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International Response To Internal Displacement: A Revolution In The Making

by Francis Deng

WE ARE ALL FAMILIAR WITH THE IMAGE. A line of tired people drag their possessions down a road that might be anywhere in the world. They are mostly women and children with a look of desperation in their eyes and a long journey ahead. These are persons who have been driven from their homes by war, human rights abuses, persecution and violence. They lack effective protection from their own governments and frequently look to international assistance to meet their basic needs. In a word, one might suppose, they are refugees. Increasingly, however, this image describes persons in a situation very different from refugees, both in terms of legal status and international institutional support, for the simple reason that they have not crossed an international border. For want of a better term, these persons have been called “internally displaced persons” or “IDPs.” At nearly 25 million worldwide, they now outnumber refugees by more than two to one.

Just over ten years ago, the international community began taking its first steps to address the challenge of internal displacement, a human rights and humanitarian issue that has become one of the most pressing of the new century. Important progress has been made in that time, both in terms of the development and growing acceptance of a “soft law” normative instrument, the Guiding Principles on Internal Displacement, and in the creation of an institutional structure to organize and improve the response at the national, regional, and international levels. Yet, new displacement continues at a startling rate worldwide and the conditions for many of those forced from their homes remain dire, even in some states that have formalized their adherence to international norms in this area. After describing the dilemma that internal displacement presents to the international community, this article will trace the development and evolution of international response to date and suggest ways to move forward.

THE DILEMMA OF INTERNAL DISPLACEMENT

MUCH OF TODAY’S INTERNATIONAL HUMAN RIGHTS infrastructure owes its beginnings to the response of the international community to the Holocaust perpetrated by the Nazis on the Jews and other victims in the 1930s and 1940s. One aspect of that response was the 1951 Refugee Convention, inspired by the plight of Jews fleeing Nazi persecution who were frequently stopped at international borders and sent back to their deaths. The Refugee Convention forbids member states from rejecting persons fleeing persecution at their borders and grants other rights essential to survival to potentially unwanted persons entering a foreign country.

However, the refugee definition did not match the needs of many subsequent waves of displaced persons who crossed borders fleeing not individualized persecution, but rather the equally deadly, though more generalized, dangers of war and domestic disturbance. In response, the African Refugee Convention and the Cartagena

Declaration expanded the definition of “refugee” for their signatories to include such people. Many state members of the Refugee Convention *de facto* follow the wider definition included in the latter two instruments, even if they are not parties to them. Likewise, the United Nations High Commissioner for Refugees (UNHCR), today a billion dollar agency dedicated to the support and assistance of refugees, has expanded its own activities to include not only “Convention refugees” but many others fleeing war and violence around the world.

Despite this flexibility, the refugee regime today still excludes from its protection millions – in fact the overwhelming majority – of persons forcibly displaced from their homes worldwide. This is because a basic element of the legal status of “refugee” remains crossing an international border. Those who do not or cannot do so are not covered by this regime (with important exceptions discussed below). However, these persons are as vulnerable – and sometimes more vulnerable — as refugees to the dangers associated with being forced from one’s home, such as increased susceptibility to disease; physical and sexual attack and exploitation; inadequate access to basic necessities, such as food, water, shelter, medicine, and sanitation; and poor prospects for employment, access to arable land, and education. Of course, displaced persons have no monopoly on these horrors in times of war, but experience has shown that they frequently feel them more acutely than those not forced to leave their homes and communities behind.

With the gradual shift in the nature of warfare from inter-state to internal that has characterized the latter portion of the twentieth century, the numbers of internally displaced persons have risen enormously. In 1982, there were 1.2 million internally displaced persons recorded worldwide. Today, as noted above, that figure is estimated at nearly 25 million. The majority of the internally displaced are found in Africa, particularly in the eastern part of the continent. My own country, the Sudan, has the unfortunate distinction of hosting the world’s largest internally displaced population, estimated at over 4 million persons. However, internal displacement is truly a global crisis affecting 52 countries and every continent.

THE INTERNATIONAL COMMUNITY’S RESPONSE

THE INTERNATIONAL COMMUNITY WAS INITIALLY RELUCTANT to intervene in situations of internal displacement. As an “internal problem,” it was seen as something falling within state sovereignty and therefore not the concern of neighboring states or of the global community more generally. However, with the end of the cold war and the growth of a more assertive world vision of the international community’s role in ensuring human rights, the feeling that something must be done prompted action.

