

***An IDP No More?***

***Exploring the Issue of When Internal Displacement Ends***

Discussion Paper

by

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## Introduction: A Question in Search of Answers

Over the past decade, the term “internally displaced person” (IDP) has entered the international lexicon and gained wide currency to denote persons forcibly displaced within their countries. It is generally understood that a person becomes internally displaced when s/he is forced or obliged to flee or to leave his or her home or place of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or human-made disasters, but remains within her or his country of origin.<sup>1</sup> It also has come to be widely recognized that the factual situation of being internally displaced tends to create particular needs and vulnerabilities requiring special attention. The Guiding Principles on Internal Displacement seek to address these needs by spelling out the various norms relevant to providing protection and assistance in all phases of internal displacement. Yet, while there exists considerable awareness of when internal displacement begins and what special needs it entails for the affected persons, the issue of when internal displacement ends or, in other words, when an IDP ceases to be considered as such, has been unclear.

The question of when internal displacement ends is critical to answer for a number of reasons. To begin with, determining when displacement ends is an important factor in compiling reliable and agreed statistics. Organizations and researchers involved in compiling IDP statistics point out that one of the reasons it has been difficult to reach agreement on IDP figures has been the lack of clarity and consensus on the issue of when an IDP ceases to be an IDP.<sup>2</sup> Operational agencies and NGOs, donors and of course Governments of countries affected by internal displacement require data on the number of IDPs in order to formulate budgets, frame policies and plan programming to address the needs of the IDPs. Clarity on the issue also is critical to determining when IDPs cease to come under the mandate and be the concern and responsibility of particular institutional mechanisms, in particular operational agencies as well as the Representative of the UN Secretary-General on Internally Displaced Persons (RSG on IDPs) and the Internal Displacement Unit recently established in the Office for the Coordination of Humanitarian Affairs (OCHA). Finally, it must not be overlooked that internally displaced persons themselves require and indeed have a right to receive information and guidance as to duration of their classification as such especially as this can have important implications on their entitlement to the benefits and, conversely, their subjection to any restrictions (legally or illegally), that this classification may entail.<sup>3</sup>

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<sup>1</sup> Based on the definition provided in the introduction to the *Guiding Principles on Internal Displacement*, UN Doc. E/CN.4/1998/53/Add.2, Introduction: Scope and Purposes, para. 2.

<sup>2</sup> See, for example, a recent discussion among researchers reflected in *Response Strategies of the Internally Displaced: Changing the Humanitarian Lens. Seminar Proceedings*. Report of a seminar held in Oslo, Norway, 9 November 2001 (Oslo: Norwegian Refugee Council in cooperation with the Norwegian University of Technology and Science), pp. 22-24. At the same time, it must be noted that the difficulty of determining reliable figures for displaced populations, is not limited to internally displaced persons but also arises with refugees and notwithstanding greater clarity on the cessation of refugee status. Other factors including access, political motivations and sensitivities, and registration problems complicate the compilation of accurate statistics. See Jeff Crisp, *Who Has Counted the Refugees?: UNHCR and the Politics of Numbers*, UNHCR Working Paper No. 12 (June 1999).

<sup>3</sup> That IDPs have such a right is implicit Guiding Principle 3 providing that internally displaced persons have the right to request and to receive protection and humanitarian assistance from the authorities and shall not be punished or persecuted for making such a request as well as Principle 20 providing that in connection with the right of every human being to recognition everywhere as a

While some actors and organizations have begun to make determinations of when internal displacement ends, calculations tend to be ad hoc, arbitrary and made on a case-by-case basis. Moreover, in the absence of common criteria on this issue, the methodologies used and, consequently, the conclusions reached, differ among actors, often significantly. Increasingly, organizations working in the field, governments framing policies and programmes for IDPs, and those preparing statistics, are pointing to the need for consensus and specific criteria on determining when displacement ends.

To address this critical question, OCHA has turned to the RSG on IDPs. The Deputy Emergency Relief Coordinator, in an official request to the RSG on IDPs, requested his advice and guidance ‘indicating when generically an individual would not only become an IDP but when he/she should no longer be considered under this category.’ Though ‘the question is not new,’ the Deputy ERC noted, ‘the answer has hitherto been quite elusive. Operational demands, however, increasingly dictate the requirement for a coherent response.’ In response to that request and in consultation with OCHA, the Representative suggested that a first step would be to convene a small group of experts from international organizations and research institutions to examine the issues involved and identify steps for further action. Hence, today’s meeting which seeks to further advance thinking on this issue and in particular to begin to identify some of the major factors needing to be taken into consideration in determining when internal displacement ends.

