

Background Report for the Conference on Internal Displacement in Asia

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Internal displacement has come to the fore in recent years as one of the most pressing humanitarian, human rights, political and security issues facing the global community. There are an estimated 20 to 25 million persons worldwide forcibly displaced within the borders of their own countries, often in acute need of protection and assistance. Whereas refugees, who total around 13 million, can look to the Refugee Convention and the UN High Commissioner for Refugees (UNHCR) for support, internally displaced persons have no comparable international system in place to respond to their needs. To be sure, ad hoc arrangements have developed, but large numbers of internally displaced persons remain outside established systems of protection and assistance.

UN Secretary-General Kofi Annan has described the problem as creating "an unprecedented challenge for the international community: to find ways to respond to what is essentially an internal crisis." Internally displaced persons are within their own countries but often fall within a vacuum of responsibility in the state. Too often, their governments are unwilling or unable to provide for their protection and assistance needs, and in some cases there is no government at all. Thus, while primary responsibility for the security and well-being of the displaced rests with their governments, the need for regional and international attention and involvement becomes essential.

Issue of Sovereignty [\[Top\]](#)

In 1992 the UN Secretary-General appointed a Representative on Internally Displaced Persons, Dr. Francis M. Deng, a former diplomat and scholar from the Sudan. Deng formulated the doctrine of "sovereignty as responsibility" as the most suitable conceptual framework for dealing with the problem. Basically, it stipulates that when states are unable to provide life-supporting protection and assistance for their citizens, they are expected to request and accept outside offers of aid. Should they refuse or deliberately obstruct access to their displaced or other affected populations and thereby put large numbers at risk, the international community has the right and responsibility to assert its concern. International involvement in such cases can range from negotiation of access, to political pressure, to sanctions or, as a last resort, military intervention. In his dialogues with governments, Deng has repeatedly made the point that no state claiming legitimacy can quarrel with its commitment to protect all of its citizens. Sovereignty must mean accountability to one's population and also to the international community in the form of compliance with international human rights and humanitarian agreements.

Legal Framework [\[Top\]](#)

To provide the international community with a basis for action, Deng, together with a team of legal experts, developed the Guiding Principles on Internal Displacement. For many years, international organizations and NGOs had pointed to the absence of a document to turn to when dealing with internally displaced populations. To fill this gap and at the request of the Commission on Human Rights and General Assembly, the Representative studied the extent to which international law provides protection for the internally displaced. A Compilation and Analysis of Legal Norms, produced by the legal team, concluded that while existing international law provides substantial coverage for the internally displaced, there are considerable grey areas and gaps in the law. Applicable provisions were, moreover, dispersed in a wide variety of instruments. Following consultations with a wide range of international and regional organizations, NGOs and experts, the legal team recommended the creation of one coherent document that would restate the law, clarify gray areas, and fill the gaps.

The Guiding Principles on Internal Displacement, completed in 1998 and introduced to the UN by Deng, are the first international standards specifically tailored to the needs of the internally displaced. Based on existing human rights and humanitarian law, and refugee law by analogy, their 30 articles set forth the rights of the internally displaced and the obligations of governments, insurgent groups and other relevant actors toward these populations. They apply to all phases of displacement, offering protection prior to displacement (that is, against arbitrary displacement), during displacement and in the return and reintegration phase. Although not a binding legal document like a treaty, the Principles are based on law that is binding and have gained, in a relatively short period of time, considerable recognition and standing.

Following Deng's presentation of them to the UN, the Commission on Human Rights, Economic and Social Council (ECOSOC) and General Assembly adopted resolutions taking note of the Principles and of the Representative's intention to use them in his dialogues with governments, intergovernmental bodies and non-governmental organizations. Even earlier, the Inter-Agency Standing Committee (IASC), composed of the heads of the major international relief, development and human rights agencies (i.e., UNHCR, World Food Programme (WFP), UNICEF, the International Committee of the Red Cross (ICRC) etc.) welcomed and endorsed the Guiding Principles and encouraged its members to share them with their Executive Boards and their staff and to apply them in the field. In his report to ECOSOC in 1998, the Secretary-General listed the Principles as one of the notable achievements in the humanitarian field in 1998. And in a report to the Security Council in 1999, the Secretary-General called upon states to observe the Principles in situations of massive displacement. In January 2000, the Security Council, in a Presidential statement, took note of the Guiding Principles.

