

## Lessons Learned from the Development of the Guiding Principles on Internal Displacement

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### 1. Introduction

In the last decade of the twentieth century, the explosion of civil wars emanating from and following the Cold War brought into view millions of persons forcibly uprooted inside their countries by conflict, communal violence and human rights violations. Called internally displaced persons (IDPs),<sup>i</sup> they suffered from extreme destitution and were vulnerable to all manner of human rights abuse. Yet, they received little or no protection from their governments, which often did not have the capacity or the willingness to provide for their wellbeing and security, or from the international community.

Because IDPs did not cross an internationally recognized state border, the 1951 Refugee Convention relating to the Status of Refugees did not apply to them, and the UN High Commissioner for Refugees (UNHCR) had no automatic mandate to assist them. To be sure, the International Committee of the Red Cross (ICRC) had long been involved in protecting civilians in armed conflict, but the magnitude of the IDP problem was beyond its scope, different phases of displacement beyond its mandate, and its access often limited. As UNICEF's former Executive Director, James Grant, observed in 1993, "The world has established a minimum safety net for refugees. Whenever people are forced into exile...refugees can expect UNHCR to be on the scene in a matter of days or on the outside, a matter of weeks. This is not yet the case with respect to internally displaced populations" (Grant 1993).

By the 1990s, the number of persons internally displaced by conflict rose to 20 to 25 million, almost twice the number of refugees (Cohen and Deng 1998, 3, 32). As concern mounted over the gravity of the situation, international humanitarian organizations began to ask how to define IDPs, what rights they had and what responsibilities governments and the United Nations had toward them. The UN began to explore institutional capacities to protect and assist IDPs (see Cuénod 1991), while a 1992 *Analytical Report* of the Secretary-General found "no clear statement" of IDP rights in international law and recommended that the Commission

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on Human Rights develop “one comprehensive, universally applicable body of principles” from existing standards to assure effective human rights protection (UN 1992, paras 103–4). The report also called for the designation of a focal point on internal displacement within the UN human rights system (UN 1992, para. 110). As Abdulrahim Farah, the UN Under-Secretary-General for Special Political Questions, told the General Assembly, “Clearly, the problem has begun to rival that of political refugees, both in scope and severity” (Farah 1989).

The appointment in 1992 by the Secretary-General of a Representative on Internally Displaced Persons, at the Commission’s request (UN Commission on Human Rights Resolution 1992/73), reflected not only concerns about the growing number of IDPs and their desperate material and protection needs, but also the legal and institutional gaps that had become evident in the international system. Francis M. Deng, the first Representative of the Secretary-General (RSG), was therefore asked by the Commission to look into the applicability of human rights and humanitarian law, as well as analogous refugee law, to IDPs. Under his guidance, a team of lawyers developed a compilation of existing norms, which found significant gaps and grey areas in the law despite its broad coverage (UN Commission on Human Rights 1995, paras 413–6). They recommended a restatement of the law for the better protection of IDPs, and the Commission and General Assembly expressed support for the development of a normative framework (see for example UN Commission on Human Rights Resolution 1997/39, operative para. 6; UN General Assembly (UNGA) Resolution A/RES/52/130, 1998, operative para. 6).

In 1998, Deng introduced into the Commission the Guiding Principles on Internal Displacement (UN Commission on Human Rights 1998). Their purpose was to 1) define persons forcibly uprooted within their own countries; 2) identify the rights to which they were entitled; and 3) set forth the obligations of governments, international organizations and non-state actors to these populations. The 30 principles were based on international human rights law, international humanitarian law (IHL) and refugee law by analogy and covered the broad range of IDP needs prior to displacement (or protection against arbitrary displacement), during displacement and during return or resettlement and reintegration.

Since the Guiding Principles were based on existing law, as opposed to new law, they were prepared, reviewed and finalized by experts outside the traditional intergovernmental process. Nor were they officially “adopted” by a governmental body (the Commission on Human Rights and the General Assembly only took note of them). Nonetheless, they quickly gained broad international acceptance and authority. The Secretary-General strongly promoted the Principles, and governments, international organizations, regional bodies, domestic and regional courts and nongovernmental organizations began to cite and apply them widely. In 2003, the Commission expressed “appreciation” of the Guiding Principles “as an important tool for dealing with situations of internal displacement” and welcomed the fact that “an increasing number of States, United Nations agencies and regional and non-governmental organizations are applying them as a standard” (UN Commission on Human Rights Resolution 2003/51, 23 April). General Assembly resolutions did likewise (UNGA Resolution A/RES/54/167, 1999, and A/RES/56/164, 2001). In 2005, 193 heads of state at the World Summit recognized the Principles in their Outcome document as an “important international framework for the protection of IDPs” (UNGA A/RES/60/1, 2005, para. 132).

The wide usage and success of the Principles have led human rights experts to study them as a model for developing new standards in other areas (see for example, UN 2005a [henceforth Pinheiro Principles], UN 2011). Generally, what has attracted expert attention is both the innovative non-governmental process by which they were developed, as well as the exercise of restating existing law so as to address grey areas and gaps and make the law more specific to the needs of a particular group.

The purpose of this chapter is to identify the lessons learned from the development of the Guiding Principles on Internal Displacement that may prove useful to those seeking to develop standards in new and emerging fields. In particular, this chapter is designed to assist the Institute for the Study of International Migration (ISIM) at Georgetown University

in its consideration of possible standards on crisis migration. The limitations of developing guiding principles will also be discussed.

## 2. Initiating New Standards

Contributing to the successful development and outcome of the Guiding Principles on Internal Displacement were several salient factors.

### **Establishing need and widely publicizing the issue**

The non-governmental organizations (NGOs) and research institutions pioneering the subject of internal displacement recognized that prior to initiating new standards, it was first important to “put the issue on the map.” Beginning in the mid-1980s, they developed statistics about the upsurge in numbers of persons in “refugee-like situations” in their own countries, called attention to their desperate conditions, and sought to close the gap in the international system when it came to IDPs.<sup>ii</sup>

International humanitarian staff also began to call attention to the problem, finding themselves increasingly confronted with IDPs in the field and not having “a piece of paper” to turn to that set forth IDP rights and the obligations of governments and international organizations toward these populations (see Cuénod 1991; Cohen and Deng 1998, 126–8, 184–6; Ogata 2005, 19, 25, 170). The UN High Commissioner for Refugees, Sadako Ogata, called for “clearer standards” for internally displaced populations, especially with regard to the right to remain, the right to return and the right to humanitarian assistance and protection (Ogata 1993, 82–4). Agencies like the World Food Program (1994) pointed to the importance of addressing their special needs, which the Secretary-General’s *Analytical Report* considered different from those of the general population and thus requiring international attention (see UN 1992 paras 6–7, 37, 40–2, 48, 52, 58, 70, 72; Bagshaw 1999).

