



THE BROOKINGS INSTITUTION PROJECT ON INTERNAL DISPLACEMENT

**Report of the International Colloquy
on the
Guiding Principles on Internal Displacement**

*Hosted by the Government of Austria
and the
Representative of the UN Secretary-General on Internally Displaced Persons*

**Vienna, Austria
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Guiding Principles on Internal Displacement**

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We are grateful to Flora MacDonald, the former Foreign Minister of Canada, and to Professor Walter Kaelin of the University of Bern for agreeing to serve as principal chairs, and for the participation and contribution of experts from all over the world who represented a wide variety of local and international non-governmental organizations, national human rights commissions, research and academic institutions, regional bodies and international organizations.

Simon Bagshaw served as principal rapporteur for the meeting and also helped prepare the background paper under the direction of the Brookings Project. We thank him and also Sivanka Dhanapala, who served as co-rapporteur. Special appreciation goes to Erin Mooney for her substantive contribution to the meeting report and for supervising the process and participating in the editing of the report. Final editing was carried out by the Brookings Project on Internal Displacement.

Roberta Cohen and Francis M. Deng
Co-Directors, Brookings Project on Internal Displacement

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REPORT OF THE INTERNATIONAL COLLOQUY

The International Colloquy on the Guiding Principles on Internal Displacement was jointly convened by the Representative of the United Nations Secretary-General on Internally Displaced Persons, Dr. Francis M. Deng, and the Government of Austria. Organized by the Brookings Institution Project on Internal Displacement, it was held in Vienna from 21-23 September 2000.

The principal objectives of the Colloquy were to review and evaluate how the Guiding Principles have been received at the international, regional and national levels since their presentation to the UN in 1998 and to explore how best to further promote their implementation in situations of internal displacement.

The 50 participants came from different geographic regions and represented a broad cross-section of international organizations, regional and sub-regional organizations, national human rights commissions, local and international non-governmental organizations (NGOs), and research and academic institutions (see Participants List).

Flora MacDonald, former Foreign Minister of Canada, and Professor Walter Kaelin of the University of Bern, served as principal chairs of the meeting. In addition, sessions were chaired by Tapan Bose (South Asia Forum for Human Rights), Dennis McNamara (Office for the Coordination of Humanitarian Affairs), Manfred Nowak (Ludwig Boltzmann Institute for Human Rights), and Evelyn Balais Serrano (Forum Asia).

Austria's Federal Minister for Foreign Affairs, Benita Ferrero-Waldner, opened the Colloquy. She noted Austria's long involvement with the issue of internally displaced persons, dating back to 1992, and her Government's satisfaction with the way in which the mandate of the Representative of the Secretary-General had evolved, in particular with regard to developing a normative framework. The Minister described the Guiding Principles as an "important tool, legitimized by the Commission on Human Rights and the General Assembly" and spoke of the necessity of enhancing efforts to raise awareness of the Principles and their practical application (see attached). Ambassador Christian Strohal, who for many years headed Austria's delegation to the United

Nations Commission on Human Rights, referred to the need to strengthen the Guiding Principles as a practical tool and hoped that the broad range of expertise at the Colloquy would produce a rich basket of activities and ideas for applying the Guiding Principles and, therefore, strengthening the work of the mandate in the international system.

The Representative of the Secretary-General, Dr. Deng, gave an overview of the global crisis of internal displacement, the role of his mandate, and the development of the Guiding Principles. He emphasized that the Principles were developed at the request of the UN Commission on Human Rights and General Assembly, and developed in a process that was internationally broad-based and inclusive. The Principles responded to a strong need to bring together the provisions of law applicable to the internally displaced, to re-state that law in a manner that addresses the specific needs of such persons comprehensively, and to clarify gaps and gray areas. The Principles set forth the rights of internally displaced persons and the obligations of governments and other actors toward these populations. They are the first international standards for internally displaced persons and serve as a vehicle for the prevention of situations leading to displacement, the protection and assistance of persons during displacement, and the process of return and reintegration, or resettlement.

RECEPTION AND STANDING OF THE GUIDING PRINCIPLES

The Guiding Principles' wide acceptance and use, since their presentation to the Commission on Human Rights in 1998, was described by Roberta Cohen, Co-Director of the Brookings Institution Project on Internal Displacement. International human rights, humanitarian and development organizations, comprising the Inter-Agency Standing Committee, have endorsed the Principles and taken the decision to disseminate them and apply them in the field.¹ Intergovernmental bodies, most notably the Commission on Human Rights and the General Assembly, have acknowledged the Principles, welcomed the Representative's use of them in his dialogues with governments and with intergovernmental organizations and NGOs, and requested that he continue these efforts.² UN

¹ The Inter-Agency Standing Committee took this decision on March 26, 1998.

² See UN Commission on Human Rights Resolution on Internally Displaced Persons, E/CN.4/Res/2000/53, 25 April 2000 and General Assembly Resolution 54/167 on Protection of and Assistance to Internally Displaced Persons, 17 December 1999.

General Assembly resolutions have also encouraged UN agencies, regional organizations and NGOs to disseminate and apply the Principles.³ In his report to the Security Council in 1999 on “Protection of Civilians in Armed Conflict,” the UN Secretary-General suggested that in situations of mass displacement, the Council encourage governments to observe the Guiding Principles.⁴ Regional intergovernmental organizations in Africa, the Americas and Europe have also been disseminating the Principles and in some cases have used them to measure conditions on the ground.⁵ At the national level, governments have begun to cite the Principles, using them in public awareness campaigns, drafting laws in terms of them, and sponsoring or participating in seminars on their provisions. In Colombia, the Constitutional Court cited the Guiding Principles as a basis for protecting internally displaced persons in two recent decisions and stated that “they be used as parameters for normative creation and interpretation in the field of forced displacement and in regard to attention given to displaced people by the State.”⁶ NGOs have actively been using the Principles as an advocacy tool with governments and non-state actors, monitoring conditions on the ground in terms of the Principles, and suggesting changes in laws and practices on the basis of the Principles. Displaced communities too have begun to use the Principles as well to promote and protect their rights.

Overall, the Principles have served to create a climate of awareness of the needs and rights of internally displaced persons worldwide. At the same time, greater international attention to the Principles has led some governments at the UN to raise questions about the process by which the Guiding Principles were formulated, in particular the fact that they had not been drafted by governments. In the discussions, it was pointed out that such concerns needed to be placed in context, namely within broader concerns about sovereignty and territorial integrity. Some states, it was pointed out, feared that international standards on internally displaced persons as well as humanitarian activities on behalf of the internally displaced could lead to political and even military

³ Ibid.

⁴ Report of the Secretary-General to the Security Council on Protection of Civilians in Armed Conflict, S/1999/957, 8 September 1999, pp.12 - 13.

⁵ See, for example, *Third Report on the Human Rights Situation in Colombia*, Inter-American Commission on Human Rights, Organization of American States, OEA/Ser. L/V/11.102, Doc. 9 rev. 1, 26 February 1999. In the report, the Commission monitors conditions in terms of the Guiding Principles and “welcomes and fully supports” the Principles as an “authoritative” guide. (p.197).

⁶ Republica de Colombia, Corte Constitucional, Sentencia Numero Su-1150/2000, Expedientes de Tutela T-186589/T-201615/T-254941, Magistrado Ponente: Eduardo Cifuentes Muñoz.

intervention. Participants acknowledged the need to be sensitive to such concerns but emphasized that governments themselves had requested the development of the Principles in unanimously adopted resolutions and that the Representative had kept intergovernmental bodies regularly informed about their development. Moreover, confronted with crises of internal displacement, governments were increasingly using the Guiding Principles, requesting training workshops in them, and justifying their actions on the basis of them.

A principal reason why some states queried the “standing” of the Guiding Principles, it was pointed out, was because they are not a binding treaty. However, as participants recognized, the Principles are based on international law that had been drafted by governments and do reflect that law. When they were first drafted, there was international support only for guidelines because these could be developed quickly, would prove more practical in the field, and could help correct what was regarded as the inadequate international response to situations of internal displacement. The Principles were intended to facilitate a better understanding and application of existing international law relevant to internally displaced persons and to stimulate enhanced international, regional and national responses to their needs. Their wide acceptance underscored that their application depended not so much on whether they are binding law as on their pointing to the binding international standards relevant to internally displaced persons.

Some expressed the view that the Guiding Principles in time might mature into binding customary international law since their provisions were based on and reflected customary and treaty law. No consensus, however, emerged on this issue. In the view of some participants, the Guiding Principles could not become customary law on the basis of state and international usage alone. Although this was necessary, it had to be reinforced by a traditional intergovernmental process in which governments define their own obligations. Such an intergovernmental process, in this view, did not necessarily mean an intergovernmental forum but could mean the integration of the Guiding Principles into national law. Some states had already begun to cite the Guiding Principles in national policy and law. If a sufficient number of states were to begin to insert the Guiding Principles into their national legislation, this could constitute the process needed for the development of customary law. Participants strongly supported the inclusion of the Guiding Principles in national legislation as an effective means of reinforcing their standing.

Other participants pointed out, however, that the nature of the drafting process need not be a prerequisite for the Principles' acquiring the status of customary international law. While it is true that a group of well-intentioned legal experts in a state-centered international legal system had no power to create binding law, the Principles were comprehensively grounded in existing international law and could acquire authoritative force by serving as a source of inspiration to judicial, quasi-judicial and monitoring bodies that invoke the Principles as an expression of the international law that has to be applied. Were the Principles to be regularly used in this way by international treaty bodies, for instance, they could eventually become part of international customary law themselves. It was also noted that the Statute of the International Court of Justice is authorized to apply not only treaty and customary law but "general principles of law recognized by civilized nations," and "the judicial decisions and the teachings of the most highly qualified publicists." Were the Guiding Principles to become acknowledged as a source of law, this could be a basis on which to ascribe potential legal effect to the Guiding Principles.

Participants agreed that the Principles were in the middle of "a process" whose outcome had yet to be determined. Without a doubt, the Principles had become an authoritative framework for many international organizations, regional bodies, NGOs, and also governments because they clarify, in a comprehensive manner, the relevance of existing norms for situations of internal displacement. In consolidating into one document the provisions of international law pertaining to the internally displaced, the Principles had succeeded in raising international awareness to the plight of the displaced and also to promote a better response to the need for protecting and assisting displaced populations. What was important for the internally displaced was the continued wide application and integration of the Principles into the work of international, regional and national actors. Broad acceptance and usage would in time also undoubtedly influence their standing.

FURTHER INTEGRATION OF THE GUIDING PRINCIPLES INTO THE WORK OF EXISTING MECHANISMS AND ACTORS

There exists a broad array of mechanisms and actors at the international, regional and national levels with mandates and activities relevant to internal displacement that could usefully integrate the Guiding Principles and the subject of internal displacement into their work.

THE INTERNATIONAL LEVEL

The Colloquy discussed the possibilities for integrating the Principles into the work of five main mechanisms at the international level: the UN human rights treaty bodies; the country and thematic mechanisms of the UN Commission on Human Rights; the Inter-Agency Standing Committee and the work of its individual members; international criminal tribunals; and finally, the UN Security Council.

HUMAN RIGHTS TREATY BODIES

Considerable potential exists within the treaty bodies for addressing the issue of internal displacement and promoting the implementation of the Principles. There exist six human rights bodies composed of independent experts which monitor the compliance by states with the principal international human rights treaties -- the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture, and the Convention on the Rights of the Child. In addition, four of the treaty bodies (Civil and Political Rights, Racial Discrimination, Women, Torture) have competence to consider complaints received from individuals who have exhausted all domestic remedies in seeking redress for alleged violations of the treaty.

The Colloquy was informed that the Human Rights Committee, which monitors the implementation of the International Covenant on Civil and Political Rights (ICCPR), on several occasions had considered the issue of internal displacement in specific country situations. Moreover, the issue of internal displacement was addressed in a recent general comment on the right to freedom of movement.⁷

⁷ See Human Rights Committee, General Comment No. 27 (67), Freedom of Movement (Art. 12), UN doc. CCPR/C/21/Rev.1/Add. 9, 2 November 1999.