Regional organizations have also begun to take note of and disseminate the Principles. The Inter-American Commission on Human Rights of the Organization of American States (OAS) has welcomed and expressed its support for the Principles, and in its most recent visit to Colombia, measured conditions on the ground in terms of the Principles.

The Organization of African Unity (OAU) formally expressed appreciation of the Principles, and several OAU-sponsored seminars have emphasized the importance of the Principles to Africa. In Europe, the Organization for Security and Cooperation in Europe (OSCE) has expressed support for and begun to disseminate the Principles to its field staff.

In addition, international and national non-governmental organizations have been publicizing and widely circulating the Principles and have organized workshops and meetings in a number of countries, together with regional and international organizations, to discuss how best to implement them in the field. In 1998, a regional conference was held in Addis Ababa on internal displacement in Africa, which featured the Principles. It was organized by the OAU, UNHCR and the Brookings Project on Internal Displacement. In the Americas, a workshop on application of the Guiding Principles was held in Colombia in 1999 by the Grupo de Apoyo a Organizaciones de Desplazados (GAD)—a consortium of Colombian NGOs—in collaboration with the U.S. Committee for Refugees (USCR) and the Brookings Project. A meeting scheduled for Europe in 1999, in particular for local NGOs from Kosovo, and organized by the OSCE, the Open Society Institute and the Brookings Project, unfortunately had to be canceled because of the tragic developments there. Also in 1999, country workshops were held in the Philippines and Uganda focused on the Principles, organized by the Norwegian Refugee Council in collaboration with local NGOs and organizations of displaced persons. A Regional Consultation on the Situation of Internally Displaced Peoples was also organized in Thailand that same year by Forum Asia.

As a result of these efforts, some governments have begun to turn to the Guiding Principles as a useful guide for the development of laws on internal displacement and as a yardstick for measuring conditions in their countries. For many international organizations and NGOs, the Principles have been proving a valuable advocacy tool in their work on behalf of the displaced.

To be sure, the mere existence of a legal document can hardly deter a government from arbitrarily displacing or abusing its citizens. Nonetheless, an acknowledged set of standards has been helping to raise international awareness to the needs of the internally displaced and provide guidance and support to displaced communities and those working on their behalf. It is to be hoped that the Principles in time may begin to act as a deterrent to arbitrary displacement.

The Bangkok Conference and the Principles [[Top](#)]

The Regional Conference on Internal Displacement in Asia, to be held in Bangkok, is the first regional meeting to be held in Asia specifically focused on the Principles. According to the conference agenda, the meeting will explore the application of the Guiding Principles by means of case studies in all phases of displacement.

Participants addressing both conflict-induced and development-induced displacement will find the Principles instructive. As concerns prevention of displacement, the

Principles quite innovatively formulate a right not to be arbitrarily displaced and set forth the grounds and conditions by which displacement is impermissible, including in situations of armed conflict. Displacement on ethnic, religious or racial grounds is prohibited in all circumstances. As for displacement by large-scale development projects, it is deemed arbitrary when there are no compelling and overriding public interests to justify the project. However, even when displacement is lawful, the authorities are to explore all feasible alternatives to avoid displacement altogether and must comply with a list of guarantees when undertaking displacement. For example, it may never be carried out in a manner that violates the rights to life, dignity, liberty, or the security of those affected. States also have a particular obligation to provide protection against displacement to indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

During displacement, the Principles set forth a broad range of rights enjoyed by the displaced, tailoring them to their particular needs, and also provide guidance to organizations providing humanitarian assistance. Indeed, the Principles underscore that when states are unable or unwilling to provide needed assistance, they may not arbitrarily prevent others from doing so and in fact must grant unimpeded access to displaced populations. And they call upon those providing assistance to pay attention to "the protection needs and human rights" of internally displaced persons and "take appropriate measures in this regard." This is particularly significant given the lack of attention often paid to protection and human rights concerns (see below). Some of the case studies at the Bangkok meeting specifically focus on integrating protection with assistance activities and the consequences of not doing so.

During return and reintegration, the Principles not only emphasize the importance of voluntary and safe returns or resettlement but of the need to assist the displaced to recover their property and possessions. When recovery is not possible, the Principles call for compensation or just reparation. Several speakers at the Bangkok meeting will deal with this aspect of displacement.

