

THE BROOKINGS-CUNY PROJECT ON INTERNAL DISPLACEMENT

*Recent Commentaries about the
Nature and Application
of the
Guiding Principles on Internal Displacement*

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I. How Hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for A Normative Framework

by Walter Kälin, Professor of Constitutional and International Public Law, University of Bern, Switzerland

How Hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework

by Professor Walter Kälin*

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The Call for an “Appropriate” Normative Framework and the Representative’s Response

In 1998, the Representative of the UN Secretary-General on Internally Displaced Persons, Dr. Francis Deng, presented the “Guiding Principles on Internal Displacement”¹ to the UN Commission on Human Rights in response to a request to prepare an “appropriate framework” for addressing the plight of internally displaced persons (IDPS)². The language of the resolution did not ask him to come up with a “legal” framework or to propose the text of a declaration on the rights of internally displaced persons but gave him a great deal of latitude to decide for himself what kind of framework would be “appropriate” under the circumstances. The Representative, thus, was confronted with the question of what form he should favor for the requested framework. Had they been asked at the time, many international lawyers and NGOs would probably have advised him to opt for a convention or, at least, a UN General Assembly declaration. The Representative did not choose this option. His Guiding Principles are neither a binding treaty nor a declaration adopted by the General Assembly after negotiations of the text by the Member States, but a set of non-binding guidelines submitted by the Representative after a prolonged period of preparation and discussion by legal experts and representatives of intergovernmental agencies and non-governmental organizations.

This choice reflected the considered opinion of Dr. Deng and his team of legal experts. They decided early on that a non-binding document restating existing law and making it specific to the context of displacement would be more appropriate than to prepare a convention on IDPs. They thought that such an approach would provide the Representative within a short period of time with a normative framework that would facilitate the

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¹ Guiding Principles on Internal Displacement, Addendum to the Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39, 11 February 1998, UN Doc E/CN.4/1998/53/Add.2.

² See Commission on Human Rights Resolution 1996/52 (UN Doc E/CN.4/RES/1996/52, 19 April 1996) calling “upon the Representative of the Secretary-General to continue, on the basis of his compilation and analysis of legal norms, to develop an appropriate framework in this regard for the protection of internally displaced persons”.

carrying out of his mandate, while the elaboration of a treaty or declaration would lead to prolonged negotiations affecting or even blocking the possibility of using international human rights law effectively in the context of internal displacement for a long time. They were also convinced that a document based upon and reflecting existing international law would be sufficient to provide the necessary guidance to States, international agencies, NGOs and others dealing with IDPs.

To what extent were these considerations justified and to what extent can the approach taken by the Representative be regarded as “appropriate” for a normative framework on the rights of IDPs?

This short paper addresses this question on two levels. First, it will argue that the preparation of a treaty or even a General Assembly declaration would not have been a realistic option when it came to protecting IDPs. Second, it will show that despite their non-binding character, the Guiding Principles are not without legal significance and that the approach chosen by the Representative has specific practical advantages.

The Difficulties of Treaty Making in the Area of Human Rights

Why not a treaty? There are several good reasons why it made sense to elaborate a non-binding document on the rights of IDPs. Some of them have to do with the situation of human rights treaty making in general, others are specific to the issue of internal displacement and the law relevant for it.

First, treaty making in the area of human rights has, in general, become very difficult in the area of human rights.

Negotiations in the UN Human Rights Commission have become extremely difficult today for several reasons. They include a rapidly growing plurality of ideas and positions among States on human rights since the end of the cold war. Unlike during the decades before 1990, it is no longer possible to adopt a text once the big powers have found a compromise. Today, projects take exceedingly long even to be adopted by the Human Rights Commission before they are passed on to the General Assembly for further negotiation. The Draft Optional Protocol to the Torture Convention, for example, has been negotiated since 1992 at the level of a working group, and a successful outcome might still be far away. In the case of the Guiding Principles, the seriousness and the degree of the problem of internal displacement made it necessary to avoid a long period of legal uncertainty and to have a normative framework that could be used immediately. In addition, there was a real danger that negotiating a text that draws as heavily from existing law as the Guiding Principles do, would have given some States an opportunity to put into question some of the existing treaty provisions or to weaken customary law by expressing the opinion that some of its principles are no longer valid.

Second, even where a text is adopted, there is no guarantee that the treaty is successful.

Another problem with treaty making in the field of human rights is that it has become more difficult recently to get enough ratifications for new human rights instruments to enter into force. The 1990 Migrants Workers Convention, which still lacks the necessary 20 ratifications, is the most notable example. An amendment to the Convention on the Elimination of Discrimination against Women (CEDAW)³ that would allow the Committee to meet more often and for longer sessions is meeting the same fate. If a treaty can enter into force, there is no guarantee that the States most affected by the problem addressed by the instrument will ratify. But even among States that have ratified human rights instruments, there might be an unwillingness to fully implement them. Even States that traditionally have been at the forefront of strengthening the role of international law⁴ have developed techniques that allow them to avoid implementation in ways which do not technically violate international law, but will weaken international law in the long run⁵.

One way is to use *reservations in order to exclude new obligations going beyond those already accepted by the State concerned*: Most multilateral treaties allow for ratification with reservations. Reservations are unilateral statements regarding the exclusion or modification of the legal effect of specific provisions in their application to a particular State⁶. While the possibility to make reservations is positive insofar as they facilitate a State's acceptance of a treaty, the proliferation of reservations in recent times is troubling. The increasing number of reservations that show a lack of willingness to accept new obligations is particularly worrisome⁷.

Another technique consists of the *exclusion of the self-executing character of the treaty without enacting implementing legislation* in order to avoid the possibility that individuals will invoke it vis-à-vis authorities and courts in domestic procedures. In countries looking at international and domestic law as part of the same legal order, i.e. following the tradition of monism, treaty provisions at the domestic level must be directly applied by courts as self-executing norms unless they need implementing legislation. However, there are

³ Amendment relating to Article 20, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, decided by the States parties to the Convention on the Elimination of All Forms of Discrimination against Women of 22 May 1995, CEDAW/SP/1995/2, annex.

⁴ See the examples, *infra* notes 7 and 8.

⁵ See Walter Kälin, *Implementing Treaties in Domestic Law: From "Pacta sunt servanda" to "Anything goes"?*, in: Vera Gowlland (Ed.), *Multilateral Treaty-Making: The Current Status of Challenges to and Reforms Needed in the International Legislative Process*, The Hague/London/Boston 2000, pp. 95 – 112.

⁶ See the definition of reservation in Article 2(1)(d) Vienna Convention on the Law of Treaties.

⁷ When ratifying the 1966 International Covenant on Civil and Political Rights in 1992, the Swiss government, for instance, entered eight reservations stripping the Covenant of any legal effects going beyond those of the 1950 European Convention on Human Rights (see Giorgio Malinverni, *Les réserves de la Suisse*, in: Walter Kälin/Giorgio Malinverni/Manfred Nowak, *La Suisse et les Pactes des Nations Unies relatifs aux droits de l'homme*, 2nd ed., Basel 1997, pp. 83-104). Thus, Switzerland avoided assuming any additional obligations to improve the legal status of its citizens. Similarly, the United States ratified the Covenant with reservations making sure that its obligations under the agreement would only extend to the degree of protection provided by the U.S. Constitution.

examples of States whose legislature declared a treaty to be non-self-executing although the agreement was suitable for direct application and, at the same time, did not enact implementing legislation⁸. Such declarations give rise to legitimate concerns about a State's willingness to abide by international law in any meaningful way.

In the case of the Guiding Principles, all these difficulties would have increased the risk of not having an effective normative framework in place for IDPs for a long time.

Third, to draft a treaty that combines human rights and humanitarian law is probably premature.

From a legal perspective, one of the main challenges in drafting the Guiding Principles was to make sure that they cover all situations where displacement occurs, i.e. situations of tensions and disturbances, situations of internal armed conflict as well as times of interstate armed conflict. This necessitated a merger of international human rights and humanitarian law not only into one document but often also into one provision in a way that would do justice to both bodies of law. An informed reader of the Guiding Principles will often be able to trace the formulations back to specific guarantees either of human rights or of humanitarian law, while the uninitiated might get the feeling that the principles rest on one coherent concept. The approach taken by the Representative and his team reflects a growing trend in contemporary legal doctrine to treat human rights and humanitarian law as a unified complex of HUMAN RIGHTS norms under different institutional umbrellas⁹. However, in legal, institutional and political terms the distinction between human rights applicable mainly in peacetime and humanitarian law made for times of armed conflict is still so fundamental that many States and organizations probably would have opposed an attempt to combine both areas of law in one convention elaborated within the framework of the United Nations.