Although the treaty bodies would be cautious in referring to standards other than the treaty for which the committee was established to monitor, precedents do exist. For instance, the Human Rights Committee, in interpreting provisions of the ICCPR, has referred when appropriate to the Standard Minimum Rules on the Treatment of Prisoners. The Guiding Principles also could be used as a reference when it comes to interpreting and clarifying the provisions of the Covenant with regard to the internally displaced.

The Guiding Principles could prove useful to the treaty bodies from a methodological perspective as well. In drawing upon human rights law as well as international humanitarian law and refugee law by analogy, the Principles could be instructive in the Human Rights Committee's on-going efforts to draft a general comment on the question of the international law applicable in situations of emergencies and armed conflict. The draft comment, in fact, already contained a citation to the Guiding Principles in a footnote.⁸

More generally, it was recommended that treaty bodies could make effective use of the work of the Representative in two main ways:

- in their review of states parties' reports on their compliance with the treaties. To facilitate this, presentations before the treaty bodies by the Representative of the Secretary-General or his staff were recommended.
- in drafting "general comments" on specific treaty provisions which detail more precisely the nature of states parties' obligations.

The issue of internal displacement could also be integrated into the work of the treaty bodies that receive individual complaints. The Guiding Principles could provide guidance to them when applying relevant treaty law to displaced persons. The Human Rights Committee was considered to have the greatest potential in this regard, both because of the tremendous substantive scope of the Covenant and also because more states recognize the competence of the Human Rights Committee to receive individual petitions than the other three treaty bodies. However, it was pointed out that

⁸ See Human Rights Committee draft General Comment on Article 4 of the International Covenant on Civil and Political Rights, UN doc. CCPR/C/70/Rev. 5, 2000.

internally displaced persons do not resort to individual complaints mechanisms with much frequency. There were several reasons for this: internal displacement tends not to be seen as an individual problem; the complaint mechanisms are perceived to be distant and legalistic, necessitating the involvement of lawyers and prohibitive expenses; the procedures for filing and pursuing a complaint are complex and lengthy; moreover, there are concerns about pursuing a case against the government when still within the country in question.

The preparation of a manual for refugees and internally displaced persons on how to use individual complaints mechanisms, which is currently underway, could be an important contribution towards promoting greater awareness of the relevance of these procedures for protecting internally displaced persons. One of the editors of this forthcoming publication reported on its potential value for those displaced.⁹

COUNTRY AND THEMATIC RAPORTEURS

The relevance of the Guiding Principles to the work of the country and thematic rapporteurs of the UN Commission on Human Rights was emphasized.

With respect to the country rapporteurs, it was pointed out that most of the countries for which a rapporteur had been appointed face serious problems of displacement, for example, Afghanistan, Burundi, Cambodia, Democratic Republic of Congo, former Yugoslavia, Iraq, Myanmar, Rwanda, Somalia, and the Sudan. Noting that internal displacement is not only the consequence of serious violations of human rights but that internally displaced persons often remain at risk of becoming victims of further human rights abuses, participants emphasized that internal displacement cannot be overlooked in examining the human rights situation in those countries. A number of country rapporteurs were already including information on internal displacement in their reports and in their dialogues with authorities. But it was noted that express linkages to the Guiding Principles were not yet being systematically made. And yet, the Guiding Principles were noted as being of considerable value in demonstrating specifically how generic human rights provisions apply to the particular needs of the internally displaced. As such, they could provide the country rapporteurs with a useful

yardstick or frame of reference against which to assess and report on the situation of the internally displaced. Country rapporteurs thus were encouraged to devote further attention to the rights of internally displaced persons and to use the Guiding Principles as a basis for assessing and reporting on them. In so doing, country rapporteurs were encouraged to consider the role and responsibility not only of states but also of non-state actors, under whose authority substantial numbers of internally displaced persons may reside, and also the corporate sector whose policies could lead to or exacerbate forced displacement.

As for the thematic rapporteurs, the issue of internal displacement was noted as being of relevance to the work of most, whether their mandates covered civil and political or economic, social and cultural rights. Indeed, it was suggested that internally displaced persons must constitute one of the largest numbers of victims of human rights violations. While a number of the thematic rapporteurs had begun to include attention to the issue of internal displacement and, in some cases, to make use of the Guiding Principles, they too could do so more systematically, not only in their reports but also in their Urgent Appeals, in their statements and press releases, during missions, and in their contacts with governments, civil society and internally displaced persons. Special mention was made of the particular relevance of new thematic mandates, especially the Special Rapporteurs on the right to housing and on the right to food and the Representative of the Secretary-General on human rights defenders. The importance of bringing the Guiding Principles to their attention was underscored.

The following additional initiatives were recommended to integrate the Guiding Principles into the work of country and thematic rapporteurs:

- Convene a “brainstorming” session on the occasion of their next annual meeting to discuss strategies for applying the Guiding Principles in their work.
- Incorporate a chapter on internally displaced persons into the manual for special rapporteurs, inclusive of a checklist of points to consider when examining situations of internal displacement.

⁹ Participant Joan Fitzpatrick described the forthcoming manual, see Joan Fitzpatrick and Diane Atkinson, eds., *International Human Rights Affecting Refugees, Asylum Seekers and Internally Displaced Persons: Improving Access*

- Ensure awareness of the Guiding Principles among staff of the Office of the High Commissioner for Human Rights (OHCHR) who service the mandates of the country and thematic rapporteurs.
- Encourage the country and thematic rapporteurs and their staff to make suggestions for technical cooperation projects between governments and the OHCHR to address the needs of internally displaced persons.

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

In addition to integrating the Guiding Principles into the work of the treaty bodies and mandates of the country and the thematic rapporteurs, it was suggested that OHCHR:

- Incorporate the Guiding Principles and projects to protect the rights of the displaced into programs of technical cooperation. Special rapporteurs could support such efforts by highlighting, in their reports, areas in which technical cooperation is required and on which states could usefully request assistance from OHCHR.
- Integrate the Guiding Principles systematically into the work of field presences and fact-finding missions.
- Ensure inclusion of the Guiding Principles in human rights training for peacekeepers.
- Encourage inclusion of the issue of internal displacement in the new permanent forum on indigenous peoples and the World Conference Against Racism.

INTERNATIONAL CRIMINAL TRIBUNALS

In many respects, one of the most important international legal developments of the 1990s was in regard to international criminal law, in particular the establishment by the Security Council of the international criminal tribunals for the former Yugoslavia and Rwanda in 1993 and 1994 respectively, and more recently, in 1998, the adoption of the Statute of the International Criminal Court. In keeping with such developments at the international level, consideration was given to integrating the Guiding Principles into the work and proceedings of international criminal tribunals.

In the view of several participants, criminal law offered opportunities for the use of the Guiding Principles. Under the Statutes of the two tribunals and the court, forcible population transfer and ethnic cleansing can be prosecuted as crimes against humanity. In the case of the ICC Statute, this is quite explicit, reflecting a growing awareness of the issue of internal displacement. The Guiding Principles and the comprehensive legal analysis on which they are based could act as a useful tool for prosecutors in applying these provisions of international criminal law relating to situations of internal displacement. Such a process would be mutually reinforcing in that the citation of the Guiding Principles in such international fora would also serve to increase broad acceptance of the Principles. In the first of the published commentaries to the Rome Statute, there was already reference to internally displaced persons and to the Guiding Principles¹⁰, which suggests that the Guiding Principles will be germane to the interpretation and application of the Statute.

At the same time, no judgments had yet been rendered by either of the two tribunals in regard to forced displacement (the International Criminal Court is not yet operational). One of the reasons advanced for the absence of such judgments was that prosecutors may not have the issue in mind, and therefore efforts should be undertaken to raise awareness of the issue among them. Under the Statute of the International Criminal Court, the court may exercise its jurisdiction on three grounds: referral of a situation to the prosecutor by a state party; referral of a situation to the prosecutor by the UN Security Council; and on the initiation of the prosecutor on the basis of information received from other sources. In this last connection, it was suggested that the Representative of the Secretary-General and international, regional and non-governmental organizations could usefully provide prosecutors with information on specific situations of forced displacement.

INTER-AGENCY STANDING COMMITTEE

In addition to integrating the Guiding Principles into the work of the UN human rights system and international criminal tribunals, an important role has been and could further be played by international humanitarian and development organizations, in particular within the Inter-Agency Standing Committee (IASC). The Principles, prior to their presentation to the Commission on

¹⁰ See, for example, Christopher K. Hall, "Crimes Against Humanity," in Otto Triffterer, ed., *Commentary on the Rome Statute of the International Criminal Court*, Baden-Baden: Nomos, 1999, pp. 117 – 172, at 136 (with respect to interpretation of para 7 (1)(d) of the Rome Statute, which concerns crimes against humanity and deportation and forcible transfer of populations).

Human Rights, were first presented to the IASC, which welcomed them and called upon its members to disseminate and apply them.¹¹

Several members of the IASC, namely the United Nations High Commissioner for Refugees (UNHCR), the World Food Programme (WFP), the International Committee of the Red Cross (ICRC), the UN Development Programme (UNDP), and the Office for the Coordination of Humanitarian Affairs (OCHA), informed the Colloquy about the efforts they have undertaken with regard to disseminating, promoting and applying the Guiding Principles. A number noted that the Principles have come to be considered an internal authoritative framework for agencies in their work with internally displaced persons. In particular they have proven a useful means for raising awareness among staff to the special concerns confronting internally displaced persons and as a checklist for monitoring and assessing their needs. A number of agencies are using the Principles in training, especially of field staff. The Principles had prompted some agencies to re-evaluate their activities in regard to the internally displaced. For one agency, for instance, this process had resulted in a clearer recognition of its role in regard to protection. For another, the inclusion within the Principles of economic and social rights clearly demonstrated the link between its mandate and the longer-term development needs of the displaced, with the result that it had become increasingly engaged with internally displaced populations in a number of countries.

The Colloquy also was informed of the recent establishment by the IASC of the Senior Network on Internal Displacement with a view to ensuring an adequate humanitarian response and appropriate coordination mechanism in regard to specific situations of internal displacement. As explained by its Special Coordinator, Dennis McNamara, the Network plans to undertake a series of country reviews over the next six months, focusing on the international response to the provision of protection and assistance to the internally displaced, with a view to identifying gaps in the response and ways in which these might be filled. The Guiding Principles would form the overarching framework for the Network when assessing the provision of protection and assistance to internally displaced persons and seeking durable solutions to their plight. Indeed, it was stated that the Network would seek to give concrete effect to the Guiding Principles at the field level. It was pointed out that the Representative of the Secretary-General was a critical part of the Network and

¹¹ See note 1 above.

that the Representative and the Special Coordinator would seek to complement and reinforce each other in their missions and activities.

Several participants advocated the need for still greater integration of the Principles into the work of international humanitarian and development organizations. It was pointed out that field staff were not always aware of the provisions in the Principles or what was expected of them in this regard. Training and discussion on how to introduce the internal displacement issue and the Guiding Principles at the field level in specific contexts were therefore recommended. It was suggested that the Network could play an important role in facilitating such discussions, as could the Representative of the Secretary-General during his country missions. The *Handbook for Applying the Guiding Principles* and the *Manual on Field Practice*, both published by OCHA in 1999, would also help staff to translate the Principles into programmatic activities.¹² It was further suggested that there should be closer discussions between the Representative and the agencies at headquarters level on their integration of the Guiding Principles in specific country situations.

It was also noted that in some cases field staff had been reluctant to invoke the Principles in their dialogue with governments and insurgent groups. In part, this stemmed from the non-binding nature of the Principles, though it was pointed out that the recent publication of the *Annotations* explaining the legal provisions upon which specific Principles were based could be instrumental in addressing this concern.¹³ The incorporation of the Guiding Principles into national legislation would also be valuable in this regard. Reference was further made to the “working definition” contained in the introduction to the Guiding Principles which, for some, was considered too broad for operational purposes and yet, it was conceded that the inclusive approach taken in developing the Guiding Principles was the most appropriate option.

