

Law & Ethics

Strengthening Protection of IDPs

The UN's Role

Roberta Cohen

UN Secretary-General Kofi Annan drew attention to “the growing problem of internally displaced persons” (IDPs) in his 2005 report on UN reform, *In Larger Freedom*.¹ Unlike refugees, IDPs do not cross international borders and thus have no well-established system of international assistance or protection. IDPs, Annan wrote, “often fall into the cracks between different humanitarian bodies.”² Despite this acknowledgement of the predicament of IDPs, nowhere in the 2005 UN World Summit document, adopted by heads of government in September, does it spell out how to improve the UN’s ability to address the plight of the twenty to twenty-five million people uprooted within their own countries by violence, ethnic strife, and civil war.³ UN reform must encourage greater national and international involvement with IDPs by promoting the Guiding Principles on Internal Displacement, giving the UN High Commissioner for Refugees (UNHCR) a broader role with IDPs, and strengthening institutional and military arrangements to defend the physical safety of IDPs.

The millions of people caught in the midst of violent conflict without the basic necessities of life present a political and strategic concern, not to mention a profound humanitarian and human rights problem, requiring international action. Conflict and massive displacement can disrupt stability, turn

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countries into breeding grounds for lawlessness and terrorism, and undermine regional and international security. Whether in the Great Lakes region of Africa, the Horn of Africa, West Africa, or the Balkans, conflict and displacement have spilled over borders, overwhelming neighboring countries with large numbers of refugees and even igniting regional wars. Unless addressed, situations of displacement can create political and economic turmoil in entire regions.⁴

The need to design a more predictable and effective international system for “internal refugees” is critical because the overall international humanitarian response system is a thoroughly inequitable one. UNHCR attends to the needs of the world’s 9.2 million refugees, and a dedicated international treaty, the 1951 Convention Relating to the Status of Refugees, sets forth their rights. In contrast, no organization has a global mandate to protect and assist the much larger number of IDPs, who are in far more desperate straits, when their own governments fail to do so. IDPs may be uprooted for the same reasons as refugees, but they receive markedly less international protection or assistance in most emergencies and, in some cases, they receive no help at all.

Sixty years after the Holocaust, it is time for the UN to act on the ideals upon which it was founded and to stop distancing itself from—or implementing half-hearted responses to—situations in which millions of people are forced from their homes by civil wars, deliberate governmental policies of ethnic cleansing, crimes against humanity, or even genocide. In his report on UN reform, Annan aptly affirmed that “the responsibility to protect” must shift to the international community when national

authorities fail to provide for the welfare and security of their citizens.⁵ Sovereignty, he wrote, cannot be allowed to serve as a barrier when the lives of millions of men, women, and children are at risk. The World Summit document also adopted the concept of necessary UN protection, though only on a case-by-case basis.⁶ The current period of UN reform offers an opportune time to strengthen the international response to situations of internal displacement and develop an international system that better protects people uprooted in their own countries.

Strengthening the Legal Framework. As a first step, the international community must reinforce the legal framework for the protection of IDPs. Eventually that might mean developing a legally binding instrument on the model of the Refugee Convention, but what is more urgently needed is the strengthening of the international usage of the Guiding Principles on Internal Displacement, the first international standards for IDPs.⁷ Introduced into the UN Commission on Human Rights in 1998 by Francis M. Deng, the Representative of the Secretary-General on Internally Displaced Persons, the Principles set forth the rights of IDPs and the obligations of governments, insurgent groups, and other actors to protect and aid them prior to and during displacement as well as during return and reintegration. These Principles comprise a minimum international standard for the treatment of IDPs, and apply to those uprooted by conflict and persecution as well as those displaced by natural disasters.⁸

The experts who drafted the Principles deliberately chose *not* to propose a treaty

to deal with the IDP issue. First, there was no governmental support for the development of a legally binding treaty on a subject as sensitive as internal displacement. Second, treaty making could take years, perhaps even decades, delaying implementation of urgently needed

such time as the international community is ready to adopt a binding instrument that "accords with the protection level set forth in the Guiding Principles," the most promising approach remains expanding the usage of the Principles.⁹ Once a sufficient number of states have

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standards to address the situation of the millions of internally displaced people caught up in ongoing emergencies. Third, sufficient humanitarian and human rights law already existed to make it possible to bring together in one document the provisions dispersed in a large number of instruments and tailor them to the needs of the internally displaced.