Finally, to negotiate a new treaty was not really necessary as existing treaties already cover, at least implicitly, the rights of IDPs to a large extent.

When the Representative began his work, it was far from clear how strongly and to what extent present international law protects IDPs. Of course, he knew from the beginning that international human rights law does not contain specific norms on IDPs but that most of its guarantees can be invoked by the displaced. He also knew that international

⁸ The U.S. Congress has been one of the most active proponents of the use of the explicit statement of non-self-execution for avoiding full implementation of international agreements when giving its advice and consent to the ratification not only of important trade agreements but also of human rights treaties such as the Convention against Torture or the Covenant on Civil and Political Rights. See Lori Fisler Damrosch The Role of the United States Senate Concerning "Self-Executing" and "Non-Self-Executing" Treaties, in: Stefan A. Riesenfeld/Frederick M. Abbott (Eds.), *Parliamentary Participation in the Making and Operation of Treaties, A Comparative Study*, Dordrecht/Boston/London 1994, pp. 205, at 207- 213.

⁹ See notably THEODOR MERON, *Human Rights in Internal Strife: Their International Protection*, Cambridge 1987, p. 28.

humanitarian law applicable in times of armed conflict contains a few scattered provisions on the treatment of the displaced which, however, do not constitute a comprehensive legal regime for this group of persons. Finally, it was clear that international refugee law has a lot to say about persons in flight but only applies to those who, unlike internally displaced persons, have left their country of origin and crossed an international frontier. Thus, the challenge was to identify and analyze those norms which are of special significance to IDPs but also to detect relevant gaps and gray areas in international law.

The Representative and his team addressed this challenge by starting their work with a careful examination of all those provisions of international human rights and humanitarian law that address the specific needs of displaced men, women and children. This work resulted in a study entitled "Compilation and Analysis of Legal Norms pertaining to internally displaced persons" which was submitted to the Commission on Human Rights in 1996¹⁰. The study came to the conclusion that present international law contains sufficient protection for the specific needs of internally displaced persons in many areas, but that there are a number of limited gaps as well as certain gray areas where clarification was needed. In this regard, the study distinguished two categories:

"... one area of insufficient coverage results from gaps in legal protection which occur where no explicit norms exist to address identifiable needs of the displaced. In some cases, there may be a norm in human rights law but not in humanitarian law and *vice versa*. In such cases, it is only possible to articulate rights by analogizing from existing provisions of law that apply only in limited situations or only to certain categories of persons such as children, refugees or minorities. The second area of insufficient coverage results where a general norm exists but a corollary, more specific right has not been articulated that would ensure implementation of the general norm in areas of particular need to internally displaced persons. In such cases, it is possible to infer specific legal rights from existing general norms; however, the protection of internally displaced persons would be strengthened by spelling out these specific guarantees in an international instrument."¹¹

To examine how binding norms of existing law can be made fruitful for IDPs by analogous application and which specific norms can be deduced from more general provisions is a task that may be left to experts.

The Legal Nature of the Guiding Principles

All these reasons were sufficient to decide not to make the Guiding Principles into a treaty. What, then, is the legal nature of the Principles if they are not binding?

As stated above, the Guiding Principles are not a binding document. Unlike declarations, resolutions or recommendations by international organizations, they have not been ne-

¹⁰Compilation and Analysis of Legal Norms pertaining to internally displaced persons, U.N. Doc. E/CN.4/1996/52/Add. 2.

¹¹ Id., para. 411.

gotiated by States. Thus, they do not even constitute typical soft law, i.e. recommendations that rest on the consensus of States and thereby assume some authority that may be taken into account in legal proceedings, but whose breach does not constitute a violation of international law in the strict sense, and thus does not entail State responsibility. Because the Guiding Principles have been written by a group of independent experts one might argue that they are even softer than soft law. In a state-centered international legal system, a group of well-intentioned legal experts simply does not have the power to create law.

However, a closer look at the Guiding Principles might reveal that this very soft instrument might actually turn out to be much harder than many well-known soft law instruments. The reason for this is that the Guiding Principles are very well grounded in international law. It is possible to cite a multitude of existing legal provisions for almost every principle,¹² which provided the drafters with strong normative guidance. Even where language was used that was not to be found in existing treaty law, no new law in the strict sense of the word was created in most cases. Instead, similar to a judge who has to decide to what extent a human rights guarantee invoked by an IDP does provide protection to that person, Dr. Deng's legal team tried to deduce specific norms from more general principles that are part of existing international law. One example of this technique is Principle 6 on "the right to be protected against being arbitrarily displaced". No existing instrument mentions such a right explicitly. However, humanitarian law prohibits displacement in some specific and limited situations and human rights law, in a more general sense, guarantees not only freedom of movement but also the right to choose one's own residence, and thus, a right to remain¹³. A right not to be displaced can also be found in instruments on the rights of indigenous peoples¹⁴. From this it can be inferred that a right not to be arbitrarily displaced is already implicit in international law. Another example is the prohibition of return to situations of imminent danger¹⁵. Such a prohibition can be deduced from the prohibition of inhuman treatment, as it has been recognized by international monitoring bodies that it is inhuman to send a person to a country where he or she will face torture, death or another very serious human rights violation. However, as all the case law refers to return across international frontiers, a prohibition of inhuman return of internally displaced persons to dangerous areas within their own country needs to be articulated. Therefore, Principle 15 states the right of internally displaced persons "to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk". Such a principle, though not stated yet in an authoritative document, is in line with the spirit of existing international law and re-

¹² See Walter Kälin, *Guiding Principles on Internal Displacement, Annotations*, Washington D.C. 2000, highlighting in detail the legal basis for each of the Principles.

¹³ See article 12(1) of the International Covenant on Civil and Political Rights, articles 49 and 147 Geneva Convention IV, Articles 51(7), 78(1) and 85(4) of Protocol I, Articles 4(3)(e) and 17 of Protocol II.

¹⁴ Article 16 of the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

¹⁵ See Article 3 of the 1984 Convention against Torture and the case law of Article 3 of the 1950 European Convention on Human Rights.

flects its underlining principles. These and other examples show that the drafters of these guidelines have been very careful not to go beyond what can be based on existing international law. Thus, it is justified to claim, as is stated in paragraph 3 of the Introduction, that “these principles reflect and are consistent with international human rights law and international humanitarian law”.

Contemporary legal theory teaches us that the creation and the application of law cannot be clearly separated but are closely related to each other. Seen in the perspective described above, the Guiding Principles are a good illustration of this complex relationship. They also show that in the field of international human rights law, it might be advisable for those promoting new standards to move away from traditional channels and forms of standard-setting. At least in certain cases, it might be more appropriate to look at standard-setting more in the light of how the rich body of existing, more general norms should be applied to specific situations in a particular area and to restate and expand existing law in the narrower context of a given problem. In that sense, the Guiding Principles may provide a model on how to promote human rights standards at a time when all basic human rights have found a sound basis in international law and, at the same time, treaty making has become difficult.

Assessment of the Non-Binding Nature of the Guiding Principles

What are the disadvantages and advantages of the non-binding nature of the Guiding Principles? An obvious disadvantage of the non-binding nature of the Guiding Principles is the fact that States cannot be held accountable if they disregard them and that, as such, they cannot be invoked in legal proceedings at the domestic level. One should, however, not overestimate this weakness as it is always possible to invoke the hard law that lies behind the Guiding Principles where necessary. Overall, the non-binding character of the document has been an advantage, and where the Guiding Principles were met with resistance, it was not because of their content but because of a suspicion that they might be binding regardless of all assertions to the contrary. The Representative’s experience has shown that it is much easier to negotiate with governments if the questions of violations does not loom in the background but, instead, problems can be approached by looking at what kind of guidance is provided by international standards.

Experience has also shown that some governments and domestic courts are ready to use the Guiding Principles in a legal sense insofar as they incorporate them into domestic law or policies or accept them as a valid expression of what human rights conventions ratified by that country mean in situations of internal displacement. Several governments have accepted the authoritative character of the Guiding Principles in this sense, for example in Burundi¹⁶ or Angola¹⁷, as has the Supreme Court of Colombia¹⁸.

¹⁶ Burundi, Protocole relatif à la création d’un cadre permanent de concentration pour la protection des personnes déplacées, (C.P.C./P.P.D.), 7 February 2001. On file with the author.

The same has happened at the international level where the Inter-American Commission on Human Rights¹⁹, UN Treaty Bodies²⁰, Special Rapporteurs of the UN Human Rights Commission²¹, the General Assembly²² and even the UN Security Council²³ have referred to the Guiding Principles either as a valid restatement of present international law or as a useful tool for properly addressing situations of internal displacement.