Special attention was focused on the need for humanitarian and development agencies to assume a greater “protection role” in the field. Meeting the protection needs of the internally displaced, participants emphasized, remains the key challenge facing the international community. Several

¹² *Handbook for Applying the Guiding Principles on Internal Displacement*, OCHA and The Brookings Institution Project on Internal Displacement, 1999; *Manual on Field Practice in Internal Displacement*, OCHA, Inter-Agency Standing Committee Policy Paper Series No. 1, 1999.

urged the Representative and the Special Coordinator to work closely on this, along with the High Commissioner for Human Rights. Others urged that humanitarian and development organizations overcome their “institutional inertia” and fear of disagreement with governments to promote greater attention to the protection and human rights needs of internally displaced populations. It was pointed out

that in recent years, international agencies had begun to focus more attention on these concerns, but that a tension still existed and would probably continue between protection and assistance and between advocacy and access. While it is important, some argued, for humanitarian agencies to recognize the relevance of protection to their work, they should not be expected to raise protection concerns with the authorities directly if doing so would put their staff at risk of physical harm or expulsion from the country, or might hinder their assistance activities. In such circumstances, however, participants recommended that agencies bring protection concerns to the attention of those who are able to act on them, including the Representative of the Secretary-General and international human rights mechanisms. It was emphasized that the Representative has far more leeway to raise protection concerns than organizations based in the field, although access (to undertake country visits) was also an issue for the mandate of the Representative, and for the special rapporteurs.

In undertaking protection work, it was noted that greater attention needs to be paid to the particular needs of certain groups among internally displaced populations, such as the elderly, women and children. Elderly persons may be more vulnerable to human rights abuses and may have specific health and mobility needs different from those of the displaced population at large. Similarly, women and children, who typically make up the overwhelming majority of an internally displaced population, have quite specific protection, assistance and reintegration needs that must be addressed. In the case of children, there is a need to recognize that they comprise different age groups with different needs. Adolescents, for instance, are more vulnerable to sexual exploitation, may become heads of household, and also may become perpetrators of violence.

¹³ See Walter Kaelin, *The Guiding Principles on Internal Displacement: Annotations*, American Society of International Law and The Brookings Institution Project on Internal Displacement, 2000.

While there was general recognition of the need for agencies to assume a greater role in regard to the internally displaced, some participants expressed concern over the “risk of over-focusing on internally displaced persons,” thereby creating a “privileged” category of victims. By the same token, a number of participants from international agencies conceded that their organizations traditionally had not focused on the particular vulnerabilities of internally displaced persons enough and that the Guiding Principles had proved a catalyst in raising awareness of their need to do so. The Guiding Principles were not intended to confer a special status on the internally displaced but rather to ensure that in a given situation their unique needs are addressed along with those of others. In this regard, the Principles can be considered as providing a basis for vulnerability assessment. Indeed, the Senior Network plans to use the Guiding Principles as the basis for determining whether the needs of internally displaced persons are being adequately met especially when their needs are different from the population in general.

SECURITY COUNCIL

Consideration was also given to integrating the Guiding Principles into the work of the UN Security Council. Important opportunities for doing so have opened up particularly in the context of the Council’s recent initiatives on the protection of civilians in armed conflict. As earlier noted, the Secretary-General, in his reports to the Security Council, had drawn attention to the plight of internally displaced persons and indeed recommended that in cases of massive displacement, the Security Council encourage states to follow the guidance provided in the Principles. The Council had begun to do so in country-specific resolutions and Presidential statements. Recognizing that the Secretary-General reports regularly to the Security Council on the situation in displacement-affected countries and territories, participants recommended that the Secretary-General continue to refer to the issue of internal displacement and to the Guiding Principles where appropriate in his reports. The creation of channels through which NGOs could provide information on internal displacement to the Secretary-General and the Security Council on countries with which it is seized was also recommended. Finally, it was suggested that occasional briefings of the Security Council by the Representative of the Secretary-General would be valuable in further integrating the issue of internal displacement into the work of the Council. At the same time, it was suggested that the main focus of intergovernmental activities in support of the Principles should remain the General

Assembly and the Commission on Human Rights, as well as regional organizations, where there was much broader state representation.

THE REGIONAL LEVEL

Participants emphasized that regional organizations, sub-regional organizations, and bodies like the Commonwealth have an important role to play in preventing and responding to crises of internal displacement. Many had begun, in varying degrees, to examine and act upon the issue of internal displacement. Representatives of a number of such organizations described the extent to which their organizations had disseminated and made use of the Guiding Principles and on possibilities for future action, in particular the Inter-American Commission on Human Rights of the Organization of American States (OAS), the Organization of African Unity (OAU), the African Commission on Human and Peoples' Rights, the Economic Community of West African States (ECOWAS), the Organization for Security and Cooperation in Europe (OSCE), the Council of Europe, and the Commonwealth.

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

The Inter-American Commission on Human Rights, composed of 7 independent experts, was established in 1959 as an organ of the Organization of American States (OAS) to promote the observance and protection of human rights and act as a consultative body to the OAS. The Commission had addressed the situation of internally displaced persons on several occasions, for example, in Nicaragua, recommending payment of just compensation to returning internally displaced persons for the loss of their property, and more recently in Colombia. In the case of the latter, cognizant of the role of paramilitary forces and non-state armed groups in causing internal displacement, the Commission departed from its traditional practice of addressing recommendations only to governments to addressing them to all the "parties to the armed conflict." The Inter-American Commission considers the Guiding Principles an authoritative guide to applicable international law and uses them as a yardstick for monitoring situations of internal displacement. In its mission to Colombia in 1998, it monitored conditions on the ground in terms of the Guiding Principles, and it devoted a special chapter in its report to the situation of internally displaced persons.¹⁴ In 1996, the Commission appointed a Special Rapporteur on Internally Displaced

¹⁴ See note 5 above.

Persons, a development which participants thought could usefully be replicated in other regional bodies.

There exists broad scope for further integrating the Principles into the work of the Commission. For example, the Commission's other special rapporteurs could refer to the Principles during their on-site visits and in their reports. Systematic reference could also be made to displacement issues and the Guiding Principles in the Commission's annual report on human rights to the OAS. As was the case with regard to the UN human rights system, it was noted that greater use could be made of the Commission's individual and inter-state complaints mechanisms. While cumbersome, the individual complaints procedures are more liberal than other procedures in that the complainant need not necessarily be the victim of the violations in question. Finally, it was noted that the Commission is able to issue interim precautionary measures that are particularly pertinent for emergency situations. The Commission has in fact initiated such measures in regard to threats faced by internally displaced communities in Colombia.

ORGANIZATION OF AFRICAN UNITY

With half of the world's internally displaced persons, Africa is the continent most affected by crises of internal displacement. In recent years, the OAU, composed of 52 African states and founded in 1963, has increasingly focused attention on the issue of internal displacement. Among the examples of its initiatives were the Addis Ababa workshop on "Internal Displacement in Africa," convened by the OAU in October 1998, in conjunction with UNHCR and the Brookings Institution Project on Internal Displacement.¹⁵ A principal aim of the workshop was the promotion and dissemination of the Guiding Principles. In addition, the Guiding Principles have been discussed at meetings of the OAU Commission on Refugees and Displaced Persons and in an OAU meeting on the return and reintegration of internally displaced women and children.¹⁶ At the same time, it was noted that the OAU could play a more active role in monitoring situations of internal displacement and in influencing governments to address the problem. While the Commission on Refugees and Displaced Persons in 1999 had welcomed the Guiding Principles, noting them with "interest and

¹⁵ See *Internal Displacement in Africa: Report of a Workshop held in Addis Ababa, Ethiopia, 19-20 October 1998*, UNHCR, Brookings Institution, OAU, reproduced in *Refugee Survey Quarterly*, Vol. 18, No. 1, 1999.

appreciation,” there remains a need for the Guiding Principles to be better known throughout the organization and the continent. It was recommended that the Principles be widely disseminated, in particular by raising awareness of them among women’s groups and religious leaders, as well as among local authorities, including the police and judges.

AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS

Another body at the African regional level with the potential to integrate the Guiding Principles systematically into its work is the African Commission on Human and Peoples’ Rights, established pursuant to the African Charter on Human and Peoples’ Rights. The Commission is competent to undertake country missions and has indeed done so in two countries, in the course of which concerns were raised about the internally displaced. Participants suggested that the Commission use the Guiding Principles in the context of such missions. In addition, the Commission could invoke the Guiding Principles in its general advocacy work and in its dialogues with governments. Indeed, the Guiding Principles could become the “basic text” for the protection of internally displaced persons. The concerns of the internally displaced also could be raised by means of individual and inter-state complaints regarding the application of the African Charter that the Commission is competent to receive. A case in fact had been brought before the Commission by NGOs. It was noted that the substance of virtually all the Guiding Principles could be grounds for bringing a complaint before the Commission.

Attention was also drawn to the requirement under the African Charter that states report to the Commission every two years on measures taken to implement its provisions. Just as there is a potential role for UN treaty bodies to use the state reporting process to examine internal displacement situations and to use the Guiding Principles in doing so, a similar approach could be taken by the African Commission. Likewise, efforts could be undertaken to incorporate the issue of internal displacement and the Guiding Principles into the work of the Commission’s existing special rapporteur mechanisms, such as those on extra-judicial, summary and arbitrary executions and on the rights of women, similar to the efforts recommended at the international level. Finally, it was suggested that internal displacement become a standing item on the Commission’s agenda at its

¹⁶ Regional Seminar on Enhancing the Participation of Returnees, Refugees and Internally Displaced Women and Children in Reintegration, Reconstruction, Rehabilitation and Peace-building, 12-15 October 1998, Addis Ababa,

annual sessions or a part of the standing item on refugees, and that where relevant, the issue be considered within the context of the Commission's emergency sessions.

ECONOMIC COMMUNITY OF WEST AFRICAN STATES

At the sub-regional level, the Economic Community of West African States (ECOWAS), established in 1975 and composed of 16 West African states including displacement-affected states such as Liberia and Sierra Leone, showed interest in exploring effective ways to integrate the issue of internal displacement into the activities of the organization. Opportunities for doing so were particularly timely in view of the recent creation by ECOWAS of a conflict prevention and management mechanism. Awareness of the issue and of the Guiding Principles could also be integrated into the work of ECOWAS peacekeeping missions. Participants suggested that formal acknowledgement of the Guiding Principles by the member states of ECOWAS might be a useful means of encouraging these and other such efforts. In this regard, it was noted that ministers of ECOWAS states had adopted a declaration at the Conference on War Affected Children in West Africa, held in Ghana, in April 2000, which welcomed the Guiding Principles and called for their application by ECOWAS member states. This declaration is due to be adopted by the ECOWAS Heads of State in December of this year. Similar action could be promoted in other sub-regional organizations, such as the Southern African Development Community (SADC) and the Inter-Governmental Authority on Development (IGAD).

EUROPEAN REGIONAL ORGANIZATIONS

Turning to Europe, there are two main regional organizations whose activities have a bearing on the internally displaced and which could usefully integrate the issue and the use of the Guiding Principles into their work in a more comprehensive manner. These are the Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe.

Organization for Security and Cooperation in Europe. Initially established in 1973 as the Conference for Security and Cooperation in Europe, the OSCE, as it became in 1995, is composed of 55 participating states including at least ten states affected by displacement crises -- Armenia,

Azerbaijan, Bosnia and Herzegovina, Croatia, Cyprus, Georgia, the Russian Federation, Tajikistan, Turkey and the Federal Republic of Yugoslavia.

The human rights activities of the OSCE are largely based on the provisions of the Helsinki Final Act and other OSCE “commitments in the human dimension.” While these documents are politically, rather than legally binding, they firmly establish the principle that the human rights situation in one participating state is the legitimate concern of all participating states. By extension, therefore, internal displacement in one participating state is the legitimate concern of all participating states. While it was recognized that the OSCE is not an organization in which the legal standing of the Principles could be advanced, their moral and political authority could be enhanced if integrated and included in the organization’s work.

