

Displacement without end: internally displaced who can't go home

by Bill Frelick

There is relatively little doubt about when refugee status ends. The 1951 Refugee Convention clearly spells out that refugee status ends when the refugee is no longer in need of protection. The fundamental principle underlying the refugee definition is not movement across a border but protection or the lack thereof from the government of his/her home country.

In contrast, the most widely accepted definition of an internally displaced person (found in the Guiding Principles on Internal Displacement) fails to mention protection and does not clearly delineate when a person ceases to be internally displaced. That definition rests fundamentally on the notion of movement – that IDPs have been “forced or obliged to flee or to leave their home ... and have not crossed an internationally recognised State border.” Likewise, the final section of the Guiding Principles – dealing with return, resettlement and reintegration – makes no mention of the word protection but rather emphasises return movement or resettlement.

Principle 28 calls upon competent authorities to allow IDPs to “return voluntarily in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.” Authorities are not specifically called upon to offer protection but rather to “endeavour to facilitate the reintegration of returned or resettled internally displaced persons.” Principle 29 calls for nondiscrimination towards IDP returnees and their right to equal access to public services, and suggests that IDPs have a right either to recovery of their abandoned property/possessions or to compensation. It does not specifically say that IDPs who have relocated and reintegrated to another part of their country (presumably re-availing themselves of the protection of their government) have ceased to be IDPs. The Guiding Principles don't say this because they

can't. To be an IDP is not a legal status. To be a refugee is. ‘Internally displaced person’ is a descriptive term [see article by Kälin, pp. 15]. ‘Displacement’ as a word requires movement. Someone or something cannot be ‘undisplaced’ unless the movement is reversed and the person or object restored to its original location.

The Guiding Principles acknowledge the fundamental gap in human rights law between being internally displaced and being a refugee. In Section Two, the Principles relating to protection from displacement speak of the right not to be “arbitrarily” displaced but recognise that some displacement, such as for large-scale development projects, may be justified by “compelling and overriding public interests” and that “measures shall be taken to minimize displacement and its adverse effects.” One cannot substitute the word ‘refugee’ here. Human rights law finds no justification under any circumstances for making someone a refugee because the threat underlying refugee status is persecution and the lack of protection against being persecuted. IDPs, on the other hand, may be displaced for a variety of reasons not limited to persecution.

If the cause of displacement is not necessarily persecution or even an act prohibited by international law, and if the solution for an IDP is not strictly speaking the restoration or acquisition of protection but simply return to the previous status quo, does an IDP have a right to return? The principal legal architect of the Guiding

Principles on Internal Displacement, Walter Kälin, writes, “there is no general rule in present international law that affirms the right of internally displaced persons to return to their original place of residence or to move to another safe place of their choice within their home country.”¹

So, even though international law does not support a right of IDP return, the descriptive reality cannot cease until such return happens. What, therefore, ought to be the rights-based concern on behalf of internally displaced people?

The rights concern ought not to be because a person is internally displaced *per se* but – by analogy with the underlying concern for refugees – because a person who is internally displaced lacks the protection of their government and, owing to fear of persecution, is unable to access that protection. The rights concern ought to be particularly heightened for IDPs who are prevented from seeking asylum from persecution in another country. The human rights concern ought fundamentally to focus on those IDPs who fear persecution within their country and who lack the protection of – or are threatened by – their own government. Unfortunately, myriad examples of such circumstances exist – Angola, Burma, Chechnya, Colombia, Congo-Kinshasa, Iraq, Liberia, Sudan. The list goes on.

There are, however, millions of other people who are also counted as IDPs because they have been displaced in one manner or another from their places of origin but who have relocated and reintegrated in another part of their country and enjoy the same civil and political rights as their fellow citizens. If we may take the refugee analogy, their situation would be comparable to the refugee who has lost his/her home and possessions and cannot return to reclaim them but who has found protection under another government. Such a refugee has suffered a grievous wrong and

usually continues to suffer hardship as a result of those losses. But, legally, the person is no longer a refugee.

Internal flight alternative and IDPs

Human rights, at least with regard to civil and political rights, tend toward the minimalist, such as the rights not to be tortured and abused. Refugee rights, as conceived by the drafters of the Refugee Convention, are similarly modest. The foundation stone of the Refugee Convention is the principle of *non-refoulement*, the right of a person not to be returned to a place where s/he would be persecuted. 'Place' is not generally interpreted to mean the entirety of a refugee's home country. Thus, asylum jurisprudence in an increasing number of states embraces the notion of an 'internal flight alternative' or 'internal protection' - the notion that refugees can be denied asylum and returned to their country of origin even if they cannot return to their home or habitual place of residence within that country. In effect, refugee law in a growing number of states allows the explicit creation of internally displaced persons. It recognises that a person has a well-founded

fear in one part of his/her country but that the same person could enjoy the protection of his/her government in another part of the country. The key consideration is that the threat of persecution does not exist outside the refugee's original locality and that the person's government is willing and able to protect them.

