The Legal Protection of Internally Displaced Persons

Origins, Concepts and Challenges

UN Office for the Coordination of Humanitarian Affairs
Migration and Development Series, International Migration Law
UNITAR, New York 20 June 2007
Overview

- What is the present situation of internal displacement?
- Who is an IDP?
- Do IDPs have rights?
- How is the international community assisting and protecting IDPs?
- What is the role of the RSG on the Human Rights of IDPs?
I. The Present Situation

Magnitude of the Problem

![Bar chart showing the magnitude of IDPs (armed conflict) and IDPs (other causes)]
24.4 million IDPs in 52 countries (Dec 2006):

- Africa: 11.8 Mio
- Americas: 4.2 Mio
- Asia: 3 Mio
- Europe: 2.8 Mio
- Middle East: 2.7
Largest internal displacement situations 2006: Sudan (5 M), Colombia (2-3 M), Iraq (1.7–2 M) Uganda (1.7 M), DRC (1.1 M)

Major new displacement during 2006/7: Lebanon, DRC, Iraq, Israel, Central African Republic, Chad

Major return movements during 2006: Sudan (South), Lebanon, DRC, Uganda, Israel.
**IDPs have special needs ...**

Problems usually not faced by those who remain in their homes:

- Lack of shelter and problems related to camps
- Loss of property and access to livelihoods
- Discrimination because of being displaced
- Lack of identity cards
- Lack of access to services
- Lack of political rights
- Restitution of/compensation for lost property
- Problems of return and integration ...
... and are especially vulnerable

IDPs run a higher risk than those remaining at home:

- to have their children forcibly recruited
- to become victims of gender-based violence
- to become separated from family members
- to be excluded from education
- to be without a job.
II. Who is an IDP?

“... 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 human-made disasters, and who have not crossed an internationally recognized State border”
= two elements:

(1) coercive / involuntary character of movement,
(2) such movement takes place within national borders
III. The Rights of IDPs: The Guiding Principles on Internal Displacement

- 1992: Creation of the Mandate of the Representative of the UN Secretary General on Internal Displacement
- 1994: Request to elaborate an “appropriate normative framework”
- 1998: Guiding Principles on Internal Displacement
- 2005: World Summit: Recognition as “important international framework for the protection” of IDPs
关于指导原则的介绍性说明

1. 国内流离失所在世界上约有2,500万人已日益被公认为当今世界上最悲

剧性的现象之一流离失所往往
是暴力冲突严重侵犯人权和有关事故所造成的惨

Kanuni ongozi kwa uhamisho wa ndani.
Utangulizi: Eneo na kusudi.

(1) Kanuni ongozi hizi zakusudia mahitaji dhahiri ya watu waliohamishwa kindani duniani kote.
“National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction” (Principle 3)

Sovereignty as responsibility
Section II: *Protection from displacement*
*(Principles 5-9)*

*Principle 6: Right not to be arbitrarily displaced*

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

2. Displacement is arbitrary, in particular:
   a) When it is based on ... „ethnic cleansing“
   b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand
   c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests …
   e) When it is used as a collective punishment
Section III: *Protection during displacement (Principles 10-23)*

*Principle 15 (free movement)*

Internally displaced persons have:

(a) The right to seek safety in another part of the country;

(b) The right to leave their country

(c) The right to seek asylum in another country;

(d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.
Principle 18 (assistance)

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

(a) Essential food and potable water;
(b) Basic shelter and housing;
(c) Appropriate clothing; and
(d) Essential medical services and sanitation.
Section IV: Humanitarian assistance (Principles 23-27)

Principle 25
The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities, but international assistance cannot be denied on arbitrary grounds.