To date, the OSCE has circulated the Guiding Principles among its participating states and to a Human Dimension seminar, which dealt with the role of OSCE field missions. The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has used the Guiding Principles in the context of its election monitoring activities. In addition, ODIHR co-sponsored, with the Brookings Project on Internal Displacement and the Norwegian Refugee Council, a “Regional Workshop on Internal Displacement in the South Caucasus,” held in Tbilisi, Georgia in May 2000, which examined the promotion and implementation of the Guiding Principles in that region.¹⁷ Shortly after the Colloquy, ODIHR in cooperation with the Austrian Chairman-in-Office of the OSCE, would convene a Supplementary Human Dimension Seminar on migration and internal displacement, which would discuss the more systematic integration of the Guiding Principles into the work of OSCE institutions, field missions and participating states. It was suggested that ODIHR could also use the Principles in the context of its training and capacity-building activities and when undertaking reviews of national legislation.

The OSCE also possesses a number of mechanisms for preventing conflict both within and between participating States, which could be activated with a view to preventing internal displacement crises arising from such conflicts. In addition, there is considerable scope to integrate internal

displacement and the Guiding Principles into the work of the OSCE's High Commissioner for National Minorities and into the Organization's fact-finding and preventive diplomacy missions. Participants further noted that the Guiding Principles could provide the framework for OSCE field operations that deal with internal displacement situations. OSCE field missions can currently be found in a number of displacement-affected states and territories, such as Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, and Kosovo.

Council of Europe. Established in 1949, primarily to promote democracy, the rule of law, and greater unity among the nations of Western Europe, the Council of Europe's membership now includes many Central and East European States, including those affected by internal displacement crises such as Croatia, Georgia, the Russian Federation and Turkey. In addition, Armenia, Azerbaijan and Bosnia and Herzegovina have "special guest" status in the Council's Parliamentary Assembly, pending full membership.

As concerns the Council's activities pertaining to the internally displaced, deputies from the Parliamentary Assembly have undertaken fact-finding missions to situations of internal displacement and the Assembly as a whole has adopted recommendations concerning internally displaced persons in places such as Kosovo, Chechnya, the South Caucasus, Turkey and Iraq. The Assembly's Committee on Migration, Refugees and Demography recently convened a colloquy on population displacement, including internal displacement, in southeastern Europe. In addition, the bureau of the inter-governmental committee on territorial asylum, refugees and stateless persons has discussed the situation of internally displaced persons in Europe and considers it an important humanitarian issue.

With a view to deepening the Council's engagement with the issue, discussions are underway between the Secretariat of the Council and the Office of the Representative of the Secretary-General in regard to the promotion and application of the Guiding Principles by the organization. For the Council, it is important that any framework for the future protection and assistance of the internally displaced be based on binding principles of international law. However, it was acknowledged that

¹⁷ See Summary Report of the Regional Workshop on Internal Displacement in the South Caucasus (Armenia, Azerbaijan, Georgia), the Brookings Institution Project on Internal Displacement, Norwegian Refugee Council and

the provisions of the Principles find their legal foundation in binding instruments of international law, relating these to the specific situation of internally displaced persons.

Of the Council's organs, of particular importance is the European Court of Human Rights, which is competent to receive inter-state and individual applications alleging violations of the European Convention on Human Rights and its protocols. Although the Court's judgments to date have not addressed internal displacement *per se*, the Court has often dealt with cases involving the violation of property rights in which the complainants have been internally displaced persons. It was noted that internal displacement is typically associated with the violation of other rights, including property rights, freedom from torture and the right to life. As such, there is potential for more cases to come before the Court which address internal displacement, at least indirectly.

An important issue that could conceivably come before the Court is that of the deportation by a state party of an individual back to his or her country of origin but to a place other than the original place of origin, thereby leaving the person internally displaced. It was suggested that the Guiding Principles potentially could be interpreted as applying to such cases.

Attention was also drawn to the fact that states parties to the Convention carry their obligations extra-territorially. Thus, the provisions of the Convention could be relevant to the actions of the armed forces of a state party involved in combat or peacekeeping operations outside the territory of that state party and which may involve situations of internal displacement.

Further, it was noted that the European Convention may be interpreted as applying to the actions of non-state actors as well as governments. The right to life provisions of the Convention oblige states parties to institute a system of law and order which protects those within their jurisdiction from the actions of non-state actors who would violate the rights protected by the Convention. It should be recalled that non-state actors such as paramilitary and guerrilla groups are frequently implicated in causing and compounding situations of internal displacement.

As to the extent to which the Court may be inclined to refer to the Guiding Principles in its judgments, it was noted that the Court, in interpreting provisions of the Convention, does refer to other sources, but that there exists a hierarchy: judgments of the Inter-American Court of Human Rights of the OAS, the Human Rights Committee, the International Criminal Tribunal for the Former Yugoslavia, and the UN Standard Minimum Rules on the Treatment of Prisoners. However, it was noted that assuming that the Inter-American system and, in the future, the human rights treaty bodies and international criminal tribunals rely increasingly upon the Guiding Principles, the European Court may, indirectly, have recourse to the Principles.

COMMONWEALTH

The 54-member Commonwealth is a particularly important forum since among its membership are a number of countries in the Asian region which presently lacks a regional human rights organization and where there are situations of internal displacement. The Commonwealth had first focused attention on the issue of internally displaced persons through its Intergovernmental Group on Refugees and Displaced Persons, focusing in particular on the social needs of women and children and on the impact of displacement on developing countries. The Intergovernmental Group had recommended that the Commonwealth lend its support to efforts to develop a normative framework for the internally displaced and its implementation, especially through national legislative measures. It also had recommended that the Commonwealth lend its support to the work of the Representative of the Secretary-General and international agencies, and that it encourage its member states to do so.

As regards future activities, it was suggested that the Commonwealth could seek to promote and disseminate the Guiding Principles among its member states and also play a role in raising awareness of the Guiding Principles through workshops and conferences. In so doing, and in keeping with the recommendations of the Intergovernmental Group, the Commonwealth Secretariat could encourage member states to incorporate the Guiding Principles into national legislation and into the work of national human rights commissions and ombudspersons.

Noting that the Human Rights Unit of the Commonwealth Secretariat has signed a memorandum of understanding with OHCHR for closer cooperation between the two organizations on projects such

as human rights needs assessment studies, it was suggested that the Guiding Principles could usefully provide the framework for the conduct of such missions when these occur in Commonwealth countries with situations of internal displacement. The development of a manual on internally displaced persons to be used for training Commonwealth staff members and personnel involved in civilian police/peacekeeping activities also was suggested. Connected to this suggestion was a broader recommendation by participants for the development of a training manual on internal displacement and the Guiding Principles tailored to military personnel.

Through the good-offices role of the Commonwealth Secretary-General, the Commonwealth undertakes conflict prevention efforts and could, through this mechanism, cooperate in efforts at prevention, early warning, monitoring and identification of root causes of mass displacement. It was suggested that through such activities, linkages could be created with the Commonwealth's political bodies.

THE NATIONAL LEVEL

While international and regional supervisory bodies can and should be encouraged to play an important role in response to situations of internal displacement and in promoting and implementing the Guiding Principles, it was emphasized throughout the Colloquy that such efforts should fundamentally be subsidiary and supplementary to efforts at the national level. This is in line with the general approach of the Guiding Principles, which seeks to reinforce state responsibility in situations of internal displacement. In this regard, it was observed that there has been a tremendous growth of national institutions such as ombudspersons and national human rights commissions, albeit with differing degrees of separation from their governments. The importance of working with these various institutions was considered an important means by which to promote the adoption of national legislation incorporating the standards contained in the Guiding Principles. The advantages are two-fold. First, it would help to overcome the difficulties encountered by international agencies that stem from the non-binding character of the Principles. Second, it was emphasized that national judges and lawyers are more comfortable applying domestic rather than international standards.

NATIONAL HUMAN RIGHTS COMMISSIONS

With regard to the role of national human rights commissions, it was observed that internal displacement is often a critical aspect of the human rights situations that fall within commission mandates and as such, should be an essential part of their work.

Considerable scope exists for making use of the Guiding Principles in the four areas of work typical to national commissions: investigating individual complaints; monitoring government compliance with treaty obligations; providing advice to government officials and legislators on draft legislation; and engaging in raising awareness and human rights education, especially among national and local authorities, the police and the military. Two general strategies were proposed for facilitating the inclusion of the Guiding Principles into these four areas, notably, mainstreaming the Guiding Principles into the work of national commissions, especially at the field level; and promoting their use in policy formulation and advocacy work, for example through their inclusion in draft laws and in dialogue with governments.

Integrating the Guiding Principles into the work of national commissions could also be pursued at the regional level, especially in regard to Asia, which lacks a regional human rights body akin to those found in Africa, the Americas and Europe. The Asia Pacific Forum of National Human Rights Institutions is composed of eight national human rights commissions from Indonesia, India, the Philippines, Sri Lanka, Nepal, Australia, New Zealand and Fiji. Other potential members include Malaysia, Thailand, Bangladesh, Pakistan, Papua New Guinea and Mongolia. The Regional Conference on Internal Displacement in Asia, held in Bangkok in February 2000, recommended that the Forum convene a seminar on the Guiding Principles for its members. This recommendation was endorsed at the Forum's annual meeting in August. At the Colloquy, participants proposed that the seminar should not be a single event but could usefully take the form of a three-year project aimed at mainstreaming the Guiding Principles into the work of national human rights commissions in the Asia-Pacific region and assessing their effectiveness on the ground. In addition, it was suggested that subject to the availability of funds, internal displacement and the Guiding Principles could be the theme of the Forum's capacity building activities for next year.

Participants also suggested that the Regional Working Group for an ASEAN Human Rights Mechanism, composed of national human rights institutions, NGOs and a number of government officials, could be another forum in which to seek to promote the Principles.

ROLE OF NGOS

NGOs, both national and international, have emerged in the last decade as major actors in the fields of humanitarian relief, development, human rights advocacy and indeed, internal displacement. Addressing the Colloquy were NGO representatives from different parts of the world, including the Support Group for Displaced People Organizations (Colombia); the Mesa Nacional y Regional Sobre Desplazamiento (Peru); Human Rights Watch/Africa (USA); the Consortium of Humanitarian Agencies (Sri Lanka); the Georgian Young Lawyers Association (Georgia); Civic Assistance and Memorial (Russian Federation); and the Norwegian Refugee Council (Norway).

It was emphasized that national NGOs possess a comparative advantage over international and regional actors in being able to introduce international standards into a domestic setting by relating their provisions, such as those of the Guiding Principles, to the specific national situation, and in promoting awareness and facilitating dialogue with local actors. They can also play an important role in analyzing existing national legislation and proposing amendments on the basis of the Guiding Principles. Indeed, in Georgia, Azerbaijan and Armenia, teams of lawyers will be beginning a project to analyze the laws and procedures in their respective countries in terms of the Guiding Principles with a view to proposing legislative and procedural reform. The coordinator is the Georgian Young Lawyers Association (GYLA).

For NGOs, the Guiding Principles are an important vehicle for bringing about improved treatment for internally displaced persons. In Colombia, for example, national NGOs have widely disseminated the Guiding Principles, apply them as a benchmark against which to monitor and evaluate national policies and legislation, and use them to promote and strengthen dialogue with the government on the rights of internally displaced persons. A number of suggestions made relating to the future implementation of the Guiding Principles in Colombia are offered here because they may be applied more broadly. They include:

- Identify gaps in the national regulatory framework on the basis of the Guiding Principles and advocate their being addressed through legislative reform.
- Promote adherence to standards contained within the Guiding Principles through advocacy and other actions.
- Incorporate the Guiding Principles as essential criteria in agreements relating to humanitarian activities and the peace process.
- Advocate the adoption of legal norms based on the Guiding Principles in order to give them binding effect at the national level.
- Request annual reports from governments to national parliaments, using the Guiding Principles as a reference tool for assessing the situation of the displaced.
- Disseminate the Guiding Principles among non-state actors.
- Translate the *Compilation and Analysis of Legal Norms*¹⁸ and/or the *Annotations* and the *Handbook for Applying the Guiding Principles* into local languages and use the *Handbook* in a training campaign on the Guiding Principles, aimed at NGOs as well as governments and non-state actors.