This paper has been prepared with a view to helping to guide and stimulate the discussions. It begins with a brief discussion of what guidance on the issue can be distilled from the Guiding Principles on Internal Displacement. And while the definition of internally displaced persons used in the Principles and cited above covers internal displacement resulting from a number of different causes, including natural or human-made disasters or large-scale development projects, the paper primarily focuses on internal displacement owing to armed conflict, situations of generalized violence or egregious human rights abuses.<sup>4</sup> Because these are persons who, for the most part, would be considered refugees had they crossed an international border, the paper then examines, in Section II, the relevance and implications of the issue of cessation in the refugee experience. Turning to the issue of when displacement ends for IDPs, Section III provides snapshots of a number of case examples where internal displacement has been, or may risk being, determined to have ended, with a view to bringing into focus the different issues that arise and related factors that may need to be taken into consideration in developing general criteria. Towards this end, Section IV distills a number of possible criteria for consideration. The paper ends by posing a number of questions for participants to consider in the light of their or their organization’s own approach to the issue. An appendix to the paper restates and consolidates the various questions for consideration that are posed throughout the text.

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person before the law, internally displaced persons shall be issued with all documents necessary for the enjoyment and exercise of their legal rights

<sup>4</sup> Indeed, given the different issues involved, separate context-specific inquiries into the issue of when internal displacement ends may be necessary for internally displaced persons uprooted by, on the one hand, development projects and, on the other, natural or human-made disasters.

## I. The Guiding Principles on Internal Displacement

The Guiding Principles on Internal Displacement, which spell out the rights and guarantees pertaining to internally displaced persons in all phases of displacement, do not contain a cessation clause as to their application, and deliberately so. After all, the definition of “internally displaced persons” used in the Principles (and cited above) is descriptive and non-legal in nature, denoting the factual situation of being displaced within one’s country rather than conferring a special legal status to be granted and eventually possibly revoked.<sup>5</sup> Because being an “internally displaced person” depends upon the existence of objective facts, and not a process of legal recognition, this classification in principle continues to apply to people so long as the factual situation of internal displacement continues to exist. Cessation of the identification of an individual or group of individuals as “internally displaced” therefore would be contingent upon a change in the factual situation of displacement that the term denotes. For instance, if an internally displaced person flees or is forced to leave, or migrates to another country, s/he ceases, by definition, to be in a situation of internal displacement and instead becomes a refugee, migrant or national of another country as the case may be.<sup>6</sup>

For forcibly displaced persons who remain within their country of origin, the Guiding Principles in effect envisage three possible solutions to their situation of internal displacement: return “to their homes or places of habitual residence,” integration where they currently reside or resettlement in another part of the country. Guiding Principle 28 specifies that return or resettlement must occur voluntarily and that, in accordance with international principles, return must also occur in “safety and dignity”. Principle 29 specifies that internally displaced persons who have returned or resettled shall be protected against discrimination as a result of having been displaced, shall have the right to participate fully and equally in public affairs, and have equal access to public services. Furthermore, competent authorities have a duty and responsibility to assist returned or resettled internally displaced persons recover or receive compensation for property and possessions left behind or of which they were dispossessed upon displacement. This suggests that return or resettlement is more than the actual act of returning or resettling but presumes the existence of sustainable conditions to support the durability of return and resettlement.

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<sup>5</sup> The *Annotations* to the Guiding Principles are unequivocal on this point: internally displaced persons need not and cannot be granted a special legal status comparable to refugee status. Whereas refugees require a special legal status because they have lost the protection of their own country and require substitute international protection in another country, internally displaced persons do not require substitute international protection. Rather, by virtue of the simple fact that they are human beings, they remain entitled to enjoy the full range of human rights and guarantees of humanitarian law, including those that are of special importance in addressing their particular vulnerabilities that arise from the fact that they are displaced. Walter Kälin, *Guiding Principles on Internal Displacement: Annotations* (Washington, D.C.: American Society of International Law and the Brookings Institution Project on Internal Displacement, 2000), p. 3, see also p. 8.

<sup>6</sup> See ‘Comment on When Displacement Ends,’ prepared for this meeting by Walter Kälin and circulated jointly with this paper.

## II. The Relevance of the Refugee Experience

Refugee law, though by definition not directly applicable to the situation of internally displaced persons, nonetheless has obvious relevance and can be instructive to consider, by analogy. Article 1C of the 1951 Convention on the Status of Refugees explicitly addresses the issue of when refugee status ends by stipulating six circumstances under which an individual would no longer require and be eligible for refugee status and the international protection it affords. The first four of these “cessation clauses” concern actions taken by an individual to re-avail himself of the protection of his country of origin, in particular through voluntary repatriation, or to obtain the protection of another state, for example by acquiring the nationality of another country. The final two clauses, which are of particular relevance to the focus of this paper, concern changes that have occurred in the refugee’s country of origin such that ‘the circumstances in connection with which [s/]he has been recognized as a refugee have ceased to exist.’ A series of guidelines by UNHCR and its Executive Committee shed further light on how the “ceased circumstances” provisions of the Convention should be interpreted. Briefly stated, improvements in the country of origin must constitute a “fundamental”, “stable”, “durable” and “effective” change in circumstances, which removes the basis for the fear of persecution.<sup>7</sup> In the instances over the years that UNHCR has invoked the “ceased circumstances” provisions, three types of developments had occurred in the country of origin: (1) the country gains independent statehood; (2) a successful transition to democracy; (3) the resolution of a civil conflict.<sup>8</sup>

