

The Guiding Principles on Internal Displacement: General presentation

Rationale and genesis

The need for international standards for the protection of Internally Displaced Persons (IDPs) became apparent in the 1990s when the number of persons uprooted within their own countries by armed conflict, ethnic strife and human rights abuse began to soar. When first counted in 1982, only 1.2 million people were IDPs in 11 countries. By 1995, there were an estimated 20 to 25 million in more than 40 countries, almost twice as many as refugees.

IDPs, like any other person, benefit from the legal protection of international human rights law and, in situations of armed conflict, from international humanitarian law. However, while IDPs continue to benefit from all of the international human rights instruments legal protection available to other persons, they do not benefit from the specialised protection of international refugee law because they have not crossed an international border. The fact of being displaced from their homes places IDPs in a situation of vulnerability to human rights abuses and neglect.

Concern with the vulnerability of IDPs led the UN Commission on Human Rights to ask the Representative on IDPs, Francis Deng, to prepare an appropriate framework for protection and assistance for IDPs. Accordingly, the Representative, with the support of a team of international legal experts, formulated the "Guiding Principles on Internal Displacement", which were presented to the Commission in 1998.

"Non-binding" but based on hard law:

The Guiding Principles are not binding on states like a treaty (such as the 1951 Convention relating to status of refugees), but:

"[A] closer look at the Guiding Principles might reveal that this very soft instrument might actually turn out to be much harder than many well-known soft law instruments. The reason for this is that the Guiding Principles are very well grounded in international law. It is possible to cite a multitude of existing legal provisions for almost every principle,¹ which provided the drafters with strong normative guidance. Even where language was used that was not to be found in existing treaty law, no new law in the strict sense of the word was created in most cases. Instead, similar to a judge who has to decide to what extent a human rights guarantee invoked by an IDP does provide protection to that person, Dr. Deng's legal team tried to deduce specific norms from more general principles that are part of existing international law. One example of this technique is Principle 6 on "the right to be protected against being arbitrarily displaced". No existing instrument mentions such a right explicitly. However, humanitarian law prohibits displacement in some specific and limited situations and human rights law, in a more general sense, guarantees not only freedom of movement but also the right to choose one's own residence, and thus, a right to

¹ You can consult "Guiding Principles on Internal Displacement, Annotations, by Walter Kälin, 2000, which highlights in detail the legal basis of each of the Guiding Principles [Internet: http://www.asil.org/pdfs/study_32.pdf]

remain ². A right not to be displaced can also be found in instruments on the rights of indigenous peoples ³. From this it can be inferred that a right not to be arbitrarily displaced is already implicit in international law. [...] Th[is] and other examples show that the drafters of these guidelines have been very careful not to go beyond what can be based on existing international law. Thus, it is justified to claim, as is stated in paragraph 3 of the Introduction, that "these principles reflect and are consistent with international human rights law and international humanitarian law".
(How Hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework, Walter Kälin, 2001)

Content

Reflecting and consistent with international human rights and humanitarian law, and with refugee law by analogy, the 30 Principles set forth the rights and guarantees relevant to the protection of IDPs in all phases of displacement, providing protection against arbitrary displacement; protection and assistance during displacement; and during return or internal resettlement and reintegration.

They provide guidance to all relevant actors: the Representative in carrying out his mandate; States when faced with the phenomenon of internal displacement; all other authorities (including de facto authorities), groups and persons in their relations with IDPs; and inter-governmental and non-governmental organisations.

The Principles establish that IDPs must not be discriminated against simply because of their displacement, or because of their race, sex, language, religion, social origin or the like.

The Principles restate the right not to be arbitrarily displaced and prohibit displacement on ethnic, religious or racial grounds.

The Principles reaffirm that "national authorities" have the obligation to ensure that IDPs' basic rights for food, water, shelter, dignity and safety, are met. They should accept the assistance of the international community, if they do not have the capacity to provide assistance and protection to IDPs. IDPs have also the right to seek asylum in another country.

In the return phase, the Principles emphasise the importance of voluntary and safe return, as well as the need to assist the displaced to recover their property and possessions.