In addition to these suggestions, emphasis was also placed by participants on the use of local and national media for raising awareness of problems of displacement and promoting the Guiding Principles.

Training in the Guiding Principles was also recommended. Particularly active in this area is the Global IDP Project of the Norwegian Refugee Council, which has conducted training workshops in Uganda, the Philippines, Thailand and Angola. The workshops are aimed at government, military and police personnel, international organizations, NGOs, and the internally displaced. The Global IDP Project, at the request of the IASC and in cooperation with the United Nations Children's Fund (UNICEF), is also developing inter-agency training modules on internal displacement based on the Guiding Principles. Participants recommended the completion of these modules and their wide dissemination as well as follow-up activities to the training programs.

Bringing the Guiding Principles to the attention of displaced communities in rural areas was recommended as a means of empowering such communities and making them familiar with their rights. In this regard, it was considered important to ensure that training be tailored to each given situation, a task which it was suggested can be undertaken most effectively by national and local actors. In Sri Lanka, the Consortium of Humanitarian Agencies has developed a “Toolkit,” based on the Guiding Principles, the *Annotations* and the *Handbook*, adapted to the Sri Lankan context. Once published it will form the basis for training programs for government officials, non-state actors and those working with the internally displaced.

Recognizing the important role played by national NGOs, it is important also to note the challenges that they face, both in legal terms and regarding the physical security of their staff. National NGOs need increased support at the domestic level, through the adoption of national legislation aimed at facilitating and enhancing their activities, and in the form of partnerships and capacity building from international agencies and international NGOs.

REGIONAL AND INTERNATIONAL INFORMATION NETWORKS

The efforts of NGOs at the national level may also be supported through the establishment of regional and information networks. A number of examples of initiatives already underway were provided, as well as suggestions for further efforts.

One initiative is the inter-agency Global IDP Database operated in Geneva by the Norwegian Refugee Council. The Database uses the Guiding Principles as the framework for collecting information on internal displacement situations and also monitors implementation of the Principles by means of the information collected. Country profiles contained in the database are structured in terms of the Guiding Principles, which further ensures that country situations are considered from a protection perspective. The Database has been an important vehicle for establishing contacts and information sharing with national NGOs. It was suggested that the Database include legal cases and remedies relevant to the Guiding Principles and internally displaced persons. There was also a call

¹⁸ *Compilation and Analysis of Legal Norms, Part I*, UN Doc. E/CN.4/1996/52/Add.2, 5 December 1995, and *Part II: Legal Aspects Relating to the Protection Against Arbitrary Displacement*, UN Doc. E/CN.4/1998/53/Add.1, 11 February 1998.

for broadening its information resource base by pressing for the implementation of the reporting requirements expected of UN Resident and Humanitarian Coordinators on situations of internal displacement.

A second initiative is the Permanent Consultation on Internal Displacement in the Americas (CPDIA), composed of international organizations, NGOs and experts, and housed in Costa Rica with the Inter-American Institute of Human Rights. CPDIA has been active in disseminating and promoting the Guiding Principles in the Americas, including in its country missions and seminars. The CPDIA is seeking to establish an Institute for Advanced Planning, Specialized Research, Information and Training on Prevention and Treatment of Sudden Migrations in the Americas that would consolidate all relevant bibliographic information and documentation in the region and undertake training programs. Emphasis would be placed on research of a practical nature that could be used in training government and intergovernmental personnel, ombudspersons and NGOs. It was suggested that the Institute undertake the systematic dissemination of the Guiding Principles and work to support their incorporation into domestic law.

Academic institutions were yet another important means of focusing attention on internal displacement and promoting the Guiding Principles. In particular, they could: include the issue of internal displacement in academic courses on refugees, human rights and forced migration; promote and undertake needed research, for example on the linkages between conflict-induced and development-induced displacement; and act as a bridge among the different actors engaged in addressing the causes and consequences of displacement, bringing them together in academic fora to discuss complex and controversial issues. To facilitate these activities, the following was recommended:

- The identification of specific academic and research institutes for dissemination, research and networking functions and for the establishment of databases on internal displacement.
- The involvement of academic institutes in training programs on the Guiding Principles for students, faculty, NGOs and local officials.
- The establishment of a committee to study the syllabi and course content of universities in different parts of the world to identify specific course areas in which internal displacement

issues could be included and to coordinate with universities on the most appropriate directions in which to proceed.

- The development by academic and research institutes of programs with non-state actors to promote adherence to the standards in the Guiding Principles.

ADDITIONAL MECHANISMS TO PROMOTE IMPLEMENTATION OF THE GUIDING PRINCIPLES

Consideration was given to whether new machinery should be created to promote implementation of the Guiding Principles. Two possible options were advanced. First, a reporting process consisting of questionnaires to be sent to governments, seeking information on measures they have taken to implement the Principles and the factors and difficulties affecting their application. Second, the establishment of an advisory group composed of eminent persons and experts with links to international organizations, regional bodies, governments, NGOs, academic and research institutions, and the corporate sector. Such a body would review, advise and provide feedback and suggestions on promoting the implementation of the Principles and also provide a forum for on-going strategic thinking on the work of the mandate of the Representative. Participants supported and encouraged the establishment of such a body.

As to the establishment of a formal reporting process, while there was some support for such an initiative, it was considered somewhat premature at the present time. In any event, it was suggested that the same results could be achieved by having NGOs and other organizations submit information on the implementation of the Principles in given situations. More systematic inquiry into issues of internal displacement by existing international and regional mechanisms could also produce the desired results. Moreover, the Representative could engage in a systematic round of consultations with governments about the Principles in order to promote their dissemination and application and ascertain and address any questions or concerns.

PLAN OF ACTION

On the basis of the discussions, a plan of action emerged to promote the implementation of the Guiding Principles, consisting of the following ten elements:

1. The further integration of the Guiding Principles into the work of existing international human rights monitoring mechanisms. This would involve using the Principles as a yardstick to measure conditions on the ground during fact-finding missions, in the preparation of reports, as a basis for technical assistance programs, when reviewing state reports on their compliance with human rights treaties, and as a source of reference and clarification for the interpretation of treaty provisions. All UN country and thematic rapporteurs, treaty bodies and human rights field staff are encouraged to undertake such activities.
2. The introduction and further integration of the Guiding Principles into the work of regional and sub-regional organizations. This would include using them as a framework for addressing the issue of internal displacement, as a tool for monitoring situations of displacement, as a basis for advocacy on behalf of the displaced, and as a reference source for interpreting and clarifying regional human rights agreements in the case of the internally displaced.
3. The use of the Guiding Principles in individual complaints mechanisms at the international and regional levels to confirm the specific meaning of human rights guarantees for internally displaced persons and to provide a remedy for their situation. Taking into account the many difficulties facing internally displaced persons who are prepared to use such procedures, NGOs have a particularly important role to play in helping internally displaced persons to identify the appropriate mechanisms to use and to assist them in bringing their cases to relevant courts and treaty bodies.
4. Bringing the Guiding Principles to the attention of international criminal tribunals to highlight the importance of prosecuting forcible population transfers and deportations on ethnic grounds as crimes against humanity, and to help in specifying the elements of the crimes.
5. Encouraging all international organizations, regional organizations and non-governmental organizations working with internally displaced persons to:

- Continue to promote and disseminate the Guiding Principles, in accordance with UN resolutions.
- Continue to use the Guiding Principles for internal purposes, for example, as a tool for training their staff, as a checklist when planning activities, or as a yardstick for monitoring and evaluating situations.
- Cite the Guiding Principles, when appropriate, in dialogues with governments and non-state actors. In this connection, it is important to emphasize that the Guiding Principles are not meant to replace existing hard law but can be usefully invoked as a supplementary instrument in situations where there is a debate about the specific meaning of treaty law when applied to internally displaced persons, where a country has not ratified the relevant treaty, where the treaty is not applicable in a given situation, or where present international law is unclear or does not address the particular needs of internally displaced persons. To this end, it is important that the *Annotations* to the Guiding Principles be made available to all staff dealing with legal aspects of protection work in order to inform them of the legal foundations of the Principles.
- Assume a greater role in regard to the protection of internally displaced persons, including focusing on the particular concerns of specific groups such as women, children, the elderly and the disabled. Should agencies in the field be constrained from raising protection concerns directly, they should adopt other strategies, including bringing concerns to the attention of those who may be able to act on them, whether international and regional human rights mechanisms, NGOs, or the Representative of the Secretary-General.
- Ensure appropriate training and discussion at the field level on how to raise protection issues and make use of the Guiding Principles. In this regard, the *Handbook for Applying the Guiding Principles* and the *Manual on Field Practice* should be widely disseminated, as should the inter-agency training materials, once these are finalized. In addition, training materials tailored to the military should be developed and training programs introduced for peacekeepers and civilian police.
- Strengthen partnerships with local NGOs and institutes through capacity building and joint programs around the Guiding Principles.

6. The UN Secretary-General is encouraged to continue to include internal displacement issues and appropriate references to the Guiding Principles in his thematic and country reports to UN bodies, including to the Security Council. Several participants also suggested that it would be valuable for the Representative of the Secretary-General to brief the Security Council on situations of internal displacement.

7. At the national level, encourage the incorporation of the Guiding Principles into national policy and legislation. Actors at the national, regional and international levels have important roles to play in accomplishing this:
 - National human rights commissions and also national ombudspersons are encouraged to promote the incorporation of the Principles into domestic law and policy when advising governments on such matters.
 - National NGOs are encouraged to undertake reviews of domestic legislation and to assess the extent to which legislation complies with the Guiding Principles. They are also encouraged to bring displacement-related cases to the attention of national courts, either through public interest litigation, where possible, or by assisting individuals with a view to establishing precedents in the highest national courts. National courts are key actors in implementing international law at the domestic level either by directly applying relevant norms where this is possible, or in interpreting constitutional guarantees and other relevant national law in the light of international law. In both cases, the Guiding Principles can provide guidance in giving specific content to these more general guarantees. The recent judgments of the Constitutional Court in Colombia reveal the potential for giving binding character in domestic law to the provisions incorporated in the Guiding Principles.
 - Universities and research institutions can play an important role by bringing together different actors in a neutral framework to discuss national law and policy and ways to bring them into line with international standards, as restated in the Guiding Principles.
 - Regional and international actors such as the Commonwealth, the Office for Democratic Institutions and Human Rights of the OSCE and OHCHR should encourage incorporation into domestic law of the standards contained in the Principles when advising governments on, or reviewing, national legislation and policy and in raising awareness of the Guiding

Principles among national judiciaries. Technical assistance should be provided to governments to support such efforts.

- Regional and international treaty monitoring mechanisms, when reviewing state reports or deciding inter-state or individual cases, are encouraged to refer to the Principles where appropriate and recommend the development or reform of national legislation in line with their provisions.
- The Representative of the Secretary-General, in his dialogue with governments, should encourage the development of national legislation and policy incorporating, or based on, the Guiding Principles.

8. Empowering internally displaced communities to use the Guiding Principles to defend their rights and interests is of crucial importance. NGOs have a critical role in raising awareness among such communities, including through the use of national and local media, and to train and assist them in capacity building.
9. The Representative of the Secretary-General, among others, should intensify advocacy efforts for the protection of international and local humanitarian and human rights personnel working with the internally displaced. Given that the Guiding Principles provide for the protection of humanitarian staff, such efforts on the part of the Representative would not only support and assist the work of the agencies, but also serve to reinforce the use and applicability of the Guiding Principles and enable greater scope for the protection of internally displaced persons on the ground.
10. The creation of an advisory group or panel of experts with linkages to international and regional organizations, governments, NGOs, academic and research institutions, and corporations to assist the Representative of the Secretary-General in areas of strategic planning and monitoring. The group would also help address the various methodological, conceptual and practical challenges confronting the international community in seeking to deal with the global crisis of internal displacement.

