

INTRODUCTION TO THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

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Jakarta, Indonesia, June 26, 2001

It is a great pleasure for me to present the Guiding Principles on Internal Displacement -- the first international standards for internally displaced persons. The Guiding Principles identify the rights of the internally displaced and the obligations of governments toward these populations, and provide guidance to all other actors engaged with the internally displaced. This normative framework was developed by the Representative of the Secretary-General on Internally Displaced Persons at the request of the United Nations Commission on Human Rights and the General Assembly. The actual drafting was done by a team of international legal experts under the Representative's direction, in consultation with a wide range of international organizations, non-governmental organizations and research institutions worldwide. The Principles were presented to the UN Commission on Human Rights in 1998.

The Principles were developed for several reasons. First, international organizations and NGOs beginning in the early 1990s began to point out that there existed no document specifically applicable to internally displaced persons that could guide their work in the field. Second, governments in the UN Commission on Human Rights and the General Assembly specifically requested the Representative to develop an appropriate framework to guide national and international responses in situations of internal displacement. Third, the Representative found, after studying existing international law that there was need to consolidate into one document all the relevant provisions of the law and to address the gray areas and gaps in the law that the legal team had identified.

For example, the legal team found that in many cases general norms existed in international humanitarian law, human rights law and refugee law, but that their specific applicability to internally displaced persons needed to be spelled out. Thus, while a general norm existed on respect for family life, there was no specific provision providing that families separated by displacement should be reunited as quickly as possible. Or, while there was a general norm prohibiting cruel and inhuman treatment, there was no specific provision that stipulated that internally displaced persons should not be returned to areas of danger in their own countries. The Principles therefore undertook to restate the existing provisions of law and make them relevant to the internally displaced. Put another way, the Principles seek to make explicit to the internally displaced what is already implicit in the law. Let's look at Principle 20, for example. After reiterating the general norm that every human being has the right to recognition before the law, the Principle spells out that the authorities concerned shall issue to internally displaced persons all documents necessary for the enjoyment and exercise of their legal rights. The

Guiding Principles thus take general principles of international humanitarian and human rights law and tailor them to the needs of the internally displaced.

Guiding principles were decided upon rather than a legal instrument because it would have taken years, even decades for a treaty to be drafted and ratified. Moreover, sufficient international law applicable to the internally displaced already existed. What was needed rather was a document that brought together all the provisions of the law and tailored them to the specific needs of the internally displaced.

Let us now take a brief walk through the Principles. The introduction provides a description or a working definition of internally displaced persons which you may all wish to turn to. The two crucial elements of the definition are first, coerced or involuntary movement – that is being forced or obliged to flee or to leave one's home or place of habitual residence – and second, remaining within one's national borders. The working definition also includes the major causes of displacement – armed conflict, generalized violence, violations of human rights and natural or human made disasters. Its use of the qualifier, in particular, however, makes clear that internal displacement is not limited to these causes alone, so as not to exclude future situations that might need special attention.

Basically, the definition tries to strike a balance between too narrow a framework that risks excluding people and one so broad that it could prove operationally unmanageable. For example, it does not extend to persons who migrate because of economic reasons because in most cases the element of coercion is not so clear.

The definition, it should be emphasized, does not confer legal status on the internally displaced. Unlike refugees, who are outside their countries of origin and require substitute legal protection, internally displaced persons are in their own countries and are expected to enjoy the same rights and freedoms as all other persons in their countries. What the Principles seek to do is to acknowledge and address the unique needs of internally displaced persons. Displacement, after all, breaks up the immediate family, cuts off social and community ties, terminates employment, ends formal educational opportunities, deprives many of basic food, shelter and health services and makes the displaced populations especially vulnerable to acts of violence and human rights abuse.

Section I of the Principles contains general principles. These point out that persons can not be discriminated against because they are displaced and affirm that the Principles apply to *all* internally displaced persons regardless of their race, religion, national or ethnic origin, or political opinion. It would not therefore be acceptable to help some internally displaced persons but decline to help others on discriminatory grounds. At the same time, the Principles acknowledge that there are some internally displaced persons who may require special attention – children, especially unaccompanied minors; women, especially expectant mothers, mothers with young children and female heads of household; persons with disabilities; and elderly persons. The general principles also emphasize that the primary duty for providing protection and assistance to internally displaced persons lies with their national authorities, and that IDPs have the right to request and receive such assistance from these authorities.

