

# **Statement to the Memorial Conference on Forced Displacement in the Russian Federation**

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It is a great honor for me to participate in this important conference and to share a few thoughts with you today. The Representative of the Secretary-General on the Human Rights of Internally Displaced Persons Walter Kälin, for whom I work, had very much wanted to attend himself but was unexpectedly called away for an urgent mission to Nepal. He asked me to express his regrets and his hope to find other opportunities to share thoughts and collaborate with all of you on the situation of internally displaced persons in Russia.

To provide a context for today's discussions about IDPs in this country, I have been asked to talk about IDP laws and policies of other countries. There are not yet very many of these despite the global reach of internal displacement and it is one of Dr Kälin's major goals to encourage more states to develop laws in conformity with international standards as articulated by the Guiding Principles on Internal Displacement.

We are therefore undertaking a systematic study of domestic laws and policies concerning internal displacement in order to produce a guidebook for policy makers to show best practices in incorporating international norms. Because we have only just begun this project, my observations today will have to be somewhat preliminary. However, I have brought along another document that may be of interest to you, a Framework for National Responsibility, which provides benchmarks for states in how to fulfil their responsibilities to IDPs. I have drawn on this Framework for some of my remarks and I understand that Margareeta Pemrocynen will speak about it further later today.

My hope is that a comparative look at how some other countries have addressed certain issues will help to provide some context for your discussions about what can and should be done about internal displacement in Russia. In doing so, I am fully aware that the situations in these countries may not be fully comparable to yours or to each other. Large differences exist between countries in levels of development, styles of governance, and in the political, historical and social backgrounds to their displacement crises. Still, there are many commonalities in the experience of mass displacement around the world so I think lessons can be drawn from others.

## **Background on the Guiding Principles**

It was the recognition of these commonalities that inspired the creation of the Guiding Principles on Internal Displacement, the primary international normative instrument on IDP issues, and I would like to begin my remarks with some background about the Principles for those of you who may not be as familiar with them. In 1992, the United Nations Commission on Human Rights

passed its first resolution on internal displacement, calling on the Secretary-General to appoint a representative to study the human rights issues of IDPs.

The Secretary-General appointed Francis Deng, Dr. Kälin's predecessor, as his representative, and he proceeded to convene a team of international law experts to study how human rights and humanitarian law addressed internal displacement. As a result of this study, Representative Deng concluded that existing laws covered most of the protection needs of IDPs but that there were certain gray areas and gaps in coverage and that there was a lack of understanding of how the relevant provisions of the various instruments work together to address IDP issues. There was thus a need for a single instrument to clarify the state of the law. On the other hand, the Representative's contacts in the diplomatic world also convinced him that there was no appetite among states at that time for the development of a new treaty on this issue.

With the encouragement of the Commission, Representative Deng and his team of experts developed the Guiding Principles on Internal Displacement, which he presented to the Commission on Human Rights in 1998. The 30 articles of the Guiding Principles compile and restate existing human rights and humanitarian law applicable to internally displaced persons and provide guidance as to how these norms apply to their specific situations.

The Guiding Principles are not binding as a document, but I will argue that this is not all that important, for two reasons. First, the norms the Principles compile are binding law for the parties to the treaties from which they are drawn. Like many countries I will mention today, the Russian Federation is a party to nearly all of these treaties. In this regard, I would like to highlight that Memorial has prepared a Russian translation of the Annotations to the Guiding Principles with specific commentary on how Russian law complies with them. I would greatly recommend them to all of you interested in the legal strength of the norms articulated by the Principles.

Second, the Guiding Principles have gained a strong and growing moral authority, for example through resolutions in the Commission on Human Rights and General Assembly, in regional bodies across the globe, including the OSCE, as well as in the work of the UN, which has adopted them as its framework for addressing IDP issues. Most important is the level of acceptance and incorporation at the national level. We are starting to see this in laws and policies of a number of states and I would now like to turn to them.

## **Definition of Internally Displaced Persons**

An important element of many of these laws and policies is the definition of IDP. By defining such a category of persons, a state recognizes that they have particular needs requiring a particular response.

According to the Guiding Principles, internally displaced persons are:

“persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”

This definition includes not only persons displaced by conflict but also those forced to leave their homes for other reasons, including development projects and natural disasters. Despite these very different causes, the drafters of the Guiding Principles felt that all those displaced shared common protection needs, including not only the loss of their homes but also heightened vulnerability to other kinds of human rights abuses as a result of displacement.