At the Commission on Human Rights, NGOs took the primary lead. The Quaker UN Office, the Refugee Policy Group and the World Council of Churches developed a joint strategy to achieve the appointment of a UN rapporteur or expert to address the human rights dimension of the problem and to oversee the development of international standards (see for example UN 1991; Cohen 1990; Bagshaw 1999; Weiss and Korn 2006, 20–3). Their advocacy paved the way for the Commission’s acknowledgment of the problem of internal displacement and its taking steps to address it.

### **Having a UN appointed expert lead the process**

The 1992 appointment by the Secretary-General of a Representative on IDPs was critical to governmental acceptance of the idea of developing Guiding Principles. Deng made one of his principal objectives a normative framework for IDPs. In his statements and reports to the Commission and General Assembly, in his dialogues with governments, and in his meetings with regional organizations and NGOs, he emphasized the importance of developing international standards for IDPs. From 1992 to 1998, he not only kept states apprised of the progress made in compiling the norms applicable to IDPs and the drafting of the Guiding Principles, but also mobilized UN agencies, regional bodies and NGOs in support of this endeavor. He was reinforced by the Project on Internal Displacement at the Brookings Institution, which—given the limited resources and staff of the Office of the UN High Commissioner for Human Rights (OHCHR)—organized the process leading to the Guiding Principles and mobilized the resources to bring together experts, UN agencies and other interested constituencies (see Weiss and Korn 2006, 41–2, 51, 57, 69). The association between a UN expert and an independent institution was essential to the development of the Principles.

### **Support from key governments**

Two governments, Austria and Norway, paved the way for the Principles by taking the lead in introducing resolutions

on IDPs into the Commission and General Assembly each year. Both used their diplomatic skills to attract more than 50 co-sponsors for the IDP resolutions, and by means of these resolutions reinforced the efforts of the RSG to develop a normative framework for IDPs. When opposition arose to including the words “legal framework” in the resolutions (a legally binding treaty was perceived as a possible threat to state sovereignty), both governments managed to achieve consensus resolutions that lent support to the development of guiding principles (see UN Commission on Human Rights Resolution 1997/39; UNGA A/RRES/52/130 1998; Cohen 2004a, 468; Weiss and Korn 2006, 28–9, 38, 40, 61).

And when the Principles were introduced, Austria skillfully managed to avoid pitfalls that had buried another set of humanitarian standards developed around the same time with ICRC support (Weiss and Korn 2006, 61–2). For example, Austria managed to steer the resolution away from calling for the circulation of the Principles to governments and international organizations for comment, which could have held up, complicated and undermined their acceptance. Instead, Austria made sure that the resolution “took note” of the Guiding Principles as drafted and of the intention of the RSG to use them in his work. Thereafter, both Austria and Norway helped strengthen the resolutions in the Commission and General Assembly so that they expressed appreciation and support for the Principles.

The government of Switzerland also played a valuable role. When Sudan, Egypt and Algeria raised questions in 2000 about the authority of the Principles and the process by which they were developed (see below), the Swiss Ambassador to the UN in New York hosted a series of informal meetings to facilitate a dialogue (see Cohen 2004a, 474–5; Weiss and Korn 2006, 113–4). The meetings brought the legal team together with the governments expressing reservations about the Principles as well as with governments and organizations like the African Union which supported them. The result was a building of consensus around the Principles. Those with reservations later expressed support (Cohen 2004a).

### Having experts draft the Principles

The RSG turned to legal experts to compile the law and then to draft the Guiding Principles because he wanted a non-political process given the sensitivities around the subject, and because an intergovernmental process did not seem necessary. “No new law in the strict sense of the word” needed to be created “in most cases,” observed Walter Kälin, chair of the process (Kälin 2002, 8). In compiling the law, the legal team had found that IDPs received a good deal of coverage under existing law and therefore had recommended the restatement of the law to address grey areas and gaps: the *Compilation and Analysis of Legal Norms* had identified seventeen areas of insufficient protection, owing to inexplicit articulation of the law and eight areas of clear gaps (see UN 1998 Add.1).

The legal team consisted of experts from law faculties, human rights organizations, the ICRC, UNHCR and OHCHR. In the case of the ICRC, its representatives sought to make sure that the Principles did not in any way conflict with or undermine the provisions of the Geneva Conventions. In the case of the UNHCR, its representative sought to ensure that the right to asylum was protected and the application of refugee law by analogy done effectively.

This approach to standard-setting was different from the traditional process of states drafting a treaty or declaration. When asked at a later point whether the Guiding Principles should undergo an intergovernmental process, Deng replied:

Considering that the Guiding Principles were developed in response to successive resolutions of the Commission on Human Rights and the General Assembly and the wide support they have received since their presentation to the appropriate UN bodies, it would not be strictly correct to assume that they have not been considered in pertinent intergovernmental bodies, even though formal adoption was not called for, given their nature as guidelines restating existing law and thereby facilitating their implementation (Deng 2001).



### **A broad-based consultative process**

The development of the Guiding Principles (and the putting together of the Compilation) benefitted from a broad-based consultative process that was asked to comment on the thorny issues that arose and mobilize support for the Principles. As noted elsewhere by the author, “Deng and I recognized that principles developed in a closed room by a team of lawyers would never see the light of day unless there was international understanding and support for those principles” (Cohen 2004a, 465).

A wide range of experts were invited to the consultations from regional organizations, international humanitarian and development organizations, humanitarian and human rights NGOs, women’s and children’s advocacy groups, legal associations and research institutions. It was at a conference of 50 such experts in Vienna in 1998 that the Guiding Principles were finalized.

Although the broad-based process was expensive, time-consuming, and sometimes contentious, the outreach paid off handsomely. By the time Deng presented the Principles to the Commission in 1998, all the international humanitarian, human rights, and development organizations and NGO umbrella groups that constituted the UN’s Inter-Agency Standing Committee (IASC) had formally endorsed the Principles. The IASC Chair, Under-Secretary-General for Humanitarian Affairs, Sergio Vieira de Mello, made known his support for the Principles before they were presented to the UN,<sup>iii</sup> and leading IASC members like UNHCR, the ICRC, UNICEF and the World Food Program delivered statements before the Commission in support of the Principles. This influenced many governments to respond positively: if the operational agencies found the Principles of use, then governments were more disposed to support them. The process also mobilized NGO support: at least five, including the International Commission of Jurists and the Norwegian Refugee Council, joined together to lobby governments at the Commission to endorse the Principles.