Reception of the Principles

International bodies

In 2005, the **Commission on Human Rights** expressed "its appreciation of the Guiding Principles on Internal Displacement as an important tool for dealing with situations of internal displacement," welcomed "the dissemination, promotion and application of the Guiding Principles" and encouraged "the continued dissemination and promotion of the Guiding Principles".

The **UN Security Council** noted that "the United Nations agencies, regional and non-governmental organisations, in cooperation with host governments, are making use of the

² See article 12(1) of the International Covenant on Civil and Political Rights, articles 49 and 147 Geneva Convention IV, Articles 51(7), 78(1) and 85(4) of Protocol I, Articles 4(3)(e) and 17 of Protocol II.

³ Article 16 of the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

Guiding Principles on Internal Displacement, inter alia, in Africa" (Resolution 1286(2000) on Burundi)

The **UN General Assembly** welcomed "the fact that the Representative of the Secretary-General continues to use the Guiding Principles in his dialogue with governments and intergovernmental and non-governmental organisations and other relevant actors, and requests him to continue his efforts to further the dissemination, promotion and application of the Guiding Principles (Resolution 58/177, 2004)

Inter-governmental agencies, such as UNHCR, UNDP, the Office of the High Commissioner for Human Rights and UNICEF, have incorporated the Guiding Principles in their policy with regard to internal displacement, and have disseminated them among their staff.

UN treaty bodies, which monitor the implementation of UN human rights conventions by state parties, such as the Human Rights Committee or the Committee on the Rights of the Child, have referred to the Guiding Principles in their observations to states.

Regional organisations have made use of the Guiding Principles in their work and have further encouraged their dissemination. References to the Guiding Principles can be found in resolutions, recommendations and reports adopted by the following organisations: African Union, Economic Community of West African States (ECOWAS), Inter-Governmental Authority on Development (IGAD)(Horn of Africa), the Organisation of American States (OAS), the Organisation for Security and Cooperation in Europe, the Council of Europe.

Individual states

Angola: the government incorporated the Guiding Principles into its law in resettlement in order to guide IDP returns after the civil war.

Colombia: the Constitutional Court cited the Guiding Principles as a basis for judgements in support of IDPs.

Peru: the Congress in 2004 adopted a law based on the Guiding Principles that establishes material benefits for IDPs.

US: USAID, the US foreign aid agency, issued a policy document to guide its assistance to IDPs, referring to the Guiding Principles as a "framework for response".

Other governments (Burundi, Colombia, the Philippines, Sri Lanka, Uganda) have developed national policies based on the principles

How local actors can use the Guiding Principles

- Disseminate the Guiding Principles and information about the Guiding Principles, especially in languages used by the IDPs and relevant authorities
- Advocate widely for the application of the Guiding Principles by national authorities and international organisations and promote their adoption through national legislation
- Support training on the Guiding Principles and on international humanitarian and human rights law for staff, for the displaced themselves, and for relevant authorities and partner organisations
- Monitor and disseminate information on compliance with the Guiding Principles
- Support data-gathering that provides accurate information on the numbers of IDPs and their condition, taking due note of requirements for security, protection, and privacy

Resources

The **Guiding Principles on Internal Displacement** in English and other available languages can be downloaded from the website of Internal Displacement Monitoring Centre of the Norwegian Refugee Council: <http://www.internal-displacement.org>

Articles and reviews of the Guiding Principles can be found on the website of the Brookings Institution Project on Internal Displacement: <http://www.brookings.edu/fp/projects/idp/articles/index.htm>

See also the **Handbook for Applying the Guiding Principles on Internal Displacement**, published by the United Nations Office for the Coordination of Humanitarian Affairs: <http://www.reliefweb.int/rw/lib.nsf/db900SID/LGEL-5CTJBU?OpenDocument>

Guidance on the monitoring of IDPs' human rights can be found in: **Training Manual on Human Rights Monitoring, Professional Trainings Series No. 7**, Office of the United Nations High Commissioner for Human Rights, 2001. See

Chapter X: http://www.ohchr.org/english/about/publications/docs/train7_d.pdf

Chapter XI: http://www.ohchr.org/english/about/publications/docs/train7_e.pdf