

While the concept of refugees was defined in a UN convention in 1951, it took another 30 years until internally displaced persons were recognized as a group with special needs and rights. Their double position as both displaced and citizens in their own country sometimes blurs the roles of actors in charge of their protection and assistance. The last decade has seen the elaboration of a much-needed set of Guiding Principles for this group.

INTERNALLY DISPLACED PERSONS:

A neglected issue on the international agenda

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As we commemorate the 60th anniversary of the Universal Declaration of Human Rights (UDHR), it is timely to focus on international efforts to uphold the rights of those who have been forced to leave their homes and communities. This article will describe the evolution of human rights standards for internally displaced persons over the past decade and then discuss challenges to the implementation of these standards in the future.

The international refugee regime

For more than 50 years, the international community has acknowledged its responsibility to protect people fleeing their countries in search of safety. In 1921 the League of Nations created a high commissioner for refugees to assist refugees in Europe, mainly from the USSR and Eastern Europe. In the aftermath of World War II and the massive needs of some 30 million displaced Europeans, the fledgling United Nations developed an international system to respond to refugees. The system included: a clear definition of who is a refugee, a convention prescribing the way in which refugees should be treated and an international agency, the United Nations High Commissioner for Refugees (UNHCR) with a mandate to protect and assist refugees.

Refugees were defined in the 1951 convention as those who: "as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is out-

side the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it".¹

Over the years, the system for protecting and assisting refugees has evolved and expanded. Most notably the Convention itself was changed with the addition of the 1967 Protocol which expanded the geographical applicability of the Convention; originally intended to benefit only those displaced as a result of events in Europe, the Protocol made it applicable to people fleeing persecution throughout the whole world. The Convention, originally intended to meet the needs of individual victims of persecution was able to respond to situations of mass influxes of hundreds of thousands of people fleeing civil conflict. UNHCR, created for a three year period to meet what was perceived as a temporary need, saw its mandate renewed every few years and its field presence expanded to include most countries of the world.

But it is important to underscore that this international refugee regime was created in the context of the Cold War and was intended to protect victims of persecution – rather than civil conflict – by allowing them to find safety elsewhere. It has never been a perfect system. Although Article 14 of UDHR guarantees the right of all human beings to seek asylum in other countries, it is the responsibility of governments to

determine who is allowed to enter their territory. The 1951 Refugee Convention has been applied in ways consistent with governmental foreign policies. Thus, in the United States, Cubans fleeing to Florida were considered to be refugees and given expedited access to residence and citizenship, while Haitians arriving on the same shores faced more restrictive processes and were often detained and deported.

In the 1980s the system came under strain as a result of a dramatic increase in the number of people seeking asylum in developed countries, particularly in Europe. Alarmed at this trend, European governments sought to deter the arrival of asylum-seekers by instituting visa requirements, sanctions against airlines transporting people without the proper documentation, detention of asylum-seekers and other punitive measures. UNHCR often found itself in the 1980s and 1990s challenging governments on human rights – often the same governments that provided the bulk of UNHCR's funding.

Entitled to citizens' rights

In the beginning in the 1980s, there was increasing concern about another group of people forced to leave their communities – but who were not able to cross an international border. These people, who came to be known as internally displaced persons (IDPs), were not entitled to the same legal protections as refugees, although they were often fleeing the same conflicts and even though they were often more vulnerable to violence because of their proximity to

the conflicts. Following a period of intense diplomatic and lobbying activity, the then UN Human Rights Commission appointed a special Representative to the UN Secretary-General on IDPs (RSG) in 1992, Francis Deng.

In 1994 the Commission asked him to analyze existing legal instruments applicable to IDPs² to determine what additional legal measures might be necessary. The review found that large numbers of existing human rights instruments were applicable to IDPs who were citizens of their own countries although governments and others were often unaware of how these instruments applied to IDPs. Since there was little interest or political will in drafting a new convention on internal displacement, an alternative was sought. Francis Deng, supported by his colleague, Roberta Cohen of the Brookings Project on Internal Displacement, set up a process by which legal experts around the

world brought together the relevant portions of international human rights law, international humanitarian law, and by analogy, refugee law into the *Guiding Principles on Internal Displacement*.