The Principles then go on to address the different phases of displacement. Section II contains principles relating to protection *from* displacement and innovatively articulates a right *not* to be arbitrarily displaced. Indeed, this section specifies when displacement is *not* permissible and the minimum guarantees to be complied with, should displacement occur. For example, displacement is prohibited when it is based on policies of ‘ethnic cleansing’ or similar practices aimed at altering the ethnic, religious or racial composition of the affected population. The Principles also spell out when cases of large-scale development projects can be considered arbitrary and make clear that displacement should not be carried out in a manner that violates the rights to life, dignity, liberty, or the security of those affected. Basically every effort should be made to avoid displacement. States, moreover, are under a particular obligation to provide protection against displacement of indigenous peoples and other groups with a special dependency on and attachment to their lands.

Section III relating to protection during displacement really is the heart of the Principles. This section sets forth the full range of civil, political, economic, social and cultural rights that all people should enjoy and tailor these general rights to the specific needs of the internally displaced. I would underscore that the Principles provide that internally displaced persons should have access to food, water, shelter, clothing, medical services and sanitation essential to their survival. And they also should be protected against human rights abuse, including direct assault, sexual violence, attacks on their camps and settlements, being arbitrarily detained or held hostage in camps, or being forcibly returned to or resettled to places where their life, safety, liberty and/or health would be at risk. In short, the Principles set an international minimum standard for the treatment of internally displaced persons.

Section IV on the provision of humanitarian assistance reaffirms the primary role of the national authorities in providing humanitarian assistance but affirms that when these authorities are unable or unwilling to provide assistance, international organizations have the right to offer their services and consent shall not be arbitrarily withheld. Indeed, these organizations are supposed to be granted rapid and unimpeded access to the internally displaced. Further, organizations providing material assistance are expected to give due regard to the protection and human rights of the internally displaced. This is important because it underscores that the needs of the internally displaced encompass both material assistance and protection of physical safety and human rights. This section also underscores the importance of protecting the humanitarian workers who assist the internally displaced and specifically provides that such persons shall not be the object of attack or other acts of violence. This is a critical provision given the dangers and insecurities to which humanitarian staff are increasingly being exposed worldwide in their work on behalf of displaced populations.

Section V of the Principles on return and resettlement emphasize the right of internally displaced persons to return voluntarily and in safety to their homes or to resettle voluntarily in another part of the country. This section further provides for the recovery of property and for compensation or reparation if recovery is not possible. And it

provides a role for international organizations and others in return, resettlement and reintegration. Emphasis is also given to the full participation of the internally displaced in the planning and management of their returns or resettlement. This is quite important because the involvement of the displaced will help make their returns or resettlement far more sustainable.

Throughout the Principles, special attention is paid to the needs of women and children. For example, the Principles call for special efforts to ensure the full participation of women in the planning and distribution of food and supplies. And they call for special attention to the health needs of women, and affirm the equal rights of women to obtain documents. With regard to children, they prohibit forced recruitment into armed forces, assert that internally displaced children should receive free and compulsory education at the primary level, and require that special efforts should be made to reunify children with their families.

What is the current standing of the Principles? As I noted earlier, the Principles are not a legally binding treaty, but they are based on provisions of international law which are binding, and they have come to acquire over the past few years a good deal of international standing and moral authority. Intergovernmental organizations, most notably the Commission on Human Rights and the General Assembly, have acknowledged the Principles, welcomed the Representative's use of them and have called upon UN agencies, regional bodies and NGOs to disseminate and apply them. This year's Commission resolution, adopted unanimously in April 2001 by 53 states, including Indonesia, "notes with appreciation that an increasing number of States, United Nations agencies, and regional and non-governmental organizations are making use of the Guiding Principles." The resolution also "encourages the further dissemination and application of the Guiding Principles, expresses its appreciation for the dissemination and promotion of the Guiding Principles at regional and other seminars on displacement, and encourages the Representative to continue to initiate or support such seminars in consultation with regional organizations, intergovernmental and non-governmental organizations and other relevant institutions, and to provide support for efforts to promote capacity building and use of the Guiding Principles."