This argument is starting to gain adherents at the national level. Uganda recently passed a policy adopting the Guiding Principles’ definition and Liberia’s transitional government accepted it as well in a 2004 declaration “adopting” the Principles. Peru’s law, a bill currently pending before the Philippines legislature as well as a draft policy being considered in Nigeria adopt similarly broad if not exactly the same language as the Guiding Principles’ definition. Afghanistan’s policy encompasses both conflict and disaster-related displaced.

However, a number of other governments with IDP policies or laws have adopted narrower definitions. For example, Azerbaijan, Colombia and the former Yugoslav states have passed laws or policies focused only on displacement by armed conflict or direct persecution. Conversely, last year, India adopted a policy that only addresses persons displaced by development. This focus is understandable in states reacting to a particular population displaced by a single cause. On the other hand, it can leave them unprepared for future displacement by other causes and create the potential for discriminatory treatment between persons displaced by different causes. This was a real concern expressed to Representative Kälin with regard to several of the countries affected by the December 26 tsunami that also hosted populations of persons displaced by conflict.

Some definitions also try to approximate the exclusive focus of the 1951 refugee convention on individualized persecution. This was true, for example of the 1992 law on IDP status in Azerbaijan (which was later broadened) and the 1999 Law on Refugees and Displaced Persons in Bosnia and Herzegovina. If it ever made sense to adopt such a narrow approach to the protection of refugees, it makes little for IDPs. While one might argue that the need for special status as a substitute for diplomatic protection of foreigners is particularly apparent in cases of individualized persecution on which the home state will not act, the protections claimed by IDPs are the same as those offered to all human beings and civilians by human rights and humanitarian law – such as protections of the right to life, physical integrity and freedom of residence and movement, all of which can be (and frequently are) violated in situations of armed conflict without any individualized intent.

Still, even narrow, single-cause definitions of IDP are not nearly as troubling as those that are overtly discriminatory. These usually provide for recognition and assistance only to those displaced by enemies of the government and not those displaced by the government itself. Nepal

currently falls into this category, by limiting its recognition to persons displaced by the Maoists. Similarly, at least at one point, Turkey limited its rehabilitation assistance to those who could claim displacement by Kurdish insurgents, although national officials now assert that such distinction is no longer made. The 1999 Azerbaijan law which broadened the definition of IDP from one focused on individual persecution also moved in this direction by referring to displacement by “external aggression”.

This type of discrimination is ironic, as state responsibility under international law is most obvious for the government’s own direct violations of rights. Moreover, it is a sure recipe for generating resentment and heightening the possibility of future conflict.

While the Law on Forced Migrants in the Russian Federation is not as extreme as that in Nepal, it is among the more restrictive, as it leaves out not only those displaced by disasters and development, but also persons fleeing generalized violence, as well as those who do not cross over into separate regions. If there is indeed to be amendments to this law, this issue should be considered.

## **Prevention of Displacement**

A number of policies around the world also integrate the element of prevention of arbitrary displacement. For example, following Guiding Principles 6 and 7, Peru and Uganda lay out steps that must be taken where authorities are considering displacement to ensure that it is not arbitrary. This is particularly useful for ensuring that IDPs are fully informed and consulted about any impending displacement. Some states have also incorporated criminal prohibitions into their laws on population transfer, which can be both a crime against humanity and a war crime depending on the circumstances. I believe that this is true of the Russian Federation. The draft policy in Nigeria is remarkable for incorporating measures and guidelines for preventing ethnic conflict.

## **Rights of IDPs During Displacement**

Many rights that are important once someone has been displaced – such as the right to life, to be free of torture, and to be free of arbitrary detention -- are usually already provided in state constitutions or legislation of general character and a dedicated IDP policy or law is not necessarily needed to provide for them. It is my understanding that this is the case here in the Russian Federation. Of course, it certainly does no harm to reiterate that these fundamental rights also apply to IDPs, and Peru, Uganda, as well as the drafts in the Philippines and Nigeria, do this in great detail.