It took two years and a series of consultations to draft the *Guiding Principles*. The 30 principles were based on existing law and spelled out a series of protections: protection against arbitrary displacement, standards for protection during displacement and protection during return, resettlement and reintegration. The *Guiding Principles* are a set of non-binding guidelines which were not negotiated by states nor subject to their ratification. This was an innovative approach to developing international legal norms and standards. Rather than being negotiated by representatives of governments, they were drafted by experts.

While this enabled a much quicker drafting process, it also meant that significant effort was needed to obtain the support of governments who were expected to implement the Principles.

Some argued at the time – and the arguments continue to surface – that a



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binding international convention was needed. But negotiating treaties generally takes years. Even when negotiated, a treaty may not receive the necessary ratifications to enter into force,³ and even when signed and ratified, conventions may not be applied. Because the *Guiding Principles* are based on existing



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Article 25: Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care.

international law, they sidestepped this process. There was also concern that negotiating a binding treaty on internal displacement would trigger a negative reaction on the part of governments fearing any infringement on their sovereignty.

The *Guiding Principles* begin with a definition of internally displaced persons as “persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of

the 2005 World Summit, governments unanimously recognized them as an “important international framework for the protection of internally displaced persons”. Presently some 20 governments have policies or laws on internal displacement which, to varying degrees, have incorporated aspects of the *Guiding Principles* into their legislation.⁶ The African Union has drafted a convention on IDPs which is scheduled for presentation to its members in 2009 and which would represent the first binding international instrument on IDPs.

IDPs and their advocates have used the *Guiding Principles* to advocate with their governments to protect the human rights of IDPs. Most notably, in Colombia, where some three million people have been internally displaced, the Constitu-

tional Court has relied on the *Guiding Principles* in making its decisions requiring the government to adopt additional measures in support of IDPs.

While UNHCR was mandated to protect and assist refugees, no UN agency was charged with responsibility for IDPs. In practice, UNHCR often assisted IDPs, but this was undertaken on a case-by-case basis at the request of the UN. The UN’s Humanitarian Reform process, launched in 2005, was largely motivated by the need to address the gap in the international system in responding to IDPs who by this time numbered more than twice the number of refugees. Under the Humanitarian Reform process, UN agencies, NGOs, and the Red Cross/Red Crescent movement were charged with working together in clusters, each led by a designated agency. UNHCR was given responsibility for leading the work in the clusters on IDP protection, emergency shelter and camp coordination and management for IDPs displaced by conflict.

For those displaced by natural disasters, the UN resident representative or humanitarian coordinator in a particular country was asked to consult with the three UN agencies with a protection mandate – UNHCR, UNICEF, and OCHA – to determine which should assume the cluster lead. In practice, it has proven difficult to obtain the commitments of UN agencies to take on respon-

sibility for IDPs. UNHCR, considered by many to be the natural organization to do so, was initially concerned that responsibility for IDPs could weaken its mandated work with refugees. Although UNHCR is presently working with IDPs in a large number of countries, its commitment to IDPs depends on its receiving extra-budgetary funds for this.

Recently, UNICEF commissioned an external evaluation to consider whether it could take on responsibility for IDPs in natural disaster situations, but so far the agency has resisted taking on this commitment. While the issue of internal displacement is firmly on the international agenda, there are still gaps in the international mechanisms to ensure that IDPs are protected and assisted.

New focus on natural disasters

In the initial years after the *Guiding Principles* were introduced, the emphasis was clearly on those displaced by conflict with relatively little attention directed towards those displaced by natural disasters or by development projects. In 2004, the tsunamis in Asia led Walter Kälin, the present RSG on the Human Rights of IDPs to examine the human rights implications of those displaced by natural disasters. Following a visit to the region, he led the Inter-Agency Standing Committee in a process of adopting *Operational Guidelines on Human Rights and Natural Disasters*. These Guidelines point to a number of problems that are often encountered by persons affected by the consequences

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armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”.⁴

This definition differs from the definition of refugees in that it includes those displaced by natural and man-made disasters as well as those fleeing conflicts. While the assumption is often made that refugees and IDPs are basically the same – with the exception that IDPs remain within their national borders – in fact there are important differences, including the principal difference that IDPs are citizens of their countries and thus entitled to all the rights and responsibilities therein. It is national governments who are responsible for protecting and assisting IDPs and there is no international agency charged with responsibility for them.