Whether or not a normative framework for the treatment of internally displaced persons is or becomes a reality, is much more dependent on the actual acceptance and use of the Guiding Principles than on their legal form. To the extent that the Principles achieve that level of authority, they become hard standards even if they are still not hard law.

¹⁷ Angola, Conselho de Ministros, Decreto No. 1/01 de 5 Janeiro, Normas sobre o reassentamento das populações deslocados, Diário da República, I Série N.º 1, Sexta-feira, 5 Janeiro de 2001. On file with the author.

¹⁸ Judgements of the Constitutional Court of Colombia in its cases T-227/97 and T-186589/T-201615/T-2459, referred to in E/CN.4/2001/5, para. 29.

¹⁹ Inter-American Commission on Human Rights, Third Report on the Human Rights Situation in Colombia (26 February 1999), chapter IV.

²⁰ E.g. Committee on the Rights of the Child, Concluding Observations of the Committee on the Rights of the Child: democratic republic of Congo, CRC/C/15/Add.153, 9 July 2001, para. 63, recommending "that the State party make every effort to respect and implement the Guiding Principles on Internal Displacement".

²¹ Examples can be found in E/CN.4/2000/3, para. 4 (Asma Jahangir), E/CN.4/2000/71, para 28 (Olara Otunou), E/CN.4/ E/CN.4/2000/41, para. 214 (Michel Moussali), E/CN.4/2000/110, paras. 51-52 (Mona Rishmawi).

²² See, e.g. General Assembly resolution 56/172, Situation of human rights in parts of South-Eastern Europe (A/RES/56/172).

²³ Statement by the President of the Security Council of 13 January 2000 on humanitarian assistance to refugees in Africa (S/PRST/2000/1, 13 January 2000), taking note of the fact "that the United Nations agencies, regional and non-governmental organizations, in cooperation with host Governments, are making use of the Guiding Principles on Internal Displacement, inter alia, in Africa".

II. The Normative Framework on Internal Displacement

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

Excerpt from the Report of the Representative of the Secretary-General on Internally Displaced Persons to the United Nations Commission on Human Rights: *Mass Exoduses and Displaced Persons*, January 16, 2002. The full report is available from the Office of the High Commissioner for Human Rights (OHCHR) website www.unhcr.ch/html/menu2/7/b/midp.htm



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**SPECIFIC GROUPS AND INDIVIDUALS: MASS EXODUSES
AND DISPLACED PERSONS**

**Report of the Representative of the Secretary-General on internally
displaced persons, Mr. Francis M. Deng, submitted pursuant to
Commission on Human Rights resolution 2001/54**

...

I. THE NORMATIVE FRAMEWORK ON INTERNAL DISPLACEMENT

4. As detailed in the previous reports to the Commission and the General Assembly, a central focus of the mandate since its inception has been the development of a normative framework for addressing the protection and assistance needs of internally displaced persons. Indeed, when the Commission on Human Rights first requested the Secretary-General to designate a Representative in 1992, one of the main tasks with which the Representative was charged was to examine existing international human rights, humanitarian and refugee law and standards, and their applicability to the protection and assistance needs of the internally displaced. In 1993, noting that the Representative had identified a number of tasks requiring further attention and study, including the compilation of existing rules and norms, and the question of general principles to govern the treatment of internally displaced persons, the Commission, in resolution 1993/95, requested the Representative to continue his work aimed at a better understanding of the general problems faced by internally displaced persons and their possible long-term solutions, with a view to identifying, where required, ways and means of improving protection and assistance for internally displaced persons. The General Assembly welcomed this request and, in resolution 48/135, encouraged the Representative, through dialogue with Governments, to continue his review of the needs for international protection and assistance of internally displaced persons, including through a compilation and analysis of existing rules and norms.

A. Development of the Guiding Principles

5. Working with a team of experts in international law, in 1994 the Representative initiated the preparation of a two-part compilation and analysis of legal norms. The first part of the compilation (E/CN.4/1996/52/Add.2)¹ examined the relevant provisions of international law once people had been displaced. It concluded that, while existing law covered many aspects of relevance to the situation of internally displaced persons, there nonetheless existed significant gaps and grey areas where the law failed to provide sufficient protection. Emphasizing the need for better implementation of the relevant norms, the compilation made recommendations for addressing the identified gaps and grey areas with a view to ensuring a more comprehensive normative framework for the protection and assistance of the internally displaced. The second part of the compilation examined the legal aspects relating to protection against arbitrary displacement (E/CN.4/1998/53/Add.1).

6. Following submission of the first part of the compilation to the Commission in 1996, the Commission, in resolution 1996/52, requested the Representative on the basis of the compilation to develop an appropriate framework; in its view, the protection of internally displaced persons would be strengthened by identifying, reaffirming and consolidating the specific rights of the displaced. As a result, the Representative and the legal team, which included experts from international agencies and organizations whose mandates were directly relevant to the needs of the displaced, began to develop a comprehensive normative framework of protection and assistance for the internally displaced in the form of guiding principles on internal displacement. The aim was not to create new law in the form of a treaty, but rather to restate existing

international law which, while covering many aspects of relevance to internally displaced persons, was too dispersed and diffuse to be effective in ensuring protection and assistance to such persons. Throughout this process, the Representative kept the Commission and the General Assembly informed of progress made and both bodies encouraged him to continue his work in this area. Consultations were also held with representatives of United Nations agencies, regional intergovernmental organizations and non-governmental organizations (NGOs) involved with the internally displaced. A final meeting, hosted by the Government of Austria in Vienna in January 1998, widened the consultative process still further and included legal experts from the various geographic regions as well as representatives from a broad cross-section of relevant United Nations and other international agencies, regional organizations and NGOs.

7. The Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), which consolidate the numerous norms relevant to the protection and assistance of internally displaced persons, were presented to the Commission on Human Rights in 1998. Reflecting and consistent with international human rights and humanitarian law, and with refugee law by analogy, the Principles set forth the rights and guarantees relevant to the protection of internally displaced persons in all phases of displacement, providing protection against arbitrary displacement; protection and assistance during displacement; and during return or resettlement and reintegration. The purpose of the Guiding Principles is to address the specific needs of internally displaced persons worldwide. To this end, they provide guidance to all relevant actors: the Representative in carrying out his mandate; States when faced with the phenomenon of internal displacement; all other authorities, groups and persons in their relations with internally displaced persons; and intergovernmental and non-governmental organizations.

8. Soon after their finalization, the Inter-Agency Standing Committee (IASC), composed of the heads of the major humanitarian, human rights and development agencies and organizations, at its meeting of 26 March 1998, adopted a decision welcoming the Guiding Principles and encouraging its members to share them with their executive boards and their staff, especially those in the field, and to apply them in their activities on behalf of internally displaced persons.

9. The following month, in resolution 1998/50, adopted without a vote and sponsored by 55 States, the Commission noted the progress made by the Representative in developing a legal framework, in particular the compilation and analysis of legal norms and the development of the Guiding Principles. It took note of the Guiding Principles, noted with interest the IASC decision, and also took note of the stated intention of the Representative to make use of the Principles in his dialogue with Governments and intergovernmental and non-governmental organizations and requested him to report on his efforts in this regard and the views expressed to him.

10. During the following two years, the Commission and the General Assembly, in resolutions adopted by consensus, welcomed the fact that the Representative had made use of the Guiding Principles in his dialogues with Governments and intergovernmental and non-governmental organizations and requested him to continue his efforts in that regard. They also welcomed the dissemination and application of the Principles by intergovernmental, regional and non-governmental organizations. In 2001, both the Commission and the General Assembly noted with appreciation that an increasing number of States, United Nations

agencies and regional and non-governmental organizations were making use of the Guiding Principles and encouraged their further dissemination and application (see below).

B. Recent responses to the Principles

11. Just as the Representative has kept the Commission and the General Assembly informed of the progress in developing the normative framework, he has also regularly reported on the views expressed on the Guiding Principles by Governments and intergovernmental and non-governmental organizations, and on the efforts taken by them to promote, disseminate and apply the Guiding Principles (E/CN.4/1999/79, paras. 14-34; E/CN.4/2000/83, paras. 7-35; E/CN.4/2001/5, paras. 13-61).