On the other hand, there are certain rights that are particularly likely not to be fulfilled for IDPs if not explicitly addressed in a specific law or policy. I can’t cite all of them now, but among them is the right to documentation, as articulated by Guiding Principle 20. The Principles specify that authorities should ensure that all documents necessary for the exercise of legal rights are available without imposing “unreasonable conditions” such as requiring them to return to

their home areas. The Principles describe this as an aspect of the right to be considered a person before the law. It could also be seen as an essential element of the right to freedom of movement. This issue has been addressed by the laws and policies of a number of states, including Peru, Uganda, and to some extent Sri Lanka. This right is arguable at issue here in the Russian Federation with regard to obstacles to registration of residence for displaced persons.

Similarly, voting rights are frequently tied by laws of general application to the place of residence. This can easily result in the disenfranchisement of displaced persons, a particularly dangerous prospect when displacement lasts for long periods of time. In 2003, Georgia changed its elections law specifically to accommodate its displaced population to allow them to register in their places of residence. Election rules in the late 1990s in Bosnia and Herzegovina under international mandate provided freely for absentee balloting by displaced persons, or the choice to re-register in their place of residence, so that security concerns at home would not deter their participation. The Brookings-Bern Project has prepared a report on electoral rights in OSCE countries that I will be happy to provide anyone interested in further information on the issue.

Moreover, general laws do not suffice to ensure the adequate participation of IDPs, particularly women, in decisions affecting their fate.

## **Durable Solutions**

More than any other area, however, adequate planning and assistance for solutions to displacement require specific treatment in a law or policy. Per Guiding Principle 28, such policies must ensure that any solutions are voluntary, safe and dignified. Voluntariness and safety have certainly been an issue raised with regard to the return of IDPs to Chechnya, as noted by Representative Deng after his 2003 visit. Most of the policies I have mentioned today provide similar guarantees although, in practice, many have not been completely implemented.

To take one at least partially positive example, Indonesia's former policy, clearly laid out three options; return, empowerment to settle in the place of current residence, and resettlement. Indonesia's policy was a remarkable success during the period it was in force from the end of 2001 to the end of 2003, and a tremendous catalyst for action. The national government devoted substantial resources and energy to implementing the three options in various parts of the country. It also offered substantial cooperation to the international humanitarian community in all areas except Aceh. As a result, it halved its conflict-induced IDP population, which as of 2001 had been over 1 million persons.

Unfortunately, as of 2004, the national government appeared to have expended its political will and essentially gave up the effort, leaving several hundred thousand IDPs without solutions. This has now been compounded with the enormous new displacement from the tsunami. Still, it is interesting to note that this developing country successfully rehabilitated over 500,000 persons, mostly with its own resources and within two years, and did so without sending these persons back to areas they considered dangerous.

## **Designation of Institutional Structures**

I want to end with what I see as one of the most important functions of a national law or policy on internal displacement, which is to clearly set out roles and responsibilities among different sectors of government, as well as between national, regional and local governments, for responding to the various needs of IDPs. While it is very well to lay out IDP rights, fulfilment is rarely assured in the absence of a clear institutional structure. IDP laws and policies in many countries, including Afghanistan, Colombia, Sierra Leone, Sri Lanka and Uganda have such a division and assignment of tasks as a major focus.

In a number of these laws and policies the role of the armed forces and police is spelled out in some detail and an attempt made to ensure their coordination with other arms of government. This is important to ensure that the primary protection needs of IDPs are met. In federal states, it is also very important to clearly lay out programmatic and budgetary responsibility between national and regional authorities. In doing so, however, it must be kept in mind that the national government, as representative of the state, bears ultimate responsibility under human rights and humanitarian law.

The availability of a remedy where policies or laws are not followed is an element frequently overlooked in IDP laws and policies but crucial to their real success. In Colombia, the Constitutional Court has allowed such a remedy relying on constitutional and international human rights principles. This has been extremely important because despite detailed law and policy on the topic, many activists argue that implementation of assistance and protection of IDPs in Colombia is very poor. In the Philippines, the draft bill would specifically place the National Human Rights Commission in a position of oversight of government compliance with the policy. However, in many states the rights of IDPs to complain where policies are not followed are not clear.

## **Conclusion**

To conclude, I think it clear that there is no one model of national response to internal displacement. Also, policy and law is merely a starting point: without effective and sensitive implementation they are of little use. However, some best practices are emerging that seek to incorporate the Guiding Principles and I hope that they can help in your consideration of the issues in Russia.