While the refugee definition has over 50 years of interpretation, analysis, implementation and practice, the *Guiding Principles* are only 10 years old. Scholars and practitioners can thus refer to UNHCR Executive Committee conclusions and a substantial body of jurisprudence to analyze practices and trends in implementation of the refugee convention on the national level. Unlike the case of refugee law, the corresponding body of law and legal standards applicable to IDPs is still in its infancy.

Falling between UN chairs

The *Guiding Principles* were presented to the UN in 1998 and over the years have acquired substantial credibility. At

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of natural disasters including unequal access to assistance, discrimination in aid provision, enforced relocation, sexual and gender-based violence, loss of documentation, recruitment of children into fighting forces, unsafe or involuntary return or resettlement, and issues of property restitution.⁷

The Guidelines emphasize that people do not lose their basic human rights as a result of a natural disaster or their displacement. Rather all of those

affected by natural disasters, including those who are displaced, are entitled to the protection of all relevant human rights guarantees. As residents, and usually citizens of the country in which they are living, they are entitled to the protections afforded to all residents and citizens, even though they may have particular needs related to the disaster and thus require specific assistance and protection measures. As with all situations of internal displacement, the primary duty and responsibility to provide such protection and assistance lies with the national authorities of the affected countries. Those affected by natural disasters have the right to request and receive such protection and assistance from their governments. These guidelines, which were formally adopted by the InterAgency Standing Committee in June 2006, are presently being used to train disaster responders on ways of ensuring that human rights are protected in the midst of disaster.⁸

Although the Internal Displacement Monitoring Center collects data on the numbers of people displaced by conflict, there are no accepted global estimates of the number displaced by natural disasters, even though it is generally accepted that the scale of disaster-induced displacement is much greater than that caused by conflict.⁹ In the course of the past year, for example, over 400 natural disasters took 16,000 lives, affected close to 250 million people and displaced many millions. As climate change is likely to increase both the number and severity of natural disasters, there is a need to put into place mechanisms to ensure that the human rights of those forced to flee floods, earthquakes, cyclones and other disasters are protected.

Division of responsibilities

Because internally displaced persons are the responsibility of national governments, questions about international action on their behalf inevitably raise questions of sovereignty. In Darfur, for example, where 2.5 million people have been displaced in the last five years, it is the government of Sudan which is responsible for their assistance and protection. Although there are over 15,000 humanitarian workers in Darfur and over US\$1 billion is provided every year to assist displaced Darfurians, problems with access and security limit the ability of humanitarian actors to meet the needs of those affected by the conflict.