### **Accepting political realities**

Although some of those in the consultative process favored the drafting of a declaration or even a convention for optimum IDP protection, the RSG, in deference to political realities, chose guiding principles. He pointed out that first, most governments were not in favor of a legally binding treaty which they feared could infringe on state sovereignty. In requesting Deng to develop an “appropriate” framework, the Commission on Human Rights had deliberately avoided the term *legal* in most of its resolutions (see for example UN Commission on Human Rights Resolution 1996/52). The ICRC also expressed reservations about embarking on a treaty, fearing that it might undermine the Geneva Conventions, whereas restatement of the law, it argued, could reinforce and strengthen existing protections. Second, Deng was mindful of humanitarian needs. Treaty making could take decades, whereas there was urgent need for a document now to address the emergency needs of IDPs. Third, as noted earlier, sufficient international law already existed applicable to IDPs. What was required was to bring together the myriad of provisions in those laws dispersed in a large number of instruments, and adapt them to the specific needs of the internally displaced.

## **3. Drafting the Guiding Principles**

In drafting the Guiding Principles, a number of choices were made that could prove instructive to others involved in developing standards.

### **Opting for a needs-based approach**

One of the legal team’s principal members, Robert Kogod Goldman, proposed the “needs-based approach” when the team was compiling the norms applicable to IDPs. He argued that it was important to identify the needs of IDPs before examining the extent to which the law adequately addressed those needs. Internal displacement after all,

...often breaks up the nuclear family, cuts off important social and cultural community ties, terminates

stable employment relationships, precludes or forecloses formal educational opportunities, and deprives those in need of special protection, such as infants, expectant mothers, and the sick, of vital public/private sector services (UN 1998 para. 9).

Understanding those needs was critical to developing legal protections. Goldman also recommended looking beyond hard law (that is, legally binding agreements) to customary law, court decisions, resolutions and other soft law instruments in developing standards. This approach contrasted with the “rights-based approach” proposed by other lawyers, especially from Europe, who wished to rely exclusively on “hard” law to decide what rights IDPs have (see UN Commission on Human Rights 1995 Add. 3).

In merging the two approaches, Kälin emphasized that the *Compilation and Analysis* “approaches displacement from the perspective of the actual needs of internally displaced persons” (UN 1998 para. 6), including life and personal security needs, subsistence needs, movement-related needs, the need for personal identification, property-related needs and so forth. The identification of these needs derived from a large number of internal and public UN reports, NGO and expert findings, and the missions of the RSG.

The Guiding Principles thus affirm in their opening that they address “the specific needs” of IDPs. In identifying these needs, Deng was careful to point out that this was not intended to confer on IDPs a privileged status or to claim that they are always worse off than non-displaced populations, but to ensure that in a given situation their unique concerns are addressed along with those of others (Cohen and Deng 1998, 26–9).

### **Basing the Principles on three branches of the law**

In 1994, High Commissioner for Refugees, Sadako Ogata, told the Commission on Human Rights:

I believe the Commission in its work to strengthen the protection of the internally displaced must seek to bring about a convergence of refugee law, international human rights law and international humanitarian law... [E]ach has a useful contribution to make to the protection of the internally displaced.... It is only through such convergence that the lacuna in the law can be addressed (Ogata 1994).

The *Compilation and Analysis* presented by Deng to the Commission in 1996 examined the three branches of the law, since they all pertained directly or by analogy to IDPs. Indeed, the legal team found that the situations covering most cases of internal displacement were:

- situations of tensions and disturbances falling short of armed conflict – to which human rights law applies;
- situations of non-international armed conflict (full scale internal conflict) – to which international humanitarian law applies as well as many human rights guarantees; and
- situations of interstate armed conflict – to which humanitarian law primarily applies, although important human rights guarantees are also operative (Kälin and Goldman 1998).

When it came to refugee law, certain provisions, it was found, could be adapted by analogy to address IDP needs as well (Kälin 2008a, 85). Refugee law, to be sure, applies to those who cross borders, but IDPs are often in refugee-like conditions in their own countries, making the analogy possible. For example, the basic principle of refugee law, *non-refoulement*,<sup>iv</sup> inspired Guiding Principle 15 (d), which affirms that IDPs have a right to be protected against forcible return to situations of danger.<sup>v</sup> At the heart of this principle is also human rights law (e.g., on torture and deportations) and the principle is now widely considered a part of customary law, all of which led Kälin to conclude that, “it is clear that states bear an affirmative duty to ensure that internally displaced persons are not compelled to return to or be resettled in places where their lives or liberty are at risk” (Kälin 2008a, 70).

Additional provisions in the Guiding Principles were also derived from the refugee experience. UNHCR's Executive Committee (EXCOM) Conclusions and UNHCR's regulations (e.g. the Guidelines on the Protection of Refugee Women and on the Protection and Care of Refugee Children) were found to be "easily applicable by analogy to women [and children] who are internally displaced" (Kälin 2008a, 88). And these provisions were reinforced by provisions in human rights and humanitarian law. Thus Guiding Principle 18, which speaks of "the full participation of women" in the planning and distribution of supplies, was drawn in part from an EXCOM Conclusion on Women and Girls and from UNHCR's Guidelines on the Protection of Refugee Women (Kälin 2008a). Guiding Principles 17, 20 and 23, which address family life, documentation, and education were also drawn, in part, from EXCOM Conclusions (Kälin 2008a, 79–80, 94–5, 107, 110; Kälin and Goldman 1998, 112).

In its work with displaced populations, UNHCR itself has applied refugee guidelines to IDPs, and some UNHCR EXCOM Conclusions on women and children expressly cover both refugees and IDPs. However, it must be borne in mind that IDPs are mostly citizens of their own countries and entitled to the same rights as other citizens. Applying analogous refugee law to IDPs should not be done in cases where the law could weaken IDP rights, since under refugee law refugees are in most cases not guaranteed equal treatment with citizens.<sup>vi</sup>

### **Sticking to the law in addressing gaps and grey areas**

The Guiding Principles in their Introduction affirm that they "reflect and are consistent with international human rights law and international humanitarian law." Sticking to the law was a deliberate choice of the legal team, which did not envisage its role as one of creating new law. To be sure, the temptation often existed to improve upon the law, but the team did not stray or stray very far from existing law. In fact, one of the strengths of the Principles was that although not a binding document *per se*, they were based on binding law.

Restating existing law entailed setting forth norms largely binding upon states and then tailoring them to the needs of IDPs. For example, after affirming that every human being has the right to recognition before the law, Principle 20 explains how to interpret that norm "to give effect to this right for internally displaced persons," namely that "the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights." Similarly, after restating that every human being has the right to respect of his or her family life, Principle 17 asserts, "To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so."