INTERNATIONAL COLLOQUY ON THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

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INTERNATIONAL COLLOQUY ON THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

Vienna, Austria
September 21-23, 2000

AGENDA

Thursday, September 21

10:00 AM OPENING SESSION

Welcome by the Government of Austria

Benita Ferrero Waldner, Federal Minister for Foreign Affairs
Ambassador Christian Strohal, Ministry of Foreign Affairs

10:30 AM THE CHALLENGE OF IMPLEMENTING AND MONITORING THE GUIDING PRINCIPLES

by: Manfred Nowak, Ludwig Boltzmann Institute for Human Rights, Vienna

Presentations

Introduction

*Francis M. Deng, Representative of the UN Secretary-General on Internally
Displaced Persons*

Reception of the Guiding Principles at the International, Regional and National Levels

Roberta Cohen, Co-Director, Brookings Institution Project on Internal Displacement

Discussion

11:30 AM Coffee Break

12:00 PM THE RELATIONSHIP OF THE GUIDING PRINCIPLES TO INTERNATIONAL TREATY AND CUSTOMARY LAW

Presentation

Gerhard Hafner, Faculty of Law, University of Vienna; and Member,
International Law Commission

Discussion

1:00 PM Luncheon

2:00 PM THE UNITED NATIONS SYSTEM: HOW BEST TO INTEGRATE THE GUIDING PRINCIPLES INTO EXISTING STRUCTURES AND BUILD ON EXISTING MODELS

Chair: Walter Kaelin, Faculty of Law, University of Bern

Presentations

The Treaty Bodies

Martin Scheinin, Member, Committee on Human Rights

Discussion

Presentation

Individual Complaints Mechanisms

Joan Fitzpatrick, Faculty of Law, University of Washington

Discussion

3:00 PM Coffee Break

3:30 PM *Country and Thematic Rapporteurs*

Leonardo Franco, Special Rapporteur on Sudan

Kamal Hossain, Special Rapporteur on Afghanistan

Bacre Waly Ndiaye, Office of the High Commissioner for Human Rights and former Special Rapporteur on Extrajudicial and Summary Executions

Discussion

4:30 PM *International Criminal Tribunals*

William Schabas, Irish Centre for Human Rights

Discussion

5:00 PM *Other Non-Binding Instruments*
Simon Bagshaw, Office of the Representative of the Secretary-General

Discussion

6:00 PM **End of Session**

Friday, September 22

9:00 AM **THE UNITED NATIONS SYSTEM (continued)**

Chair: Dennis McNamara, Special Coordinator on Internal Displacement, OCHA

Presentations

The Inter-Agency Standing Committee: Integration of the Guiding Principles

Stephane Jacquemet, UNHCR

Thomas Linde, OCHA

Sarah Poole, UNDP

Dianne Spearman, WFP

Marguerite Contat-Hickel, ICRC

Discussion

10:00 AM **REGIONAL APPROACHES**

Chair: Flora MacDonald, Canada

Presentations

Organization of American States

Robert K. Goldman, past President and member, Inter-American Commission on Human Rights, Organization of American States

Organization of African Unity

Ahmed Haggag, former Assistant Secretary-General, Organization of African Unity

Emmanuel V.O. Dankwa, Chair, African Commission on Human and People's Rights

Organization for Security and Cooperation in Europe

Vladimir Shkolnikov, ODIHR, Organization for Security and Cooperation in Europe

Discussion

11:00 AM Coffee Break

11:30 AM *European Court Of Human Rights*

Francoise Hampson, Essex University

Council of Europe

Alexey Kozhemyakov, Directorate General of Legal Affairs

Commonwealth

Emmanuel Opoku Awuku, Legal and Constitutional Affairs Division

Discussion

12:30 PM *Asia-Pacific Forum of National Human Rights Institutions*

Mercedes V. Contreras-Danenberg, National Human Rights Commission, Philippines

Discussion

1:15 PM Luncheon

2:30 PM ROLE OF NON-GOVERNMENTAL ORGANIZATIONS (NGOs)

Chair: Tapan Bose, South Asia Forum for Human Rights

Presentations

Marcela Salazar, Support Group for Displaced People Organizations (GAD), Colombia

Jeevan Thiagarajah, Executive Director, Consortium of Humanitarian Agencies, Sri Lanka

Zurab Burduli, Georgian Young Lawyers Association

Binaifer Nowrojee, Human Rights Watch/Africa

Discussion

4:00 PM Coffee Break

4:30 PM CREATING REGIONAL AND INTERNATIONAL INFORMATION NETWORKS

Chair: Evelyn Balais Serrano, Asian Forum for Human Rights and Development (Forum Asia)

Presentations

Marc Vincent, Global IDP Project, Norwegian Refugee Council

Cristina Zeledon, Permanent Consultation on Internal Displacement in the Americas, Inter-American Institute of Human Rights

Omprakash Mishra, University of Jadavpur, Calcutta, India

Discussion

6:00 PM End of Session

Saturday, September 23

9:30 AM THE ROLE OF THE REPRESENTATIVE IN MONITORING THE IMPLEMENTATION OF THE GUIDING PRINCIPLES

Chair: Flora MacDonald

Panel

Dennis McNamara, OCHA

Arthur C. Helton, Council on Foreign Relations

Iain Levine, UNICEF

Francis M. Deng, Representative of the Secretary-General

Discussion

11:00 AM Coffee Break

11:30 AM CONCLUSIONS AND RECOMMENDATIONS

Presentation

Walter Kaelin, assisted by Erin Mooney, Office of the Representative of the Secretary-General

Discussion

12:30 PM CONCLUDING REMARKS

Flora MacDonald, Chair

Francis M. Deng, Representative of the Secretary-General on Internally Displaced Persons

1:00 PM Farewell Lunch

BACKGROUND PAPER FOR THE INTERNATIONAL COLLOQUY ON THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

VIENNA, AUSTRIA
21-23 SEPTEMBER 2000

INTRODUCTION

Internal displacement has emerged in recent years as one of the most pressing humanitarian, human rights and political issues now confronting the international community. Globally, there are an estimated 20 to 25 million persons, forcibly displaced within the borders of their own countries by conflict and human rights violations, often in acute need of protection and assistance. There are also millions of persons internally displaced by natural disasters and other causes.

In 1992, in response to increasing international concern at their numbers and their need for assistance and protection, the UN Secretary-General, at the request of the Commission on Human Rights, appointed Dr. Francis M. Deng as Representative of the Secretary-General on Internally Displaced Persons. The mandate of the Representative has since been renewed on three occasions, most recently in 1998. During this time the Representative has focused on three main areas of work: developing a legal framework for the protection and assistance of the internally displaced, resulting in the elaboration of the Guiding Principles on Internal Displacement; visits to countries affected by internal displacement; and promoting an institutional framework at both the international and regional levels.

History and Development of the Guiding Principles

The development of a legal framework for the internally displaced has been a key feature of the mandate since its inception. The Commission on Human Rights and the General Assembly requested the Representative to examine the applicability of existing international law to the protection and provision of assistance to the internally displaced, possible additional measures to strengthen the implementation of these laws, and alternatives for addressing protection needs not adequately covered by existing instruments. International organizations and NGOs also urged the Representative to bring together into one compact document the various provisions of international law applicable to the internally displaced.

Together with a team of international legal experts, the Representative studied the extent to which international law (human rights law, humanitarian law and refugee law by analogy) provides adequate protection for internally displaced persons. In a two-part *Compilation and Analysis of Legal Norms*,¹⁹ published by the UN in 1996 and 1998, the team found that while existing law covers many aspects of relevance to the situation of internally displaced persons, there nonetheless

¹⁹ See *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1995/57. Compilation and analysis of legal norms.* UN doc. E/CN.4/1996/52/Add.2 (1996) and *Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission on Human Rights resolution 1997/39. Addendum. Compilation and Analysis of Legal Norms, Part II: Legal Aspects Relating to the Protection against Arbitrary Displacement.* UN doc. E/CN.4/1998/53/Add.1 (1998).

exist significant gaps and grey areas where the law fails to provide sufficient protection. They recommended bringing together into one document all the legal provisions relevant to the internally displaced and addressing the identified gaps and grey areas. Requested by the Commission and General Assembly to develop an appropriate normative framework based on the Compilation's findings, the Representative and the legal team produced the Guiding Principles on Internal Displacement.

The Guiding Principles were developed over a period of several years and finalised at an expert consultation hosted by the Government of Austria in January 1998. The process was a broad-based one which brought together legal experts from all different parts of the world and included representatives of international organizations, regional intergovernmental bodies, non-governmental organizations (NGOs), and research and academic institutions.

Although not a binding instrument, the Guiding Principles restate the existing norms of human rights and humanitarian law as well as analogous refugee law that are relevant to the internally displaced. They also fill grey areas and gaps by making explicit what has already been found to be implicit in the law. They set forth the rights of internally displaced persons and the obligations of governments, insurgent groups and other actors toward these populations in all phases of displacement, providing protection against arbitrary displacement, protection and assistance during displacement and during return or resettlement and reintegration.

Dissemination and Use of the Guiding Principles

Since their presentation by the Representative to the Commission on Human Rights in 1998, the Guiding Principles have been widely acknowledged by UN bodies. The Commission and General Assembly, in unanimously adopted resolutions, have taken note of them and of the Representative's intention to make use them in his work, have welcomed the fact that the Representative has used the Principles in his dialogues with governments and intergovernmental and non-governmental organizations, and have requested him to continue his efforts. They have also encouraged the further dissemination and application of the Principles, including through regional and other seminars on internal displacement. Even earlier, the Inter-Agency Standing Committee, composed of the major international humanitarian, human rights and development agencies and NGOs, welcomed the Guiding Principles and called upon its members to disseminate them and have their staffs apply them, especially in the field. The UN Secretary-General has cited the Guiding Principles as a major achievement in the humanitarian area and recommended to the Security Council that in cases of massive displacement, it encourage states to follow the legal guidance provided in the Principles. The Council indeed has begun to refer to them in its Presidential statements and resolutions.

Following this positive reception, the UN and other international agencies, regional bodies and international and local NGOs began to widely circulate and promote the Principles. To help international organizations and NGOs apply them in the field, the UN in 1999 published a *Handbook for Applying the Guiding Principles* which spells out the meaning of the Principles in non-technical language and provides suggestions for their practical realisation. A *Manual on Field Practice in Internal Displacement*, which contains examples of field initiatives supporting the

application of the Principles, has been published by the UN as well. Further, an inter-agency training package is being developed to promote application of the Principles. And *Annotations* to the Principles, explaining the legal provisions upon which they are based, have been published by the American Society of International Law and the Brookings Institution.

These combined efforts have contributed to the Principles being used as an advocacy tool by international organizations and NGOs in their work on behalf of the displaced. Governments also are finding the Guiding Principles a useful guide for the development of laws on internal displacement and as a yardstick for measuring conditions in their countries. A number have publicly praised the development of the Principles and several governments in countries with serious situations of internal displacement have actively supported and participated in seminars on the Principles.

At the same time, there are governments which have begun to question the innovative process by which the Guiding Principles were developed. At the July 2000 session of the Economic and Social Council (ECOSOC), a number of governments expressed the view that principles not drafted or formally adopted by governments cannot have real standing. Yet these same governments are among those that have voted for the Commission and General Assembly resolutions encouraging the development of the Guiding Principles, recommending their wide dissemination, and requesting the Representative to use them as the basis for his dialogue with governments. They have also supported decisions by regional bodies to disseminate the Principles.

The Guiding Principles and the Vienna Colloquy

The principal objectives of the Vienna Colloquy are to review and evaluate how the Guiding Principles have been received at the international, regional and national levels and to explore how best to further promote their implementation in situations of internal displacement. The Colloquy will discuss the current status of the Principles and will consider different means at the national, regional and international levels to further their implementation, including the integration of the Principles into the work of existing structures, the development of new implementation machinery, the creation of worldwide monitoring and information networks, and the mobilization of international constituencies worldwide.

Integrating the Guiding Principles into Existing Structures

As already noted, the integration of the Principles into the work of existing actors at the international, regional and national levels is well underway. Nonetheless, this needs to be strengthened and additional steps considered.