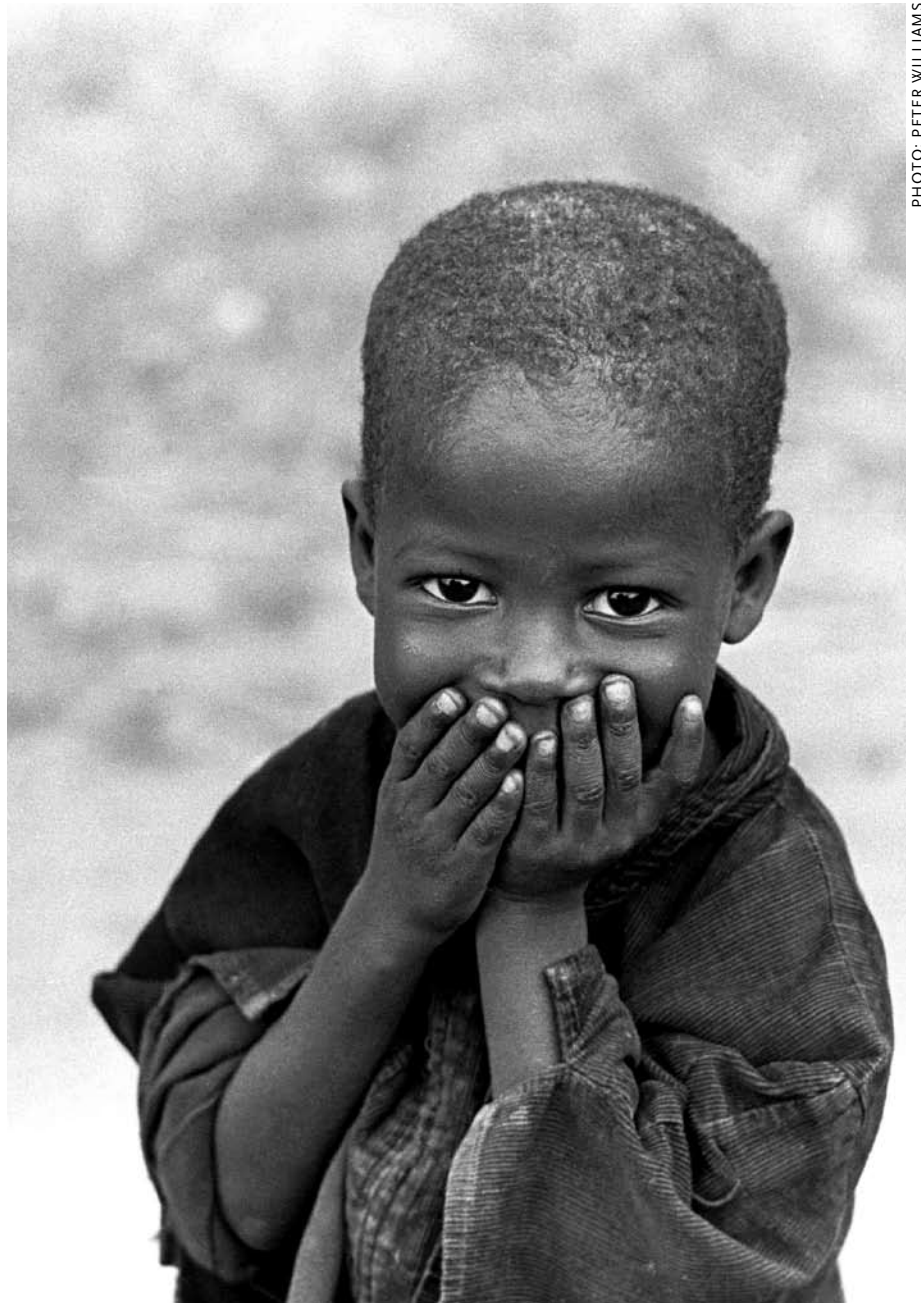


PHOTO: PETER WILLIAMS

Article 1: All human beings are born free and equal in dignity and rights. *A smile from Biafra.*

It is up to national governments to determine whether and how humanitarian agencies will be allowed to assist people displaced within their territory – whether they are displaced by conflict or by natural disaster. Thus in the aftermath of Cyclone Nargis, the government of Myanmar initially restricted entry to humanitarian agencies even though by most accounts the government was unable to respond adequately. It is likely that in the coming years, questions of sovereignty will remain central to the ability of the international community to respond to the needs of those displaced internally.

Although much has been done to disseminate the *Guiding Principles*, much more work is needed to ensure their implementation at the national

and local levels. Laws and policies by national governments are needed to ensure that the human rights of the displaced are upheld. Civil society, including national NGOs and National Human Rights Institutions, has a crucial role to play in monitoring the implementation of laws and policies. Internally displaced persons themselves need to be given the opportunity to participate in decisions that affect their lives. Peace agreements which are negotiated to bring about an end to conflicts should address internal displacement. Finding solutions for internally displaced persons is a crucial component of peacebuilding. If solutions are not found for them, peace and stability will be difficult to sustain.

Promotion of the human rights of those displaced by natural disasters is likely to become more important in the future. Further work will be needed on legal issues of those affected, for example, by rising sea levels and by the expected intensification of slow-onset disasters, such as drought. Presently, for example, those forced to leave their countries because of the effects of climatic changes brought about by global warming are considered as economic migrants. If small island states are submerged by rising sea levels resulting from climate change, the international community will need to grapple with their status: for example, should they be treated as refugees? If so, should the 1951 Convention be expanded?