The internal flight alternative concept is still quite controversial, and this author has been among its fiercest critics,² but it is less controversial when the feared persecutor is a local non-governmental entity opposed by the central government, when the refugee identifies with the majority population and embraces the ideology of the central government, and where the government gives every assurance that it extends the same rights of citizenship and opportunity to the returnee as would be enjoyed by other citizens in the government-controlled part of the country who never left.

Take as an example an ethnic Kurd and an ethnic Turk from southeastern Turkey. Both may have fled Turkey and sought asylum in Germany. For the sake of argument, let us say

that both asylum seekers have successfully established a well-founded fear of persecution in southeastern Turkey. The Turkish Kurd fears persecution at the hands of government forces and government proxies. The ethnic Turk fears persecution at the hands of Kurdish militants. Because of the involvement of the central government, the Kurd can be said not to enjoy an internal flight alternative since his fear of persecution cannot be confined to the southeastern region. For the Turk, on the other hand, relocation and reintegration in central or western Turkey might be a viable option if he does not feel threatened by his government and regards the threat as entirely local; if his government is willing and able to protect him and if the local non-governmental forces that would harm him should he return to the southeast do not have the means of carrying out such a threat beyond that region. However, it is indisputable that when Germany returns the Turkish refugee to Istanbul or Ankara, even though the person at that moment ceases to be a refugee, he, in fact, becomes an IDP.

As already established by the term itself, he remains an IDP until he is

Displaced family in Iraq, 1992.



able to return to his place of origin. However, he does not necessarily remain a human rights concern for the international community. His welfare now becomes the particular concern of his own government.

Conclusion

Millions of IDPs are able to relocate and integrate in other parts of their country. Most commonly, they are at least nominal members of the country's majority ethnic nationality and linguistic group and have fled or been expelled by a secessionist minority living in an ethnic enclave. This has become a particularly common phenomenon in Europe in the 1990s: ethnic Georgians displaced from Abkhazia; ethnic Azeris from Nagorno-Karabakh; ethnic and linguistic Russians from Chechnya; ethnic Serbs from Kosovo. Their suffering is real, their losses devastating, but generally they enjoy the protection of their governments and are able to exercise their rights as citizens. If any of these enclaves were to succeed in their quest for independence, these displaced persons would not qualify for refugee status if they were offered and exercised their rights as citizens in their new locations.

Strictly speaking, they remain IDPs. Yet if the concern for IDPs ultimately rests on their similarity to refugees – the commonly stated notion that IDPs are people who would be refugees if they crossed an international border – then the solutions for refugees must have some bearing on how the international community regards IDPs. Without minimising the anguish or the continuing humanitarian needs of IDPs who enjoy the protection of their government, their plight should not be regarded as equally compelling to that of IDPs who are threatened by their country's government.

Such IDPs are, indeed, especially vulnerable because they remain within the territory of that country. Especially in light of the deference paid to national sovereignty not only by other states but also by international humanitarian agencies of the UN and the ICRC, they should be regarded as at highest risk because they have the least opportunity for protection. For such IDPs the right to seek asylum from persecution outside their country ought to be paramount,

and 'solutions' such as 'safe havens' inside their country or other internal flight alternatives should be looked upon with the utmost scepticism.

Ultimately who is counted as an IDP either rests on the most inclusive meaning of the words 'internally displaced' or has a functional meaning. While reasonable arguments may be made for drawing the line more broadly to include people unable to return to their homes or places of habitual residence or to include people who have not been compensated for their losses, the narrower line based on the lack of protection defines the subset of IDPs who must be of most compelling concern to the rights-regarding international community.

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1. Walter Kälin *Guiding Principles on Internal Displacement: Annotations*, Studies in Transnational Legal Policy, No. 32, published by American Society of International Law and the Brookings Institution Project on Internal Displacement (Washington, DC, 2000) p. 69 (though Kälin does point out that "[a]t least a duty of the competent authorities to allow for the return of internally displaced persons can, however, be based on freedom of movement and the right to choose one's residence.")
2. See Bill Frelick, 'Down the Rabbit Hole: The Strange Logic of Internal Flight Alternative', *World Refugee Survey* 1999. See: <http://refugees.org/>

Clarification

FMR 16 included an article by Pascale Ghazaleh on displaced Sudanese in Cairo. The article stated that "one church offered to help fund the Sacred Heart school but on condition that all the Muslim students were expelled". It has since come to light that no such condition had been imposed. The author had acted in good faith on information received but both she and FMR would like to apologise to the Joint Relief Ministry and its donors for any distress or inconvenience that may have been caused. We wish them well with their excellent work. For more information on JRM, please visit: www.geocities.com/jrmcairo/aboutUs.html

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Returned IDPs, Kelucha village, Taskhinvali area, Georgia.

