

Training of Trainers and Curriculum Development Seminar:

The UN Guiding Principles and the International Context of Forced Displacement – Colombia 2-3 July, 2002

Introduction

During the last 50 years, Colombia, one of the countries hardest hit by the phenomenon of internal displacement, has had to face up to the challenges posed by millions of vulnerable individuals requiring the support of the authorities and of civil society. In order to harness lessons learned and improve the response capacity of public and private institutions, several Colombian educational institutions have started to offer formal training of key civil servants and NGO staff in ways to best respond to the needs of the displaced communities. One of the top universities in Colombia, the University of Valle, has even developed a post-graduate programme in internal displacement. This post-graduate course is being implemented by the university's Institute for Research and Development of Violence Prevention and Social Harmony, CISALVA¹, with the active support of the International Organization of Migration (IOM) in Colombia.

In order to strengthen the post-graduate programme by further integrating international norms, such as the UN Guiding Principles on Internal Displacement, as well as lessons learned from other countries affected by displacement, the Global IDP Project was asked to provide training of key university staff. Participants included professors, staff and counterparts in charge of the design, evaluation and development of the programme as well as graduates asked to evaluate the programme.

¹ Instituto de Investigación y Desarrollo en Prevención de Violencia y Promoción de la Convivencia Social, CISALVA.

During the two-day training, the topics below were addressed in sessions delivered by the Global IDP Project. This report provides a brief summary of the content of each session, including a comparative analysis between global displacement tendencies and the Colombian situation.

The following topics were addressed:

- Brief overview of current situation of internal displacement worldwide
- Introduction and background to the mandate of the Representative of the UN Secretary General on Internal Displacement and the UN Guiding Principles
- International and Colombian reactions to the Principles and their incorporation into national legislation and policy
- International institutional arrangements to respond to IDPs (Collaborative Approach)
- Definitions of a displaced person in the Principles and in the Colombian legislation
- Review of the content of the Guiding Principles
- Strengths of the Principles compared to Colombian IDP Law 387
- Displacement in Colombia and internationally: a comparative study

Current situation of internal displacement worldwide

Making use of the extensive IDP information systematized in the Global IDP Project's database, participants were presented with a global picture of internal displacement. Their attention was drawn to the fact that more than 25 million persons from over 48 countries are today internally displaced. This figure is almost twice as large as the number of refugees worldwide.

Regional IDP situations were also discussed, highlighting the most numerous and critical country situations in Africa, Asia and Europe/CIS. According to the Global IDP Project's database, Colombia is the fourth most affected country in the world, after the Sudan, Angola and the Democratic Republic of Congo.

Introduction and background to the mandate of the Representative of the UN Secretary General on Internal Displacement and the UN Guiding Principles

Having provided participants with a better picture of the phenomenon of internal displacement worldwide, the seminar focused on some of the international community's responses to that reality: the assignment of a Special Representative of the UN Secretary General on Internal Displacement, Mr. Francis Deng (1992), and the development of the UN Guiding Principles on Internal Displacement (1998).

The mandate of the Representative was reviewed and explained, highlighting the Representative's following four responsibilities:

- To review the protection of IDPs in existing international law instruments
- To analyze different institutional arrangements responding to the needs of the displaced
- To carry out field missions to countries affected by the phenomenon
- To advocate for IDP rights through a dialogue with authorities and others

It was made clear that the Principles more or less follow the chronological development of displacement, covering prevention, protection, humanitarian assistance and return/resettlement. In addition, the Principles provide guidance on the process of protecting IDPs and finding durable solutions by advocating IDP participation and empowerment as well as self-sufficiency and community unity. At this point, only the general content of the Guiding Principles were discussed, while the more detailed provisions were examined in a separate session.

International and Colombian reactions to the Principles and their incorporation into national legislation and policy

Participants were briefed on how the Guiding Principles were very well received by the coordinating body of the United Nations humanitarian agencies, the UN Inter Agency Standing Committee (IASC). The head of the IASC (the Emergency Relief Coordinator, ERC) asked all the UN agencies to disseminate them and to use them in the field. Governments have also responded favorably to the Principles, taking note of them in repeated resolutions during the yearly Commission of Human Rights and at the General Assembly, encouraging governments and agencies to make full use of them.