THE NORMATIVE FRAMEWORK

In 1992, the United Nations Commission on Human Rights called upon the Secretary-General to appoint a representative on internal displacement. I was honored to be selected for that post. As my

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first task, requested that I study the normative framework for internal displacement in international law and suggest appropriate action. I assembled a team of legal experts who, over the next few years, assisted me in exhaustively studying international law as it applied to the internally displaced. We found that existing human rights and humanitarian law already provided a great many guarantees needed by the internally displaced, but that gray areas and gaps existed in this coverage, that the rules themselves were scattered among numerous instruments and not easily accessible to those who might most benefit from them, and that implementation of existing law was inadequate. The latter problem reflected the traditional conceptual division between the refugee and human rights regimes – a barrier that many are beginning to see as artificial and counter-productive.

I reported our findings to the Commission and recommended that a new normative document focused on internal displacement be developed to encourage better implementation of existing law and to address areas where the existing law was unclear. Both the Commission and the General Assembly welcomed my recommendations in successive resolutions and encouraged me to proceed. After considering the possibility of advocating a new treaty for the internally displaced similar to the Refugee Convention, my legal team and I decided instead to opt for a “soft law” document compiling and clarifying

unsafe (Principle 15(d)). They address all “phases” of displacement, including (a) prohibition of arbitrary displacement in the first instance; as well as provisions for the humane treatment of persons who are legitimately displaced; (b) rights to assistance and protection while displaced; and (c) rights to assistance and protection in voluntary return, resettlement, or reintegration and corollary rights to recuperate or be compensated for lost property. They also affirm the rights and duties of humanitarian assistance providers. The overarching rationale and foundation of the Principles is a positive interpretation of the notion of sovereignty as entailing responsibility, as stated in Principle 3: “[n]ational authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.” At the same time, they call upon all relevant actors – including “non-state actors” (i.e. rebel armies) – to respect the rights of the internally displaced.

Although based on existing law, the Guiding Principles were considered to be very sensitive when first presented to the Commission in 1998. For this reason, we did not ask that they be “adopted” by that body, but rather that it “take note” of them, and also that it take note of my plans to use them in dialogues with states and other actors. Even before their formal submission to the Commission, the Inter-Agency Standing Committee (IASC), comprised of the heads of the operational agencies of the UN system, the International Committee of the Red Cross (ICRC), the International Organization of Migration, and the representative non-governmental organizations endorsed the Guiding Principles and decided to bring them to the attention of their governing bodies and field staff to guide them in their work. The Commission also took note of the action taken by the IASC. In subsequent years, resolutions of the Commission and the General Assembly have grown gradually warmer in their descriptions of the Principles. Last year, both bodies “express[ed] [their] appreciation of the Guiding Principles on Internal Displacement as an important tool for dealing with situations of internal displacement” and “encourage[d] all relevant actors to make use of the Guiding Principles when dealing with situations of internal displacement.”

These resolutions also “welcome[d] the fact that an increasing number of States, United Nations agencies and regional and non-governmental organizations are applying them as a standard,” and indeed, the growth in acceptance of the Guiding Principles at all of these levels in the last five years has been remarkable. Supportive resolutions and decisions have been adopted by the Organization of African Unity (OAU) Commission on Refugees, the Commonwealth, the Economic Community of West African States (ECOWAS), the Inter-Governmental Authority on Development (IGAD), the Inter-American Commission on Human Rights, the Organization for Security and Cooperation in Europe (OSCE), and the Council of Europe’s Parliamentary Assembly. A number of state governments, including Angola, Burundi, Colombia, Liberia, and Sri Lanka have adopted policies and/or laws based at least in part upon the Guiding Principles, and several other states are currently considering plans to follow suit. Even some rebel groups have begun to make active use of them, including the Sudan’s Peoples Liberation Movement/Army, which has referred to them in its consideration of its own internal rule-making on dealing with the internally displaced. Moreover, United Nations agencies, non-governmental organizations, local civil society representatives, and internally displaced persons themselves around the world are making increasing use of the Guiding Principles

“Principles restate existing human rights and humanitarian law and also apply refugee law by analogy where human rights and humanitarian instruments are not immediately clear”

existing law. We did so to avoid the possibility that a new document might become the occasion to “renegotiate” and thus weaken existing rights and because the creation of multi-lateral human rights treaties is an extremely slow process – sometimes taking decades or even longer to complete. There was an urgent need for a normative response to the crisis.

