

International Seminar: Experiences of Displaced Populations in Colombia, Guatemala, El Salvador and Peru

Lima, Peru
March 26-27, 2003

The Guiding Principles on Internal Displacement: Their Use and Application in the Americas*

Statement by Gimena Sanchez-Garzoli, Research Analyst, The Brookings-SAIS Project on Internal Displacement

Introduction

It is an honor for me to be with you today to present the *Guiding Principles on International Displacement* and their use and application in the Americas. My presentation is divided into four parts. First, I will briefly discuss the global standing of the *Principles*. Then I will introduce the unique institutional arrangements for the displaced that have developed in the Americas and the use of the *Principles* in this region. Following this, I will discuss the development and content of the *Principles*. Lastly, I will point out how the Spanish language edition of the *Handbook for Applying the Guiding Principles* can be utilized by everyone here to address the protection and assistance needs of the internally displaced.

Global Standing of the Principles

It is important to highlight that the *Guiding Principles* are the first international standards developed for internally displaced persons. These 30 *Principles* set forth the rights of the internally displaced and the obligations of governments and insurgent groups toward these populations. They cover all phases of displacement: protection from arbitrary displacement, protection and assistance during displacement, and during return or resettlement and reintegration. Although the *Principles* are not a binding treaty they are based on binding international humanitarian law, human rights law and refugee by analogy.

Since their presentation to the United Nations by the Representative of the UN Secretary-General on Internally Displaced Persons, Francis M. Deng, in 1998 they have gained

*This statement draws upon the following items: "Introduction to the Guiding Principles on Internal Displacement," by Roberta Cohen in *Kurdish Exodus: From internal Displacement to Diaspora*, edited by Mohammed Ahmed and Michael Gunter, Ahmed Foundation, September 2001; Report of the Representative of the UN Secretary-General on internally displaced persons, Francis M. Deng to the UN Commission on Human Rights, Mass Exoduses and Displaced Persons, 21 January 2003, E/CN.4/2003/86 and *Internal Displacement in the Americas: Some Distinctive Features*, by Roberta Cohen and Gimena Sanchez-Garzoli, Occasional Paper, Brookings-CUNY Project on Internal Displacement, May 2001.

worldwide international standing and authority. Intergovernmental bodies, such as the UN Commission on Human Rights and the General Assembly have acknowledged and encouraged their use and dissemination in their resolutions. The UN Secretary-General has called upon the Security Council to encourage states to observe the *Principles* in situations of mass displacement. All of the main international humanitarian, human rights and development organizations and umbrella organizations have endorsed the *Principles* and taken the decision to disseminate and apply them in the field. Many regional intergovernmental organizations around the world have been disseminating and applying the *Principles*.

The Representative of the Secretary-General utilizes the *Principles* in his missions as a basis of dialogue with governments and all other actors concerned with the plight of the displaced. To date, he has undertaken 25 missions throughout the world. One of the first visits he paid was to El Salvador. Indeed, some of the first countries he visited were in the Americas: Colombia (twice in 1994 and 1999), Peru (in 1996) and most recently he visited Mexico in August 2002. Dr. Deng has found that governments are increasingly using the *Principles* as guidelines in dealing with situations of internal displacement. Several have begun to base policy and law upon their provisions. I will speak more in detail about Colombia shortly but I would note that many governments have begun to use the *Principles* as a basis for policy, including Angola, Armenia, Burundi, Georgia, the Philippines, and Sri Lanka. The government of Angola has enacted legislation based on the *Principles* in its “Norms on Resettlement.” A key objective of Burundi’s “Protocol for the Creation of a Permanent Framework of Cooperation for the Protection of Displaced Persons” is the promotion and application of the *Principles*. In Afghanistan, the *Principles* are being used as a reference for a decree that is being drafted for the safe return of internally displaced persons. The framework for the return of internally displaced persons in Sri Lanka relies upon the *Guiding Principles*.