Definitional Issues [\[Top\]](#)

The introduction to the Guiding Principles contains a definition of internally displaced persons, which it should be borne in mind, is descriptive. Unlike the refugee definition, it does not confer legal status on the displaced. According to the definition, 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."

The two crucial elements of the definition are coerced or involuntary movement and remaining within one's national borders. Also included in the definition are the major causes of displacement, although the use of the qualifier, "in particular," makes clear that internal displacement is not limited to these causes alone.

The definition tries to strike a balance between too narrow a framework that risks excluding people and one so broad that it could prove operationally unmanageable. While focusing primarily on people who, if they were to cross a border, would qualify as refugees, it also includes people who would not qualify as refugees, for example those uprooted by natural and human-made disasters.

The argument for including natural and human-made disasters was based essentially on cases where governments respond to such disasters by discriminating against or neglecting certain groups on political or ethnic grounds or by violating their human rights in other ways. The same reasoning applies to persons displaced by development projects although they are not explicitly mentioned in the definition. Should dams and other such development projects be constructed without compelling and overriding public interest and without meeting certain guarantees (such as consultation, resettlement, compensation or respect for human rights), they could qualify as human-made disasters and/or situations requiring attention under the definition.

Whereas people forced from their homes because of economic injustice and marginalization tantamount to systematic violation of their economic rights would come under the definition, in most cases of economic migration, the element of coercion is not so clear. Therefore, persons who migrate because of economic causes do not fall under the definition.

What is considered to make internally displaced persons of concern to the international community is the coercion that impels their movement, their subjection to human rights abuse emanating from their displacement, and the lack of protection available within their own countries. Situations of forced displacement that have generally commanded international attention to date, in addition to natural disasters, are therefore those caused by internal and international conflict, ethnic strife and human rights violations. Development-induced displacement as well as forced evictions have generally not been part of international debates or operations on internal displacement; indeed, a UN expert seminar in 1997 found that persons displaced by these causes "can be classified as a distinct group of persons requiring protection under international human rights law." Others, however, see such groups as internally displaced persons, and international financial institutions have increasingly begun to pay greater attention to the displacement caused by development projects and to take this into account when deciding upon projects to support.

Because both development-induced and conflict-induced displacement feature heavily in Asia, the Bangkok conference will deal with both development-induced and conflict-induced displacement, the degree to which respect for human rights and the rule of law affect both, and strategies for dealing with them.

Institutional Arrangements [[Top](#)]

Over the past decade, a multitude of humanitarian, human rights and development organizations have come forward to provide protection, assistance, reintegration and

development support to internally displaced persons. These include UNHCR, which regularly becomes involved with internally displaced persons and is currently assisting some 5 million of them, the International Committee of the Red Cross (ICRC), the World Food Programme (WFP), UNICEF, the UN Development Programme (UNDP), the World Health Organization (WHO), the International Organization for Migration (IOM), the Office for the High Commissioner for Human Rights (OHCHR), and a myriad of NGOs. Most have shown themselves remarkably flexible in interpreting their mandates broadly to encompass internally displaced persons and in developing special expertise and skills to reach displaced people. Nonetheless, the overall response has been largely ad hoc, with the result that large numbers of internally displaced persons have gone without adequate protection, assistance or reintegration and development support.

The inadequacies have prompted a wide-ranging debate within and outside the United Nations about how to improve the international response to situations of internal displacement. Among the options frequently put forward are whether a new agency should be created, whether an existing agency should be assigned the responsibility, or whether the strengthening of collaborative arrangements among agencies whose mandates and activities relate to internally displaced persons is the most practical alternative.

The first option has never garnered support. Neither the political will nor the resources exist to create a new agency. The second option, enlarging the mandate of an existing agency, is more regularly discussed. Indeed, every few years, governments, NGOs or experts put forward the idea that UNHCR should assume the responsibility because of its expertise in providing protection and assistance to uprooted people. Most recently, in January, the US Ambassador to the UN, Richard Holbrooke, proposed that UNHCR assume the responsibility in a statement before the UN Security Council. And NGOs such as Human Rights Watch, the International Rescue Committee, and Médecins Sans Frontières expressed public support for this option. It should be noted that the kind of internal displacement being discussed for a UNHCR lead role is conflict-induced displacement, i.e., cases where the internally displaced would be considered refugees if they crossed a border.

