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Protecting the Internally Displaced

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Consider this striking fact about the post Cold-War era: during the past five years, the number of persons displaced within the borders of their own countries has soared to an estimated 25 to 30 million, while the number of refugees of concern to the United Nations High Commissioner for Refugees (UNHCR) has declined to an estimated 14.4 million. The political advantage that motivated many states to accept refugees during the Cold War has given way to preoccupation with limiting their entry. The rising number of internally displaced persons badly in need of international protection and assistance is, in part, a consequence of this reversal of attitudes.

Refugees have an international agency and legal structure to turn to for protection and assistance. The internally displaced have nothing comparable. In recent years, many humanitarian relief and development agencies, as well as human rights bodies, have come forward to provide emergency assistance, development aid, and, to a lesser extent, protection to displaced populations. But in the absence of clear institutional responsibility, the international community's response has varied substantially. In some countries, the needs of the

internally displaced have been met to one degree or another; in others, they have been largely or wholly neglected. International preoccupation with reducing refugee flows has not been matched by an equivalent effort to protect and assist those displaced within their own borders.

Of course, primary responsibility for the internally displaced rests with their governments, but international involvement is also essential. Not all governments have the resources to fulfill their sovereign responsibilities to their citizens: They may invite international assistance, as have Mozambique and Angola; or there may be a total breakdown of governmental authority, as in Somalia, Liberia, and Afghanistan. Some governments may seek international assistance for their displaced but may receive little or none, like Peru and Colombia. Others may invoke sovereignty to prevent outside interference with their ruthless displacement of their own citizens. This is the case of Turkey, which has uprooted some two to three million of its Kurdish minority; of the Sudan, which has displaced four million of its southerners; and of Burma, which is believed to have displaced between 500,000 and one million. The international commu-

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nity itself may invoke the sanctity of sovereignty as an excuse to avoid tackling problems of internal displacement in states that wield exceptional political clout, or are of so little strategic interest that few wish to act on behalf of the displaced in those countries. Or it may choose to override sovereignty, as it did in the case of Iraq in 1991, and step in energetically.

The next decade will find the international community increasingly called upon to address situations of internal displacement. Conflicts within states, in which civilians, not armies, are the primary targets, have become a defining feature of the post-Cold War era. To meet this challenge, international organizations, governments, and NGOs will have to go beyond ad hoc responses and explore more effective ways of reaching persons displaced within the borders of their own countries as a result of genocide, gross violations of human rights, internal strife, and ethnic disputes. At the same time, they must expand the scope of their efforts, from relief, the main focus up to now, to protection, which has yet to receive the attention it warrants.

The international community should take the following steps to improve its ability to address situations of internal displacement.

Define the Internally Displaced

At present, there exists no internationally agreed upon definition of who is an internally displaced person. Achieving one is essential both for the development of accurate statistics and information and for comprehensive and coherent action.

The UN's current working definition holds as internally displaced those

...persons who have been forced to flee their homes suddenly or unexpectedly in large numbers, as a result of armed conflict, internal strife, systematic violations of human rights or natural or man-made disasters, and who are within the territory of their own country.¹

This definition has been described as both too broad and too narrow. Including victims of natural disasters is said to make it unduly broad. Persons fleeing armed conflict, internal strife, and systematic violations of human rights would, if they were to cross a border, qualify as refugees both under the Organization of African Unity (OAU) Convention and the Cartagena Declaration, and, arguably, in many cases, under the narrower definition of the Refugee Convention as well. But persons uprooted by natural disasters would not; they generally are not in need of international protection of their human rights; moreover, their governments

and the international community are usually willing—if not always able—to provide them with assistance. The argument for retaining them in the definition is based essentially on cases where governments respond to natural disasters by persecuting certain groups on political or ethnic grounds or by violating their human rights in other ways. For example, when drought and famine ravaged Ethiopia in the mid-1980s, the government forcibly relocated hundreds of thousands of Tigreans it regarded as political opponents, under the pretext of responding to a natural disaster. In other countries, persons have also been displaced because of a combination of natural causes and racial, social, or political reasons. Maintaining natural disasters in the text, it is argued, would assure protection for such persons.

A better solution, however, might be to qualify the term so that it covers cases involving human rights violations and persecution but not all victims of natural disaster.

The same reasoning would apply to man-made disasters, for example ecological or nuclear disasters. Whereas displaced populations in many of these cases should readily receive assistance from their governments and/or from the international community, other cases may be complicated by persecution and systematic violations of human rights or the need for international protection. It is the latter cases that should be covered by the definition. The same would be true for development projects that cause displacement. Should, for example, the Three Gorges dam currently under construction in China entail the forcible displacement of one million people without adequate resettlement, compensation, or respect for human rights, it could qualify as a man-made disaster whose displaced populations require attention under the definition.