The United Nations Secretary-General has called upon the Security Council to encourage states to observe the Principles in situations of mass displacement. And the Security Council has begun to cite the Principles in its resolutions and Presidential statements. Regional intergovernmental organizations have also been disseminating and applying the Principles. For example, the Inter-American Commission on Human Rights of the Organization of American States has formally endorsed the Principles and uses them as a yardstick for measuring conditions in Latin American countries. In Europe, the Organization for Security and Cooperation in Europe held a special meeting on internal displacement in 2000 and recommended that the Principles serve as a framework for OSCE activities in this area. In the Asian region, the Asia Pacific Forum of National Human Rights Institutions decided in August 2000 to encourage its member institutions to integrate issues of internal displacement and the Guiding Principles into their work and will be convening a seminar in future around the Principles. It further should be noted

that international humanitarian, human rights and development organizations, comprising the UN's Inter-Agency Standing Committee, have endorsed the Principles and taken the decision to disseminate and apply them in the field.

Although governments did not themselves draft the Principles – which is sometimes pointed out by states -- governments are increasingly using them as guidelines in dealing with situations of internal displacement. As the Government of India affirmed at the UN, the Principles may not be legally binding but they are useful guidelines for states. And increasingly, governments have begun to base policy and law upon the Principles. In Sri Lanka, the Philippines, Georgia, Armenia, Colombia and Burundi, for example, governmental agencies have begun to use the Principles as the basis for policy, and in Angola, the Principles have been incorporated into law. Moreover, in Colombia, the Constitutional Court has cited the Guiding Principles in two leading decisions on IDPs, thus creating judicial precedent.

NGOs, of course, have been at the forefront of promoting attention to the Guiding Principles. In Asia, NGOs have been particularly active in raising visibility to the needs of internally displaced populations and to the Guiding Principles. Some examples may be instructive for groups in Indonesia. In Sri Lanka, for example, the Consortium of Humanitarian Agencies has just published a *Toolkit*, which adapts the Guiding Principles to the Sri Lankan context and which will be used as the basis for an outreach campaign on behalf of the internally displaced. In addition, the South Asia Forum for Human Rights in collaboration with the Calcutta Research Group is planning to undertake a study on the implementation of the Guiding Principles in South Asian countries. Indeed, throughout the world, NGOs are most creatively using the Principles as an advocacy tool with governments, to monitor conditions on the ground in terms of the Principles and as a benchmark for suggesting changes in laws and practices. Displaced communities too have begun to use the Principles as an empowerment tool for their own communities. In support of all these efforts, the UN together with my Project at the Brookings Institution has published a Handbook, which is available here, on how specifically to apply the Principles in the field.

Because the Principles do not contain any monitoring or enforcement machinery, a global effort is needed to do the monitoring, advocacy and intercessions and to frame laws, policies and institutions on the basis of the Principles. It is heartening to note that governments, regional organizations, UN agencies and international and local NGOs are increasingly becoming part of this worldwide effort.

To conclude, it is my hope that in Indonesia, the Principles will prove of value to government agencies by providing a standard to promote a more uniform and systematic response to situations of internal displacement. It is also my hope that the Principles will be actively used by the national human rights commission, by NGOs and by international organizations in this country in their efforts to defend the rights of the internally displaced and address their needs. The translation of the Principles into Bahasa Indonesia, for which we are most grateful, should facilitate their dissemination and application. It would also be useful to translate the Guiding Principles into some of Indonesia's other

languages. Over time, their continued usage should help clarify the relevance of existing law to the situation of internally displaced populations and help influence the way IDPs are perceived and treated. Over the next two days everyone here will have the opportunity to familiarize themselves with the provisions of the Principles and join the worldwide effort to promote greater well being and security for internally displaced persons.

Thank you.