12. At consecutive sessions of the Commission on Human Rights since 1998, a number of States have spoken positively of the contribution of the Guiding Principles to helping concerned actors to meet the protection and assistance needs of internally displaced persons (as reported in E/CN.4/2000/83 and E/CN.4/2001/5). At the fifty-seventh session of the Commission, several States expressed their views on the Guiding Principles. The representative of Switzerland noted that the Principles were extremely relevant and important in responding to internal displacement. The representative of Austria referred to the Principles as constituting an important tool for Governments, international, regional and non-governmental organizations and other actors when faced with situations of internal displacement. Moreover, the Austrian Government was encouraged to see the United Nations system and an increasing number of States applying the Principles on the ground, and as such noted that the Principles had gained broad international recognition. Recalling its comments at the Commission's previous session, the representative of India, while noting that the Guiding Principles were not legally binding, also recognized that they could serve as useful guidelines for States when required. The Indian Government did not, however, consider development-induced displacement, cited in the Principles, as falling within the international domain. Finally, the representative of Georgia stated that the Principles were a useful instrument for protecting the rights of internally displaced persons and informed the Commission that the Government was taking steps to bring certain national legislative provisions into line with the standards contained in the Principles. The representative of Georgia was also one of three government panellists to participate in an open meeting at the Commission on using the Guiding Principles. In that meeting, the representatives of the Governments of Angola and Burundi also explained how their Governments were using the Guiding Principles as a basis for domestic law and policy.

13. Reference to the utility of the Principles was also made by a number of States during the third humanitarian segment of the Economic and Social Council which took place in Geneva in July 2001. The Secretary-General, in his report to the Council on strengthening the coordination of emergency humanitarian assistance of the United Nations, referred to the efforts of his Representative in raising the profile of the Guiding Principles, noting in this regard that the Guiding Principles had been reflected in a Constitutional Court decision in Colombia, in new legislation on the return and resettlement of displaced persons in Angola and in legislation to be introduced in Georgia on voting rights for the internally displaced (A/56/95-E/2001/85, para. 55).

14. While the representative of Egypt expressed concern that the Principles had not been formally adopted and the representative of India pointed out that the Principles did not have intergovernmental approval, other States expressed support for the Guiding Principles as a normative standard for internally displaced persons and pointed to their value as guidelines to national authorities in addressing the needs of the internally displaced. The representative of Belgium, in a statement made on behalf of the European Union (EU) member States and countries associated with the EU, specifically Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey, reiterated support for the Guiding Principles, noting their use in Colombia, Angola and Georgia, which demonstrated the merit of the Principles and the fact that they were becoming a reference as regards displaced persons. The representative of the United States, noting that primary responsibility for meeting the assistance and protection needs of the displaced rested with the national authorities concerned, also emphasized, as recognized by the Council in its agreed conclusions in 1999, that all States should apply internationally recognized norms with regard to internally displaced persons. In this regard, the United States Government expressed its continuing support for the work of the Representative in promoting the Guiding Principles as the normative standard for internally displaced persons. The representative of South Africa concurred with the emphasis that responsibility for assistance and protection of internally displaced persons rested primarily with the national authorities. In cases where national authorities were unable or unwilling to assist their displaced population, however, it was incumbent on the United Nations to strengthen international coordination and response efforts on their behalf, to be effected in conjunction with the State concerned and on the basis of the Guiding Principles. The representative noted that this was increasingly the case, citing the example of Angola in the southern African region.

15. The World Conference against Racism, Racial Discrimination, Xenophobia and Religious Intolerance, held in Durban, South Africa, in September 2001, also underlined the important role that States ascribe to the Guiding Principles. Indeed, the Programme of Action that was adopted at the Conference includes several provisions relating to the protection of internally displaced persons and encourages the bodies, agencies and relevant programmes of the United Nations system and States to promote and to make use of the Guiding Principles on Internal Displacement, in particular those provisions relating to non-discrimination.

16. At the fifty-sixth session of the General Assembly, during the Third Committee debate on refugees, returnees and displaced persons, the representative of Belgium, on behalf of the EU member States, reiterated the EU's support for the Guiding Principles, referring to them as the benchmark with regard to the protection of and assistance to internally displaced persons and appealing also for their general application. The representative of Algeria asked whether the broad application of the Principles might be enhanced through their being discussed in an intergovernmental forum. In a written response submitted to the Third Committee on behalf of the Representative of the High Commissioner for Human Rights at Headquarters, the Representative of the Secretary-General replied that considering that the Guiding Principles had been developed in response to successive requests from the Commission and the General Assembly and the wide support they had received since their presentation to those and other appropriate United Nations bodies, it would not be strictly correct to assume that they had not been discussed in pertinent intergovernmental bodies, even though formal adoption was not

called for, given their nature as guidelines restating existing law. The Representative also noted the growing application of the Principles by Governments, intergovernmental organizations, regional bodies and NGOs. In particular, he pointed to the growing number of regional intergovernmental bodies discussing and taking note of the Principles. The Organization of African Unity Commission on Refugees in 1999, for example, had adopted a proposal put forward by the representative of Algeria to take note of the Principles “with interest and appreciation”. Virtually all speakers at the OAU session had expressed appreciation for the Representative’s preparation of the Principles and, at the recommendation of the representative of the Sudan, a call was made for increased awareness in Africa of the Principles.

17. During the Third Committee’s subsequent consideration of the draft resolution on protection of and assistance to internally displaced persons, the representative of Egypt called upon the Representative to consult with Governments on the Principles and to report to the General Assembly on the views expressed to him. The representatives of India, the Sudan and the Syria Arab Republic called attention to the non-binding nature of the Principles as they had not been formally negotiated or adopted by an intergovernmental forum. In this connection, the representative of India expressed appreciation that the Representative had met with a number of Governments and intended to broaden and intensify his consultations with States on the Guiding Principles.

18. The Representative of the Secretary-General continued to hold meetings with a number of Governments on the Guiding Principles, including the Governments of Algeria, Egypt and the Sudan. During his visit to the Sudan in September 2001, members of the Government expressed support for the development of a national policy and strategy on internal displacement and agreed to undertake a comprehensive study which would review current government policy and develop cooperative strategies in light of the Guiding Principles and United Nations institutional arrangements (see addendum 1). During the Representative’s visit to Indonesia in September 2001, he also discussed the Principles with senior government officials (see addendum 2), and during a visit to Nigeria in August 2001, he held discussions about the Principles with the President and the Permanent Secretary in the Ministry for Foreign Affairs.

19. On 19 December 2001, the General Assembly adopted by consensus resolution 56/164 on protection of and assistance to internally displaced persons, co-sponsored by 64 States from Africa, Asia, the Americas and Europe and reflecting a broad geographical distribution. The Assembly welcomed the fact that the Representative had made use of the Guiding Principles in his dialogue with Governments and intergovernmental and non-governmental organizations. It noted with appreciation that an increasing number of States, United Nations agencies and regional and non-governmental organizations were making use of the Guiding Principles and encouraged their further dissemination and application. It also expressed appreciation for the dissemination and promotion of the Principles at regional and other seminars on displacement, and encouraged the Representative to continue to initiate or support such seminars in consultation with regional, intergovernmental and non-governmental organizations and other relevant institutions. Finally, it encouraged the Representative to provide support for efforts to promote capacity-building and use of the Guiding Principles.

20. Resolution 56/172, adopted by the General Assembly by consensus on the situation of human rights in parts of South-Eastern Europe, also made reference to the Guiding Principles. In the first preambular paragraph, the Guiding Principles are included in a list of international and regional human rights and humanitarian standards guiding the General Assembly.

C. Promotion, dissemination and application of the Principles

21. As noted in the Representative's previous reports to the Commission, and in accordance with requests by the Commission and the General Assembly, significant efforts to promote, disseminate and apply the Principles are being undertaken at the national, regional and international levels by Governments, national and international NGOs and intergovernmental organizations.

1. National level

22. At the national level, a number of developments have taken place as concerns the promotion and application of the Principles since the last session of the Commission. Of particular note are ongoing developments with regard to the protection of internally displaced persons in Angola. As noted in the previous report to the Commission, the Guiding Principles formed the basis for minimum standards for the resettlement of internally displaced persons, developed by the Government in cooperation with United Nations agencies in the summer of 2000. In October 2000 these standards were adopted in a decree of the Council of Ministers, signed by President dos Santos, as norms on the resettlement of internally displaced persons, a preambular paragraph of which states that the Guiding Principles establish general principles governing the treatment of internally displaced persons. Since that time, and subsequent to the Representative's mission to the country in October 2000, significant steps have been taken by the Government and the United Nations in developing a national strategy for the protection of internally displaced persons which includes efforts to promote and implement the Guiding Principles.