As noted earlier, the *Principles* apply to governments and to “all other authorities, groups or persons in their relations with the internally displaced.” Last September, I traveled to southern Sudan to participate in UN training in the *Principles* of the Sudan People’s Liberation Movement (SPLM/A). At this training, the SPLM/A developed a draft policy on internally displaced persons based on the *Principles*. At a November 2002 seminar cosponsored by the Representative of the Secretary-General, UNICEF and the Brookings-SAIS Project, SPLM/A officials discussed the draft policy and said they would submit it for ratification to the SPLM/A leadership in 2003.

Institutional Responses and the Use of the Guiding Principles in the Americas

Bearing in mind that internal displacement is a global problem, let’s now turn to the Americas. The civil wars of the 1980s and early 1990s displaced more than two million people. By the end of the 1990s, however, these figures had fallen dramatically because the establishment of peace in several countries led to returns of the displaced. Although in many Latin American countries the numbers have dropped and so the international spotlight has shifted to other areas of the world, displacement continues to plague the Americas and those affected suffer greatly. The Global IDP Database of the Norwegian

Refugee Council reports that some 3 million persons remain internally displaced in the region. In Peru and Guatemala the displaced mainly face challenges of return and reintegration found in post-conflict settings. In Mexico, displaced persons require protection and assistance. But it is in Colombia that the problem is the most acute. New displacements occur on a frequent basis and there is a critical need to develop mechanisms to effectively protect these populations. With over 2 million persons displaced (some NGOs estimate 2.8 million), Colombia contains one of the largest internally displaced populations in the world.

Faced with the challenge of seeking solutions for the displaced, the Americas region has responded by developing some innovative institutional arrangements for the displaced. One early institutional arrangement that bears mentioning here is the International Conference on Central American Refugees (CIREFCA), which was convened in 1989 by UNHCR and the Central American governments. It put into place mechanisms at the international, regional and national levels for the design and implementation of reintegration programs for returning refugees and internally displaced persons. Under its Plan of Action, Central American governments and international donors committed themselves to far-reaching humanitarian and development programs for uprooted peoples, and many of these programs were effectively carried out. In addition, the UN Development Program for Displaced Persons (PRODERE) brought together relief and development agencies over a five-year period to facilitate the reintegration of more than two million uprooted persons. Carried out between 1989 and 1995, PRODERE supported the restoration of infrastructure and community-based and development projects and assisted displaced persons in securing legal documents and legal aid.

While studies have found that internally displaced persons could have received more attention under both programs, CIREFCA and PRODERE are generally regarded as being among the most successful regional approaches to the reintegration of uprooted populations.

Another institutional innovation in the Americas that bears noting has to do with the Organization of American States (OAS). It was the first regional organization to create a position exclusively devoted to the problem of internal displacement. In 1996, its Inter-American Commission on Human Rights appointed one of the principal drafters of the *Guiding Principles*, Professor Robert K. Goldman, as its special rapporteur for internally displaced persons. The special rapporteur has been monitoring situations of internal displacement in the Americas, and the Commission's 1999 report on the human rights situation in Colombia contains a lengthy chapter on internal displacement, with recommendations addressed to both the government and insurgent groups. The Commission's April 2001 report on Guatemala also analyzes the human rights situation of those uprooted by armed conflict and makes several recommendations to the Guatemalan government designed to aid the reintegration process of the displaced. For example, it recommends that the government intensify efforts to ensure that the uprooted obtain identity documents and adopt concrete measures and procedures to implement the 'Agreement on Resettlement,' which provides that uprooted populations should be

allowed to participate in the design and implementation of policies and projects that affect them.