The quantitative and time qualifiers in the definition, on the other hand, make it unduly narrow. Restricting the internally displaced to those forced to leave “suddenly or unexpectedly in large numbers” would exclude serious cases of internal displacement—such as in Colombia, where the displaced often flee in small numbers, making them less conspicuous, or in Iraq, where the government organized the uprooting of Kurds over a period of years in the late 1970s, 1980s, and early 1990s.

The term “forced to flee” is also too narrow. Countless numbers in Burma, Iraq and Ethiopia have been forcibly moved by their governments on political and ethnic grounds; they did not flee. Nor did Bosnian Muslims forcibly expelled from their homes in Banja Luka and other areas of Bosnia on ethnic and religious grounds. Such persons explicitly should be included as internally displaced.

The definition essentially should help identify persons who should be of concern to the international community because they are basically in refu-

gee-like situations² within their own countries, and their own governments are unwilling or unable to protect and assist them. Some development agencies have proposed expanding the definition to encompass those who migrate because of poverty or other economic causes. But this would add millions of persons to the definition who have not fled or been forced from their homes and whose needs are best addressed by development programs generated by national and international agencies.

The internally displaced should be defined as persons or groups of persons who have been forced to flee, or leave, their homes or places of habitual residence as a result of armed conflict, internal strife, and systematic violations of human rights, as well as natural or man-made disasters involving one or more of these elements, and who have not crossed an internationally recognized state border. What should make internally displaced persons of concern to the international community should be the coercion that impels their movement, their subjection to human rights abuse as a result of this uprootedness, and the lack of protection available within their own countries.

When an internally displaced person ceases to be displaced also needs clarification. Conventional wisdom would have it that the voluntary return of the displaced to their homes or their reintegration elsewhere marks the end of internal displacement. But if protection is largely lacking in these areas and their land and homes are occupied by others, can internal displacement be said to be over? In Angola, for example, groups of internally displaced persons voluntarily transported back to their home areas found that they could not remain there because all infrastructure had been destroyed and they had no means of sustaining themselves. The mere act of return therefore did not end their internal displacement. Determining when internal displacement is ended should go beyond merely registering whether return or relocation has taken place. It should include whether the returns and relocations are reasonably viable and whether basic security and survival are assured.

Adopt a Legal Instrument

Adopting a legal instrument goes hand in hand with defining internal displacement.

International organizations and NGOs frequently complain that no legal instrument exists to guide their work with the internally displaced. Governments similarly find that there is no instrument to consult when drafting laws to protect the internally displaced. A myriad of provisions can be found in international human rights and humanitarian law, and in refugee law by analogy, but some are appli-

cable in certain circumstances and not in others. And no one instrument sets forth these principles in a coherent fashion.

During the past two years, international legal experts have worked to compile a set of appropriate provisions. They have found many gray areas and gaps in the law as it might apply to the internally displaced. Human rights law, for example, can be derogated from in times of public emergency or internal strife, leaving internally displaced persons without adequate protection. It also is not binding on insurgent forces. Humanitarian law applies only to armed conflict situations, not to lesser situations of civil strife in which many internally displaced persons are caught up.

Neither human rights nor humanitarian law is sufficiently explicit in its protection of the internally displaced. In some cases, it is possible to infer specific rights from existing general norms or by way of analogy. In others, however, inferences strain interpretation. For example, no explicit guarantee exists against the forcible return of internally displaced persons to places of danger. Governments are not explicitly obliged to accept international humanitarian assistance or to ensure the safe access of internally displaced persons to essential facilities and commodities needed for survival. Nor are there explicitly articulated protections for internally displaced women and children. Clear gaps exist in the law when it comes to personal documentation for the displaced or restitution or compensation for property lost during displacement. International lawyers have identified seventeen areas where there is insufficient protection owing to inexplicit articulation, and eight areas where there are significant gaps in the law.³

What is needed is a definitive statement of legal principles that recapitulates and clarifies in one coherent document the existing norms, makes explicit the gray areas in the law, and remedies identifiable gaps. The instrument should be non-derogable in all circumstances. It would have to apply both to governments and to insurgent forces. To obviate a need for ratification (and because the political reality is that many governments would not be willing to bind themselves through a convention), it should take the form of a declaration of principles whose moral force could, over time, achieve for it the status of customary law.

In addition to providing a modicum of legal protection for the internally displaced, such a declaration would serve the important educational purpose of raising the level of international public awareness of the needs of internally displaced persons. It would also serve the practical purpose of giving human rights and humanitarian agencies a document to point to when dealing with governments and insurgent forces to gain access to the





internally displaced.