At the International Level

At the international level, the UN Commission on Human Rights consistently has emphasized the importance of integrating the internal displacement issue into the activities of other parts of the UN human rights system. Specifically, the Commission has called upon the UN special procedures (thematic and country rapporteurs, representatives, working groups, experts) and treaty monitoring bodies to seek information on situations which have already created or could create internal displacement and to include relevant information and recommendations in their reports.

In response, some thematic mechanisms, for example, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has begun to consistently refer to internal displacement and the Guiding Principles in reports and in relevant urgent appeals. The Special Representative of the Secretary-General for Children and Armed Conflict has consistently drawn attention to internally displaced children and called for observance of the Guiding Principles by all relevant actors. The Special Rapporteur on Violence Against Women and the Working Group on Enforced or Involuntary Disappearances have also done some reporting on the issue, but thematic mechanisms could do far more. With regard to country rapporteurs and experts, the Independent Expert on Somalia has referred to internal displacement in that country in some detail, including the lack of an adequate international response to the problem and has drawn attention to the Guiding Principles. There is need for other country rapporteurs to more systematically refer to internal displacement and make use of the Guiding Principles in situations where there are substantial numbers of internally displaced persons.

With regard to the treaty bodies (which review states' compliance with human rights treaty provisions), a number have begun to address internal displacement situations, although the Guiding Principles have not been consistently integrated into their work. Some do invoke non-binding human rights instruments, although none have referred to the Guiding Principles in their concluding observations.

The Commission on Human Rights also has consistently called upon the Office of the High Commissioner for Human Rights (OHCHR) to develop technical assistance projects to promote the human rights of internally displaced persons as part of its advisory services programmes in the field. Indeed, there is broad scope for the integration of the Guiding Principles into these field projects, a goal which has not yet been effectively realized. Nonetheless, field staff of this Office have begun to apply the Principles in their advocacy and monitoring activities, and have facilitated their translation into local languages and incorporation into training programmes.

The issue of internal displacement is also beginning to be integrated into the work of international and regional tribunals. The statutes of the international criminal tribunals for the former Yugoslavia and Rwanda and the International Criminal Court recognise forcible population transfer and ethnic cleansing as a criminal offence. The European Court of Human Rights also has begun to act in cases of internal displacement, in particular on the issue of property.

As noted above, the international humanitarian system, within the framework of the Inter-Agency Standing Committee (IASC), has been widely disseminating the Principles and integrating situations of internal displacement in their work. The policy on protection of internally displaced persons, adopted by the IASC in December 1999, provides a framework for activities in this regard. However, training programs are only just being developed in the Principles and reporting requirements by field workers on situations of internal displacement do not yet exist. To be sure, international organizations are increasingly focusing greater attention and resources on cases of internal displacement, for example UNHCR, UNICEF, UNDP, the World Food Programme (WFP), and the International Committee of the Red Cross (ICRC), but the system largely remains *ad hoc*. As of this month, a senior coordinator on internal displacement has been appointed within the Office for the Coordination of Humanitarian Affairs (OCHA) to lead an inter-agency network. The

network will examine a series of country situations with a view to ensuring an adequate humanitarian response and appropriate coordination mechanisms. In evaluating field operations and making recommendations for follow-up, the network should consider working within the framework of the Guiding Principles, especially so as to ensure that particular attention is paid to protection issues.

At the Regional Level

A number of regional organizations have begun to take note of, disseminate and apply the Principles. The Commission for Refugees, Returnees and Displaced Persons of the Organization of African Unity (OAU) has formally expressed appreciation of the Principles, and several OAU-sponsored seminars have emphasized the importance of the Principles to Africa. In particular, a seminar on Internal Displacement in Africa, co-sponsored by the OAU, UNHCR and the Brookings Institution, called for the wide dissemination and application of the Guiding Principles in Africa. The country missions of the OAU Commission on Refugees have also begun to include internally displaced persons but not in any systematic way. In the Americas, the Inter-American Commission on Human Rights of the Organization of American States (OAS) has appointed a Rapporteur on Internally Displaced Persons, has formally welcomed and expressed support for the Guiding Principles, and in its missions to different countries, has begun to measure conditions on the ground in terms of the Principles. The Organization for Security and Cooperation in Europe (OSCE) has disseminated the Principles to its participating states and staff. In May of this year, the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) co-sponsored a regional workshop on internal displacement in the South Caucasus,²⁰ which sought to promote the application of the Guiding Principles in the region. One of the stated aims of the OSCE's forthcoming Supplementary Human Dimension Seminar on Migration and Internal Displacement, to be held on 25 September, is to elaborate how OSCE bodies, institutions, field operations and participating states could play a role in the practical application of the Principles. The Commonwealth, for its part, has expressed encouragement for the Representative's efforts to develop a normative framework for internally displaced persons through the development of the Guiding Principles and has recommended greater observance of human rights and humanitarian law in situations of displacement.

Many additional steps, however, could be taken by these and other regional bodies and will be the subject of discussion at the Colloquy. In Asia, the Association of South East Asian States (ASEAN) and the South Asian Association for Regional Cooperation (SAARC) have not to date addressed the issue of internal displacement despite the increasing and vocal interest among Asian NGOs, academics, journalists and members of national human rights commissions in regional efforts to address the problem. One promising initiative on the horizon, however, is the work of The Asia-Pacific Forum of National Human Rights Institutions (see below).

Regional NGOs have played an especially critical role in mobilizing attention to situations of displacement. In Asia, for example, Forum Asia and the South Asia Forum For Human Rights have organized conferences, published reports and engaged in public advocacy whereas in the Americas, the Permanent Consultation on Internal Displacement in the Americas has drawn regional attention to the problem through country visits. In the Southern Caucasus, national NGOs have joined on a regionwide basis to monitor compliance with the Guiding Principles; in particular, lawyers groups

²⁰ The other sponsors were The Brookings Institution and The Norwegian Refugee Council.

in Georgia, Azerbaijan and Armenia plan to monitor the laws and practices in their respective countries with a view to recommending improvements in light of the Principles.

At the National Level

Mention has already been made of the fact that a number of governments are using the Principles and have encouraged seminars and training in them for government, military and police personnel, as well as for parliamentarians and members of civil society. It has also been noted that a number of governments have translated the Principles into local languages. But by and large it is national NGOs which remain at the forefront of the issue, in particular through their direct work with displaced persons, their convening of workshops to train in the Guiding Principles, and through their use of the media to draw attention to particular situations. Closer working relationships between national and international NGOs should be encouraged in the form of joint advocacy and regional and international monitoring and information networks.

A particularly encouraging initiative at the national level is the promotion of the Guiding Principles through national human rights commissions, which have come to play an important role in Asia. A regional conference on Internal Displacement in Asia, held in February 2000 in Bangkok,²¹ proposed that national human rights commissions focus on the rights of the internally displaced, press for the observance of the Guiding Principles and promote specific steps to protect internally displaced persons. In August, the annual Asia-Pacific Forum of National Human Rights Institutions (ASPAC) expressed support for a greater role for national human rights commissions with the internally displaced and is planning to convene a seminar to promote this.

The unique role of academic and research institutions in different countries should also be underscored. Increasingly, they have begun to integrate the subject of internal displacement into migration courses, undertake needed research, hold conferences to raise attention to the issue, and promote joint academic and NGO activities on behalf of the Guiding Principles.

Possibilities for New Machinery to Promote Implementation of the Guiding Principles

Beyond integrating the Guiding Principles into the work of existing institutions at the national, regional and international levels, consideration should also be given to the potential for creating new machinery. Because the Principles are a non-binding instrument, the question in fact often arises as to whether special machinery could and should be developed to promote their implementation.

The establishment of formal machinery within the UN for promoting implementation of non-binding human rights instruments (such as declarations, standard minimum rules, guidelines, codes of conduct, basic principles and guiding principles) is not unusual, not least of all because non-binding human rights standards comprise the majority of human rights instruments adopted by the UN. Indeed, there is much to be said in support of the use of such standards especially as, unlike treaties which have long drafting and ratification delays, they can be applied immediately to address pressing concerns. Generally, they are drafted by governments and adopted or endorsed by a resolution of a UN organ, such as the General Assembly.

²¹ The Conference was hosted by Forum Asia and the University of Chulalongkorn and sponsored by UNHCR, the Brookings Institution Project on Internal Displacement, the Norwegian Refugee Council and the U.S. Committee for Refugees.

In the case of the Guiding Principles on Internal Displacement, they have not been drafted by governments or formally adopted by a political organ of the UN. Nonetheless, they have been acknowledged, disseminated by the UN and are being widely used. The precedents that exist for promoting the implementation of non-binding human rights instruments, as set forth below, may therefore be instructive for the Guiding Principles.

Promoting Implementation through Reporting

One model to consider is the implementation measures provided for in the Standard Rules on the Equalization of Opportunities for Persons with Disabilities. Adopted by the General Assembly in 1993, these Rules themselves contain a monitoring process in the form of a Special Rapporteur, who reports to the UN (the Commission on Social Development). The Special Rapporteur is expected to assist each state assess its level of implementation of the Rules, measure its progress, and identify ‘obstacles and suggest suitable measures that would contribute to the successful implementation of the Rules.’ In the course of doing so he/she is expected to consult with a ‘panel of experts’, drawn primarily from major international NGOs of persons with disabilities but also from national NGOs. Furthermore, UN agencies are to ‘cooperate with the Special Rapporteur in the implementation and monitoring of the Rules at the national level’.

As to the seriousness with which the Rules have been taken by states, the Special Rapporteur has found that while ‘no country, not even among the most advanced countries, has fully implemented the Rules’, there is no doubt that the rules, in the short time since their adoption, ‘have been widely accepted and are being used as the main policy guidelines in the disability field both by governments and [NGOs].’²² Indeed, the response rate to the Special Rapporteur’s two surveys on the implementation of the Rules, undertaken between December 1995 and August 1996, and in 1999, generated replies from 83 and 104 governments, respectively. According to the Special Rapporteur, all those governments that responded to the questionnaires ‘have made considerable efforts in providing information on a number of areas. Naturally, this has also had an awareness-raising effect in government administrations’. Indeed, the Special Rapporteur’s general impression is that ‘the Rules are well-known by disability experts in most government administrations around the world and that they are being widely used in a large number of countries’.

UN agencies and NGOs also have been disseminating the Rules and providing information to the Special Rapporteur on their implementation. Some 115 NGOs, including national NGOs, provided information for the Special Rapporteur’s 1999 survey. The Special Rapporteur considers the role of NGOs particularly important since their assessments of the situation often differ from that of governments, which ‘can stimulate national discussion.’²³

In addition, machinery for promoting implementation of non-binding instruments may also be established directly by UN resolutions. In the field of criminal justice, ECOSOC resolutions have invited states to submit periodic reports to the Secretary-General on the progress achieved in

²² *Monitoring the implementation of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities. Annex. Final report of the Special Rapporteur of the Commission for Social Development on monitoring the implementation of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities.* UN doc. A/52/56 (1996), para.130.

²³ *Ibid.*, para.126.

implementing particular standards. A 1970 secretariat working paper on the Standard Minimum Rules for the Treatment of Prisoners, notes that the system of periodic reporting ‘gives to the Rules an official status enjoyed by few matters under the jurisdiction of the UN’. Through periodic reports, the Secretary-General has the power ‘to inform the world of the status of enlightened correctional practice and the extension of the minimum conditions agreed upon by Member States’, the exercise of which ‘amounts, in itself, to a powerful incentive for nations to compete in improving the circumstances of those protected by the Rules.’²⁴ Indeed, five surveys were conducted between 1967 and 1990, which indicated that the Rules had been embodied in national legislation or prison laws and regulations.²⁵

In 1993, this monitoring system was reformed and is now based on a questionnaire sent to governments which seeks ‘an in-depth understanding of the use and application of the Rules’, based on ‘precise, comparable and quantifiable information on how the Rules are applied in practice.’²⁶ The Secretary-General’s first report on the basis of the new questionnaire, submitted in 1996, was based on the replies of 72 states which was considered a ‘remarkably high response rate’.²⁷ By 1998 the total number of respondent states was 99.²⁸

This kind of information gathering process (through questionnaires) was extended in 1998 to ten other non-binding instruments adopted by the UN in the field of crime prevention and criminal justice, and is deemed to constitute a ‘significant milestone’ in promoting the use and application of UN standards and rules in this area through the identification by governments of their achievements and shortcomings.²⁹ NGOs have also played an important role in providing information in the context of the Secretary-General’s information gathering process. They often provide something of a reality-check, tempering over-optimistic assessments by states as to their use and application of the various standards.