23. A particularly innovative aspect of this strategy, and one which the Representative believes could be usefully emulated elsewhere, is the development of provincial protection plans which involves a joint Government-United Nations training group composed of representatives from the military, the judiciary, the Attorney-General's Office, the national police, the Ministry for Social Assistance and Reintegration (MINARS), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Office for the Coordination of Humanitarian Affairs (OCHA). The group conducts protection training in the provinces with the aim of assisting its counterparts at the provincial level to develop provincial protection plans. Participants identify the specific problems in their province on the basis of the Guiding Principles and the steps which need to be taken, and by whom, to address these problems. The results of this process are incorporated into a protection plan specific to that particular province which is adopted by the participants on the basis of consensus and signed by the provincial governor. Implementation of the plans is monitored at the provincial level by OCHA-led teams and at the national level by a joint technical group composed of United Nations agencies. In addition, the plans themselves provide for the establishment of human rights committees to monitor and promote their implementation.

24. To support these efforts the United Nations country team has also established a system for collecting information and monitoring the conditions of the internally displaced at the provincial level. The system involves regular interviewing with displaced persons in camps by OCHA field advisers using a questionnaire based on the above-mentioned Norms on Resettlement and the Guiding Principles.

25. These efforts were further strengthened in November 2001 at a five-day workshop conducted jointly by UNHCR, OCHA and the Human Rights Division (HRD) of the United Nations Office in Angola which provided training to senior officers and provincial humanitarian coordinators of the Government's Technical Unit for Coordination of Humanitarian Assistance (UTCAH), as well as 10 OCHA national officers and 5 HRD national officers, on monitoring compliance at the field level with international and national human rights standards, including the Guiding Principles. Training was provided by senior staff of United Nations agencies and also senior technical staff from MINARS, UTCAH and the Attorney-General's Office. The opening session of the workshop included statements from the Minister for Social Assistance and Reintegration, the Minister of Justice, the Attorney-General and the United Nations Humanitarian Coordinator.

26. As noted in the Representative's report to the fifty-sixth session of the General Assembly (A/56/168, para. 21), following a mission by the Senior Inter-Agency Network on Internal Displacement, the Government of Burundi, in collaboration with the United Nations country team, in February 2001 established a permanent framework for the protection of internally displaced persons. The framework comprises two bodies - the Committee for the Protection of Displaced Persons, and the Technical Group for Follow-Up - whose monitoring and remedial actions in support of the displaced are to be undertaken within the framework provided by the Guiding Principles.

27. A number of Governments continue to request or participate in training and other seminars on the Guiding Principles, in particular within the context of the training programme on the Principles organized by the Global IDP Project of the Norwegian Refugee Council (NRC). Subsequent to the Representative's previous report to the Commission, in which reference was made to NRC training workshops in Angola and Georgia, additional such workshops have been undertaken in Sierra Leone, Colombia, Liberia, Burundi and India, aimed at personnel from the relevant government ministries and departments as well as staff from national and international NGOs and United Nations agencies. The training workshop in Colombia, held in May 2001, was aimed specifically at 43 recently elected members of the Municipal Ombudsman's Office in the province of Antioquia, the region most affected by internal displacement. The municipal ombudsmen play a key role in the implementation and enforcement of domestic legislation on internally displaced persons.

28. In addition to such NRC training workshops, the Representative continues to initiate or support national workshops on the Guiding Principles. In June 2001 a seminar on internal displacement was held in Indonesia with a view to raising the visibility of the problem and identifying ways to improve the national and international response with reference to the Guiding Principles. The seminar was co-sponsored by the Brookings-CUNY Project on Internal Displacement, the Center for Research on Inter-group Relations and Conflict of the Faculty of

Social and Political Sciences of the University of Indonesia, the National Commission on Human Rights, OCHA, the United Nations Development Programme (UNDP) and UNHCR. It was attended by more than 130 participants from throughout Indonesia, including government officials, and representatives of United Nations agencies, international organizations, local and international NGOs and research institutions. The Coordinating Minister for Political, Social and Security Affairs opened the seminar at a ceremony also attended by several government officials, diplomats and representatives of the media. The recommendations and report of the seminar are contained in addendum 3 to the present report.

29. It will be recalled that national level workshops were also to be held during the Representative's mission to the Sudan which was originally due to take place in May 2001. Two workshops were planned, one in Khartoum and co-sponsored by UNDP and the Brookings-CUNY Project, and the other in the south of the Sudan, in Rumbek, also in collaboration with UNDP and the Brookings-CUNY Project. As the Representative noted in his report to the fifty-sixth session of the General Assembly, at the last moment, the Government decided against holding the workshops, but invited the Representative to visit the country in order to discuss the situation, with a view to agreeing on alternative plans for the workshops. Thus, the September mission focused ostensibly on discussing with the Government the possibility of convening a seminar on internal displacement in the Sudan, to be held in Khartoum in the first half of 2002. The seminar will provide a forum in which the Government, United Nations agencies, international and non-governmental organizations, the donor community and the internally displaced themselves could discuss, in a constructive and cooperative spirit, the national response to internal displacement and develop ways of enhancing that response with the support and collaboration of the international community. As detailed in addendum 1 to the present report, the Government was receptive to this initiative and it is hoped that the workshop will proceed in April 2002.

30. As reported to the last session of the Commission and the General Assembly, for non-governmental organizations at the national level, the Guiding Principles have become an important vehicle for bringing about improved treatment for internally displaced persons, and they are actively using them in countries throughout the world to monitor and assess the needs of the internally displaced and advocate on their behalf. It will be recalled that as follow-up to the regional workshop on internal displacement in the South Caucasus that was convened in Tbilisi, in May 2000, co-sponsored by the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe, the Brookings Project and the NRC, the ODIHR, the Georgian Young Lawyers Association and the Brookings Project agreed to support a project, to be undertaken by groups of local lawyers, to review national legislation and administrative procedures in Armenia, Azerbaijan and Georgia on the basis of the Guiding Principles and then to assess the extent to which reforms might be needed in the laws and regulations to achieve compliance with international standards. In October 2001, the report of the Armenian lawyers' group was discussed at a meeting in Yerevan, attended by the lawyers concerned and representatives of the Government of Armenia, the ODIHR, and international experts and non-governmental organizations. Similar meetings in Georgia and Azerbaijan are to be held in 2002.

31. In Sri Lanka, the Consortium of Humanitarian Agencies, a group of more than 50 NGOs, has been conducting an outreach programme based on the Guiding Principles among government officials, international organizations, international and national NGOs and displaced communities. To this end, it has published a “Toolkit” in English, Sinhala and Tamil, as well as a variety of other training materials for use in ongoing workshops and round tables. In Colombia, too, an outreach programme is being developed by NGOs on the basis of the Guiding Principles.

32. In the former Yugoslav Republic of Macedonia, from 31 May to 4 June 2001, the Centre for Refugees and Forced Migration Studies of the University of Skopje, in collaboration with the Brookings-CUNY Project, organized a lecture series entitled “Exodus within borders: the global crisis of internal displacement”. The lectures, which were given by experts from academic and research institutions, international organizations and non-governmental organizations, sought to raise the visibility of the problem of internal displacement in the Balkans region and gave particular attention to the Guiding Principles. Audiences included government officials, international organizations, regional organizations, international, regional and national military and police, non-governmental organizations, academics, experts and students. Television, radio and newspapers featured the series. In December 2001, the Proceedings were published and widely disseminated. Members of the lecture team also went on to Bulgaria and Albania to hold meetings. The Macedonian portion of the lecture series was co-sponsored by the Institute for Sociological, Political and Juridical Research of the University of Skopje, UNHCR-Skopje and the Open Society Institute. The Bulgarian portion was co-sponsored by UNHCR-Sofia, the Bulgarian Red Cross, the Refugee Agency and the Bulgarian Helsinki Committee; and the Albanian portion was sponsored by the Centre for Refugee and Migration Studies in Tirana.

33. National human rights institutions continue to constitute an important forum for the promotion of the Guiding Principles. It will be recalled that at the regional Conference on Internal Displacement in Asia (Bangkok, February 2000) it was proposed that national human rights institutions should 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 2000, the Asia Pacific Forum for National Human Rights Institutions expressed support for a greater role for those bodies with the internally displaced and during its Sixth Annual Meeting, held in Sri Lanka in September 2001, Forum members specifically discussed the relevance of the Guiding Principles to their work. In their concluding statement Forum members welcomed the opportunity to share their experiences on the internal displacement issue and requested the secretariat of the Forum to seek funds for national institutions that request assistance for their work on the issue.