Arguments against a new legal instrument come mainly from those who believe in placing emphasis on implementing existing norms rather than creating new ones. The International Committee of the Red Cross (ICRC) in particular has expressed the fear that any attempt to develop new standards could risk undercutting the extensive coverage that already exists under the Geneva Conventions.

Rather than undercutting existing protections, however, a new instrument would both reconfirm them and expand coverage for a group of persons insufficiently protected at present. Precedents abound in international law for the protection of disadvantaged groups—whether refugees, minorities, indigenous populations, the disabled, or women and children. Drafting a non-binding declaration would be an incremental step toward establishing minimum conditions for the treatment of the displaced. Every effort should be made to encourage the UN Commission on Human Rights and the General Assembly to take that step.

Acknowledge the Special Needs of the Internally Displaced

That internally displaced persons, by virtue of their displacement, have special and distinct needs, seems obvious. The fact, however, merits underscoring, for not everyone agrees.

Consider some recent examples. In Rwanda, in 1994, the UN Department of Humanitarian Affairs (DHA) found that the nutritional status of the displaced was substantially worse than that of the wider population. In Angola, in 1995, the International Organization for Migration (IOM) found that the internally displaced often endured worse conditions than returning refugees and that the great majority were unable to participate fully in the reconstruction of the Angolan economy for lack of land, tools, and resources. In Chechnya, in 1995, UNHCR reported that many of the internally displaced “fled with nothing but the clothes on their backs, and reported losing their homes and everything in them.”⁴ Moreover, they were targeted deliberately in attacks by Russian forces.⁵

The Representative of the UN Secretary-General on Internally Displaced Persons, Francis M. Deng, appointed in 1992, has emphasized the profound physical and psychological trauma suffered by the internally displaced as a result of their displacement. On the run and often without documents, they have been more readily subjected to round-ups, forcible resettlement, and arbitrary detention. They are more vulnerable to forced con-

scription and sexual assaults, and more regularly deprived of food and health services. The highest mortality rates ever recorded during humanitarian emergencies have come from situations involving internally displaced persons.⁶ The Representative has also observed that internally displaced persons in many countries are “perceived as the ‘enemy’ either by their association with an identifiable insurgent group, or more generally with an ethnic, cultural or social group perceived as inferior, ‘threatening,’ or simply ‘other.’” Because of this, they fall into a vacuum of responsibility within a state.⁷

Nonetheless, staff at several international organizations have been reluctant to recognize that serious differences exist between the needs of the internally displaced and those of other affected populations. Field staff at UNICEF, among others, have argued that singling out the internally displaced would discriminate against others equally in need and cause inequity and conflict. “Situations,” they say, not categories of persons, are what should be addressed, with all those in need receiving attention whether or not they are displaced.

Such an approach could prove harmful, even dangerous, were it to fail to take into account the special problems and characteristics of the internally displaced. In El Salvador, for example, a major problem for the internally displaced—unlike others in the general population—was a lack of official documentation. For them, protection meant being provided with the required papers. In Sri Lanka and Burundi, the internally displaced have limited, if any, access to land, which means that they need more food assistance than the local population. In Tajikistan and Rwanda, internally displaced persons returning to their homes faced security problems that made it essential for special steps to be taken to increase protection specifically for them. In Colombia, many internally displaced persons who had taken refuge in urban slums came forward with unique problems, such as the need for legal recognition, when the government expressed readiness to recognize their situation.

To acknowledge the needs of internally displaced persons is not to create a new category of persons with special rights and privileges. Rather, it is to ensure that, in a given situation, community-based or otherwise, their unique needs are addressed. When UNICEF responds to the needs of women and children, a particularly vulnerable group, it works to the advantage of entire communities. So it should be with the internally displaced. Clearly, the international community must find ways to ensure a more equitable distribution of resources, so that internally displaced persons also receive protection and assistance appropriate to their needs.

Needed: An Organization To Collect Data

At present, no office exists either within or outside the UN that systematically collects data about the internally displaced: about their numbers worldwide, the causes and manifestations of their displacement, their access to basic services, their protection concerns, the capacity and willingness of their governments to address their problems, and the response of the international community to their plight. Absent such information, figures will remain imprecise, data about the needs of the displaced will remain sparse, situations will be easier to neglect, and it will be harder to analyze the role played by international organizations and governments in protecting and assisting them.