The third option, currently in place, is one of improved coordination among the different agencies by the Emergency Relief Coordinator (ERC). The UN Secretary-General's 1997 reform program requested the ERC to serve as central point for coordinating assistance to the internally displaced. The ERC was also asked to ensure that protection needs of the internally displaced are addressed. Since assuming this position in 1998, Sergio Vieira de Mello has made a real effort to try to strengthen existing collaborative relationships and promote a division of labor with regard to the internally displaced. Whether these efforts are translating into improvements on the ground needs to be evaluated.

Particularly troublesome has been the issue of protection of the physical safety and human rights of the internally displaced. Too often, providing food, medicine and shelter has taken priority over the equally compelling need of persons to be protected against assault, expulsions, forcible conscription, landmines, rape and other egregious human

rights abuses. While in some instances the only way protection may be possible is through military or police action, in other instances steps can be taken by international organizations on the ground with experience in providing protection. With the exception of ICRC and UNHCR, most humanitarian and development organizations do not have such experience, although many are now exploring measures they can take to enhance protection for displaced populations. Monitoring and reporting mechanisms, increased presence, joint advocacy, reinforcing local capacities and existing coping mechanisms are all means of enhancing protection.

Regional organizations are also beginning to play a role in situations of displacement. The Inter-American Commission on Human Rights of the OAS has appointed a rapporteur on internally displaced persons and as noted above, its missions now measure conditions of the internally displaced in terms of the Guiding Principles. As for the OAU, it has set up conflict prevention machinery to prevent the conditions that cause displacement and its Commission on Refugees has begun to monitor the situation of internally displaced persons. The OSCE also has conflict prevention machinery and has deployed field staff to defuse tensions and promote protection for the internally displaced. In Tajikistan, for example, OSCE field officers brought to the attention of the authorities instances of harassment of internally displaced persons and have taken up individual cases of illegal house occupation to facilitate the return and reintegration of the displaced.

Although Asia is the largest and most populous of the world's regions, it has no overarching regional structure. Nor have its sub-regional organizations such as the Association of Southeast Asian Nations (ASEAN) and the South Asian Association for Regional Cooperation (SAARC) become involved with the issue of internal displacement. The potential for their concentrating their attention on this problem in some form will be explored at the Bangkok meeting.

The absence of a regional structure encompassing all Asia has not discouraged NGOs from forming regional groupings. In addition to the Asian Forum for Human Rights and Development (Forum Asia), one of the conference sponsors, several leading regional NGOs will be participating in the Bangkok meeting, among these the Asian Cultural Forum on Development (ACFOD), the South Asia Forum for Human Rights, and the Asia-Pacific Forum of National Human Rights Institutions.

The role that regional bodies, national human rights commissions, NGOs and organizations of displaced persons can play in developing strategies for dealing with internal displacement will be discussed at the Bangkok meeting.

Concluding Remarks [\[Top\]](#)

As the most heavily populated continent, and one with a great diversity of ethnic and religious identities, the conference sponsors consider it important that Asian countries begin to more systematically address existing and potential problems of internal displacement. With regard to displacement caused by conflict and human rights

violations, the cases of Afghanistan, East Timor, India, Indonesia, Pakistan, Sri Lanka, Myanmar (Burma), Tajikistan, and the Philippines feature significantly. Development-induced displacement adds many more to the total—not only from countries listed above but from countries such as China, Malaysia, Nepal and Thailand. Displacement caused by natural disasters affects many countries but compounded by human rights violations brings the North Korea case to mind. Return and reintegration programs for the displaced focus in particular on Cambodia, East Timor, Laos and the Philippines.

At the same time, internal displacement must be seen as part of much larger political, economic and social processes within societies and as a symptom of inequities and conflicts within the countries concerned. It is first and foremost a problem for national and local authorities to work out with their displaced communities, but also one that the international community is increasingly called upon to address. Yet the lack of precision in figures and paucity of accurate information about these populations undermines efforts to help them. By identifying the patterns and trends of internal displacement in Asia and the applicability of the Guiding Principles on Internal Displacement to the problem, the Bangkok conference hopes to raise consciousness to the issue and encourage more effective national, regional and international strategies for promoting protection, assistance and reintegration and development support for the displaced.