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Robert K. Goldman

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INTERNAL DISPLACEMENT : THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT – NORMATIVE STATUS, AND THE NEED FOR EFFECTIVE DOMESTIC IMPLEMENTATION*

ROBERT KOGOD GOLDMAN**

I. INTRODUCTION: ORIGIN OF THE UN MANDATE ON INTERNALLY DISPLACED PERSONS

It was not until the early 1990s that international concern began to increasingly focus on the plight of IDPs, i.e., people forced from their homes as a result of armed conflict, communal violence, serious human rights and humanitarian law abuses and/or natural or man-made disasters and who remain uprooted and at risk within their own countries. Unlike persons who flee across international borders and thereby may be entitled to the status and protective international legal regime applicable to refugees, IDPs remain within their country and, as such, are subject to the jurisdiction of their own government, whose very actions or policies may have caused their displacement and which all too frequently may be unwilling or unable to protect or assist them.

Although IDPs are theoretically entitled to enjoy the same human rights as the rest of the country's citizenry, experience amply indicates that they are rarely able to do so. Indeed, forced displacement frequently entails multiple human rights violations since it "breaks up the immediate family ... cuts off important social and community ties; terminates stable employment relationships; precludes or forecloses formal educational opportunities; deprives infants, expectant mothers, and the sick of access to food, adequate shelter, or vital health services; and makes the displaced population especially vulnerable to acts of violence, such as attacks on camps, disappearances, or rape."¹

* This paper was presented at ISIL, New Delhi.

** Professor of Law & Louis C. James Scholar; Co-Director, Center For Human Rights and Humanitarian Law, American University, Washington College of Law, Washington, D.C., USA.

1. W. Kalin & R. Goldman, "Legal Framework" in R.Cohen & F. Deng. *Masses in Flight: The Global Crisis of Internal Displacement* (Brookings Institution Press, Washington D.C., 1998), pp. 74, 92 (hereinafter *Masses In Flight*).

Whereas in 1982, it was estimated that some 1.2 million were forcibly displaced in eleven countries, by 1995 an estimated 20 and 25 million IDPs were located in some forty countries, approximately double the number of refugees world-wide.² Of those displaced by conflict and human rights violations, more than 12 million are displaced throughout Africa, 4 to 5 million in Asia (before last December's, devastating, tsunamis), 3 to 4 million in Europe, and more than 2 million in the Americas. As Roberta Cohen of the Brookings Institution has noted, relief agencies and NGOs working in the field, recognizing the magnitude of this humanitarian crisis, sought to help IDPs, but "they found that they had no clear rules for doing so. Indeed, the UNHCR, UNICEF, and NGOs began to appeal for a document they could turn to that would define IDPs and their entitlements."³ James Grant, UNICEF's former executive director, aptly stated: "The world has established a minimum safety net for refugees. Wherever 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."⁴ It should be pointed out that the International Committee of the Red Cross (ICRC) is mandated by the Geneva Conventions of 1949 to assist victims of armed conflicts, including internally displaced populations, and has a right of initiative under its statutes to offer its services to governments in situations falling short of armed conflict. Although the ICRC has undertaken important activities on behalf of IDPs where it has been granted access, it was generally felt that the sheer magnitude of internal displacement worldwide not only exceeded its capacity to act, but also required a more comprehensive and particularized response by the international community.

Within the UN system, many saw unchecked, large scale internal displacement as the precursor of large-scale refugee flows in volatile regions which, in turn, could provoke serious political and security problems. In a similar vein, Secretary-General Kofi Annan admonished that if not addressed, such displacement could "spill across borders and upset external and regional stability." He also described the crisis of internal displacement as an "unprecedented challenge for the international community: to find ways to respond to what is essentially an internal crisis." NGOs, while sensitive to issues of national sovereignty, became increasingly vocal in insisting that "when governments deny access to populations at risk and deliberately subject them to starvation and other abuses, the international community must find ways

2. *Ibid.*, pp. 3 and 32.

3. R. Cohen. *The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting in Global Governance* 10 (2004) at p. 461.

4. J. P. Grant, "Refugees, Internally Displaced and the Poor: An Evolving Ethos of Responsibility", address at Round Table on the Papal Document, UNICEF, 9 March 1993.

to provide the needed assistance.”⁵

As global awareness of the plight of the internally displaced gradually increased, “international discussions increasingly focused on ‘a right to humanitarian assistance’” and, as Roberta Cohen, notes “UN agencies and NGOs became far more active in hard diplomatic bargaining to persuade both governments and rebel forces to allow food and supplies to reach displaced persons at risk. In the case of Iraq in 1991, the international community not only demanded access to hundreds of thousands of displaced Kurds but set up a security umbrella to protect them. Subsequent UN Security Council resolutions demanded access to internally displaced populations in other countries as well and at times authorized the use of force to facilitate the delivery of relief and to provide protection to them.”⁶ NGOs, with the support of certain key States, moreover, began pressing for the creation of a mechanism within the UN system that would focus on IDPs and develop standards to protect them.

Responding to these pressures, in 1992 the UN Human Rights Commission passed a resolution calling on the Secretary-General to name a representative on internally displaced persons to monitor situations of internal displacement worldwide and to devise ways to better protect and assist them.⁷ In particular, the resolution called on the representative to examine the applicability of international human rights and humanitarian law, as well as principles of refugee law, to the protection of IDPs.⁸ Shortly thereafter, the Secretary-General appointed Francis M. Deng, a distinguished former Sudanese diplomat and legal scholar, to that position.