What is needed is an organization that will serve as a central point for worldwide monitoring of the displaced. Within the UN system, the most likely candidate is UNHCR's Centre for Documentation on Refugees (CDR), which has begun to amass information about internal displacement. Its data, however, are incomplete. CDR does not pursue information actively. Instead, it simply collates whatever it is sent, and its collection does not include what is outside the public domain. Neither is any staff member specifically assigned to keep the information on internally displaced persons up to date and comprehensive. UNHCR's increasing involvement in situations of internal displacement should encourage it to expand CDR's role and explore cost-sharing with other UN agencies, in particular with DHA, which is expected to play a coordinating role in situations of internal displacement but has no centralized information base of its own. But regardless of whether the UN system assumes the task, a nongovernmental center, outside the UN, is just as urgently needed. An NGO center could publicize situations in need of attention free from the constraints of the UN system, evaluate the performance of governments and international organizations, and play an important advocacy role. It could also strengthen regular reporting and improve data collection regarding internal displacement.

Make Protection Automatic

Protection of the physical safety and human rights of the displaced should go hand in hand with assistance, in equal partnership, and be made automatic. Internally displaced populations are by definition populations that are at risk. Providing them with food, shelter, and medical attention is only half the job.

What can happen when protection is deficient was tragically demonstrated in Rwanda last

year. In April, several thousand internally displaced Hutus sheltered in camps in the Kibeho area were massacred by the Rwandan army in full view of UN peacekeepers and the staff of international humanitarian relief organizations. Others were reportedly killed by extremist Hutu militia members who also occupied the camps. Present in Rwanda at the time were UNDP, UNHCR, UNICEF, the Centre for Human Rights Field Operation, the Special Representative of the Secretary-General for Rwanda, a Humanitarian Coordinator sent by DHA, and UNAMIR, the UN's peacekeeping force. Neither UNHCR nor the human rights field operation had been given a direct role in protecting the internally displaced—which might have enabled them to intercede early on and forestall these events. Only UNAMIR had a mandate explicitly authorizing it to protect the internally displaced, but its numbers in the camps were small, and it interpreted its mandate to cover only the protection of relief workers. A UN internal evaluation of the incident concluded that protection responsibilities should be assigned clearly in situations of internal displacement, and leadership on protection matters clearly established.

Protection, however, has not been a central concern or function for many humanitarian and development agencies that are involved with the internally displaced. These agencies may be the first to become aware of protection problems, but it has not been their practice to address these problems or even communicate them to those who could. Some senior staff in these agencies outrightly oppose any association with protection concerns, on the grounds that such concerns are "political" and that they would jeopardize their agencies' impartiality, neutrality and ability to provide humanitarian relief. Neither UNDP nor DHA has protection as a responsibility, even though the UN has assigned to UNDP Resident Representatives, in their role as Resident Coordinators of the UN system, the task of coordinating assistance to the internally displaced. The Emergency Relief Coordinator (the head of DHA) has been made the UN's "reference point" for situations of internal displacement. However, the Inter-Agency Task Force on Internally Displaced Persons, which DHA chairs, has yet to focus on protection or to decide which institutions and organizations should address protection in the field. Staff sent to assess emergency situations generally have expertise in food aid, water supply, health and sanitation, as well as shelter, but not in how to deal with the human rights and physical safety of the affected population. The inter-agency team sent by DHA to Rwanda, for example, did not include a human rights expert even though protection problems were paramount. In Angola and Liberia, the World Food Program became the lead UN agency because food and logistics were deemed the most critical needs.





Protection problems, although equally severe, received less attention.

UNHCR and the International Committee of the Red Cross (ICRC) stand out as exceptions. Their involvement encompasses both assistance and protection. For these two organizations, humanitarian action is not only about the delivery of relief but also about ensuring the basic human rights and security of the victims. Still, there can be problems. In Chechnya, for example, UNHCR has been less than outspoken about protection concerns, presumably out of fear that to do so would jeopardize its assistance role. UNHCR and ICRC, moreover, are not present in all situations of internal displacement. Only 5.4 million internally displaced persons have been determined to be "of concern" to UNHCR. ICRC's involvement with the internally displaced is limited essentially to wartime situations, but governments often refuse to acknowledge that a non-international armed conflict is taking place on their territory, and some of the worst offenders refuse to allow ICRC entry.