A particular question of interest to this inquiry is: *whether and in what ways UNHCR’s invocation of the “ceased circumstances” provisions for refugees has implications for the determination of the cessation of internal displacement in the same country of origin?* In the case of Mozambique, for example, UNHCR’s invocation of the “cessation clause” to end refugee status for Mozambican refugees worldwide on 31 December 1996 appears to have been an important determining factor in the decision to consider there to be no longer any internally displaced persons in the country either.<sup>9</sup> However, when the RSG on IDPs visited the country that same month, he found that ‘despite the decision by the Government and the donor community no longer to target displaced groups, this in no way means that all internally displaced persons have returned’. Among the reasons cited were ‘a lack of confidence in the durability of peace, sometimes coupled with a reluctance to return to the area where they had experienced terror,’ and a lack of transport to areas of return.<sup>10</sup>

⇒ *Should the return of refugees or cessation of refugee status be the determining factor for when internal displacement ends?*

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<sup>7</sup> Rafael Bonoan, *When is International Protection No Longer Necessary? The “Ceased Circumstances” Provisions of the Cessation Clauses: Principles and UNHCR Practice, 1973-1999*, Working Paper # 8 (June 2001).

<sup>8</sup> *Ibid.*

<sup>9</sup> USCR, *Country Reports: Mozambique 1997* [online: [www.refugees.org/world/countryrpt/africa/mozambique.htm](http://www.refugees.org/world/countryrpt/africa/mozambique.htm)]

<sup>10</sup> United Nations, Commission on Human Rights, Report of the Representative of the Secretary-General on Internally Displaced Persons, *Profiles in Displacement: Mozambique*, UN Doc. E/CN.4/1994/43/Add.1, para. 26.

Because UNHCR frequently assumes responsibilities for internally displaced populations and typically does so when these situations have a “refugee link”, it would be interesting to explore UNHCR’s own approach to the issue of when internal displacement ends and, in particular, whether it applies similar criteria as it uses for refugees. To recall, refugee law envisages three scenarios when it would cease to apply to an individual refugee: (1) when the refugee returns to his/her country of origin; (2) finds another durable solution such as resettlement in another country; or (3) when an asylum state or UNHCR, invoking the “ceased circumstances” provisions cited above, determines that a refugee or, more likely, a group of refugees no longer requires international protection because it is safe for them to return and, consequently, ends their refugee status. By analogy, internally displaced persons, who remain in the country, would no longer be considered as such if there is a fundamental change of circumstances in the country enabling return or resettlement.

⇒ *In determining when displacement ends, does UNHCR apply the same criteria for internally displaced persons as it does for refugees?*

It is also important to consider the linkages between the cessation of refugee status and internal displacement. In Bosnia, the emphasis in the Dayton Agreement on the right of refugees and displaced persons “to return to their homes or places of origin” has led many refugees (most of whom were covered by the “temporary protection” regime established by UNHCR in response to the mass exodus of refugees) to be returned to the country prematurely (i.e. not necessarily voluntarily), before conditions were safe and supportive of sustainable return. Unable to return to their homes or areas of origin or, alternatively, to permanently resettle elsewhere in the country, many of these refugees returned to Bosnia only to become internally displaced persons. Property issues have been a major impediment to return, especially in the absence of effective compensation or restitution for lost property, as the Dayton Agreement also guaranteed. The homes of many of the refugees remained occupied, frequently by internally displaced persons who themselves were unable to return home, often due to same problem of their homes being occupied; at the same time many refugees ended up occupying homes abandoned by internally displaced persons, thereby impeding their return as well.<sup>11</sup> Application of the “cessation clauses” for refugees, rather than being a reason to consider internal displacement to also have ended, may require a different approach in cases which result, as the Bosnia case epitomizes, in an even greater number of internally displaced persons as returning refugees become internally displaced.

⇒ *To what extent does the complexity of the relationship between the cessation of refugee status and the issue of when internal displacement ends suggest the need for an integrated and comprehensive approach to refugees and internally displaced persons?*

### **III. The IDP Experience: Different Approaches Taken to Date**

The problem is not that a determination of internal displacement having come to an end is never made in particular situations but rather that this decision occurs on an ad hoc and arbitrary case-by-case

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<sup>11</sup> Amnesty International, *Bosnia-Herzegovina: “Who’s Living in My House?” Obstacles to the Safe Return of Refugees and Internally Displaced People*, AI Index: EUR 63/001/1997 (19 March 1997).

basis, if at all, and on the basis of criteria that differ from one actor to another. ‘Governments decide it, organizations that count decide it or no one decides it.’<sup>12</sup> This section sets out a number of examples where internal displacement has been considered to have ended, with a view to illuminating the various issues and implications involved in these decisions, which should inform the development of universal criteria that are so urgently needed.