In the case of the Guiding Principles on Internal Displacement, the Representative himself could, within the terms of reference of the Commission on Human Rights resolutions, send a questionnaire to states with a view to discerning the measures taken to implement the Principles and the factors and difficulties affecting their application.³⁰ This might encourage states that have not yet done so

²⁴ *The Standard Minimum Rules for the Treatment of Prisoners in the Light of Recent Developments in the Correctional Field. Working paper by the Secretariat, Fourth United Nations Congress on the Prevention of Crime and Treatment of Offenders.* UN doc. A/CONF.43/3 (1970), para.40.

²⁵ *Implementation of the Standard Minimum Rules for the Treatment of Prisoners. Report of the Secretary-General.* UN doc. A/CONF.144/11 (1990).

²⁶ *Report of the Secretary-General. Addendum: Use and application of the Standard Minimum Rules for the Treatment of Prisoners.* UN doc. E/CN.15/1996/16/Add.1 (1996), para.1.

²⁷ *United Nations standards and norms in the field of crime prevention and criminal justice. Report of the Secretary-General.* UN doc. E/CN.15/1996/16 (1996), para.26.

²⁸ *Use and application of United Nations standards and norms in crime prevention and criminal justice. Report of the Secretary-General.* UN doc. E/CN.15/1998/8 (1998), para.10.

²⁹ E/CN.15/1996/16, para.29.

³⁰ Some precedent and scope for this exists in the Commission’s request in 1998 that the Representative report on his use of the Guiding Principles in his dialogue with governments, intergovernmental and non-governmental organizations, and on the views expressed to him. The Representative in fact did report to the Commission on the views of governments expressed in different intergovernmental and regional fora and in bilateral discussions. He also reported on the views of international agencies and NGOs (see E/CN.4/1999/79). Furthermore, the Commission has encouraged the Representative through continuous dialogue with governments and intergovernmental and non-governmental organizations to continue his analysis of the causes of internal displacement, the needs of those displaced, measures of

to give consideration to the Principles and their application. It could also provide them with an opportunity to identify specific needs for which international assistance or technical cooperation is required. In addition, international and national NGOs and international agencies could be encouraged to submit information to complement states' responses as well as detail the ways and extent to which they have implemented the Principles in the field and the extent to which such efforts have promoted implementation of the Principles by states. It is noteworthy that reporting activities by organizations are envisaged by the IASC in its policy paper on protection of internally displaced persons and its supplementary guidance to Resident Coordinators and Humanitarian Coordinators (RC/HCs) on their responsibilities in relation to internally displaced persons.³¹ Given the IASC's consideration of the Guiding Principles as "fundamental to a comprehensive response to the protection and assistance needs of IDPs in all phases of displacement", such reporting could be based on the Guiding Principles.

Establishment of a Panel of Experts

Still another option for promoting the implementation of non-binding instruments is through the establishment of an expert panel. The panel of experts established within the framework of the Standard Rules on disability, for example, has taken a number of steps to promote the Rules, including by disseminating information at NGO events and in declarations and reports issued by UN world conferences.³² In 1991, an *ad hoc* Meeting of Experts for the Evaluation of Implementation of UN Norms and Guidelines in Crime Prevention and Criminal Justice suggested the appointment of temporary or permanent advisors, or the establishment of working groups to promote the implementation of UN standards and norms in this area³³ (such a body has not yet been established).

As concerns the Guiding Principles on Internal Displacement, a 'panel of experts' composed of NGOs, academics, representatives of displaced communities, and UN agencies could be established to review, advise and provide feedback and suggestions on promoting their implementation. This could involve the creation of networks of local groups to do monitoring on the ground.

prevention and ways to strengthen protection, assistance and solutions for the internally displaced. It has welcomed the fact that the Representative has made use of the Guiding Principles in his dialogue with governments and intergovernmental and non-governmental organizations, and has requested him to continue his efforts in that regard. Issuing a questionnaire on the implementation of the Principles could therefore be a means through which the Representative could pursue continuous dialogue with governments. Moreover, in the case of countries to which the Representative has undertaken missions, it could be interpreted as part of the follow up process provided for by the Commission in having encouraged governments which have invited the Representative to visit their countries to follow-up on his recommendations and suggestions and to make available information on measures taken thereon. Of course, to be comprehensive, any reporting process should not be limited only to those states to which the Representative has undertaken missions.

³¹ The policy paper, adopted in 1999, provides that the RC/HC and the country team relay information on the protection requirements of internally displaced persons to the Emergency Relief Coordinator (ERC), the Representative, the Office of the High Commissioner for Human Rights and the IASC-Working Group in order to ensure a timely and effective response. It also provides that the RC/HC, with input from the UN country team and other international organizations, report to the ERC on specific information on displaced populations and call particular attention to gaps in existing assistance and protection measures. This latter responsibility is also provided for in the IASC's supplementary guidance to RC/HC's on their responsibilities in relation to internally displaced persons, formulated in 2000. Also, the IASC's 1998 recommendations relating to the review of the capacity of the UN system for humanitarian assistance provide that the UN country team 'should be made responsible for reporting on IDP situations on a regular basis through the Resident Coordinators and this function should be included in their job-description'.

³² A/52/56, paras.34-9.

³³ Pursuant to Resolution 29 of the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders.

Establishment of a ‘friends of the mandate of the Representative of the Secretary-General’, composed of eminent persons, could also be a way to promote high-level attention to situations of internal displacement and the implementation of the Guiding Principles. An eminent persons group could work together with an expert panel worldwide.

CONCLUSION

The development of worldwide implementation machinery for the Guiding Principles has become a possibility now that so many important actors have begun to disseminate and use the Principles. While this background paper has tried to build on existing national, regional and international structures, the meeting may also wish to consider alternative mechanisms for implementing the Guiding Principles.

The UN Secretary-General, Kofi Annan, has described the problem of internal displacement as creating ‘an unprecedented challenge for the international community: to find ways to respond to what is essentially an internal crisis.’ The development of the Guiding Principles represents an important step towards meeting this challenge. The emphasis now must be on giving practical and meaningful effect to the Guiding Principles on the ground through their active implementation.

WELCOME ADDRESS OF BENITA FERRERO WALDNER, FEDERAL MINISTER FOR FOREIGN AFFAIRS OF THE REPUBLIC OF AUSTRIA

Ladies and Gentlemen,

I am very pleased to extend to all of you on behalf of the Austrian Government a very warm welcome in Vienna. It is with particular pleasure that we host this International Colloquy on the Guiding Principles on Internal Displacement here at the Hofburg together with the Brookings Institution and the Representative of the Secretary General of the United Nations on Internally Displaced Persons, Professor Francis M. Deng. Let me also say that I am delighted to be opening the Colloquy myself. I do this for a number of reasons:

First of all, it was Austria to take up the issue of the protection of internally displaced persons in 1992 within the United Nations system, and we are continuing this task to which we are attaching great importance.

Looking back to the first resolution adopted by the Commission on Human Rights on the issue of internally displaced persons, it appears that this was the starting point for the articulation of new international responsibilities, and formulating perspectives, within the United Nations and beyond.

This of course was achieved with the help of numerous friends - within international organisations, NGOs, governments, and, you will certainly agree with me, this was possible only thanks to the untiring work of Professor Deng. We are especially satisfied about the way the mandate has developed over the years under his leadership into an institution that plays a crucial and catalytic role for one of the most pressing tasks of the international community. Recent discussions within the UN system, including the Security Council, have amply demonstrated this development, and, therefore, the more coherent way we are dealing with this concern; at the same time, however, these discussions have also demonstrated more than ever that the plight of the internally displaced needs to be addressed effectively and in a solution-oriented manner.

A second reason for my appreciation of this Colloquy lies in the fact that Austria attaches highest priority to the respect for international law in all areas. It is, unfortunately, only too often that fundamental legal principles are being deliberately ignored; this lack of respect for legal obligations has been particularly disconcerting in recent conflicts involving the displacement of large numbers of persons, be it in the Balkans, or in Africa, or in Central Asia.

Thus I believe that the question of the legal framework has been central not only to the mandate of the Representative, but also to our understanding of its functioning.

Therefore, we take pride in the development of the Guiding Principles on Internal Displacement by Francis Deng and the fact that both at the beginning and at the end of this work stood international symposia here in Vienna. The Guiding Principles are indeed a fairly unique document, having been elaborated under intensive involvement of experts from all parts of the world, both from the

academic community and from international organisations who had as a major focus of their work the practical impact of the Principles “on the ground.”

Thus, the Guiding Principles have achieved the aim set out some years ago by Dr. Deng and the Commission on Human Rights: to bring applicable international law - human rights law, humanitarian law, and refugee law - together in one document, in order to provide a practical tool to all actors involved for the effective protection of and assistance to internally displaced persons.

Consequently, the Guiding Principles have already stood the test of being considered useful by international humanitarian practitioners on the ground.

While the need to strengthen international responses to the global crisis of displacement is widely recognised, some concern has emerged with regard to a few voices who have recently raised doubts about the Guiding Principles. Our position in this regard is clear: the Guiding Principles are an important tool, legitimised by the Commission on Human Rights and the General Assembly - and their wide application shows by itself their utility. I consider it therefore as necessary to enhance efforts to spread not only knowledge about them, but also about their practical use. NGOs have been very important partners in this regard and I am therefore particularly pleased that numerous representatives of NGOs are present here today.

Thirdly, therefore, I wish to point towards one arena where we are making particular efforts in promoting the Guiding Principles: the Organization for Security and Cooperation in Europe (OSCE). In the Charter for European Security of November 1999, the Heads of State or Government of participating States reaffirmed their respective commitments and underlined their will to pursue without discrimination the re-integration of refugees and internally displaced persons in their places of origin. As the current Chair-in-Office we have placed internally displaced persons firmly on the agenda of the organisation, building on the work of Francis Deng and his mandate.

At a special Supplementary Human Dimension Meeting next week, the OSCE will, for the first time, address the issue of internally displaced persons in a more systematic manner. The meeting is designed to lay a firm foundation for further thinking and action by the OSCE in this regard; we plan to take up the issue later in the year at the Implementation Meeting in Warsaw as well as at the Ministerial Council in November. The awareness of the situation of internally displaced persons has to be increased throughout the region and also within OSCE institutions. The Guiding Principles must be more effectively integrated into the work of the organisation. This applies to the field level but also to the assistance provided by the Office for Democratic Institutions and Human Rights (ODIHR).

Finally, I would like to see the phenomenon of internal displacement in the broader perspective of human rights and security. At the Vienna World Conference on Human Rights the clear link between human rights, democracy and development was reaffirmed, while security issues were not addressed.

Now, after the terrible tragedies in the Balkans, in Rwanda, and elsewhere, it is increasingly recognised that human rights and national as well as international security are equally strongly linked. As a consequence, more and more attention is paid to concepts of “human security,”

stressing the integrity and well-being of the individual human person as the central concern of security policies. This concept underlines also our policies, and should contribute to a further mainstreaming of human rights into all our activities.

The Secretary-General of the United Nations, Kofi Annan, in his commendable report to the Security Council on the issue of civilians in armed conflict has stressed the absolute necessity of confronting the issue of displacement.

Rightly he points out the problem of non-compliance with international norms and stresses the responsibilities that come with sovereignty - a principle that has been stressed repeatedly by Francis Deng. Legal principles are only as good as is their implementation. Therefore, this Colloquy is facing the challenge of identifying concrete ways and means to promote and strengthen the Guiding Principles and their use.

We should all be guided by the “monumental plight” - as Francis Deng calls it - of the internally displaced. We have the framework and principles, we have the institutions, and we have the determination. We only need to apply them effectively. Francis Deng is showing us the way.

I wish you all success and assure you of Austria's continued support.