A limited number of countries have criticized the Principles for not having been approved in an intergovernmental review process and for supporting relief activities seen as humanitarian intervention violating national sovereignty. The Colombian government has never expressed such concerns. On the contrary, Colombia is the country that by far has made the most extensive use of the Principles in formulation of legislation and IDP policy. Consequently, the Colombian IDP legislation is largely in line with the Guiding Principles and the Constitutional Court has determined that new legislation or norms should also follow the Principles. Furthermore, the Court has determined that the Principles, as an international instrument of law, should be given the same weight as the Colombian constitution. In other words, the Court argues that the Principles have a standing above Colombian legislation. This remarkable validation of the Principles has also been confirmed by the executive in Presidential Directive No. 06 of 2002.

International institutional arrangements to respond to IDPs

In order for participants to better understand the different responsibilities of international agencies in relation to IDPs, the UN's so called "collaborative approach" to IDP protection and assistance was discussed. It was explained that under the coordinating responsibility of the Emergency Relief Coordinator each agency has a responsibility to attend to IDPs, making strategic use of its comparative advantages and distinct mandates. To enhance the effectiveness of this arrangement, a new IDP Unit has been set up within OCHA. Participants were introduced to some of the main objectives and activities of this Unit. Lastly, the special coordinating arrangements among UN agencies in Colombia was addressed, making clear that UNHCR Colombia has a thematic lead agency responsibility in relation to IDPs.

Definitions of a displaced person in the Principles and in the Colombian legislation

First, the difference between a descriptive definition, like the one provided in the Guiding Principles, and a legal definition, like the definition in the Colombian legislation, was discussed. It was made clear that a descriptive definition does not provide IDPs with rights beyond the ones enjoyed by other citizens. Such a definition only identifies IDPs as a particularly vulnerable group. However, a legal definition, like the one found in

Colombian IDP Law 387, entitles displaced individuals to special support, such as food rations, emergency housing, clothing etc.

When comparing the definition in the Guiding Principles with Law 387 participants quickly noticed that the Colombian definition is somewhat narrower. The definition in Law 387 focuses on victims of human rights violations and war-affected persons, excluding persons forced to leave their homes as a result of natural disasters and large development projects, while these last individuals would fall under the definition in the Principles.

Both definitions include victims of human rights violations but exclude voluntary economic migration. Participants discussed how the difference between these categories is often unclear in Colombia. Some of them argued that recent agricultural policies have turned large number of farmers into victims of violations of basic economic human rights. As such, they would fall under the definition of Law 387, it was argued.

Review of the content of the Guiding Principles

The concrete content of the Guiding Principles were reviewed through the lens of four themes:

- No discrimination
- Freedom of movement
- Physical integrity
- Right to return or resettlement

Discrimination against an individual based on that person's condition as displaced is prohibited in the Principles. Such an explicit prohibition fills a gap in international law. In addition, the Principles prohibit discrimination against displaced persons in a number of concrete situations, such as their access to social services, schooling and employment, including access to public offices.

The Principles include an explicit right to be protected from forced displacement, which is derived from a general human right to freedom of movement. In addition, IDPs have the right to freedom of movement during displacement, just as any other citizen can move freely around his/her country. The applicability of this right to IDP specific situations has been

clarified in the Principles. Displaced persons have, for example, the right to move freely in and out of IDP camps, the right to seek safety in any part of the country and the right to not be forced to return or resettle, according to the Principles.

The physical protection of IDPs in the Guiding Principles include human rights such as the right to life, right to freedom from torture and disappearance, as well as rights under humanitarian law, such as protection from indiscriminate attacks, antipersonnel mines, forced recruitment and recruitment of children. The physical integrity of displaced persons is also protected through the obligation to provide a minimum of food, potable water and health care services.