Some argue that with a treaty, states could be held more accountable, but this view overlooks the dangers that exist in moving too hastily to develop one. There is no guarantee that the affected states would ratify the instrument or observe its provisions. The process could become a pretext for watering down accepted provisions of international human rights and humanitarian law. There are a number of governments, including the current U.S. administration, which would like nothing better than to rewrite the Geneva Conventions and other provisions of international law to make them less forceful. Difficulties in the treaty-making process have led Walter Kalin, the current Representative of the Secretary-General, to advise that until

developed national laws and policies, a binding instrument could follow.

The Principles have proven to be an effective means for aiding IDPs. Over the past eight years, they have gained substantial standing and authority. Resolutions of both the Commission on Human Rights and the General Assembly refer to them as "an important tool" and a "standard" for dealing with situations of internal displacement.¹⁰ The World Summit document recognizes them as "an important international framework for the protection of IDPs," while regional intergovernmental bodies in Europe, the Americas, and Africa use them as a monitoring tool for measuring conditions on the ground. UN agencies and non-governmental organizations (NGOs) have translated the Principles into more than forty languages and provide training in them, while local groups around the world use them as an advocacy tool on behalf of IDPs.¹¹ Most significantly, a growing number of governments are basing laws and policies on the Principles, which make them enforceable at the domestic level. In 2001 the gov-

ernment of Angola based its law concerning the resettlement of the internally displaced on the provisions in the Guiding Principles; in 2004 the government of Peru adopted a law based on the Principles that provides material benefits to IDPs. Similarly, in Colombia the government announced more aid to IDPs in response to a Constitutional Court decision based on the Guiding Principles, while the government of Georgia brought its laws on voting rights into line with them. In Burundi, Liberia, the Philippines, Sri Lanka, and Uganda, governments have based their national policies on the Principles, with gains reported for IDPs.¹²

To strengthen the standing of the Guiding Principles, Kalin is developing a manual for lawmakers to explain how to adapt them to domestic law. Meanwhile, the Secretary-General's reform report supports this initiative by urging member states to promote the adoption of the Guiding Principles "through national legislation."¹³ Although the World Summit document does not include a specific call for national laws and policies, the integration of the Principles into the national legal and political landscape of nations with acute IDP problems will be a critical step toward building greater national responsibility toward IDPs. Developments at the regional level could also reinforce national action. The African Union is in the process of drafting a legally binding instrument on internal displacement based on the Guiding Principles while the Council of Europe is exploring ways to strengthen the Principles' implementation.¹⁴ Both initiatives should serve to bolster the legal basis of the Principles, expand their standing and usage, and translate into

steps on the ground to improve conditions for IDPs.

Creating Predictable Institutional Arrangements. Expanding UNHCR's mandate to take on greater IDP protection obligations would be the most effective next step in improving the institutional arrangements for IDPs. UNHCR's long experience with refugees makes it an obvious candidate for assuming a leadership role in situations where persecution and conflict also produce IDPs. Even if it does not take on all the millions displaced by natural disasters or development projects, it could assume a leading role in helping those uprooted by conflict and human rights violations. Indeed, UNHCR is already engaged with protecting and assisting some five million IDPs, one-fifth of the world's total.

Many prominent voices over the years have called for the enlargement of UNHCR's mandate to include IDPs, but the idea has always triggered strenuous objections from other UN agencies unwilling to yield jurisdiction or resources to the refugee agency. More recently, however, opinion has begun to shift as it has been recognized that the "collaborative approach" is insufficient. Under the current system, many different UN agencies on the ground are supposed to share the responsibility for protecting IDPs. UNHCR, the UN Children's Fund (UNICEF), the World Food Program (WFP), the World Health Organization, the UN Development Program (UNDP), the Office of the High Commissioner for Human Rights (OHCHR), the International Organization for Migration, and a myriad of NGOs are expected to work together to meet the assistance, protection, reintegration, and development

needs of the internally displaced. Their activities are coordinated by the Emergency Relief Coordinator at headquarters and by Resident/Humanitarian Coordinators in the field.