The 10-year history of the *Guiding Principles on Internal Displacement* illustrates that it is possible to put a neglected issue on the international agenda and to develop an international legal framework in a relatively short period of time. As Walter Kälin has stated: “the *Guiding*

Principles go beyond a simple compilation and restatement of those human rights and humanitarian law guarantees that are applicable to situations of internal displacement. They provide a fully-fledged framework for identifying protection needs and for planning, implementing and monitoring protection activities.”¹⁰ The challenge for the future will be to ensure that this framework is not only more widely implemented, but that it is adapted to respond to new situations which displace people. 📌

1 Office of the UN High Commissioner for Human Rights, Convention relating to the Status of Refugees, Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950. Available at <http://www2.ohchr.org/english/law/refugees.htm>

2 Compilation and Analysis of Legal Norms pertaining to internally displaced persons, UN Doc.E/CN.4/1996/52/Add. 2.

3 It took 10 years for the UN Convention on the Rights of All Migrant Workers and their Families to

receive sufficient ratifications to come into force and even now, the fact that it has not been ratified by the government of a country which receives large numbers of migrants, limits its applicability.

4 United Nations, *Guiding Principles on Internal Displacement*, 1998 http://www.brookings.edu/projects/idp/gp_page.aspx.

5 UN General Assembly GA Resolution A/60/L.1 para. 132

6 See the newly created website www.idpguiding-principles.org for examples of laws and policies referencing the *Guiding Principles*.

7 IASC *Operational Guidelines on Human Rights and Natural Disasters*, Washington: Brookings-Bern Project on Internal Displacement, June 2006, p. 8.

8 IASC *Operational Guidelines on Human Rights and Natural Disasters*, Washington: Brookings-Bern Project on Internal Displacement (June 2006); *Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster*, Pilot version, Washington: Brookings-Bern Project on Internal Displacement (March 2008).

9 See www.internal-displacement.org

10 Walter Kälin, “The role of the *Guiding Principles* on Internal Displacement”, Forced Migration Review, Special Issue: Putting IDPs on the map: achievements and challenges (December 2006).

UN Advocacy Week with focus on human rights

– As Christians, we are called to stand with those who are victims of oppression, poverty or violence, Rev. Elenora Giddings Ivory, Director of the World Council of Churches (WCC) Programme on Public Witness said in advance of the WCC’s United Nations Advocacy Week in November this year. The week was marked by an overarching framework of Human Rights at 60 Years, as both the WCC and the Universal Declaration of Human Rights celebrate their 60th anniversary this year.

The declaration is an early example of successful church advocacy. The Commission of the Churches on International Affairs, a consultative body of the WCC, effectively pressed for the inclusion of the article on religious freedom – to change one’s religion or belief and to manifest one’s religion or belief in worship, teaching, practice and observance – as essential to freedom, justice and peace.

Human rights have been a priority on the ecumenical agenda ever since. The WCC enables victims of human rights violations to give testimony. The WCC contributes to the sessions of the new UN Human Rights Council with written and oral submissions on issues such as religious freedom and intolerance, socio-economic and cultural rights, and issues relating to migration, racism and xenophobia.

– In our work, we try to enact this biblical and theological mandate from our understanding of where our individual faith traditions say we should be, but more importantly where Jesus said we should be, Giddings Ivory said.

The advocacy week, organised annually by the United Nations Liaison Office of the WCC in New York, brings together over 120 people working on advocacy issues in churches, national councils of churches, specialised agencies, regional ecumenical organisations and regional advocacy networks. It provides a significant moment for churches willing to address questions of power and structural injustice through a concerted and coordinated ecumenical approach to strengthen their networks, agree on priority advocacy issues and develop common strategies.

The broad constituency base of churches, firmly rooted in the local but also belonging to a worldwide community, provides an opportunity for advocacy not only at the United Nations but in capitals in nearly every country in the world.

The WCC works to defend human dignity by addressing human rights from an ethical and theological perspective. It responds to requests from churches to support their work when human dignity is threatened. This project attempts to accompany churches and strengthen their advocacy work for human rights. This requires a holistic approach where civil and political rights, economic, cultural and social rights are addressed in an integrated way.