Even before the appointment of the rapporteur, the Commission had begun to report on the situation of internally displaced persons in Haiti and Guatemala, and in the case of Nicaragua it took a seminal decision. As early as 1984, it ruled that compensation should be awarded to the Miskito Indians for the damage done to their property during displacement. This decision helped guide future approaches to returns of internally displaced persons and influenced the development of the *Guiding Principles* on this point. Some have proposed that the Commission take additional steps, in particular that it make known to displaced populations how to bring individual complaints before the Commission. It has also been suggested that the Commission engage in preventive measures and in fact the Commission has initiated such measures in regard to threats faced by internally displaced communities in Colombia.

The Commission was also the first regional body to endorse and systematically apply the *Guiding Principles* to its work. Its acceptance and use of the *Principles* has encouraged governments and non-governmental groups to base their policies and programs on the provisions in the *Principles*.

In Colombia, for example, the Representative found on his mission in 1999 that government officials accepted the *Principles* as a basis for dialogue and recognized a national responsibility toward the displaced. Since the Representative's visit, the government has taken a number of steps to further develop national legal and institutional frameworks for addressing the problem of internal displacement. One such effort was Presidential Directive No. 6 (2001), which supports the 2001 Colombian Constitutional Court's decision that upheld the *Guiding Principles* and stressed the need for government officials to receive training in the *Principles*. And, along the same line, a prior Constitutional Court decision SU-1150 (August 2000) affirmed that the *Principles* should be utilized in the interpretation of existing legislation for the internally displaced and as the standard for any new legislation on displacement.

At the same time, it is important to note that despite these efforts towards formal institutionalization of the *Principles*, there continues to be a significant gap between the policies and programs developed by the Colombian government and the reality faced by the displaced persons on the ground. Continuing problems include: ineffective measures to prevent displacement from occurring in the first place; serious protection concerns throughout the country; the inability of many displaced persons to access government assistance due to a lack of documents; the need for assistance for those displaced multiple times or for more than 3 months; insufficient attention toward finding durable solutions for those who remain displaced for years; and, issues of security for leaders of the displaced and those who work on their behalf.

Colombian NGOs have been extremely active in promoting the rights of the displaced and have been widely disseminating and applying the *Principles*. At the 1999 seminar organized by the Grupo de Apoyo a Organizaciones de Desplazados, the US Committee

for Refugees, and the Brookings Project, government officials, local and international NGOs, agencies and IDP representatives came together to analyze the situation of internal displacement in Colombia and to develop strategies based on the *Principles*. Although the focus of the seminar was primarily on Colombia, representatives of NGOs in Peru also participated. The seminar's declaration stressed the importance of putting the *Principles* into practice, and thereafter, international and national NGOs and church groups, such as the Colombian Episcopal Conference, DIAL, CODHES, the Colombian Commission of Jurists (CCJ), among others, began to utilize the *Principles* in their work. In Peru, NGOs have also disseminated and applied the *Principles* as benchmarks against which to monitor and evaluate national policies and law and to promote and strengthen dialogue with the government on the rights of the displaced. The National Committee on Displacement, an umbrella organization composed of 50 organizations, held a national seminar in 2000 on "Public Social Policies and Formation of Citizenship in Areas Affected by Political Violence," which set forth proposals for assisting the displaced population within the framework of the *Guiding Principles*. I understand that a second seminar was held the following year that targeted areas, in particular in the eastern region where access is limited.

Most encouraging is that internally displaced persons themselves have begun to use the *Principles* as an empowerment tool. Displaced persons organizations in the Americas have begun to incorporate them as a tool for advocacy and defense. For example, Colombian Afro-Colombian displaced groups organized a national seminar in 2000 that brought together Afro-Colombians from various regions of the country in order to develop a common plan of action that addressed the specific concerns of displaced persons of African descent. The *Principles* were referenced throughout the three-day seminar and used as a tool to better understand the concerns of the displaced. The Mixed Working Table on Internal Displacement in Bogota (a venue for dialogue between IDP groups and the government supported by Colombian NGOs) has analyzed Colombian legislation in light of the *Principles*. In Peru, which has active displaced persons organizations, including women's IDP organizations, the *Principles* could also prove of benefit to the displaced.