Thus, in 1998, we completed the Guiding Principles on Internal Displacement (U.N. Doc. No. E/CN.4/1998/53/Add.2 *also available at* http://www.brookings.edu/fp/projects/idp/gp_page.htm) and presented them to the Commission on Human Rights. The Guiding Principles restate existing human rights and humanitarian law and also apply refugee law by analogy where human rights and humanitarian instruments are not immediately clear, such as whether a person can be sent back to his home area within a country if conditions there are

in their own programs and in advocacy with governments for better conditions for the internally displaced.

I am often asked whether the Guiding Principles can be considered “law,” given that they have not been formally adopted by states like a treaty. To the extent that they restate and/or correctly interpret existing binding instruments, the rules expressed by the Guiding Principles are undoubtedly binding on states party to the underlying instruments. More broadly, however, the growing acceptance of the Guiding Principles is helping them to grow into an international norm, whether strictly “legal” or not, that courts, policy makers, and advocates are using more and more “as a standard,” as the Commission and General Assembly rightly put it. Thus, for example, the Colombian Constitutional Court decided in opinions issued in 2000 and 2001 that although “the Principles have not been formalized by means of an international treaty,” they “should be taken as parameters for the creation of new rules and interpretation of existing rules in the area of regulation of forced displacement by the state,” and “all relevant government personnel . . . must conform their conduct not only to constitutional requirements but also to those of the [Guiding] Principles.”

agency focused on internally displaced persons, designation of an existing agency (such as UNHCR) to assume responsibility for them, and collaboration among all the various relevant agencies. The third option has been preferred over the last decade and institutions and policies have been put in place to enhance its potential.

In 1990, the General Assembly assigned to United Nations “Resident Coordinators” (who are UN officials otherwise charged with coordination of development activities) the responsibility for coordinating assistance to internally displaced persons in the field by the operational agencies. In 1991, the Assembly created the post of Emergency Relief Coordinator (ERC) at the level of Under-Secretary-General to coordinate the system-wide response to emergency situations, and the following year it established the Inter-Agency Standing Committee (IASC), in which all the major humanitarian and development agencies and organizations and NGO umbrella groups participate. As part of the Secretary General’s reform program in 1997, the ERC was formally entrusted with overall responsibility for the coordination of assistance and protection to internally displaced persons and the post of “Humanitarian Coordinator” was created (and frequently delegated as a second “hat” to Resident Coordinators) and assigned the

“. . . existing policies are frequently ignored or not even known in the field, turf battles among agencies hinder speedy and effective response in some countries, and, in others, no agency or organization appears ready to take a major role in assisting IDPs.”

THE INSTITUTIONAL RESPONSE

In parallel with the development and promotion of a normative framework for internal displacement, the international community has become more active and coherent in its own operational or institutional response to internal displacement over the last decade. However, much progress remains to be made.

As noted above, UNHCR has never taken overall responsibility for internally displaced persons because they do not fall within the “refugee” definition, although it has done so for a sizeable minority of the internally displaced – currently covering approximately 5 million persons – mostly as an extension of their refugee coverage in situations also involving IDPs or as a result of specific requests in ad hoc General Assembly resolutions over the years. However, this still left approximately 20 million persons for whom no agency or organization had a leading role and although many were involved in some way in assisting internally displaced persons in various parts of the world (e.g. food assistance from the World Food Program, support for women and children from UNICEF, protection and assistance in situations of active armed conflict by ICRC, etc.), gaps in coverage were common – especially in the area of protection.

Early in my tenure, I identified three options for solving this “mandate gap” for internally displaced persons: creation of a new

task, *inter alia*, of ensuring coordination for IDPs at the country level.

At the headquarters level, a Senior Inter-Agency Standing Committee on Internal Displacement was formed to facilitate inter-agency cooperation on the issue and, in 2002, a dedicated “IDP Unit” was formed within the Office for the Coordination of Humanitarian Affairs (OCHA) to assist the ERC in his duties with regard to IDPs. The IASC also remained engaged, generating policy and guidance for field collaboration, such as the 2000 policy paper on protection of internally displaced persons, which carefully laid out the responsibilities of agencies and their partners in the field. Moreover, other human rights organs of the United Nations, including the bodies that interpret the major human rights treaties and a number of human rights rapporteurs, experts, and working groups have increasingly attempted to address issues of internally displaced persons as appropriate to their various mandates.