The right to return or resettle voluntarily is clearly stated in the Principles. Such a right translates into an obligation on the part of the authorities to create conditions that allow the displaced to return. In order to establish such conditions it is often necessary to address the root causes of displacement and establish certain socio-economic conditions, which permit IDPs to recreate their livelihoods.

Strengths of the Principles compared to Colombian IDP Law 387

Clearly, the Colombian legislative and normative framework protecting IDPs is much more detailed and obviously more country specific than the Guiding Principles could ever be. It includes not only Law 387 but also a number of specialized decrees or agreements from each sector (health, housing, land reform, etc). However, there are a number of provisions and aspects of the Principles, which would add to Colombian IDP Law 387. Those particular provisions were discussed during the seminar:

- Indigenous people, minorities and other groups with a special dependency on their lands enjoy special protection in the Principles, while not explicitly so in Law 387.²
- The Guiding Principles provide clear protection from forced return and resettlement, which is not included in Law 387.

² It should here be pointed out that Colombia is however a state party to ILO Convention No.169, which prohibits forced displacement of indigenous groups (Art. 13.1)

- Both instruments guarantee the right to return or resettle. However, the Principles go one step further and specify that the authorities have the obligation to create conditions for such return or resettlement to be safe, voluntary and dignified.
- The Principles call on the authorities to facilitate processes of compensation and reparation for lost property.
- Under the Principles, humanitarian actors are expected to not only attend to the assistance needs of the displaced population but to also provide human rights protection.
- Through a general protection provision, Law 387 affords the displaced population protection from all internationally recognized civil rights violations. In the Guiding Principles, this protection is made much more explicitly relevant to IDPs. Important protection issues for IDPs in Colombia and elsewhere, such as prohibition against closed camps, child recruitment, starvation as a method of combat and indiscriminate attacks etc, are all explicitly spelled out in the Principles, but not in Law 387.

Displacement in Colombia and internationally: a comparative review

In order for participants to reflect on the challenges and potentials of the Colombian displacement situation, a comparative review of displacement elsewhere and in Colombia was provided. This comparison focused on the role of the State in affected countries, but also touched on more specific characteristics of displacement in Colombia and worldwide, such as causes, access to the IDPs, external intervention, patterns of displacement etc.

The role of the State in relation to internal displacement can be analyzed from three perspectives:

- The State as an active agent of displacement
- The presence of the State, and
- The State's response to internal displacement

The State as a perpetrator of displacement

In more than one third of the countries monitored through the Global IDP Project's database, the State itself is responsible for causing displacement. This displacement is generally carried out in order to: 1) isolate insurgent groups, 2) control areas that are either strategic or rich in natural resources, or 3) alter the demographic composition of an area.

Even though Colombian official statistics report a small percentage of IDPs displaced by state forces, it was agreed that in general terms, Colombia would not fit into the category of States directly displacing populations.³

Presence of the State

In many countries affected by internal displacement the State barely exists (Somalia). It is often a highly unstable construction weakened or practically destroyed by internal conflict and extreme poverty (DRC, Sierra Leone, Sudan, etc). It is common to find a total absence of the State on a municipal and even provincial level.

In Colombia, there is clearly a need for an extended State presence. However, in comparison to other countries affected by internal displacement, there is a much larger number of State agencies and institutions (political, judicial and socio-economic), which are present, even at the municipal level.

State response to internal displacement

Internationally, very few displacement-affected countries have been able to respond satisfactorily through IDP legislation/policies and effective institutional arrangements. State institutions charged with the responsibility to attend to IDPs are often lacking skilled staff, necessary infrastructure and a general capacity to cope with a situation of massive displacement. They are often hopelessly under funded and therefore completely dependent upon international support.

