

Codification of international rules on internally displaced persons

An area where both human rights and humanitarian law considerations are being taken into account

by **Robert K. Goldman**

This past April the Representative of the United Nations Secretary-General on Internally Displaced Persons, Francis M. Deng, presented to the UN Commission on Human Rights, at its 54th session, a report with an addendum entitled *Guiding Principles on Internal Displacement*¹ (hereinafter "Guiding Principles"). The Commission adopted by consensus a resolution² co-sponsored by more than 50 States which, *inter alia*, took note of the decision of the Inter-Agency Standing Committee welcoming the Guiding Principles and encouraging its members to share them with their Executive Boards, and also of Mr. Deng's stated intention to make use of these principles in his dialogue with governments and intergovernmental and non-governmental organizations. These principles are an important milestone in the process of establishing a generally accepted normative framework for the protection of the estimated 20 to 25 million internally displaced persons worldwide.

The Guiding Principles are largely the outgrowth of the conclusions of an elaborate study entitled *Compilation and Analysis of Legal Norms*,

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¹ Text reprinted *infra*, p. 545.

² UN Doc. E/CN.4/1998/53/Add. 2 of 17 April 1998.

which was prepared by a team of legal experts under the direction of Mr Deng and presented to the Commission on Human Rights in 1996.³ The purpose of the study was to determine the extent to which international human rights law, international humanitarian law and refugee law, by analogy, meet the basic needs of the internally displaced in three recognized situations in international law. These situations, which cover most cases of internal displacement, are: (1) situations of tension and disturbances, or disasters in which human rights law is applicable; (2) situations of non-international armed conflict governed by the central principles of humanitarian law and by many human rights guarantees; and (3) situations of inter-State armed conflict in which the detailed provisions of humanitarian law become primarily operative and many fundamental human rights norms remain applicable.

The study concluded that while existing international law covers, albeit in a dispersed and diffuse manner, many aspects of particular relevance to internally displaced persons, there are many areas in which the law provides insufficient legal protection owing to inexplicit articulation or normative and other kinds of gaps. One example of a normative gap is the fact that no international instrument contains an express right not to be arbitrarily displaced. Other such gaps are the absence of a right to restitution of property lost (or compensation for its loss) as a consequence of displacement during armed conflict situations, a right to have access to protection and assistance during displacement, and a right to personal documentation. Further gaps occur where a legal norm is not applicable in all circumstances. For example, because human rights law is generally binding only on State agents, the internally displaced lack sufficient protection in situations of tension and disturbances where violations are perpetrated by non-State players. Another instance of insufficient protection occurs in situations falling below the threshold of application of humanitarian law, in which restriction or even derogation of human rights guarantees might be permissible.

In addition, there are numerous areas where a general norm exists, but a corollary, more specific right relevant to the needs of the internally displaced has not been articulated. For example, although there is a general norm guaranteeing freedom of movement, there is no explicit right to find refuge in a safe part of the country, nor any express guarantee against the forcible return of internally displaced persons to dangerous areas within

³ UN Doc. E/CN.4/1996/52/Add. 2.

their own country. Another example can be found in the area of non-discrimination, where treaties prohibit discrimination, *inter alia*, on the basis of any “other status” of the person concerned. Although this can be interpreted to include the status of being internally displaced, no authoritative body has yet rendered such a decision. Similarly, although human rights treaties prohibit arbitrary detention, the preconditions for lawful detention of internally displaced persons in closed camps are unclear. Finally, there are “ratification” gaps which are still numerous. Such gaps can result in a vacuum as regards legal protection for the internally displaced in those States that have not ratified key human rights treaties and/or the Additional Protocols to the 1949 Geneva Conventions.

These findings were sufficiently compelling to prompt Francis Deng to ask his team of legal experts to assist him in the formulation of a set of guiding principles specifically tailored to meet the needs of internally displaced persons. This document would both restate general principles of protection in more specific detail and address the grey areas and gaps identified in the *Compilation and Analysis of Legal Norms*. It was also felt that restating and clarifying legal norms in a single coherent document could reinforce and strengthen existing protection. Significantly, both the International Committee of the Red Cross and the Office of the UN High Commissioner for Refugees endorsed the preparation of guiding principles relating to the internally displaced on the basis of the conclusions of this study.

The Guiding Principles on Internal Displacement consist of 30 principles which are comprehensive in scope. They identify key rights and guarantees relevant to protecting persons against forced displacement, and to protecting and assisting them both during displacement and during their return or resettlement and reintegration. For the purposes of these principles, internally displaced persons are:

“persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or man-made disasters, and who have not crossed an internationally recognized State border.”⁴

As stated in the document itself, the Guiding Principles reflect and are consistent with international human rights and international humanitarian

⁴ Introduction, para.2.

law. Indeed, many of them, particularly those relating to protection during displacement, are essentially declaratory of customary law. Most of the principles blend basic humanitarian law rules and principles with key human rights guarantees, thereby underscoring the shared purpose of both bodies of law, that is, to safeguard human life and dignity. Many of the principles are either modelled on or are near verbatim transcriptions of provisions that appear in humanitarian and human rights treaties. In addition, the principles relating to return, resettlement and reintegration were largely inspired by and reflect certain basic tenets of refugee law.

It is important to note that these principles do not alter, replace or modify existing international law or rights granted to individuals under domestic law. Rather, they are designed in large measure to provide guidance on how the law should be interpreted and applied during all phases of displacement. By calling on “all authorities and international actors” to respect their obligations under international law, including human rights and humanitarian law, the principles also seek to prevent and avoid conditions that might lead to displacement in the future.

As the most comprehensive, if not authoritative, restatement of norms specifically applicable to the internally displaced, the Guiding Principles should be disseminated as widely as possible. Such dissemination is particularly necessary since the rights of the internally displaced are often disregarded or even violated simply because of lack of awareness. They should prove an indispensable tool for orienting and facilitating the work of States and intergovernmental and non-governmental organizations providing protection, assistance and other necessary services to the internally displaced.