In cases where the team found clear gaps and grey areas in the law, they drew upon what they considered *implicit* in the law. They thus affirmed a right not to be arbitrarily displaced (Principle 6) even though no such provision exists in human rights law. To reach that conclusion, they drew upon provisions in human rights law (freedom of movement and choice of residence, freedom from arbitrary interference with home and the right to housing) which "jointly point to a general rule according to which forced displacement may be undertaken only exceptionally" and even then, not "arbitrarily imposed" (Kälin 2008a, 27, 30). International humanitarian law and the law relating to indigenous peoples reinforced these provisions since both contain express prohibitions against arbitrary displacement (the IHL prohibition is considered part of customary international law). The combination of these provisions helped put on a "sound legal basis" the right to be protected against arbitrary displacement (Kälin 2008a, 27–8).

In the case of a gap in the law regarding the restitution of (or compensation for) property as a consequence of displacement during armed conflict, the Principles were more cautious. Principle 29 (2) provides only that competent authorities have the duty and responsibility to assist IDPs to recover their property or receive compensation. It does not speak of a right to restitution or compensation because none expressly existed in the law at the time the Guiding Principles were drafted. It was not until several years later, with the adoption of additional UN principles and guidelines, that a trend began to develop toward a right to restitution or compensation (see Pinheiro Principles; Kälin 2008a, 132–140).

In order to make clear the legal foundation of each principle, Kälin published Annotations in 2000, which he updated in 2008 (Kälin 2008a). That each principle could be traced to law already negotiated and accepted by states brought wide acceptance to the Principles, giving many governments confidence to use them as the basis for policies and laws in their countries. The few governments that did raise reservations about the Principles did not so much question their content as the process by which they were developed. As Goldman was able to assert, “these principles do not alter, replace or modify existing international law or rights granted to individuals under domestic law” (Goldman 1998, 466).

Whether other recent principles and guidelines prepared and endorsed by experts are consistent with existing law needs to be determined. The Pinheiro Principles, for example, on housing and property restitution for refugees and displaced persons affirm “a new international standard” with regard to restitution and return. But their legal foundation has at times been questioned,<sup>vii</sup> even though Explanatory Notes were issued to establish their origins, and their Preamble speaks of “many national and international laws, standards, policy statements, agreements and guidelines” as the basis for asserting that they “are grounded firmly within existing international human rights and humanitarian law.”

#### **Defining the problem with enough elasticity to meet the test of time**

In defining IDPs, one of the main issues was how broad or narrow the definition should be and whether the description of IDPs should go beyond the refugee concept. Some, for example, proposed that IDPs be described as persons forcibly uprooted inside their countries by persecution—in other words, persons who would be refugees if they crossed a border according to the 1951 Refugee Convention.<sup>viii</sup> Others observed that the 1951 refugee definition applied only to a minority of today’s refugees, and proposed that the broader definition of refugee – that is, persons uprooted by armed conflict, generalized violence and human rights violations (per the 1969 OAU Refugee Convention and the 1984 Cartagena Declaration) – be applied.

The majority, however, felt that the refugee experience could “not accurately depict the variety of the root causes of [internal] displacement” (Cohen and Deng 1998, 18). They persuasively proposed instead that natural disasters (e.g. earthquakes, floods) and human-made disasters (e.g. chemical or nuclear accidents) be part of the definition. They pointed out that persons uprooted by such disasters were in fact involuntarily displaced and generally faced human rights and protection problems that might require international attention. Indeed, governments sometimes responded to disasters by discriminating against or neglecting certain groups on political or ethnic grounds or violating their rights in other ways.<sup>x</sup>

Economic migrants, however, were considered too far afield to be included in the definition of IDPs. The element of coercion was not so clear. In addition, it was argued that such an enlarged definition could undermine “the consensus around the issue of internal displacement” and risk losing “the focus” on a group with “distinct protection and assistance needs arising from forced displacement” (see Brookings et al. 2004, 12; Mooney 2005, 13). Migrants, moreover, were said to have other regional and international standards and arrangements specific to their situation.<sup>xi</sup> Overall, what was felt to distinguish IDPs was the coercion that impelled their movement, the human rights abuse they faced by virtue of their displacement and their need for international protection.

The definition decided upon basically sought to strike a balance between too narrow a framework that risked excluding people and one so broad that it could prove operationally unmanageable. IDPs were defined as,

...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 (Guiding Principles on Internal Displacement, Introduction (2)).



The addition of the words, “in particular” was intended to make the definition more elastic, enabling it to encompass new IDP categories that might arise but were unanticipated at the time the Principles were drafted. One such group was those uprooted by *slow-onset* natural disasters (e.g. drought, desertification, land degradation, rising sea levels). Unlike those uprooted by sudden-onset disasters (earthquakes, floods, hurricanes), they traditionally were seen as *voluntary* migrants (as opposed to forced migrants). However, the growing impact of climate change has begun to call this assumption into question and some, particularly those who can no longer return to their homes, are beginning to be seen as forced migrants or IDPs.

Although not explicitly mentioned in the IDP definition, the IDP concept also encompasses those uprooted by development projects. Both the World Bank and the Organization for Economic Cooperation and Development (OECD) had begun to develop resettlement standards for those experiencing development-induced displacement, and the Guiding Principles built on these precedents. Guiding Principles 5–9 explicitly encompass development-induced displacement.<sup>xiii</sup>

The IDP definition is not limited to those who are citizens of their country. The Secretary-General’s *Analytical Report* emphasized that the concept of one’s own country should be interpreted in a flexible manner. It could mean “the country of nationality or, if nationality is uncertain the country of usual [or habitual] residence” (UN 1992, para. 14). The term thus goes beyond citizens to include: stateless persons who were born in the country or took more than temporary residence there, and long-term residents, i.e. persons with a foreign nationality who without having become citizens were born in the country concerned or settled there permanently and legally (Kälin forthcoming a). Tourists and other visitors, and also migrant workers were not intended to be included since they come to a country “temporarily” and can return home. Should they experience natural disaster or conflict while in a country temporarily, they of course, as Kälin (forthcoming a) points out, come under the protection of human rights law but would not be considered internally displaced and be able to claim entitlements to durable solutions in accordance with the Guiding Principles. Whether more non-citizens should come under the IDP umbrella is a question that has been recently raised (Koser 2012).

Overall, the flexibility of the IDP definition has enabled it to become the most widely accepted one worldwide. The African Union’s 2009 Convention on the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)<sup>xiv</sup> and the 2006 International Conference on the Great Lakes Region Protocol on the Protection and Assistance to Internally Displaced Persons<sup>xv</sup> are both based on this definition. So too are national laws and policies in a number of countries.