The U.S. Committee for Refugees (USCR), which compiles statistics on refugees and internally displaced persons and publishes these in its annual *World Refugee Survey*, is one of the few organizations to have spelled out a position on the issue. USCR considers there to exist two bases upon which to cease to consider an IDP as such: (1) when the person returns home or resettles locally; or (2) when the conditions that caused the displacement have improved to the point that it should be possible for IDPs to return home safely. Using these criteria, USCR has removed from its global figures IDP populations in a number of countries over the years, including: Nicaragua (1992), El Salvador (1993), Eritrea (1994), Ethiopia (1995), South Africa (1995, for those displaced because of apartheid land policies), Mozambique (end 1996) and Guatemala (1998). As USCR acknowledges, in some cases its decision to cease to consider a group of persons as internally displaced proves controversial.<sup>13</sup>

For instance, in 1998 USCR removed the figure of 250,000 IDPs in Guatemala from its annual statistical table on the basis that Guatemalans who wished to return home were no longer prevented from doing so by conflict (which had ended in 1996) or fear of persecution. Others expressed the view that in the absence of compensation, these people should continue to be considered IDPs.<sup>14</sup> While continuing to defend this decision, USCR nonetheless noted in 2000 that many displaced Guatemalans had not as yet been able to return owing to ‘the government’s lack of political will and resources to provide the displaced the land and assistance they would need to return home.’<sup>15</sup> In 2001, the Inter-American Commission on Human Rights noted the existence of a number of persistent impediments to return: ‘the problem of the illegal occupation of land...the deficiencies of the title registry system, the lack of insufficiency of funds to buy land, the insufficiency productivity of the land, and unresolved claims of assistance.’<sup>16</sup> An additional problem faced by many thousands of internally displaced Guatemalans is the continued lack of personal identification documentation (provided for in the peace accords), as a result of which they ‘are unable to effectuate basic transactions, exercise their franchise to vote, gain access to a range of services, or obtain identification documents for their children.’<sup>17</sup> As an indication of the divergence in answers to the question

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<sup>12</sup> Statement by Roberta Cohen, in *Proceedings of the Lecture Series, “Exodus Within Borders: the Global Crisis of Internal Displacement”*, co-sponsored by St. Cyril and Methodius University, the Brookings-CUNY Project on Internal Displacement, UNHCR Skopje, and the Open Society Institute, Skopje (2001), p. 12.

<sup>13</sup> Statement by Bill Frelick, Director, U.S. Committee for Refugees, in *ibid.*, p. 58.

<sup>14</sup> *Ibid.*

<sup>15</sup> USCR, *Country Report: Guatemala* (2000).

<sup>16</sup> Organization of American States, Inter-American Commission on Human Rights, *Fifth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.LV/II.111, Doc. 21 rev. (6 April 2001), see Chapter XIV on the Human Rights of Those Uprooted by the Armed Conflict), pp. 6-7. The report is available at: [www.oas.org](http://www.oas.org)

<sup>17</sup> *Ibid.* It should be noted that the Guiding Principles specify that internally displaced persons shall be issued with all documents necessary for the enjoyment and exercise of their legal rights, including personal identification documents (Principle 20).

of when internal displacement should be considered to end in Guatemala, the Global IDP Database notes that estimates of the number of internally displaced Guatemalans vary widely, ranging from zero to 250,000 at the end of 2001.<sup>18</sup>

USCR's earlier decision to stop counting as IDPs the 3.5 million South Africans forcibly removed from their land as part of the policy of apartheid on the basis that the end of apartheid removed the obstacles to their return (regardless of whether all these IDPs actually did return) raises some similar issues. In particular, more than six years later, most of these former IDPs still await compensation.<sup>19</sup> These examples highlight different approaches taken and answers arrived at by different groups and organizations to the same situation of internal displacement, in particular raising the questions:

- ⇒ *Is the possibility of safe and voluntary return, regardless of whether it occurs, a sufficient criterion in of itself for cessation of internal displacement?*
- ⇒ *Should issues of compensation as well as conditions for the durability of return (ex. access to housing and public services and ability to earn a living) also be taken into account?*

There is also the issue of whether return will ever be a realistic possibility. This issue becomes particularly important to address in situations when internally displaced persons appear to be resettled in other parts of the country. Consider the case of Cyprus, where 250,000 persons were displaced as a result of Turkey's invasion of 1974. USCR, for example, continues to include internally displaced persons in Cyprus in its global statistics. The rationale provided for doing so is three-fold: the lack of a resolution to the conflict; the continued involvement of the United Nations in assisting the internally displaced; and the fact that even though the displaced have been resettled in their current locations for more than two decades, many maintain that they still wish to return home.<sup>20</sup> It is unclear whether this determination will be influenced by the fact that as of end 2001 the United Nations 'no longer considers the humanitarian situation of the displaced population in Cyprus as a problem', as displaced persons in both parts of the island are considered to have been integrated by the respective authorities.<sup>21</sup>

