

The legal dimension

by Walter Kälin

The Guiding Principles on Internal Displacement do not explicitly address the question of when displacement ends, i.e. when these principles no longer apply.

Unlike Article 1C of the 1951 Convention on the revocation of refugee status, the Principles do not contain any cessation clauses that would determine when their application ceases.

This is not a gap in the Guiding Principles but a consequence of one of the basic premises upon which they rest; IDPs have many specific protection and assistance needs by nature of their displacement and this is why the Principles spell out in detail their entitlements. However, like other vulnerable groups such as children, or the wounded and the sick, IDPs do not constitute a distinct legal category. Their status of being displaced does not need to be legally recognised in order to get certain legal entitlements.¹ They are already entitled to the human rights and humanitarian law protection that is available to them as to all other citizens in their country and they can invoke without any additional requirement those guarantees that have become particularly relevant to them because of their displacement. In this context, a requirement of 'displaced status determination' analogous to the refugee status determination under the 1951 Convention would be dangerous as it could easily be turned into an instrument of denying rights that they already enjoy. However, if from an international law perspective IDPs do not possess a specific legal status, a cessation of this status similar to Article 1C is unconceivable.

While the lack of a cessation clause in the Guiding Principles is thus justified, the question as to how one should determine when displacement ends remains highly relevant. There are three possible methodological approaches to answering this question.

Cessation in international law

The first approach is to look at how the different areas of international

law upon which the Guiding Principles are based (human rights law, humanitarian law and refugee law by analogy) address the issue of cessation. This approach helps to solve the problem discussed here in a limited way only.

The cessation clauses in Article 1C of the 1951 Convention on the Status of Refugees are of limited relevance for IDPs. First, of all the grounds mentioned in this provision, only paragraph 5 allowing for cessation if "the circumstances in connection with which he has been recognised as a refugee have ceased to exist" could be applied to IDPs by analogy. The other reasons² are intimately linked to the concept of **international** protection for refugees who need that kind of protection because they are abroad. Second, this ground refers to the cessation of a **legal status**, i.e. a concept that is alien to the law on internal displacement. Finally, the Guiding Principles themselves are not limited to displaced persons in the strict sense of the word. They also deal with former IDPs when mentioning the duty of authorities to facilitate the reintegration of returned or resettled persons (Principle 28) and to support them in efforts to regain their property (Principle 29, paragraph 2) or when prohibiting the discrimination of former IDPs (Paragraph 1 of Principle 29).

The idea of 'cessation' is absolutely alien to human rights law. Human rights remain applicable even if someone no longer is an IDP. Thus, for example, the rights to leave the country or to seek asylum (Principle 15) are not lost because someone has given up the idea of return to his or her original place of residence or is fully integrated in the location where he or she found refuge before leaving the country. Likewise, the prohibition of discrimination against returnees or resettlers as a result of their having been displaced (Principle 29) remains applicable even if several decades have elapsed since the end of displacement, provided that the

discriminatory treatment continues. By contrast, humanitarian law guarantees are only applicable during an armed conflict. Regarding the applicability of those principles that are based on the Fourth Geneva Convention, Article 6, for example, is relevant, stating that the application of the present Convention shall cease "on the general close of military operations" and "[i]n the case of occupied territory ... one year after the general close of military operations". The prohibition against using IDPs "to shield military objectives from attack..." in Principle 10(2)(c) has no relevance outside situations of armed conflict even if some remain IDPs after the end of hostilities. It is only regarding those principles that reflect humanitarian law that we can get some guidance from international law on the issue of the duration of application of the Guiding Principles.

Solutions

The second approach - analogous to the discussion of 'solutions' in refugee law and policy - is to look at the factual side of displacement. This is helpful as it allows us to distinguish between the following three situations:

- i) As soon as an IDP leaves his or her country of origin, the Guiding Principles are no longer applicable. Such a person is no longer in the situation of internal displacement but instead becomes a refugee or a migrant as the case may be. Here, displacement ends when the person concerned crosses the frontier of that country.
- ii) Displaced persons are no longer IDPs in the sense of the Guiding Principles if they "have returned to their homes or places of habitual residence" (Principle 29) but they continue to enjoy the rights of returnees as long as they need such protection (Principles 28-30). Once they are (re)integrated, have regained their property or received compensation and are no longer discriminated against because of their former displacement, the Guiding Principles cease to apply.

iii) The same is true of former IDPs who "have resettled in another part of the country" (Principle 29) and are no longer in need of protection under Principles 28-30. Such resettlement, for obvious reasons, must be firm and permanent.

Mandates

A third approach is to look at the mandates of humanitarian agencies and other organisations involved in assisting and protecting IDPs. The mandate of ICRC, for example, may terminate at the end or soon after the end of an armed conflict whereas a development agency may continue to be responsible for very long periods of time for IDPs who cannot return. Other organisations may be mandated to supply housing during displacement and not to returnees. Every organisation will have to determine on the basis of its own mandate when it has to stop to provide assistance and protection.

Conclusions

The factual situation of displacement in most cases changes and ends **gradually** and not abruptly. Similarly, the specific needs of IDPs change gradually

over time. For these reasons, it is not possible, and would be wrong to try, to define cessation clauses analogous to Article 1C of the Refugee Convention that would fix a specific moment when displacement is considered to have ended. Rather, it is appropriate:

- (a) to clearly separate the issue of when the mandate of an organisation requires it to cease providing assistance and protection to IDPs (to be decided specifically by each organisation) from the issue of ending the application of the Guiding Principles (and the hard law underlying it);
- (b) to focus, when deciding about cessation issues, on the needs of IDPs and to provide them with assistance and protection as long as they continue to have specific needs that are or have been caused by their being displaced;
- (c) to combine, regarding the applicability of the Guiding Principles, the second and the first approach, i.e. (i) to ask whether a particular principle still satisfies a continuing need of a person

arising out of the fact that he or she was displaced and (ii) to examine whether, in legal terms, such application is possible because the underlying hard law is protecting the person concerned in his or her present situation; and

- (d) to stress that relevant human rights and humanitarian law guarantees contained in hard law may remain applicable even if the person concerned, due to return or resettlement, no longer has special needs related to the former displacement.

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1. This does not exclude that IDPs are registered for practical purposes.
2. Article 1C paras 1 and 2 (the refugee has regained the protection of his country), para 3 (the refugee has acquired a new nationality), para 4 (the refugee has returned to the country of origin) and para 6 (ability of a stateless person to return to the country of his or her former habitual residence).