UNHCR has called repeatedly for increasing the involvement of human rights bodies in field operations, and for developing with them joint strategies for monitoring the basic human rights and physical safety of the internally displaced. Until now, the UN has kept human rights bodies deliberately weak and has constrained their ability to operate. The appointment, in 1994, of a High Commissioner for Human Rights opens the way for UN human rights bodies to assume more of a protection role in the field. As a first step, an emergency unit should be established within the UN Centre for Human Rights to help develop its operational capacity and expertise in emergency field work. An experienced and well-trained corps of human rights protection officers should be formed who could be activated in situations of internal displacement. It is noteworthy that the High Commissioner is currently considering steps to ensure "an international human rights presence in countries with large internally displaced/refugee populations" and where protection is a serious concern.⁸ The international community has long accepted the field protection activities that humanitarian organizations such as UNHCR and ICRC provide. Now it is time to extend similar acceptance to the protection role of human rights bodies, and to make available the needed funding.

At the same time, humanitarian and development agencies must themselves assume greater responsibility for assuring protection for the internally displaced. Governments are often more inclined to deal with these agencies, which, after all, fund activities they generally find highly desirable and usually regard as "neutral." They should take advantage of their special position to negotiate guarantees for physical protection. UN Resident Coor-

dinators should develop a common response on the part of UN agencies in order to avoid what happened in Rwanda this past year when UN agencies undercut the Special Representative of the Secretary-General for Rwanda by rushing ahead with aid deliveries on several occasions without reference to the overall human rights and political objectives being pursued. It is important that agencies maximize the impact of their aid deliveries so as to promote a comprehensive program that includes protection and human rights. Governments and non-state actors need to be made aware that they are dealing with a united front that is bound by human rights and humanitarian standards.

Building closer working relationships between humanitarian and human rights bodies is another essential step. Specifically, memoranda of understanding should be drawn up between the High Commissioner for Human Rights and bodies like DHA and UNHCR. A recent agreement between UNHCR and the Human Rights Field Operation in Rwanda defines their respective responsibilities with regard to protecting the physical security and integrity of returning refugees and internally displaced persons and provides for joint action in case of protection problems. This agreement offers a model for such cooperation.

Humanitarian and development agencies should also increase their cooperation with the Representative of the UN Secretary-General on Internally Displaced Persons. The Representative has authority to discuss issues of internal displacement at senior governmental levels. His visits to countries and dialogues about protection problems offer a forum for highlighting the needs of the internally displaced and, in particular, can prove valuable when humanitarian agencies are constrained by their assistance roles.

Humanitarian and human rights organizations also need to forge closer relationships with the UN's peacekeeping units. Although increasingly called upon to play protection roles in emergency situations, peacekeeping units generally have little or no knowledge of human rights, humanitarian, or refugee concerns and little experience in providing protection to civilians in armed conflict situations. As a result, opportunities have been missed for protecting displaced populations and thousands of lives have been lost—as in the former Yugoslavia, where UN forces failed to protect displaced persons in safe havens in Zepa and Srebrenica, and in Rwanda, where they made no serious effort to avert the killings at Kibeho. The UN must assure that its peacekeepers are trained in human rights and humanitarian standards and in the practical measures needed to protect the physical security of displaced persons. When given a specific protection role, they must have a clear understanding of what that means

and be afforded the staff and equipment to make the role effective.

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Internal displacement is one of the most serious humanitarian problems of our time. The international community cannot be expected to come to the rescue in each and every situation of internal displacement around the globe. But if great humanitarian catastrophes are to be avoided, it must be in a position systematically to monitor situations worldwide and to develop appropriate responses. These may range from diplomatic approaches to governments whose actions are causing displacement, to the offering of technical or emergency assistance, or—in the most serious cases—to large-scale, on-the-ground involvement. The steps outlined above, if pursued resolutely, should put the international community on its way toward achieving that goal.

Notes

¹ Analytical Report of the Secretary-General on Internally Displaced Persons, E/CN.4/1992/23, 14 February 1992, para. 17.

² Broadly defined as in the OAU Convention and the Cartagena Declaration as well as in the Refugee Convention.

³ Compilation and Analysis of Legal Norms, Internally Displaced Persons, United Nations Commission on Human Rights, E/CN.4/1996/52/Add.2, December 1995.

⁴ "DHA News," Jan/Feb 1994; Report of IOM & U.N. Unit for Humanitarian Assistance, Luanda, 1995; and Agence France Presse, February 1, 1995.

⁵ Hrair Balian, "Armed Conflict in Chechnya," Coveas Center for Law & Conflict Resolution, November 1995.

⁶ Francis M. Deng, "Internally Displaced Persons: An Interim Report to the United Nations Secretary-General on Protection and Assistance," UN Department of Humanitarian Affairs and Refugee Policy Group, December 1994.

⁷ Interview with the Representative of the Secretary-General on Internally Displaced Persons, *Refugees*, Geneva, 1996 (forthcoming).

⁸ Report of the United Nations High Commissioner for Human Rights, UN General Assembly, A/50/36, 2 November 1995, p.33.