- ⇒ *Do the factors of the lack of a resolution to a conflict producing internally displaced persons and the lingering hope of internally displaced persons to one day return home provide sufficient grounds to consider that internal displacement continues?*

To be sure, the latter factor of internally displaced persons holding on to the hope of return is a complex issue. The experience of exile (internal or external) and detachment from one's homeland typically engenders a mix of deep emotions stemming from the advantages (having found safety and freedom from persecution, better economic opportunities etc.) and disadvantages (detachment from home, community, place of origin) this situation entails. It will often be the case that internally displaced

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<sup>18</sup> Global IDP Database, *Guatemala Summary*, [www.idpproject.org](http://www.idpproject.org)

<sup>19</sup> 'South Africa Survey,' *Economist* (24 February 2001), p. 5. For USCR's rationale for its decision and its basis on the complexity of the issue of compensation for this group of people, see Cohen and Deng, *Masses in Flight*, pp. 38-39.

<sup>20</sup> Roberta Cohen and Francis M. Deng, *Masses in Flight: The Global Crisis of Internal Displacement* (Washington, D.C.: Brookings, 1998), pp. 37-38.

<sup>21</sup> See Global IDP Database, *Cyprus: Profile Summary*, [www.idpproject.org](http://www.idpproject.org)



persons, along with refugees, migrants and other persons who have left or been forced to flee their home area or homeland, will hold on to the dream of return to one's place of home area or homeland for many years, if not throughout their lives. In addition to the case of Cyprus, consider the following anecdote from Burundi: A UNICEF official recently recounted to the author a visit in late 2000 to a resettlement site of people no longer considered to be "internally displaced persons". The shelters built were designed to be permanent, people had access to good quality land enabling them to farm for self-sufficiency as well as generate some income, and the general conditions of the site were considered to be quite good by country standards. The UNICEF official asked a group of IDPs whether they considered this site to be home. They replied that they did *not* consider the resettlement sites "home" and that they fully planned on returning "home", to their places of origin, one day.<sup>22</sup> An individual's sense of attachment to her or his place of origin and association of this place, alone, with "home" clearly can be very powerfully felt, and may remain so regardless of the conditions in areas of resettlement.

It is difficult to gauge, however, whether this dream of return goes beyond sentimental attachment to one's original home town or village to indicate a readiness to return home as soon as this becomes a realistic option. On what basis would internally displaced persons make this decision? Is it sufficient for there to be safety and freedom from fear of persecution in areas of return or would their decision to return be contingent upon other factors? In Peru, though the conflict has abated, a number of internally displaced persons have not returned home. A study in 1998 cited issues of safety and insufficient assistance to returnees, while for others the explanation lay in the fact that they had adapted to life in the city.<sup>23</sup> Indeed, in situations of internal displacement the world over, it is often the case, especially when displacement occurs from rural to urban areas, that the displaced come to prefer the conditions in the cities (where there tend to be more employment opportunities and better access to public services for instance) to those they left behind. Young people in particular are less apt to return home, especially if the skills they develop during displacement are not suited to the rural, often agricultural, life of their parents.

⇒ *Should people whose reluctance to return stems not from concerns for their safety but better socioeconomic conditions in their area of refuge, continue to be considered internally displaced?*

There is also a risk that too much emphasis on return may preclude internally displaced persons from alternative solutions to their situation or otherwise restrict their right to integrate. In Azerbaijan and Georgia, where nearly a million internally displaced persons have been displaced for upwards of a decade, return is the only solution for the displaced that the governments are willing to seriously consider, as it serves the political objective of regaining and then consolidating control over territories lost to insurgent groups. While many internally displaced persons share this goal of return, they also are eager to have more meaningful, dignified and productive lives in the interim: many remain in temporary and dilapidated

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<sup>22</sup> Conversation with UNICEF official, New York, March 2002.

<sup>23</sup> Cohen and Deng, *Masses in Flight*, p. 36.

accommodation and dependent on international assistance but denied the right to own land or property or until recently, to benefit from skills-training and access income-generating opportunities.<sup>24</sup> In Georgia, IDPs are not even able to vote in all elections without risking losing their inclusion on the national IDP registry and the benefits, albeit modest and often severely delayed in delivery, that this entails.<sup>25</sup> These cases raise the question:

⇒ *Does the continued categorization as “IDP” restrict integration? Conversely, would local integration argue against their continued categorization as IDPs?*