At the same time, it must be borne in mind that the term “internally displaced person”, unlike the term “refugee”, is not a legal status. It is a description more than a definition since IDPs are in their own country, enjoy the same rights as others in their country and do not require substitute legal protection. As a result, a wide range of international organizations can become involved by “adapt[ing] the IDP concept to their particular mandates” (see Mooney 2005, 14).

### **Respect for sovereignty**

That primary responsibility for the security and wellbeing of IDPs rests with their governments seems obvious today, but when the Guiding Principles were first drafted, many governments were uncertain about the rights to which IDPs were entitled and unaware of their own responsibilities toward these populations.

The Guiding Principles therefore made clear (Principle 3) that “National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.” This responsibility extends to both citizens and habitual residents, and covers all phases of displacement

– prior to displacement, during displacement, and during return, resettlement and reintegration.

If there can be said to be a philosophical foundation behind the Principles, it is the concept of sovereignty as responsibility (see Cohen and Deng 1998, 275–80). The security and wellbeing of internally displaced populations rest with their governments, and governments are expected to take steps to protect and assist them. If governments are unable or unwilling to assume this responsibility, the international community is expected to become involved. The concept is particularly evident in Guiding Principle 25 on humanitarian assistance. While acknowledging that primary responsibility for the displaced rests with their governments, the Principle acknowledges that international humanitarian organizations “have the right to offer their services in support of the internally displaced” and that such offers shall not be regarded “as an unfriendly act or as interference in a State’s internal affairs.” Indeed, consent is not to be “arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required assistance.” “Rapid and unimpeded access” is also to be given to international humanitarian organizations when it comes to the return, resettlement and reintegration of IDPs (Principle 30).

In 2006, the RSG presented “a framework for national responsibility” to the UN, setting forth the specific steps states should take to implement the Guiding Principles (UN Commission on Human Rights 2005, Add.1; see also Brookings–LSE 2011) and pointing out that it was in states’ interests to do so. The steps included preventive measures, the adoption of national policies and laws, institutional arrangements to address IDP needs, the allocation of resources, and the finding of solutions for the displaced in cooperation with international and regional organizations. The Kampala Convention went on to make these and additional state obligations legally binding, thereby reinforcing the concept of sovereignty as a form of responsibility.<sup>xvi</sup>

#### **A dissemination plan**

As important as developing the Principles was the plan to disseminate them. It took at least a decade (Weiss and Korn 2006, 103–114, 155–8) and involved many steps: advocacy with international organizations to ensure the integration of the Guiding Principles into their programs and activities; the publication of a Handbook to help operationalize the Principles (Martin 1999); the convening of seminars and consultations with regional organizations in Africa, Europe and the Americas to discuss how to apply the Principles; dialogues with governments to promote the incorporation of the Principles into national laws and policies; the development and publication of a Manual to help policymakers draft legislation (Brookings–Bern 2008); the mobilization of local and international NGOs and civil society to promote the Principles and make them available to IDPs; the publication of articles about the Principles in journals around the world; and the translation of the Principles into more than 50 languages.<sup>xvii</sup>

The dissemination plan took resources, dedication and staying power, and proved essential to bringing international awareness to the standards.

## **4. The Impact of the Principles**

At UN headquarters there was a great deal of support for the Guiding Principles. UN Secretary-General Kofi Annan praised them, called on the Security Council to encourage states to observe them and recommended that the General Assembly and Economic and Social Council encourage states to develop national laws and policies “consistent” with their provisions.<sup>xviii</sup> UN resolutions regularly welcomed their dissemination, promotion and application worldwide, and the Security Council began to cite the Principles in its resolutions and Presidential statements. As earlier noted, in 2005, the heads of state at the World Summit Outcome recognized the Principles as “an important international framework for the protection of internally displaced persons,” (UNGA Resolution A/RES/60/1, 2005, para. 132) language that was repeated in many subsequent resolutions, reflecting a broad consensus that had developed at the global level.<sup>xix</sup>

In the field, although some UN agencies initially found it difficult to translate the Principles into practical steps, other humanitarian and development agencies and NGOs used them extensively, developing awareness raising programs and training sessions based on the Principles and employing them as an advocacy tool and a checklist to monitor and assess IDP needs (Bagshaw and Paul 2004, 38, see also Kälin forthcoming b). UNHCR directly incorporated the Principles into its protection and human rights activities for IDPs and reported that this generated “concrete benefits to IDPs” in a number of countries (Diagne and Entwisle 2008, 33–5). The IASC, composed of the major international humanitarian, development and human rights agencies, developed several tools based on the Guiding Principles to provide operational guidance to their staff, including a *Manual on Field Practice in Internal Displacement*, a *Framework for Durable Solutions for Internally Displaced Persons* and the *IASC Handbook for the Protection of Internally Displaced Persons*.<sup>xx</sup>

At the regional level, the vast majority of intergovernmental organizations, whether in Africa, the Americas or Europe, acknowledged the Principles and referenced them. By contrast, sub-regional organizations in Asia resisted acknowledging the Principles, in deference to Asian states’ concerns about sovereignty. In addition, regional human rights courts in the Americas and Europe began to cite the Guiding Principles in their rulings on IDPs (Kälin forthcoming b).

The Principles also served as a catalyst for the development of binding law on internal displacement. In Africa, the 11 states in the Great Lakes Region adopted a Protocol in 2006, obliging its member states to adopt the Guiding Principles as a regional framework and incorporate their provisions into domestic law.<sup>xxii</sup> In 2009, 53 African states adopted the legally binding Kampala Convention, which came into force in December 2012. Its provisions, some of which are based on the Guiding Principles, oblige states to take concrete measures on the ground to improve conditions for IDPs.

Most effective is when the provisions of the Principles are translated into national law (see Lomo 2006, 23–5; Kälin 2008b, 39). Since the late 1990s, a small but increasing number of governments – to date more than 20 – have begun to develop policies and laws based on the Principles and some have directly incorporated the Principles into their national law.<sup>xxiii</sup> In some countries this has resulted in clear benefits for IDPs, such as increased resources for food and shelter, assistance with returns, compensation for having been displaced and the right to vote in their current place of residence (see Cohen 2004a, 470–1; Kälin forthcoming b). Sometimes, national courts have cited the Guiding Principles in rulings to ensure that the displaced are provided with adequate material assistance (see Cepeda-Espinosa 2006; Kälin forthcoming b). At the same time, governments have been slow to implement the policies and laws they have adopted, and some have failed to do so at all (see Brookings–LSE 2001; Koser 2011).

Local NGOs, lawyers’ groups, women’s associations, academics and other members of civil society, as well as IDP associations and displaced communities, have been at the forefront of using the Principles to advocate for IDP rights and press their governments to carry out their obligations (see Cohen 2001; Weiss and Korn 2006, 471; Kälin forthcoming b). When international organizations and NGOs have lent support to these efforts, the possibilities for implementation have increased.