Nearly every UN and independent evaluation has found the collaborative approach deficient when it comes to IDPs.¹⁵ To begin with, there is no real locus of responsibility in the field for assisting and protecting IDPs. As former U.S. Ambassador to the UN Richard

took until 2005 to deploy a mere three additional child protection officers. The agencies support coordination in theory, but no one likes to be “coordinated” in practice.

In response to these widely publicized deficiencies, the Emergency Relief Coordinator’s office in mid-2005 came up with a “sectoral” approach, under which the different agencies would be expected to carve out areas of responsibility based on their expertise and carry

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Holbrooke aptly quipped, “Co-heads are no heads.”¹⁶ There is also no predictability of action, as the different agencies are free to pick and choose the situations in which they wish to become involved on the basis of their respective mandates, resources, and interests. In every new emergency, no one knows for sure which agency or combination thereof will become involved. Whereas most rushed to South Asia to help those displaced by the tsunami, only limited international engagement is to be found in northern Uganda where tens of thousands of children flee every night to cities and villages to escape abduction and maiming by rebels. Nor does the Emergency Relief Coordinator have the authority to tell the powerful, billion-dollar operational organizations what to do. In Darfur, UNHCR declined to take on the management of IDP camps, while in Uganda, despite the coordinator’s pleas, UNICEF

them out on a *regular* basis in emergencies. This approach, set to begin January 2006, was approved in September by the UN’s Inter-Agency Standing Committee (IASC), composed of the heads of the major relief and development agencies, the Red Cross, and NGOs. UNHCR agreed to assume the lead for the protection of IDPs, the management of IDP camps, and emergency shelter for IDPs, a substantial enlargement of its role, and more encompassing than that of other agencies assigned to water and sanitation, nutrition, and early recovery.

Unfortunately, it appears that UNHCR will have to assume its new role with clipped wings. Annan’s reform report makes abundantly clear that the collaborative system will not be replaced; rather the onus of responsibility for IDPs will remain “under the global leadership of my Emergency Relief Coordinator.”¹⁷ This will require UNHCR to navigate a

cumbersome, collaborative system, reporting to Resident/Humanitarian Coordinators who in turn may have to report to special representatives of the Secretary-General. There will also be bureaucratic resistance to overcome. According to a UN Office for the Coordination of Humanitarian Affairs/Brookings study, the “majority” of coordinators in the field are reluctant to support protection activities or “to advocate for the rights of the displaced in an effective and assertive manner.”¹⁸ Many of them view protection as “political” and likely to undermine the provision of humanitarian relief or even lead to their expulsion from the country.

There will be other hurdles as well. Donors will need to be persuaded to provide increased resources for a greater

becoming irrelevant to today’s humanitarian emergencies if it ignores IDPs, who often outnumber refugees ten to one. Recently senior staff have begun to speak of a “predisposition” to help IDPs, while High Commissioner Antonio Guterres has clearly affirmed, “I don’t believe we at UNHCR can stay away from the problem.”¹⁹

If UNHCR actually begins to assume a lead on the ground with the internally displaced, it will be a welcome first step toward formulating an international response for IDPs, as predictable as the current one for refugees. Although each group of forced migrants has a separate legal regime—one being outside its country of origin and the other inside—operationally “it is neither ethical nor practical to distinguish between human beings

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UNHCR presence in the field. Right now UNHCR is engaged with only 1.1 million of the 12 to 13 million IDPs in Africa, the continent most ravaged by conflict and displacement. UNHCR will also need to bring the “refugee movement” on board. Some staffers joined by outside refugee advocates, dubbed “the fundamentalists,” have opposed most if not all UNHCR involvement with IDPs, on the grounds that the task would overwhelm the agency and undermine its core mandate of providing asylum for refugees. At the same time UNHCR’s leadership has become keenly aware that the agency risks

because of a border they may or may not have crossed.”²⁰ However, it remains to be seen whether other agencies will actually cede to UNHCR the leadership role the IASC has given it. In the case of refugees, where UNHCR is the undisputed agency, the WFP, UNDP, and NGO “implementing partners” regularly assist it. But when it comes to IDPs, the collaborative approach is still the overarching framework, which means that other agencies will need to recognize UNHCR’s lead and reinforce it with their support. As Kalin has observed, “close cooperation between the different

agencies and actors will be necessary” to ensure full protection of IDPs.²¹ But UNHCR will also have to assert its leadership role with the other agencies; otherwise, overemphasis on collaboration will lead to delayed and weak decision making, undermining protection.