Principles 26
Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.
Section V: Post-displacement phase
(Principles 28-30)

Principle 28
Competent authorities have the primary duty and responsibility to establish conditions, as well as to provide the means, which allow internally displaced persons to
(a) return voluntarily, in safety and with dignity, to their homes or places of habitual residence
(b) or to resettle voluntarily in another part of the country.
1. Although internally displaced persons have departed from their homes, unlike refugees they have not left the country whose citizens they normally are:

- They can invoke all human rights and IHL guarantees available to the citizens of that country.
- Applicability of refugee law is not possible and would be dangerous.
2. Internally displaced person experience a very special factual situation and, therefore, have specific needs.

3. It is necessary to restate in more detail those legal provisions which respond to the specific needs of internally displaced persons and to spell them out in order to facilitate their application in situations of internal displacement.

4. Not a binding instrument but a highly authoritative document.
2005 World Summit Outcome:

“We recognize the Guiding Principles on Internal Displacement as an important international framework for the protection of internally displaced persons and resolve to take effective measures to increase the protection of internally displaced persons.”
IV. The Role of the International Community

- No single UN agency with an IDP mandate
- But: Co-operation of several UN agencies (UNDP, UNHCR, WFP, UNICEF, WHO, etc.) and other relevant organizations (ICRC, IOM, INGOs)

  ⇒ Collaborative approach
  ⇒ Cluster approach with sectoral responsibilities
  ⇒ Role of regional organizations (OAS, AU, OSCE, etc.)
1. **Protection**: UNHCR in conflict settings / UNHCR/OHCHR/UNICEF in disasters
2. **Camp management**: UNHCR in conflict settings / IOM in natural disasters
3. **Emergency shelter**: UNHCR in conflict settings / IFRC in natural disasters
4. **Nutrition**: UNICEF
5. **Water and Sanitation**: UNICEF
6. **Health**: WHO
7. **Early Recovery**: UNDP
8. **Logistics**: WFP
9. **Telecommunications**: OCHA/UNICEF/WFP
Other UN Actors

A/46/182 (1991)

- IASC (Interagency Standing Committee)
- OCHA (Office for the Coordination of Humanitarian Affairs)
  - ERC (Emergency Relief Coordinator, John Holmes)
  - OCHA / PDSB / DPSS
- Representative of the UN Secretary General on Internally Displaced Persons, mandate by UN Commission on Human Rights (1992 – 2004: Francis Deng)
Representative on the Human Rights of IDPs

Mandate: Strengthening the international response to the complex problem of internal displacement through:

- International advocacy for improving protection and respect of the human rights of IDPs through dialogue with Governments, as well as non-governmental organizations and other relevant actors
- Mainstreaming human rights of IDPs into all relevant parts of the United Nations system
- Promoting the Guiding Principles
Strategy of the ERC/RSG

- **Goal:** IDPs are able to enjoy their human rights
- **Necessary elements:**
  1. A strong normative framework:
     - Promoting the Guiding Principles
     - Supporting their incorporation into national laws and policies
     - Supporting elaboration of regional instruments
2. Will to protect

- Dialogue with governments, country missions and follow-up visits to affected countries
- Dialogue with other relevant actors,
- Mainstreaming the rights of IDPs into all relevant parts of the UN system
- General advocacy
3. Capacity to protect

- Manuals and guidelines (National responsibility framework – Manual for Law and Policy Makers)
- Technical advise and training (Sanremo courses)
- Research/studies (Consultations with IDPs)

4. Ability to respond to new challenges

- 2004 – 2006 Disaster induced displacement (Operational guidelines on Human Rights and Natural Disasters)
V. Problems and Challenges

- ‘The problem is sovereignty’ (Ogata)
  - but: national responsibility

- Selectivity of responses and ineffective coordination
  - but: cluster approach with sectoral responsibilities

- Insufficient attention to protection (protection gap)
  - but: the Guiding Principles and national policies/laws

- Insufficient reintegration and development support
  - but: need to create conditions for sustainable solutions
Additional information

- Brookings-Bern Project on Internal Displacement:
  - www.brookings.edu/idp
- IDMC/NRC:
  - www.internal-displacement.org
- Office of the UN High Commissioner for Human Rights
  - www.ohchr.org
- Office of the UN High Commissioner for Refugees:
  - www.unhcr.org