Initially, the impact of the Guiding Principles was felt by governments, international organizations and NGOs when it came to situations of conflict, even though the Guiding Principles also define IDPs to include those uprooted by natural and human-made disasters. But after the tsunami in 2005, persons displaced by natural disasters and climate change also began to be seen as IDPs in need of human rights protection. The advocacy campaign undertaken at that time resembled the one earlier launched to apply the Guiding Principles to conflict-induced displacement. The RSG, supported by the Brookings Project, undertook visits to different countries, chaired seminars around the world to raise awareness about the rights of those affected (see UN 2009), and developed special guidelines on human rights and natural disasters (IASC 2006).

Because of the growing usage of the Guiding Principles by international organizations, governments, UN treaty bodies and courts, many have begun to conclude that the document has acquired “legal significance.”<sup>xxiv</sup> As UNHCR staff have observed, UNHCR’s use of the Principles in its day-to-day operations “contributes not only to improved IDP protection but also to strengthening the Principles as a legal...tool” (Diagne and Entwisle 2008, 35). Two governments in fact have expressed the view that the Principles are now “part of international law.”<sup>xxv</sup> And the Kampala Convention has reinforced the developing legal status of the Guiding Principles. Nonetheless, the World Summit Outcome document, which recognizes the Guiding Principles as an “important international framework,” does not recognize them as a “basic international norm,” as had been proposed by the Secretary-General (Kälin forthcoming b). And according to Kälin, the number of domestic laws, regional judgments and other references is still not sufficient to claim the Principles as customary law (Kälin forthcoming b). Nonetheless, the trend seems to be moving in the direction of customary law. One of the main reasons is that the Principles are based on binding law and that many of their non-binding elements have become customary law or are on the road to becoming so (see Henckaerts and Doswald-Beck 2005, 195, 381, 424, 461, 465, 467–72; Goldman 2009).

## 5. Limitations and Benefits of a Non-governmental Process

Because the Guiding Principles are not a treaty, they come with no monitoring or enforcement machinery. A global effort is therefore needed to oversee compliance with their provisions, requiring the participation of governments, local authorities, regional bodies, UN agencies, international and national NGOs, organizations representing the displaced, and the displaced themselves. But such an effort is not always consistent, vigorous or well supported (Ferris 2008), although without it, awareness of the Principles and their incorporation into domestic law can falter.<sup>xxvi</sup> As the RSG has observed, it is only “if states, international organisations and other actors continue to insist that specific guarantees exist for the internally displaced,” that “the law of internal displacement will grow” (Kälin 2008b, 39).

Another limitation is the non-binding status of the Principles, which can make it easier to dismiss them. Sometimes governments have little awareness of the provisions in the Guiding Principles or of the need to apply them, or there is resistance to apply them because they are non-binding (see for example Cohen and Bradley 2010, 108–9). One in-depth study found that the non-binding nature of the Guiding Principles has made it easier for states to “insist on the applicability of domestic laws that are not beneficial to IDPs” (Kälin et al. 2010, 5). A legally binding instrument by contrast can hold governments more accountable. As a local NGO on the Thai/Burma border observed:

The [Guiding] Principles have proven invaluable in promoting awareness about displacement and mobilizing assistance to respond to grave needs. Yet, In Burma, as in some other contexts, the Principles offer little diplomatic leverage when national authorities are unable and/or unwilling to fulfill their obligations (Thailand Burma Border Consortium 2008, 14–15).

As a result, many believe that a legally binding instrument will have more authority and international recognition and be more likely to be implemented.

Yet there are caveats here that bear emphasis. The two RSGs have found it easier to negotiate with national officials on the basis of guidelines because some governments find them less threatening since they cannot be formally charged with noncompliance (Kälin 2002). A legally binding instrument, moreover, does not always assure improved conditions for IDPs. Governments do not always ratify the treaties they adopt or comply with the treaties they ratify. While monitoring bodies set up under treaties can put some pressure on governments to carry out their obligations, that pressure is not always effective. Influencing governments to carry out their responsibilities is a challenge whether the instrument is binding or non-binding.



The treaty route, moreover, can be risky. Negotiating an international treaty on internal displacement could result in the watering down of provisions in human rights and humanitarian law on which the Guiding Principles are based. Some believe as a result that sustained usage and acceptance of the Guiding Principles is the best route to follow. As more and more states adopt laws and policies, and more regional instruments come into force as stepping stones, an international convention could be considered in the future. A promising development in this regard is the legally binding Kampala Convention, which has reinforced the legal significance of the Guiding Principles by making its provisions into law at the regional level.

Whether or not the spotlighting of IDPs marginalizes or excludes others equally in need still remains a subject of debate (see for example International Red Cross and Red Crescent Movement 2009). In his reports to the UN, RSG Kälin has emphasized the importance of paying attention to host families and displacement-affected communities, while also attending to the specific vulnerabilities of those forcibly uprooted (UN 2010, paras 48–9). In developing the UN *Operational Guidelines for Human Rights and Natural Disasters*, he made sure these applied both to IDPs and to other disaster-affected communities. This suggests that care needs to be taken when one group is singled out, to ensure that other affected persons also receive attention, especially when entitlements come into play. IDPs themselves have pointed to the need for a holistic approach when providing them with assistance (see for example Cohen 2008, 15).

## 6. Conclusion

As the first international standards developed for IDPs, the Guiding Principles fill a major gap in the international protection system for uprooted people. Since 1951, the world has had standards for refugees forced to flee their countries in search of international protection abroad. Now those forcibly displaced within their own countries have a document to turn to when they are denied life-saving protection and assistance.

Whether the Guiding Principles' successful development holds lessons for others developing standards in the migration field remains a question to explore. It is evident that the process by which they were developed – experts drafting, circulating, finalizing and mobilizing support for principles – has become a more accepted course of action because of the Principles. Indeed, they helped in some respects to pave the way for the Pinheiro Principles and the Guiding Principles on Business and Human Rights.<sup>xxvii</sup> The Guiding Principles also contributed to making more accepted practice, the combining of human rights and humanitarian law and the restatement of law drawing from what is implicit in the law to express new and emerging standards. The Guiding Principles have thus been described as “a model for the process of aggregating and adapting the norms and principles from a wide range of international instruments to protect the rights of the ‘environmentally displaced’” (Zetter 2008, 63).