Overcoming the Protection Gap.

Providing food, medicine, and shelter to internally displaced persons, while ignoring violent abuse, has led to the tragic description of the victims as the “well-fed dead.” The expression may have originated in Bosnia in the 1990s, but it also applies to Darfur where there are more than 11,000 humanitarian workers on the ground, but fewer than one hundred with protection responsibilities.²²

What is needed is a comprehensive approach that integrates protection with assistance and includes steps to defend the physical safety and rights of IDPs. This could include setting up early warning systems; insisting upon access to IDPs; deploying staff among threatened communities; developing strategies to protect women and children from rape and abduction; arranging relocations and evacuations; advocating for the protection of the displaced with governments and insurgent groups; and accompanying IDPs home to ensure their safety.

Only two international agencies, the International Committee of the Red Cross (ICRC) and UNHCR have the skills and experience to undertake a full range of protection activities for IDPs, and there are limits even to what these two agencies can accomplish. The ICRC does not generally become involved in situations of violence below the threshold of armed conflict and usually leaves when the conflict is over, and UNHCR’s

involvement with IDPs has been limited by its refugee mandate. Now that UNHCR has agreed to assume a lead role in protecting IDPs, it should expand its partnerships with other agencies. In particular, OHCHR and UNICEF, which largely absent themselves from protection work, should be called upon to play active roles.

NGOs should also be encouraged to provide protection by following the example of the International Rescue Committee, Peace Brigades International, and others who have pioneered in this area. The greater engagement of international organization and NGO staff on the ground could create the “critical mass” needed to form protection coalitions and mobile protection teams in addition to creating a protection standby force for emergencies, steps often recommended but not yet implemented.²³ UNHCR leadership will be sorely needed to coordinate this effort.

Close collaboration of protection staff with peacekeepers will also be needed because in some situations, protection is only possible through military and police action. Indeed, peacekeepers are increasingly being called upon by the UN Security Council to defend IDPs, facilitate the delivery of relief, create secure humanitarian areas, and enable IDPs to return home safely. Many perform well, but are not always given the mandates, troops, or equipment required to do the job. Political will, training, adequate numbers, and resources are all needed for peacekeepers to protect IDPs. This is particularly true in Darfur where lightly armed African Union (AU) troops and police, numbering no more than 7,000, with a weak protection mandate, have been expected to defend close to two million IDPs in an area the size of France.

Strengthening the protection capability of the AU should prove essential not only for Darfur but for future emergencies in Africa. The slogan "African solutions for African problems," however, should not be allowed to stand in the way of developed countries offering their well-trained, experienced, and more heavily armed troops for protection. At present, less than 10 percent of peacekeepers come from Western armies.²⁴ As the Foreign Minister of Senegal pointed out, AU troops alone cannot stop the killing in Darfur; the joint action of the UN Security Council, the European Union (EU), the AU, and the United States is needed.²⁵ While plans by the EU for a standby force for humanitarian emergencies are encouraging, an *international* capability is needed because Western countries often refuse to become involved when their strategic interests are not at stake. Absent an international protection system, local wars can be expected to go on for decades, undermining the stability of countries, while donors spend large sums of money on humanitarian relief. Far more cost effective would be "strategic reserves that can be deployed rapidly" to enhance international military capacity, as called for by the Secretary-General in his reform report.²⁶ Heads of government at the World Summit urged only the "further development of proposals" to create such capacity. They did, however, ask regional organizations to "consider the option" of

placing their military capacity under UN standby arrangements and endorsed a standing police capacity, which if formed could prove valuable for protection.²⁷ Stronger police and military capacity will of course need to be bolstered by international efforts at political solutions to resolve the conflicts at the heart of displacement.

Conclusion. Over the past fifteen years, recognition has grown that people in need of humanitarian aid and protection have certain rights and claims on the international community when their governments do not act responsibly or where there is a disintegration of the state. UN reform must build on this trend, and address the tensions that exist between an emerging international responsibility to protect IDPs and more traditional notions of sovereignty that often obstruct humanitarian action. The Guiding Principles must be institutionalized within nations to ensure policies and laws that aid IDPs and intensive monitoring to ensure their implementation. As an international body, UNHCR must be given the authority and means to expand its role with IDPs, and international police and military capacity must be strengthened to defend their physical safety. A more reliable and predictable system for those trapped inside borders will require stronger legal, institutional, and protection measures from the international community.