The Development and Content of the Guiding Principles

Before discussing the content of the *Principles*, I will say a few words about their development. In the early 1990s, the number of persons forcibly displaced within their countries' borders began to rise dramatically because of a preponderance of civil wars. It soon became clear, however, that unlike refugees, who could turn to established international legal and institutional mechanisms to receive protection and assistance, internally displaced persons were often left unprotected and forced to fend for themselves. The United Nations, governments, and international and national organizations had no document to turn to as guidance for helping these persons. As a result, and at the behest of international organizations, NGOs and the UN Commission on Human Rights, the Representative of the Secretary-General was asked to develop an appropriate normative framework for the internally displaced.

After studying existing international law applicable to the internally displaced, Dr. Deng and a team of international lawyers concluded that while there were many provisions in existing international law applicable to the displaced, a single document was needed to consolidate the relevant provisions and also to tailor them to the needs of the displaced. For example, there was need to spell out more clearly the right to restitution or compensation for property lost as a consequence of displacement due to armed conflict.

The document that resulted was the *Guiding Principles on Internal Displacement*. The process by which they were developed was a broad based one, including consultations with a wide range of international organizations, non-governmental organizations and research institutions. Since their presentation to the UN Commission on Human Rights in 1998, the *Principles*, as already noted, have gained significant international standing and recognition and are being widely used in all regions of the world by a growing number of governments and other actors concerned with the plight of the internally displaced.

Content of the Principles

Now we will take a brief look at the *Principles*. In the introduction to the *Principles* you will find a working definition of internally displaced persons. The two crucial elements of this definition are coerced or involuntary movement (that is being forced or obliged to flee or to leave one's home or place of habitual residence), and, remaining within one's national borders. The definition also includes the major causes of displacement: armed conflict, generalized violence, violations of human rights and natural or human made disasters. It should be noted that the language used in the *Principles* does not limit internal displacement to these causes alone. The *Principles* try to strike a balance between too narrow a framework that risks excluding people and one so broad that it could prove operationally unmanageable. Economic migrants, for example, are not included because of the largely voluntary nature of their movement.

Because internally displaced persons remain within their own countries, they are expected to enjoy the same rights and freedoms as all other citizen in their countries. Unlike refugees, who are outside their countries of origin, internally displaced persons do not benefit from a separate internationally recognized legal status.

Section I of the *Principles* contains general principles that relate to the equal treatment of internally displaced persons and assert that the displaced cannot be discriminated against because of their displacement. At the same time, they acknowledge that certain vulnerable groups such as women, children and elderly persons may require special attention. Most important, the *Principles* emphasize that the primary duty for providing protection and assistance to internally displaced persons lies with their national authorities, and that the internally displaced have the right to request and receive such assistance from these authorities.

Sections II-IV address the different phases of displacement. Section II contains principles relating to protection from displacement and articulates a right not to be arbitrarily displaced. States are under a particular obligation to avoid displacement and to

provide protection against the displacement of groups with a special dependency on and attachment to their lands. The *Principles* also provide minimum guarantees to be complied with when displacement occurs.

Section III relating to protection during displacement sets forth the full range of civil, political, economic, social and cultural rights that all people, including the displaced, should enjoy. And they spell out how these rights specifically apply to the needs of the internally displaced. For example, the *Principles* provide that internally displaced persons should have access to all provisions essential to their survival. And, that they should be protected against human rights abuse, including direct assault, sexual violence, attacks on their camps and settlements, being arbitrarily detained or held hostage in camps, or being forcibly returned to or resettled to places where their life, safety, liberty and/or health would be at risk. Especially important to this meeting is that the *Principles* affirm that the property and possessions of the displaced should be protected against destruction and arbitrary illegal appropriation, occupation or use.