34. At the second Conference of Euro-Mediterranean National Institutions for the promotion and protection of human rights,² attended by institutions from Albania, Croatia, Cyprus, France, Greece, Italy, Morocco, Palestine, Portugal and Tunisia, held in Athens in November 2001, the institutions reiterated their commitment to promoting and supervising the implementation of human rights protection in accordance with the international human rights obligations undertaken by States, particularly concerning migrants, asylum-seekers, refugees and displaced persons.

35. The Representative intends to further explore possibilities for strengthening his cooperation with national human rights institutions and regional and international networks of national institutions, including with the International Coordinating Committee on National Institutions established pursuant to the recommendations of the second International Workshop on National Institutions for the Promotion and Protection of Human Rights, convened in Tunis in December 1993 and welcomed by the Commission on Human Rights in resolution 1994/54.

36. To assist in the promotion, dissemination and application of the Guiding Principles at the national level, and indicative of their increasing use and relevance in different parts of the world, the Principles continue to be translated into an increasing number of languages. To facilitate dissemination, these translations are being posted on the web site of the Office of the High Commissioner for Human Rights (OHCHR). Initially made available in all the official languages of the United Nations (Arabic, Chinese, English, French, Russian and Spanish) for their submission to the Commission in 1998, the Principles have since been translated into a number of local languages relevant to particular situations of internal displacement: Albanian; Armenian; Azerbaijani; Bahasa (Indonesia); Georgian; Burmese and Sgaw Karen (Myanmar); Dari and Pashtu (Afghanistan); Macedonian; Portuguese (Angola); Sinhala and Tamil (Sri Lanka); and Turkish. Their translation into Abkhazian (Georgia), Chin (Myanmar), Tagalog (Philippines) and Tetum (East Timor) is under way and interest has been expressed from various quarters to translate the Principles into other local languages such as Gulu (Uganda), Kurdish and Dinka (Sudan). Efforts to translate and publish the Principles have been undertaken at the initiative of a variety of actors - the United Nations and its agencies, international and local NGOs and Governments, often working in partnership. Support for additional such efforts may be available from OHCHR in the framework of technical cooperation projects.

37. In addition to the translation and dissemination of the Principles, efforts are also focusing on the translation of the Handbook for Applying the Guiding Principles, published by OCHA and the Brookings Project in 1999 and which, it will be recalled, aims to spell out the meaning of the Guiding Principles in non-technical language and facilitate their practical application. While the Handbook was originally published in English only, the importance of further empowering local NGOs and displaced communities and the need to develop outreach strategies has underlined the need also to translate the Handbook into at least all the United Nations official languages and other local languages. With support from the Schurgot Foundation, the Brookings-CUNY Project has arranged for the translation of the Handbook into French and Russian, both of which will be published by the United Nations. The Pan-American Health Organization and local NGOs in Colombia have translated the Handbook into Spanish.

38. In Indonesia, OCHA, in cooperation with the Brookings-CUNY Project, is facilitating the translation of the Handbook into Bahasa and encouraging an outreach campaign around the Principles and the Handbook, being developed by Oxfam and a local NGO.

39. In the former Yugoslav Republic of Macedonia, following the lecture series on internal displacement noted above, the Centre for Refugees and Forced Migration Studies, with the support of UNHCR and the Brookings-CUNY Project, translated the Principles, as well as the Handbook and the Manual on Field Practice in Internal Displacement, into the Macedonian and Albanian languages. In September 2001, it held a round table to raise awareness of these

documents among Government officials, international organisations, NGOs, and academics in Macedonia.

40. It is the hope of the Representative that such initiatives will be replicated elsewhere, with support from United Nations agencies, international NGOs and research and academic institutions.

2. Regional level

41. Regional organizations continue to devote attention to the promotion and application of the Principles. Both the General Assembly and the Commission have noted with appreciation that regional organizations are making use of the Guiding Principles in their work and have encouraged their further dissemination and application, in particular through seminars in collaboration with the Representative. Both the General Assembly and the Commission have welcomed initiatives undertaken by the Organisation of African Unity (OAU), now the African Union (AU), the Economic Community of West African States (ECOWAS), the Organization of American States (OAS) and the Organization for Security and Cooperation in Europe (OSCE).

42. The African Union, it will be recalled, has taken note of the Guiding Principles “with interest and appreciation” and in 1998 co-sponsored a seminar on their use in Africa. The recommendations of that seminar as well as the text of the Guiding Principles are included in the Compendium of OAU Instruments and Texts on Refugees, Returnees and Displaced Persons in Africa 1963-1999, which was published jointly by the OAU and UNHCR in 2000 to commemorate the thirtieth anniversary of the 1969 Convention Governing Specific Aspects of Refugee Problems in Africa.

43. At the subregional level, it will be recalled that in April 2000, ECOWAS ministers adopted a declaration at the Conference on War-Affected Children in West Africa, held in Ghana and co-hosted by the Governments of Ghana and Canada, which welcomed the Guiding Principles and called for their application by ECOWAS member States. This declaration was subsequently adopted at the ECOWAS Summit of Authority of Heads of State and Government, held in Bamako, in December 2000. Building on this momentum, in August 2001, the Representative held consultations with senior officials at the ECOWAS secretariat in Abuja, including with the Executive Secretary of the organization, Ambassador Kouyate, to discuss the possibility of convening a regional seminar on internal displacement in West Africa and the application of the Guiding Principles. Ambassador Kouyate and other officials, stressing the extent of the problem of internal displacement in the region, welcomed this initiative and further consultations are under way between the Office of the Representative and the ECOWAS secretariat with a view to convening such a seminar during 2002.

44. In the Americas, the Inter-American Commission on Human Rights of the OAS and its Rapporteur on internally displaced persons have regularly been applying the Principles in their work, monitoring conditions in different countries in terms of the Principles. Most recently, in April 2001, the Inter-American Commission published its fifth report on the situation of human rights in Guatemala. In the chapter concerning displaced persons, the Commission noted that the

Guiding Principles serve as the most comprehensive statement of the norms applicable to the internally displaced. The Commission further recalled that the Principles provide authoritative guidance on how the law should be interpreted and applied during all stages of displacement, noting in the case of Guatemala, the relevance of principles 28-30 concerning return, resettlement and reintegration.

45. Within the European region, the OSCE and its Office for Democratic Institutions and Human Rights (ODIHR) have continued to focus on the application of the Principles. It will be recalled that in September 2000, ODIHR, in conjunction with the Government of Austria in its capacity as Chairperson-in-Office of the OSCE, convened a Supplementary Human Dimension Meeting on Migration and Internal Displacement, at which the Representative gave a keynote address. A principal goal of the seminar was to elaborate ways in which OSCE institutions, field operations and participating States could enhance their response to internal displacement, in particular through the practical application of the Guiding Principles. Among its recommendations, the meeting called for the integration of internal displacement into the activities of the OSCE, using the Principles as a framework for doing so.³

46. The recommendations of the Vienna meeting were revisited in September 2001 at the OSCE's Human Dimension Implementation Meeting, held in Warsaw. During a working session focusing on freedom of movement, including displaced persons, a statement delivered on behalf of the Representative recalled the recommendations of the Vienna meeting and noted the importance of the present meeting as an opportunity to reaffirm those recommendations and to call for their translation into practical measures to ameliorate the plight of Europe's internally displaced. Statements in support of an enhanced OSCE role with the internally displaced were also made by the Governments of Azerbaijan, the Federal Republic of Yugoslavia and Norway, as well as by the Norwegian Refugee Council (NRC) and the Helsinki Federation. In addition, written recommendations submitted to the meeting by UNHCR encouraged participating States to make a particular effort to support the internally displaced and in doing so to adopt the Guiding Principles as their yardstick.

47. Prior to the working session on freedom of movement, NRC organized a panel discussion on internal displacement in the OSCE region. The meeting, in which the Office of the Representative participated, was well attended by a number of representatives of OSCE participating States and NGOs, and included discussion of the development and reception of the Guiding Principles.

48. The Warsaw meeting heard calls from the GUAMM States (Georgia, Uzbekistan, Ukraine, Azerbaijan and the Republic of Moldova) for the appointment of an OSCE adviser on refugees and internally displaced persons within ODIHR, tasked with collecting information on acute problems of refugees and displaced persons in the OSCE area and formulating, through the Director of ODIHR, appropriate recommendations to the Permanent Council for action by the OSCE. It is the hope of the Representative that the OSCE in future will give serious consideration to the appointment of a focal point on internally displaced persons and will use the Guiding Principles more formally as a framework for its activities in this area.