At the same time, it must be borne in mind that the widespread acceptance of standards developed by experts depends on a restatement of the law based on obligations that can be said already to exist under human rights and humanitarian law. States are more willing to accept expert principles if they are not asked to assume new obligations, but rather to understand better how to apply their existing obligations in new situations. Governments, for example, did not challenge the right not to be arbitrarily displaced (Principle 6), as set forth in the Guiding Principles, because the right could be discerned from human rights and humanitarian law. Nor did governments challenge the right of IDPs not to be forcibly returned or resettled to conditions “where life, safety, liberty and/or health would be at risk” (Principle 15), as it was drawn from existing provisions of human rights law and analogous refugee law. Yet, in the case of addressing cross-border displacement in disaster situations, governments have challenged the existence of state obligations (see Kälin 2012).

To determine whether rights and entitlements for persons who flee across borders for environmental reasons can be

discerned from existing international law, and whether independent experts can appropriately be the drafters and finalizers of such principles (as in the case of the Guiding Principles), it would be useful first:

1. To compile a body of national law and regional and international standards relevant to those who may be forced across borders because of environmental reasons, and who cannot return to their countries temporarily or permanently. Such a compilation should include cases of sudden-onset as well as slow-onset disasters and cases where both conflict and natural disaster combine to compel cross-border movement.<sup>xxviii</sup>
2. To compile a body of state practices regarding the treatment of those who may be forced across borders because of environmental reasons, as well as examples of practices by United Nations humanitarian and development agencies to assist such persons.
3. To analyze how extensive the practice and law is to see whether policies of temporary protection might possibly be transformed from an ad hoc response into a reliable, rights-based entitlement.
4. To develop creative interpretations of existing international norms based on what might be considered implicit in the law to see the extent to which such norms can apply to those environmentally displaced across borders. This would entail an analysis of:

- whether or not the principle of *non-refoulement* in refugee and human rights law could be interpreted to extend to environmentally displaced persons who may require international protection so that foreign states would be obliged to “at least temporarily admit a person to remain” (Kälin 2009);
- whether or not regional instruments like the OAU Refugee Convention and the Cartagena Declaration (which speak of serious disturbances to “public order”) can be interpreted to extend to those crossing borders because of disasters (see Cohen and Bradley 2010, 106–7, 128); and
- whether or not the criteria of safety and dignity for returns of refugees and IDPs could be applied to those who cross borders for environmental reasons. A study of the Conclusions reached by the *Compilation and Analysis of Legal Norms* for IDPs could prove instructive since they explain in detail what gaps and grey areas mean, how they can be appropriately filled by a soft law instrument and when by implication they cannot, requiring new law instead (UN 1998 para. 411).

5. To formulate a concise and clear definition or description of persons in need of protection that relates to an obvious gap in the international system and resonates with international concerns. At the same time, the formulation must be flexible enough to stand the test of time, but not be so broad as to lack clarity for those expected to assist such persons.
6. To undertake broad consultations at the national and regional levels so that the research not only reflects the perspectives of a wide range of governmental and non-governmental actors, but also mobilizes support for the issue.

The identification of an independent expert and one or two governments to lead the process would enhance its prospects for success.<sup>xxix</sup> In the process leading to the Guiding Principles, the role played by the RSG with the support of well-disposed governments was essential. The Principles after all were not drafted “in a political vacuum” (Kälin forthcoming b). The UN Commission on Human Rights, a political body (albeit at the urging of NGOs and UN agencies) requested the RSG to develop “an appropriate framework” for the protection of IDPs, emphasizing that such protection would be strengthened “by identifying, reaffirming and consolidating specific rights for their protection” (Resolution 1996/52). The UN Secretary-General supported the work of the RSG as did a sizeable number of governments.

The Guiding Principles were developed to respond to the needs of IDPs caught up in internal conflicts in their own countries. Today, the frequency and severity of natural disasters, fueled in great measure by climate change, are making it essential to strengthen legal safeguards not only for IDPs (especially those uprooted by slow onset disasters), but

also for those who are forced to cross borders. Although some may categorically argue that the Guiding Principles hold no lessons for future standards (Koser 2012b), there is, in fact, much to be gleaned from the experience.

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## Endnotes

- <sup>i</sup> The term was coined following the Second World War when both refugees (outside their country of origin) and those called internally displaced were housed together in displaced persons camps.
- <sup>ii</sup> See US Committee for Refugees 1983, 4–5, 41; reports of Human Rights Watch and other NGOs on the vulnerable conditions of IDPs, cited in UN 1992; Clark 1989, 18–24; Cohen 1991; Refugee Policy Group (RPG) 1991, 1992; Weiss and Korn 2006, 15, 16–29.
- <sup>iii</sup> See Cohen 2004b. De Mello wrote the Foreword to the first edition of the Guiding Principles.
- <sup>iv</sup> Article 33 (1) of the Convention relating to the Status of Refugees (1951) says that "No contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a social group or political opinion."
- <sup>v</sup> Guiding Principle 15 (d) says that IDPs have "The right to be protected against forcible return to or resettlement in any place where their life safety, liberty or health would be at risk." See Kälin 2008a, 69–70.
- <sup>vi</sup> An exception would be Article 23 of the 1951 Refugee Convention, which provides that host states will accord refugees "the same treatment with respect to public relief and assistance as is accorded to their nationals." In this case, the Guiding Principles can be applied by analogy to refugees as far as humanitarian assistance is concerned in their country of refuge or asylum. See Kälin forthcoming a.
- <sup>vii</sup> See for example Pantuliano 2009; Ballard 2010; Williams 2012. Others known to the author have also questioned whether the principles exceed existing law, expand interpretations of the law without sufficient justification or pay too little attention to what can be realistically implemented.
- <sup>viii</sup> See the 1951 Convention relating to the Status of Refugees, which defines a refugee as person who "owing to a well-founded fear of being persecuted in his country of origin for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or, owing to such fear is unwilling to avail himself of the protection of that country."
- <sup>ix</sup> See the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, which speaks of persons seeking refuge across borders by "external aggression, occupation, foreign domination or events seriously disturbing public order." See also the 1984 Cartagena Declaration on Refugees, relevant to Latin America, which speaks of persons leaving their countries "because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or circumstances which have seriously disturbed public order."
- <sup>x</sup> For example, when drought and famine ravaged Ethiopia in the mid-1980s, its government forcibly relocated hundreds of thousands of Tigreans it regarded as political opponents under the pretext of responding to a natural disaster, see Cohen and Deng 1998, 16–19.
- <sup>xi</sup> The Inter-American Commission on Human Rights, for example, appointed a Special Rapporteur for Migrant Workers and their Families, see Brookings–SAIS 2004, and at the international level, an International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families was adopted in 1990 (entering into force in 2003) and a Special UN Rapporteur was appointed, see <http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/SRMigrantsIndex.aspx>
- <sup>xii</sup> See the African Union's 2009 Convention on the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), which obligates states to "protect and assist persons who have been internally displaced due to natural or human-made disasters, including climate change" (Art.5(4)). See also the recommendation of the Parliamentary Assembly of the Council of Europe to extend the Guiding Principles to encompass those uprooted by slow-onset disasters, Recommendation 1862, para.6.5 (2009); and Cohen and Bradley 2010, 97, 104, 108, 127.
- <sup>xiii</sup> See Guiding Principles 5–9 Relating to Protection from Displacement (Principle 6c specifically speaks of arbitrary displacement "in cases of large-scale development projects, which are not justified by compelling and overriding public interests"); and see Kälin

2008, 17–18.