NOTES

1 United Nations General Assembly, In larger freedom: toward development, security and human rights for all, Report of the Secretary-General, UN Doc.A/59/2005, 21 March 2005, para. 209.

2 *Ibid.*, para. 210.

3 United Nations General Assembly, 2005 World Summit Outcome, Resolution A/RES/60/1, 15 Sep-

tember 2005, para. 132, available at <http://www.un.org/Depts/dhl/resguide/r60.htm>

4 Kofi Annan, "Preface," in Roberta Cohen and Francis M. Deng, *Masses in Flight: the Global Crisis of Internal Displacement*, Washington DC: the Brookings Institution, 1998, xix.

5 United Nations, In larger freedom, para 135.

6 United Nations, 2005 World Summit Outcome, para. 139.

7 United Nations, Commission on Human Rights, The Guiding Principles on Internal Displacement, UN Doc.E/CN.4/1998/53/Add.2, 1998.

8 The US government never formally designated the survivors of Hurricane Katrina internally displaced persons, although President Bush at one point did refer to them as "displaced Americans." Nonetheless, the Guiding Principles on Internal Displacement should serve as a framework for them, see Roberta Cohen, "Time for the United States to Honor International Standards in Emergencies," Opinion, the Brookings Institution, 9 September 2005, and Frederic L. Kirgis, "Victims of hurricane Katrina are internally displaced persons, not refugees," ASIL Insight, American Society of International Law, 21 September 2005.

9 See Interview with Walter Kalin, Forced Migration Review, vol. 23, May 2005, p.4; and Walter Kalin, "How Hard is Soft Law," in Recent Commentaries about the Nature and Application of the Guiding Principles on Internal Displacement, Brookings-CUNY Project on Internal Displacement, April 2002.

10 See UN Commission on Human Rights Resolution 2003/51, 23 April 2003, and General Assembly Resolution 56/154, 19 December 2001.

11 United Nations, 2005 World Summit Outcome, para. 132.

12 Roberta Cohen, "The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting," *Global Governance*, vol.10, no.4, October-December 2004, 459-480.

13 United Nations, In larger freedom, para. 210.

14 Walter Kalin, "The Guiding Principles on Internal Displacement as International Minimum Standard and Protection Tool," *Refugee Survey*

Quarterly, 2005.

15 See United Nations, Commission on Human Rights, Report of the Representative of the Secretary-General on Internally Displaced Persons, Francis M. Deng, which reports on the results of four major studies on the collaborative approach, UN Doc. E/CN.4/2004/77, 4 March 2004, paras. 24-33. See also Susan Martin et al, *The Uprooted: Improving Humanitarian Responses to Forced Migration*, New York: Lexington Books, 2005, 112-120.

16 Richard Holbrooke, "A Borderline Difference," *Washington Post*, 8 May 2000.

17 United Nations, In larger freedom, para. 210.

18 Simon Bagshaw and Diane Paul, *Protect or Neglect: Towards a More Effective United Nations Approach to the Protection of Internally Displaced Persons*, The Brookings-SAIS Project on Internal Displacement and OCHA, November 2004, 4.

19 Interview with Antonio Guterres, Migration Information Source, MPI, 1 August 2005.

20 Kamel Morjane, former Deputy High Commissioner for Refugees, ICVA Talk Back, Vol.7-2, Geneva, 30 March 2005.

21 United Nations, Report of the Representative of the Secretary-General on the human rights of internally displaced persons to the General Assembly, A/60/338, para.7.

22 United Nations, Security Council, Report of the Secretary-General on the Sudan, S/2005/411, 23 June 2005, para. 45

23 Bagshaw and Paul, *Protect or Neglect*, 10.

24 Marc Lacey, "U.N. Forces Using Tougher Tactics to Secure Peace," *New York Times*, 23 May 2005.

25 Susan E. Rice, "Why Darfur Can't Be Left to Africa," *Washington Post*, 7 August 2005.

26 United Nations, In Larger Freedom, para. 112.

27 United Nations, 2005 World Summit Outcome, paras. 92-3, 170.

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