In Rwanda, an internal OCHA study of December 2000 found that OCHA and UNHCR field offices had decided that it would be unhelpful to continue to consider as IDPs the large numbers of Rwandans uprooted in two distinct waves of internal displacement. The first group consists of people displaced during the 1994 genocide who are unable or unwilling to return to their areas of origin, since resettlement, supported by the Government, is considered to provide an alternative durable solution. The second group consists of people displaced in the Northwest due to insecurity in 1997-1998, who for the most part were displaced as part of a policy of forced relocation undertaken by the army for “security reasons”. Over the course of the year 2000, the Government implemented the “imidugudu” programme of rural resettlement (sometimes dubbed “villagization”)<sup>26</sup> according to which the majority of these people were resettled in new sites ‘considered to be final’.<sup>27</sup> And yet, the internal OCHA study found that ‘[a]lthough returnees and relocated populations in these new “imidugudu” schemes are not considered internally displaced, the situation of a large proportion of them remains inadequate in terms of coverage of basic needs...up to 370,000 families are still in a situation of vulnerability.’ While these people did have shelter, ‘the need for sustainable livelihoods was often overlooked both by the international community and the Government.’ ‘So many Rwandans [who] have experienced displacement in recent history,’ the report continued, ‘have not yet found...a stable way of life.’<sup>28</sup> Another assessment concludes that the majority of the persons in these sites have been reduced to ‘total dependency’, especially as they are unable to adequately access

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<sup>24</sup> See United Nations Commission on Human Rights, Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng, *Profiles in Displacement: Azerbaijan*, UN Doc. E/CN.4/1999/79/Add.1 (25 January 1999); United Nations Commission on Human Rights, Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng, *Profiles in Displacement: Georgia*, UN Doc. E/CN.4/2001/5/Add.4 (19 December 2000).

<sup>25</sup> In a significant recent development, in March 2002, the Government of Georgia informed the Human Rights Committee that in the light of changes to the Electoral Code, ‘[i]nternally displaced persons were entitled to participate in elections of any kind’ and would ‘not lose their right to receive social assistance when they participated in an election.’ United Nations, *Press Release: ‘Human Rights Committee Takes Up Second Report of Georgia,’* 18 March 2002; United Nations, *Press Release: ‘Torture, Criminal Justice Reform, Religious Freedom Among Issues Addressed as Human Rights Committee Concludes Discussion of Georgia’s Report,’* 19 March 2002. It will be important to monitor the adherence to these commitments; IDP leaders and advocates have informed the author that they were not entirely confident that these assurances would be met in the elections scheduled for later this year.

<sup>26</sup> While the programme generally has been promoted as a means of addressing the housing crisis and supporting economic development, outside observers suggest that it is primarily motivated at preventing further insurgency: the depopulation of outlying rural areas and scattered settlements facilitates the army’s task of ferreting out rebel hideouts; which nonetheless does have the effect of improving the security of farming populations. See Jon Bennett, ‘Forced Relocation in Uganda, Rwanda and Burundi: Emerging Policy,’ *Forced Migration Review*, Issue 7 (April 2000), pp. 28-30.

<sup>27</sup> OCHA, Mission Report: Displacement and Resettlement in Rwanda. Report on Mission to Rwanda, 6-12 December 2000 by Thomas Linde, Senior Adviser on IDPs, OCHA.

<sup>28</sup> *Ibid.*, paras. 12 and 15.

and cultivate land.<sup>29</sup> Removing these two groups of internally displaced populations from the overall tally for the country led OCHA and UNHCR to arrive at a total number of 6,340 IDPs in Rwanda at the end 2000, covering persons for whom such 'durable solutions' had not yet been undertaken as well as several thousand displaced due to drought.<sup>30</sup> These findings, which it must be noted generated considerable discussion within OCHA, beg the question:

⇒ *Is a "durable solution" required in order to consider internal displacement to have ceased and, if so, what constitutes a "durable solution" for internally displaced persons?*

Consider the case of Angola, where it is the policy of the government that the classification of "displaced" holds only for the first six months of displacement; after which people are considered to be "integrated", regardless of whether there has been a change in their circumstances.<sup>31</sup> The RSG on IDPs, in his mission to the country in November 2000, found that many of uprooted Angolans who, under this policy, were considered to be "integrated" were nonetheless in need of protection and assistance and continued to have special needs as a result of having been displaced.<sup>32</sup>

In Colombia, Presidential Decree 2569 enumerates three circumstances under which internal displacement would be considered to have ended: (1) successful return or resettlement, which is defined as entailing "access to economic activity"; (2) exclusion of an individual from the government's central IDP registry; and (3) upon request by the individual IDP. All three factors, however, have been challenged on legal grounds.<sup>33</sup> The first scenario of "successful return or resettlement" to be indicated by the "gain of access to economic activity" is more restrictive than the national law on internally displaced persons (Law 387) which specifies that the condition of displacement ceases 'when stabilization and socioeconomic consolidation is achieved'. This criterion is understood as entailing economic as well as social restitution and would require the government to invest in social and economic infrastructure and income generating projects to support the durability of return or resettlement. The second scenario of exclusion from the state registry of IDPs has been challenged by the Constitutional Court, the Ombudsman's Office and Colombian NGOs on the basis that the registry is simply an administrative mechanism regulating access of IDPs to assistance but has no bearing on the factual situation of being displaced. Indeed, it should be noted that many internally displaced persons fear identification through registration and therefore do not register, yet they remain internally displaced. Many others face considerable bureaucratic and other impediments in becoming officially registered by the Government and consequently in accessing the entitlements that registration as a *desplazado* entails.<sup>34</sup> While removal from the registry may, in the view

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<sup>29</sup> Bennett, pp.29-30.