49. Also at the European level, the Council of Europe has become increasingly engaged with the internal displacement issue, in particular through the activities of the Parliamentary Assembly and its Committee on Migration, Refugees and Demography, which have sought to address situations of internal displacement, for example, by undertaking fact-finding missions to displacement-affected countries and recommending respect for the Guiding Principles.⁴ In September 2001, the Committee held a seminar in Geneva on internal displacement in Europe and the application of the Guiding Principles, co-hosted by the Representative, the Office of the High Commissioner for Human Rights and the Brookings-CUNY Project on Internal Displacement. The Representative has since been informed by the Committee's Chairman that as follow-up to the seminar a report is to be drawn up containing recommendations to Council of Europe member States in support of the Guiding Principles, including a possible recommendation from the Parliamentary Assembly to the Council's Committee of Ministers that it invite member States to observe the Guiding Principles and include their provisions in national legislation if this has not yet been done.⁵

3. International level

50. In addition to what was reported earlier, the Commission on Human Rights has consistently emphasized the importance of integrating the internal displacement issue into the activities of its special procedures (country and thematic) and the human rights treaty bodies and for them to include relevant information and recommendations in their reports. A number of the Commission's special procedures have begun and continue to refer to the Guiding Principles in their reports and statements and also in the context of urgent appeals. The human rights treaty bodies, for their part, have become increasingly seized with the displacement issue and the Guiding Principles. In particular, the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination have continued to recommend in relevant cases that States parties to the respective conventions give effect to the provisions contained in the Guiding Principles.

51. OHCHR continues to be engaged in the promotion, dissemination and application of the Principles. The High Commissioner for Human Rights uses the Principles in her advocacy efforts in regard to specific country situations and has also referred to them in relation to specific thematic concerns regarding the internally displaced. To further enhance the promotion and protection of the rights of internally displaced persons worldwide, OHCHR has included a project on internally displaced persons in its Annual Appeal for 2002. Among the activities envisaged in the project is the promotion and further integration of the internal displacement issue into the work of the treaty bodies and special procedures, including convening a half-day workshop on the Guiding Principles for independent experts and their staff in conjunction with the annual meetings of the treaty bodies and special procedures. Another key component is the translation and publication of the Guiding Principles into local languages in countries with problems of internal displacement. Though modest in financial requirements (US\$ 50,000), the project stands to make an important contribution to the further promotion, dissemination and application of the Guiding Principles.

52. Prior to the fifty-second session of the Executive Committee of the Programme of the United Nations High Commissioner for Refugees (UNHCR), in October 2001, UNHCR hosted

its annual pre-EXCOM meeting with NGOs. The three-day meeting included a panel discussion on the implementation of the Guiding Principles, with presentations by the Special Coordinator of the Senior Inter-Agency Network on Internal Displacement, the Office of the Representative, as well as representatives of UNHCR, the ICRC and the NRC. The panellists underlined the value of the Guiding Principles as a tool for the dissemination of standards and training relating to the treatment of internally displaced persons. It was also underlined that the implementation of the Principles at the field level remains the main challenge and that in this regard, NGOs were playing an indispensable role in their promotion and dissemination.

53. Both the Senior Inter-Agency Network on Internal Displacement and the new Unit on Internal Displacement established within OCHA have made the Guiding Principles their framework (see below). The Representative looks forward to the Unit's training and dissemination programmes, based on the Principles, currently being planned (see below).

54. To conclude, the Guiding Principles have clearly come to constitute an important guide for Governments, international organizations, regional bodies and NGOs in their work on behalf of the displaced. They are also becoming an empowerment tool for displaced populations. Consistent with the central role of dialogue in the implementation of the mandate, the Representative intends to broaden ongoing consultations with States (reported above in I.B) in order further to explore their concerns and how best to apply the Principles in support of internally displaced persons.

¹ Subsequently issued as publication No. 9 in the Human Rights Study Series. United Nations publication, Sales No. E.97.XIV.2, 1998.

² See Declaration of Athens, adopted on 3 November 2001 by the Euro-Mediterranean National Institutions.

³ See OSCE, Supplementary Human Dimension Meeting: Migration and Internal Displacement, Vienna, 25 September 2000, Final Report.

⁴ See Report of the Committee on Migration, Refugees and Demography of the Parliamentary Assembly of the Council of Europe concerning the conflict in Chechnya, document 8632, 25 January 2000.

⁵ See Committee on Migration, Refugees and Demography of the Parliamentary Assembly of the Council of Europe, Internal Displacement in Europe - Motion for a Recommendation, Council of Europe Doc. 9247, 8 October 2001.

III. The Guiding Principles: How Do They Support IDP Response Strategies?

by Roberta Cohen, Co-Director, The Brookings-CUNY Project on Internal Displacement

Excerpt from the Seminar Proceedings on “Response Strategies of the Internally Displaced: Changing the Humanitarian Lens,” held in Norway, November 9, 2001 and published by the *Forced Migration Review* in association with the Norwegian Refugee Council, 2001. The Proceedings are available on the *Forced Migration Review*’s website www.fmreview.org

The Guiding Principles: how do they support IDP response strategies?

by Roberta Cohen

It is a great pleasure to be in Oslo again. I would like to thank the Norwegian Refugee Council and its Secretary-General Steinar Sørli and the Global IDP Project led by Marc Vincent for the important work they are doing worldwide for IDPs.



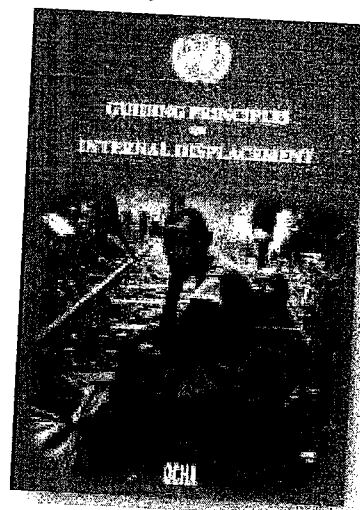
I also thank them for the collaboration they have extended to the Representative of the UN Secretary-General on IDPs, Francis Deng, and for today's programme which focuses on an aspect of internal displacement often overlooked: the response strategies of IDPs and how the international community can support them.

The Guiding Principles on Internal Displacement are an important tool for IDPs. Presented to the UN in 1998, they are the first international standards for IDPs. They consist of 30 Principles which identify the rights of IDPs and the obligations of governments and insurgent groups toward these populations. They also provide guidance to all other actors engaged with IDPs - in particular international organisations and NGOs. They cover all phases of displacement - prior to displacement (the right not to be displaced), during displacement and during return or resettlement and reintegration. They are based on international human rights law, international humanitarian law and

refugee law by analogy. They bring together into one document all the provisions of international human rights and humanitarian law relevant to IDPs. What is unique about the Principles is that in addition to restating provisions of existing law they tailor the provisions of the law to the specific needs of IDPs.

The Principles were developed by a team of international legal experts under the direction of the Representative of the Secretary-General and in consultation with a wide range of international organisations, NGOs and research institutions. Although they are not a legally binding document like a treaty, since their presentation to the UN Commission on Human Rights in 1998 they have fast acquired a good deal of international standing, moral authority and acceptance. One reason for this is that they are based on, and are consistent with, binding law. Another reason is the overriding need for a document relevant to IDPs. Prior to their preparation, there was no single document to turn to on internal displacement.

International organisations, regional bodies, non-governmental groups and a growing number of governments have acknowledged the Principles and are using them as a basis for policy and law. Indeed, a unanimously adopted resolution by 53 states during the April 2001 UN Commission on Human Rights recognised that an increasing number of states, UN agencies and regional and non-governmental organisations are making use of them. The resolution called for their further dissemination and application.



How can the Guiding Principles support the response strategies of IDPs?

There are five principal ways.

First, the Guiding Principles provide a framework for understanding the problem. In many countries IDPs do not realise that they have certain rights or that local authorities have obligations toward them. They are not aware of internal displacement as a phenomenon or do not realise that people in other countries are suffering in the same way and that international approaches are being developed to address the issue. In Indonesia, for example, I found IDPs interested to learn about a document that explained their plight and showed them that internal displacement is a worldwide problem for which solutions are being sought and that there might even be an emerging international responsibility toward IDPs. In Macedonia, where I have been on two different occasions to lead discussions on internal displacement and the Principles, displaced persons were interested in learning more about their situation and how it compared with other situations in Europe. The Principles thus are a valuable frame-

work for promoting a greater understanding of what is happening to people when they become forcibly displaced.