In Colombia, state capacity to respond to the crisis is much more impressive, particularly in the field of legislation and policy. In these areas, incomparable achievements have been made to guarantee IDPs' needs and rights through numerous laws, government policies, presidential decrees and

³ It could however be argued that the Colombian paramilitary groups, responsible for more than 50% of all displacements, often work hand in hand with State forces.

directives, as well as through important decisions by the Colombian Constitutional Court. In addition, elaborate institutional arrangements on both the central and the local level are being coordinated by one central agency (Social Solidarity Network). Additionally, Colombian civil society has played a crucial role in supporting the displaced communities through, for example, the Catholic Church, the NGOs, and a variety of community-based organizations. Also, Colombia, despite all the challenges it faces, is still a nation with a relatively high level of development compared to many other displacement-affected countries. This translates into a certain capacity to absorb continuous flows of internally displaced.

Dramatic increase in the number of IDPs in Colombia

Having concluded that the role of the Colombian State in relation to internal displacement has been so much more positive than in other countries, it is surprising to see that Colombia still has one of the highest IDP populations in the world. To understand that equation one has to take a look at the statistics of new IDPs in Colombia, which show an alarming and sustained increase, particularly over the last five years. During this time period, more than 300.000 persons have been displaced annually, adding to an already unmanageable caseload of long-term displaced.

The relatively acceptable response by the Colombian State (very good when compared to other countries) has clearly been off-set by the dramatic yearly increase of IDPs. However, many nations affected by displacement would be completely overwhelmed by a prolonged yearly increase similar to the one in Colombia. A fairly solid state presence and intervention, together with an organized civil society, have avoided an even more critical IDP situation. However, the response capacity is stretched to its maximum and there is now an urgent need to seriously focus on preventive measures in order to stem the dramatic yearly increase of new IDPs.

Other characteristics of the Colombian displacement situation

The drastic yearly increase of IDPs stands out as the salient characteristic of displacement in Colombia and clearly constitutes the main challenge for Colombian authorities and civil society. Additionally, a number of other important characteristics were discussed:

- Some of the most common causes of displacement do not necessarily apply to Colombia: ethnicity, religion and struggles for independence or autonomy

- Humanitarian access to the displaced population has normally not been hindered (recent developments might indicate a trend shift)
- The displaced communities have achieved high organizational levels despite repressive action by the armed actors
- Displacement in Colombia has traditionally not been in the form of mass exoduses, but rather through continuous, often silent, displacement of individuals and families.
- Hence, the majority of the displaced have not gathered in large camps but rather live in poor neighborhoods or have dispersed in the major cities.

Summary

During the two-day seminar, both the professors and the broader academic team gained a better understanding of the Guiding Principles and current international responses to internal displacement. Participants agreed that international aspects should be further incorporated into the post-graduate programme, together with national IDP legislation. It was suggested that a rights based approach, combining international and national norms, should be a common thread throughout the programme. Such an approach should not compromise the very operational and field oriented content of the programme, but certainly increase students' awareness of IDP rights.

The comparative analysis between the Colombian IDP situation and international characteristics of internal displacement showed that the greatest challenge is posed by the sustained and dramatic yearly increase in number of new IDPs in Colombia. Effective prevention measures therefore have to be designed and urgently implemented. The post-graduate programme should incorporate this crucial problem in its curriculum.

The role of the State in relation to internal displacement was discussed from an international perspective. The limited effectiveness of state capacity in most countries affected by internal displacement makes the Colombian State response stand out as relatively satisfactory, particularly in the areas of IDP legislation and policy development. However, participants pointed to the

large gap between norms and actual implementation. Once again, prevention of displacement was identified as the most critical issue to address in the post-graduate programme and in other fora.

Finally, seminar participants appreciated the opportunity to discuss and evaluate the current content of the post-graduate programme and to reflect on how international norms and practices could be better incorporated. At the same time, the seminar provided a space to discuss the Programme's links to other institutions and training efforts, such as the decentralized human rights training programme initiated by the Office of the Human Rights Ombudsperson. Strengths and weaknesses of the University programme were identified, but overall, everyone agreed that this initiative by the University of Valle and the IOM is an important achievement, which effectively enhances participating civil servants and NGO staff's capacity to better fulfill the rights of internally displaced persons.