<sup>30</sup> OCHA Mission Report, para. 10.

<sup>31</sup> Karen Jacobsen, 'Some Problems with Conducting Research on IDP Livelihood Strategies' in *Response Strategies of the Internally Displaced*, *op.cit.*, p. 22.

<sup>32</sup> United Nations Commission on Human Rights, Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng, *Profiles in Displacement: Angola*, UN Doc. E/CN.4/2001/5/Add.5 (25 January 2001). See for example paragraphs 16, 17 and 23.

<sup>33</sup> *Report on Forced Displacement in Colombia, January 2000-May 2001* (GAD: August 2001), pp. 23-24.

<sup>34</sup> United Nations Commission on Human Rights, Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng, *Profiles in Displacement: Colombia*, UN Doc. E/CN.4/2000/83/Add.1 (11 January 2000), paras. 80-82.

of the government, exclude an individual from particular benefits, the very fact that hundreds of thousands of persons who are objectively considered to be displaced are not included on the registry underscores that exclusion from the registry is not an indicator of an individual's *de facto* condition of displacement. Recall from the discussion of the Guiding Principles above that being an "internally displaced person" depends on the existence of objective facts, and not on a process of legal recognition for conferring a special status, which could then be revoked.<sup>35</sup> A similar logic provides the basis for rejecting the third scenario whereby classification as an internally displaced person could terminate upon the request of the individual concerned.<sup>36</sup> Instead of the three scenarios provided for in the Presidential Decree, it is suggested that only when the security of internally displaced persons can be assured and the original causes of displacement are removed that displacement can formally be considered to have ended in Colombia.<sup>37</sup>

Finally, but looking ahead, in Indonesia, where there are currently over a million IDPs, the government has announced that by the end of 2002 there will be none. The RSG on IDPs, in the recent report of his mission to the country in September 2001, queried about the feasibility of ending what is a sizeable problem of internal displacement in Indonesia in such a short time-frame.<sup>38</sup> The implications for the populations involved remain unclear and of potential concern. There is evidence to suggest that IDPs who are unable to return in the absence of a settlement to the conflict that uprooted them may simply become urban poor.

#### **IV. A NEED FOR CRITERIA**

Clearly, there are many different ways of approaching the issue of when internal displacement ends. If one were to ask IDPs, most, including those who have been resettled for several years if not decades, likely would still say that they hold a hope of returning home. This individual sentiment and desire of return to one's home area and community may never fade, however, it must be recognized that it also may not be an entirely reliable indicator of their intentions should safe and durable return become possible. Arguably, it is not a realistic basis for determining when internal displacement ends, at least not for the very practical issues of concern, such as compiling statistics and formulating programmes and budgetary plans for addressing their needs, which have brought this matter to the fore in the international arena.

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<sup>35</sup> This does not, however, preclude administrative measures such as registration of internally displaced persons as a means of identifying those internally displaced persons who are in need of assistance. At the same time, the lack of such registration would not deprive internally displaced persons of their entitlements under human rights and international humanitarian law. On this point, see Kälin, *Annotations*, p. 3.

<sup>36</sup> *Report on Forced Displacement in Colombia, January 2000-May 2001*, p. 24.

<sup>37</sup> Workshop on the UN Guiding Principles on Internal Displacement and the National IDP Legislation in Colombia, Santa Fe de Antioquia, Colombia, 15-17 May 2001, p. 4.

<sup>38</sup> United Nations, Commission on Human Rights, Report of the Representative of the Secretary-General on Internally Displaced Persons, UN Doc. E/CN.4/2002/95/Add.2 (15 February 2002)

But what benchmarks or criteria should be used for determining when internal displacement ends? From the empirical analysis in the last section, a number of questions emerge from the many different ways of approaching the issue and the considerations that these raise (see Appendix for a consolidated list of the questions posed). The approaches taken to date largely centre around the issue of solutions, and are reflected in three possible questions to consider as to when internal displacement ends:

- ⇒ *When there is a fundamental change of circumstances, that is, the situation causing displacement ceases to exist, enabling voluntary and safe return, ie. the refugee analogy?*
- ⇒ *When a person actually returns? But what if their homes and land are occupied by others or there are other socioeconomic factors impeding sustainable return and enabling them to resume productive lives?*
- ⇒ *When an IDP resettles and reintegrates into another area? Some IDPs, after all, may not feel safe returning to their areas of origin or there may not be a change of circumstances, even over a protracted period, enabling them to return. If they are integrated in another area of the country and receive national protection but still hold the hope of return, are they still IDPs? ex. Greek Cypriots*