<sup>xiv</sup>See <http://www.unhcr.org/4ae9bede9.html>

<sup>xv</sup>See [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/29D2872A54561F66C12572FB002BC89A/\\$file/Final%20protocol%20Protection%20IDPs%20-%20En.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/29D2872A54561F66C12572FB002BC89A/$file/Final%20protocol%20Protection%20IDPs%20-%20En.pdf)

<sup>xvi</sup>See Kampala Convention at <http://www.unhcr.org/4ae9bede9.html>

<sup>xvii</sup>See <http://www.brookings.edu/about/projects/idp/gp-page>

<sup>xviii</sup>See United Nations 1999, Recommendation 7; 2003; see also United Nations 2005b, which urges states to accept the Guiding Principles as the basic international norm for the protection of IDPs and to promote the adoption of the principles through national legislation.

<sup>xix</sup>See UNGA Resolutions: A/RES/62/153, para. 10; A/RES/64/162, para. 10; and A/RES/66/165, para. 12; and Human Rights Council Resolutions: A/HRC/RES/6/32, para. 5; A/HRC/RES/14/6, para. 9; and A/HRC/RES/20/L.14, para. 1.

<sup>xx</sup>See Inter-Agency Standing Committee 1999; UN Doc. A/HRC/13/21/Add.4, 29 December 2009; Inter-Agency Standing Committee 2010; and A/HRC/16/43/Add.5, 31 January 2011, as cited in Kälin forthcoming b.

<sup>xxi</sup>These included the International Conference on the Great Lakes Region, the Organization of African Unity and later the African Union, the Inter-American Commission on Human Rights of the Organization of American States, the Council of Europe and the Organization for Security and Cooperation in Europe. See Cohen 2004a, 469–70; Kälin forthcoming b.

<sup>xxii</sup>Protocol on the Protection and Assistance to Internally Displaced Persons, International Conference on the Great Lakes Region, 30 November 2006.

<sup>xxiii</sup>See <http://www.brookings.edu/about/projects/idp/resources/laws>; and Kälin forthcoming b.

<sup>xxiv</sup>See United Nations 2010, paras. 10–16. Of the UN treaty bodies, the Human Rights Committee, the Commission on the Elimination of Racial Discrimination, the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights have recommended that countries improve the rights of IDPs in accordance with the Guiding Principles, see Kälin forthcoming b.

<sup>xxv</sup>The governments of Germany and Iraq have so affirmed this, see United Nations 2010, para. 11, note 4.

<sup>xxvi</sup>See for example McHattie 2008; Kälin et al. 2010. It should be noted that the underlying political, economic and social problems within countries can interfere with national implementation of the Guiding Principles, see Zetter and Morrissey forthcoming.

<sup>xxvii</sup>The Pinheiro Principles were adopted by the UN Sub-Commission on Human Rights, a body of experts, while the Guiding Principles on Business and Human Rights were adopted by the Human Rights Council, a governmental body.

<sup>xxviii</sup>Some experts have already moved in this direction. See Kälin and Schrepfer 2012; McAdam 2012.

<sup>xxix</sup>Most promising is The Nansen Initiative focused on cross border displacement in the context of natural disasters and environmental degradation, co-chaired by the governments of Norway and Switzerland, with Walter Kälin as Envoy. See Kälin 2012, 48–9.





## About the Author



Roberta Cohen is a nonresident Senior Fellow in Foreign Policy at The Brookings Institution in Washington, D.C. She is a specialist in human rights, humanitarian, and refugee issues and a leading expert on the subject of internally displaced persons.

She co-founded and for more than a decade co-directed The Brookings Institution Project on Internal Displacement, served as senior adviser to the Representative of the United Nations Secretary-General on Internally Displaced Persons from 1994-2010, and organized the process leading to the development of the Guiding Principles on Internal Displacement. She now serves as an adviser to The Brookings Institution-LSE Project on Internal Displacement. She co-authored the first major study on internal displacement, *Masses in Flight: The Global Crisis of Internal Displacement* (Brookings, 1998)

with Francis M. Deng, the first Representative of the Secretary-General and co-edited its second volume, *The Forsaken People: Case Studies of the Internally Displaced* (Brookings, 1998). The study proposed the creation of an international system for addressing the needs of internally displaced persons. In 2005, she and Deng were co-winners of the Grawemeyer Award for Ideas Improving World Order. To commemorate her work on the Guiding Principles and internal displacement, the *Forced Migration Review* in December 2006 published a special issue -- "Putting IDPs on the map: achievements and challenges." Cohen has a B.A. from Barnard College, an M.A. "with distinction" from the Johns Hopkins School of Advanced International Studies (SAIS), and an honorary doctorate from the Faculty of Law of the University of Bern.

The

# Crisis Migration Project

Institute for the Study of International Migration

**About the Project:** With generous support from the John D. and Catherine T. MacArthur Foundation, ISIM launched a three-year project in late 2011 to explore the migration implications of a broad range of humanitarian crises and the associated protection needs of those affected by them. The project focuses on crisis-related movements that do not fit within legal and institutional frameworks designed to protect refugees—those who have fled due to a well-founded fear of persecution. The project's recommendations will seek to identify principles and effective practices on (1) the rights of those who move or remain trapped in the context of humanitarian crises; (2) the obligations of governments; and (3) the responsibilities of international actors.

[ISIM.GEORGETOWN.EDU/WORK/CRISIS/](http://ISIM.GEORGETOWN.EDU/WORK/CRISIS/)

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ISIM, founded in 1998, is based in the School of Foreign Service at Georgetown University and affiliated with the Georgetown University Law Center. Staffed by leading experts on immigration and refugee policy, the Institute draws upon the resources of Georgetown University faculty working on international migration and related issues on the main campus and in the law center. ISIM applies the best in social science, legal and policy expertise to the complex issues raised by international migration. It conducts research and convenes workshops and conferences on immigration and refugee law and policies. In addition, the Institute seeks to stimulate more objective and well-documented migration research by convening research symposia and publishing an academic journal that provides an opportunity for the sharing of research in progress as well as finished projects.