Section IV on the provision of humanitarian assistance goes beyond simply pointing out the primary role of the national authorities in providing humanitarian assistance. It adds that when those governmental authorities responsible are unable or unwilling to provide assistance, international organizations have the right to offer their services, and, consent to do so shall not be arbitrarily withheld. Furthermore, rapid, unfettered access to displaced populations is mandated and should be facilitated where possible. Section IV also emphasizes that beyond material assistance, the displaced also need protection of their physical safety and human rights. Organizations, whenever possible, are asked to focus on both.

Section V of the *Principles* addresses return, resettlement and reintegration. *Principle 28* emphasizes the right of internally displaced persons to return voluntarily and in safety to their homes or to resettle voluntarily in another part of the country. In other words, internally displaced persons have options – they can return to their home areas or resettle in another part of the country. The *Principles* emphasize that it is the national authorities' responsibility to establish a proper and secure environment in the areas of return or resettlement. Also authorities must facilitate the reintegration of the displaced, and return or resettlement processes must include the full participation of the displaced.

Principle 29 (1) reiterates the notion of non-discrimination that is found throughout the *Principles*. Returned or resettled internally displaced persons should not be discriminated against and they have the right to participate in public affairs and to access public services. Emphasis is also given to the full participation of the internally displaced in the planning and management of their returns or resettlement. This is quite important because the involvement of the displaced will help make their returns or resettlement more sustainable.

Principle 29 (2) states that: "Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of

upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.” Lastly, *Principle 30* provides a role for international organizations and others in the return or resettlement phase of displacement. It bears emphasis that throughout the *Principles* special attention is paid to the protection and assistance needs of vulnerable groups such as women, children, the elderly and disabled. For example, they call for the participation of women in the planning and distribution of relief supplies, prohibit sexual violence and the recruitment of minors into hostilities and stress the need for family reunification. Of particular relevance to the Americas, the *Principles* also refer to the right of women to obtain personal identity and other documents on an equal basis as men.

Utilizing the Handbook for Applying the Guiding Principles

Now I will say a few words concerning an outreach campaign the Brookings-SAIS Project is supporting in the Americas. The *Handbook*, which was developed to implement the *Principles* in the field, was first published in English in 1999 by the UN Office for the Coordination of Humanitarian Affairs (OCHA) and the Brookings Project. It provides practical direction to field staff on the actual steps they can take on behalf of displaced persons to carry out the *Principles*. In order to facilitate the *Handbook*'s use in the Americas, the Brookings Project supported its translation into *Spanish* and the dissemination of over 2,000 copies to actors concerned with displaced persons in Colombia, Ecuador, Peru and Mexico.

Relevant to this meeting, the *Handbook* provides guidance to displaced organizations engaged in the return, resettlement and reintegration process and to those working on their behalf. It provides a series of steps field staff and others can take to ensure that the standards set forth in the *Principles* are implemented on the ground. For example, it suggests that field organizations should:

“Assess legal statuses or other relevant documents to determine the returnees’ claim to land and property upon return, designing programs to ensure that internally displaced persons’ property rights are protected and they gain access to legal assistance if needed to reclaim property.”

It also calls for longer-term reintegration activities because the economic and social disruption of return or resettlement may be present for years. And it says that organizations should design programs for women headed households in areas of return and resettlement.

In his December 2002 statement prepared for the launch of the Spanish translation of the *Handbook* in Bogota, the Representative of the Secretary-General expressed the “hope that the Spanish edition will further support the work of international and national organizations working on behalf of the displaced in Colombia and will reinforce efforts of displaced communities themselves.” I encourage all of you to familiarize yourselves with the contents of the *Handbook* and to find ways to utilize it in your work on behalf of

those displaced in Colombia, Guatemala, Peru and El Salvador. I believe you will find that the *Principles* will contribute to and reinforce your efforts to improve the treatment and conditions of the internally displaced.

Thank you.