Another way of demarcating this large issue is to look at the issue of institutional responsibility (both national and international) for the internally displaced. At issue here is not so much the question of institutional mandates but, rather, a consideration of when international and national responsibility ends in terms of undertaking specific measures to address the particular needs of internally displaced persons, compared with the population in general. Internally displaced persons, it was noted in the introduction, have particular needs and vulnerabilities that arise from their condition of displacement and warrant special attention from the government concerned and possibly also the international community. Essentially, then, the issue may be framed as one of needs and obligations to fulfil them. However, this raises the question: *When do the particular needs of IDPs end?* A number of sub-questions follow as to the criteria and method for answering this question:

- ⇒ *Should the benchmark be: when the IDP ceases to need international protection and/or national protection, i.e. the refugee analogy?*
- ⇒ *Should the benchmark also be: when an IDP ceases to require international and/or national assistance? If so, how should “assistance” be defined: would this be limited to emergency assistance or should it also include reintegration and development assistance in support of sustainable return or resettlement?*
- ⇒ *Who makes the decision that protection and assistance are no longer needed? In the case of refugees, UNHCR plays an important role in invoking the cessation clause and the host country decides whether refugees may remain or must repatriate if there are changed circumstances in the country of origin. In the context of internal displacement, however, when the government of the country of origin may be hostile to the internally displaced populations and may even have caused their displacement, putting the responsibility on the government to make these determinations may be problematic. At present, no international organization has a similar authority as that which rests with UNHCR for refugees, to declare that there is no longer a need to provide internally displaced persons with protection and assistance.*

⇒ *When donors reduce or cut off aid, what impact does this have on the categorization of persons as IDPs? Is it helpful to IDPs to consider them as such long after their displacement?*

## **YOUR OWN EXPERIENCE -- ADDITIONAL QUESTIONS TO CONSIDER:**

- (1) How would you or your organization characterize when internal displacement ends? On what basis? Is, for instance, the possibility of safe and voluntary return sufficient or do other factors need to be taken into account?*
- (2) Do you or your organization apply the same criteria in all circumstances or do you find there to be country-specific factors calling for a case-by-case approach?*
- (3) Would application of criteria lead you to reach the same conclusions arrived at in the case examples in this paper? Which, if any, of these examples provides a useful model and why?*
- (4) Why do you or your organization consider it important to reach a consensus on the determination of when displacement ends? What do you consider to be the most compelling reasons (ex. statistics, operational programming etc.) for doing so?*
- (5) Are you or your organization aware of or undertaking any relevant research on the issue of when internal displacement ends? What specific aspects of the issue do you feel need pressing attention? What particular case studies come to mind and why?*

Appendix:

**CONSOLIDATED LIST OF QUESTIONS RAISED IN THE TEXT\***

1. *Should the return of refugees or cessation of refugee status be the determining factor for when internal displacement ends?*
2. *In determining when displacement ends, does UNHCR apply the same criteria for internally displaced persons as it does for refugees?*
3. *To what extent does the complexity of the relationship between the cessation of refugee status and the issue of when internal displacement ends suggest the need for an integrated and comprehensive approach to refugees and internally displaced persons?*
4. *Is the possibility of safe and voluntary return, regardless of whether it occurs, a sufficient criterion in of itself for cessation of internal displacement?*
5. *Should issues of compensation as well as conditions for the durability of return (ex. access to housing and public services and ability to earn a living) also be taken into account?*
6. *Do the factors of the lack of a resolution to a conflict producing internally displaced persons and the lingering hope of internally displaced persons to one day return home provide sufficient grounds to consider that internal displacement continues?*
7. *Should people whose reluctance to return stems not from concerns for their safety but better socioeconomic conditions in their area of refuge, continue to be considered internally displaced?*
8. *Does the continued categorization as “IDP” restrict integration? Conversely, would local integration argue against their continued categorization as IDPs?*
9. *Is a “durable solution” required in order to consider internal displacement to have ceased and, if so, what constitutes a “durable solution” for internally displaced persons?*
10. *When there is a fundamental change of circumstances, that is, the situation causing displacement ceases to exist, enabling voluntary and safe return, ie. the refugee analogy?*
11. *When a person actually returns? But what if their homes and land are occupied by others or there are other socioeconomic factors impeding sustainable return and enabling them to resume productive lives?*
12. *When an IDP resettles and reintegrates into another area? If IDPs are integrated in another area of the country and receive national protection but still hold the hope of return, are they still IDPs?*
13. *Should the benchmark be: when the IDP ceases to need international protection and/or national protection, i.e. the refugee analogy?*
14. *Should the benchmark also be: when an IDP ceases to require international and/or national assistance? If so, how should “assistance” be defined: would this be limited to emergency assistance or should it also include reintegration and development assistance in support of sustainable return or resettlement?*
15. *Who makes and should make the decision that protection and assistance are no longer needed?*
16. *When donors reduce or cut off aid, what impact does this have on the categorization of persons as IDPs? Is it helpful to IDPs to consider them as such long after their displacement?*

\*restated verbatim, in order of appearance, and excluding those re: participants own experience