Notwithstanding this growing institutional and policy structure, however, problems of implementation continue to plague the “collaborative approach” to internal displacement. A series of major UN-sponsored studies of IDP protection, assistance and institutional structures within the UN and the wider international humanitarian community undertaken in the last year have revealed that existing policies are frequently ignored or not even known in the field, turf bat-

ties among agencies hinder speedy and effective response in some countries, and, in others, no agency or organization appears ready to take a major role in assisting IDPs. The coordinating roles of the ERC, Resident Coordinators, and Humanitarian Coordinators have not yet resulted in a predictable and coherent system globally. The UN is currently undergoing an internal process of reform and enhancement of the collaborative approach in response to these studies.

THE WAY FORWARD

IN THE END, FUNDAMENTAL CHANGE FOR THE BETTER for internally displaced persons must come from their own societies. It is national governments who hold the primary responsibility for ensuring the assistance and protection of persons within their jurisdictions. Rebel groups are responsible for protecting internally displaced persons and other civilians pursuant to humanitarian law. Local civil society and national human rights institutions are some of the best engines for reform within societies. However, the international community can and should continue to play an important role in supporting domestic actors in their responsibilities.

Although the progress of the Guiding Principles to date has exceeded our initial expectations, they are still in their infancy as an international norm. More governments of states with large IDP populations should be encouraged to adopt comprehensive policies and/or laws addressing internal displacement based on the rights outlined in the Guiding Principles. Internally displaced persons and their advocates should be educated about their rights as outlined in the Principles. National human rights institutions have particularly strong potential in many countries for facilitating the absorption of these international rights into domestic policy and practice and should be supported to do so. Additional and stronger expressions of support from international and regional organizations would also contribute to the increased use of the Guiding Principles.

It remains a possibility that the Guiding Principles, like other “soft law” instruments before it, could someday serve as a stepping stone for the creation of an international treaty. At present, there appears little appetite among states for such an endeavor, and the same concerns which led us to take the soft law route still apply. On the other hand, the situation might be different at the regional level and possibilities there should be fully explored. Moreover, advocates should be aware of complementary sources of law, including, of course, the human rights and humanitarian instruments underlying the Guiding Principles themselves, but also parallel developments, such as the rising minority rights regime in Europe and the growth of international criminal law (particularly with regard to the prosecution of “deportation” and “transfer” as war crimes and crimes against humanity).

At the institutional level, the international community can do more to close the gaps and ensure a more predictable and comprehensive system of support for internally displaced persons. While it has been recognized that all humanitarian actors can have a role to play in enhancing the protection of internally displaced persons, certain agencies and organizations, such as UNHCR, the International Committee of the Red Cross and the United Nations Children’s Fund, have particular protection-related mandates and expertise that should be fully exploited. Lines of accountability must be strengthened and leadership by those charged with coordinating the various agencies’ response will be critical. Donor states can also improve the consistency

and focus of their patterns of funding to guard against the neglect of “forgotten emergencies” in which so many internally displaced persons are trapped.

The international community can also contribute greatly on the political front. Long-term solutions to internal displacement often (but do not always) require the end of conflict. International intervention has been crucial to recent breakthroughs in ending long-standing conflicts in countries such as Angola, the Democratic Republic of Congo, Sierra Leone, and Sri Lanka, permitting hundreds of thousands of internally displaced persons to return to their homes. Security Council members have become more willing to approve rigorous peace-keeping mandates, allowing for the protection of displaced persons and other civilians. Focused pressure on governments to abide by international norms and to end ethnic and regional discrimination, which so often is at the root of conflicts, can also bring positive results.

CONCLUSION

GIVEN THE DAUNTING SIZE OF THE GLOBAL CRISIS of internal displacement, its political, legal, and bureaucratic complexity, and the frequently intractable conflicts generating it, it would be easy to become pessimistic about when we can hope to see its end. However, in crisis lies opportunity. Awareness of the problem of internal displacement is much greater today than it was ten years ago, as is the willingness in many states and in the international community to do something about it. A normative framework has been developed and is gathering steam worldwide. Institutional arrangements and sensitivity have improved over the last decade, although much remains to be done. The lives of many internally displaced persons have already been improved as a result. Last year, for example, although 3 million persons were newly displaced worldwide, a nearly equal and offsetting number were able to return to their homes. Although we will not soon end war and violence, we should retain confidence that we can mitigate their effects and bring real change. There is no room for either pessimism in the face of this awesome crisis or complacency in satisfaction with the progress so far made.

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