Second, the Guiding Principles are an empowerment tool. When displaced people learn that certain standards exist which bear on their plight it gives them ideas for empowering themselves. Just look at the language of the Guiding Principles. They assert, for example, that IDPs have the right to request and receive protection and humanitarian assistance from national authorities. They speak of participation of IDPs in planning and distributing supplies and in planning and managing their return and reintegration. This is empowerment language. I saw this to be the case in Colombia when meeting with a group of internally displaced women from all parts of the country. Despite the security threats they faced and the material deprivation they suffered, they were heartened to learn that a document existed with articles specific to their particular needs. In particular, Principle 20 on the right of women to have documents in their own name resonated with these women. This is **something** they could use, they said. Right now, the Brookings-CUNY Project on Internal Displacement, which I co-direct, is working with NGOs in Colombia to develop an outreach campaign to displaced communities based on the Guiding Principles so that these communities can better use the Principles in support of their own response strategies.

Third, the Guiding Principles are a monitoring tool, a valuable benchmark for measuring conditions in a country. At present, a number of regional and non-governmental organisations are monitoring conditions in particular countries in terms of the Principles. Displaced communities can begin to undertake monitoring as well. One can see the beginnings of this in Colombia, Sri Lanka, Georgia and Macedonia, where the Principles have been translated into the local languages and outreach programmes are underway.

Fourth, the Guiding Principles can serve as an advocacy tool. Of course, this works best when IDPs are already in conditions of relative safety and can pursue advocacy vis-à-vis their local and national authorities. In the

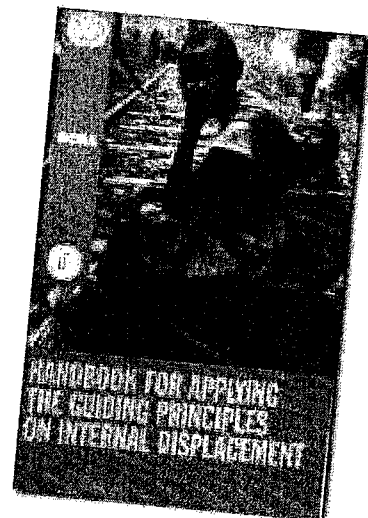
Southern Caucasus, for example, IDPs are working together with lawyers in Georgia, Azerbaijan and Armenia to examine the laws and regulations in their countries in terms of the Guiding Principles and to advocate for legislative reform. When discriminatory electoral laws were identified in Georgia, a group of IDPs made an appeal to the Supreme Court. When the court did not rule in their favour, IDPs together with NGOs appealed to the government which announced at the UN that it would explore bringing this particular law and other laws into line with the relevant provisions in the Guiding Principles. Another compelling example can be found in Sri Lanka where an NGO consortium (the Consortium of Humanitarian Agencies) organised a meeting between IDP camp commanders and IDP representatives using the Guiding Principles as the framework. At the meeting, the representatives of the IDPs advocated for better conditions, in particular more ample food rations, more timely deliveries of food, clean water and more personal security in the camps. They found the Principles a valuable vehicle for making their concerns known.

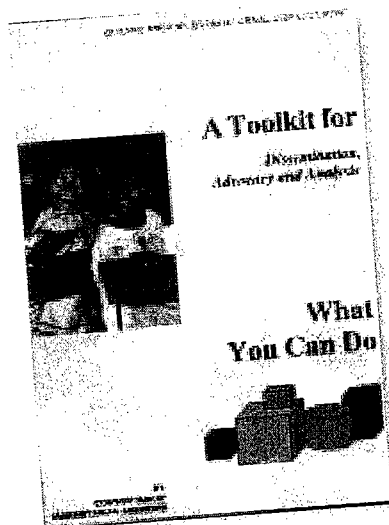
Fifth, the Guiding Principles define 'protection' for IDPs and provide a framework for developing protection strategies. IDPs not only need food, medicine and shelter. They also require protection of their personal security and human rights. Indeed, IDPs often point out that protection against assault, rape and forced recruitment is as essential to them as material assistance. While there is no international consensus on who should undertake protection activities in support of the response strategies of the displaced, the *Handbook for Applying the Guiding Principles*, published by the UN and the Brookings Institution, does set forth the kinds of steps that can be taken to enhance protection for IDPs. It contains sections on 'What You Can Do' which offers a framework for a protection strategy. The *Handbook*, for example, suggests that channels of communication should be opened between displaced communities and national or local authorities and it shows how international organisations and NGOs can assist in achieving this. It also calls for members of displaced communities to visit proposed relocation sites with a view to evaluating their safety. On a trip to Angola last year,

the Representative of the Secretary-General recommended that NGOs and international organisations consult with displaced populations to develop protection strategies using the Guiding Principles and *Handbook* as the base.

To be widely used, the Guiding Principles will have to be translated into local languages. So far, the UN has translated the Guiding Principles into its six working languages. In addition, governments, UN agencies and international and local NGOs have had the Principles translated into a further 15 languages. Even this is hardly enough: requests come in regularly from different countries. For example, there are requests from Uganda to translate the Principles into Gulu for use in IDP camps, from Iraq to translate the Principles into Kurdish, from East Timor to translate the Principles into Tetum and from the Sudan for a Dinka translation. Priority needs to be given to these requests by the UN and resources made available.

The *Handbook for Applying the Guiding Principles* must also be translated and disseminated in the more than 40 countries affected by internal displacement. Here, an even worse deficiency exists. The *Handbook* exists at the UN in published form in English only, even though the *Handbook* sets forth (and indeed is the only text that does set forth) what international organisations, NGOs and IDPs can do to reinforce response strategies. Unfortunately, the UN has not fully focused on the importance of empowering local displaced





communities. It has not initiated translations of this booklet into the UN's working languages or developed outreach strategies to use the booklet in these languages.

To fill this gap, the Brookings-CUNY Project has recently had the *Handbook* translated into French and the UN has agreed to publish it. Next, we will fund the translation of the *Handbook* into Russian and will again ask the UN to publish it. In Colombia, NGOs and the Pan American Health Organisation have translated the *Handbook* into Spanish and the Brookings-CUNY Project has agreed to help with the publication and dissemination of the booklet in Latin America.

However, translations of the *Handbook* are needed not only into the UN's working languages but also into local languages, and outreach campaigns are needed to disseminate the Principles to IDPs. Here, some ini-

tiative has begun to be shown by the UN. In Indonesia, for example, the Office for the Coordination of Humanitarian Affairs (OCHA), together with the Brookings-CUNY Project, is having the *Handbook* translated into Bahasa Indonesia and an outreach campaign is being developed by OCHA and OXFAM. This kind of programme could well be replicated in other countries.

In Sri Lanka, with help from UNHCR, the Norwegian Refugee Council and the Brookings-CUNY Project, an NGO consortium has published a *Toolkit* in English, Sinhala and Tamil, based on the Guiding Principles and the *Handbook*, to help empower and strengthen the capacities of IDPs. The University of Skopje, with support from UNHCR and the Brookings-CUNY Project, has translated the Principles and the *Handbook* into Macedonian and Albanian. The UN must give greater priority to this effort and hopefully will do so through its newly-formed IDP Unit headed by Kofi Asomani.

Strengthening the response strategies of IDPs is one of the most important ways we can help. As emphasised in the Norwegian Refugee Council's new book, *Caught Between Borders*, IDPs are not just victims but resources. We must work to reinforce their capacities and help provide them with the tools they can use to help themselves and in the languages in which they need them.

In closing, I would like to recount an experience from the human rights arena to emphasise the importance of making the Guiding Principles and

Handbook available to displaced populations. Back in the 1970s, through my human rights work I had the occasion to meet a Soviet dissident who had been confined to a psychiatric hospital because of his political views. He had been injected with painful drugs, abused and partially starved. Because of an international campaign, he was released. When I met him in New York, I could not help but ask him: "How did you get through all of this?" In response, he took a crumpled piece of paper from his back pocket, and said, "This is how." The paper was the text of the International Covenants on Human Rights, the UN-adopted standards on civil, political, economic, social and cultural rights. This man had memorised them and knew them by heart.

When I asked him how it was possible that this document had sustained him when his government did not abide by the standards in the Covenants, he replied: "Oh, they know about them, they adopted resolutions on them at the UN, in fact they have ratified them, and one day they will have to observe them." Holding up the Covenants, he said, "This document has power." He proved to be right. I believe this story should be instructive for today's discussions about the Guiding Principles and how they can reinforce the response strategies of IDPs.

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Testimony of a displaced woman trained in community protection and conflict resolution at Salga Camp, Luanda Province, Angola:

"I knew that we had rights, just like any other person. Now that I know exactly what they are, it is my responsibility to ensure that my community understands them too. I am a widow, a mother of four. I never went to school. I am thankful for this opportunity to learn and teach about our rights. If we know about the Guiding Principles and the [Angolan] Norms [on Resettlement], we know our lives can improve."