Dr. Deng was situated at the Brookings Institution in Washington and from that location moved rapidly in assembling a team of legal scholars from Europe and the United States to assist him in preparing the study requested by the UN Human Rights Commission. I should note, parenthetically, that I had the good fortune to chair the legal team established under the joint auspices of the American Society of International Law and the International Human Rights Law Group (now Global Rights) to assist Dr. Deng in the preparation of that study. The members of the various legal teams working with the Representative met periodically in Washington and Europe from 1993 to 1995. Importantly, legal experts from the ICRC and UNHCR also participated in these meetings. The studies prepared by these teams were eventually merged into a single document titled *Compilation and Analysis*

5. R. Cohen, “Some Reflections on National and International Responsibility in Situations of Internal Disturbances” in *Forced Migration in South Asia: Displacement, Human Rights and Conflict Resolution* (Jadavpur University ed. by O. Mishra) at p. 242.

6. *Ibid.*

7. UN Commission on Human Rights Res. 1992/73 (5 March 1992).

8. *Ibid.*

of *Legal Norms Applicable to the Internally Displaced* that Dr. Deng presented to the UN Human Rights Commission in 1996, which was followed by a supplement in 1998.⁹

II. METHODOLOGY AND KEY CONCLUSIONS OF THE COMPILATION AND ANALYSIS OF LEGAL NORMS

The Compilation and Analysis of Legal Norms adopted a “needs-based”, rather than a “rights-based” approach. This required first identifying the basic needs of IDPs and then determining the extent to which international human rights law, international humanitarian law and refugee law, by analogy, meet those needs in three recognized situations in international law. These situations, which cover most cases of internal displacement, are: (1) situations of tension and disturbances, or disasters in which human rights law is applicable; (2) situations of non-international armed conflict governed by the central principles of humanitarian law and by many human rights guarantees; and (3) situations of inter-State armed conflict in which the detailed provisions of humanitarian law become primarily operative and many fundamental human rights norms remain applicable.

The study concluded that while existing international law covers, albeit in a dispersed and diffuse manner, many aspects of particular relevance to internally displaced persons, there are many areas in which the law provides insufficient legal protection owing to inexplicit articulation or normative and other kinds of gaps. Specifically, the study identified seventeen areas of insufficient protection and eight clear gaps in the law. Regarding inexplicit articulation, the study found that there are numerous areas where a general norm exists, but a corollary, more specific right relevant to the needs of the internally displaced has not been articulated. For example, although there is a general human rights norm guaranteeing freedom of movement, there is no explicit right to find refuge in a safe part of the country. Similarly, although a general norm prohibits cruel, inhuman or degrading treatment, there is no express norm prohibiting the forcible return of IDPs to dangerous areas within their own country. Another example can be found in the area of non-discrimination, where treaties prohibit discrimination, *inter alia*, on the basis of any “other status” of the person concerned. Although this can be interpreted to include the status of being internally displaced, no authoritative body has yet rendered such a decision. Moreover, although human rights

9. UN, *Compilation and Analysis of Legal Norms*, Report of the Representative of the Secretary-General on Internally Displaced Persons, UN Doc. E/CN.4/1996/52/Add. 2; Part II, *Legal Aspects Relating to Protection Against Arbitrary Displacement*, was completed in 1998 and appears in UN Doc. E/CN.4/1998/53/Add.1 (1998).

treaties prohibit arbitrary detention, the preconditions for lawful detention of internally displaced persons in closed camps are unclear. In addition, although there may be a general norm covering essential medical care, the special needs of displaced women in the areas of reproductive and psychological health care has not yet been clearly articulated.

Regarding gaps in the law, the study found numerous instances where the law is silent. For example, no international instrument contains an express right not to be arbitrarily displaced. Other such gaps are the absence of a right to restitution of property lost (or compensation for its loss) as a consequence of displacement during armed conflict situations, a right to have access to protection and assistance during displacement, and a right to personal documentation. In such cases, the study indicated that such rights would have to be inferred from other provisions of law.

Further gaps occur where a legal norm is not applicable in all circumstances. For example, because human rights law is generally binding only on State agents, the internally displaced lack sufficient protection in situations of internal tensions and disturbances where violations are perpetrated by non-State actors. Another instance of insufficient protection occurs in situations falling below the threshold of application of humanitarian law, in which restriction or even derogation of human rights guarantees might be permissible. Finally, there are “ratification” gaps which are still numerous. Such gaps can result in a vacuum as regards legal protection for the internally displaced in those States that have not ratified key human rights treaties and/or the Additional Protocols to the 1949 Geneva Conventions.

Without stipulating the nature of a future international instrument applicable to the internally displaced, the *Compilation and Analysis of Legal Norms* did suggest the need to both restate general principles of protection in more specific detail and address the grey areas and gaps identified in the study. In this regard, Dr. Deng and his legal team felt that restating and clarifying legal norms in a single coherent document could reinforce and strengthen existing protection.

Early on, it was deemed wise not to go the treaty route, but instead to elaborate a comprehensive set of guiding principles. There were three principal reasons for this decision. First, there was little support by States for a new binding instrument, largely because of sensitivity over issues of national sovereignty. Second, treaty making is notoriously slow, and there was an immediate and pressing need to comprehensively address the plight of displaced persons. Third, the *Compilation and Analysis* confirmed that, despite identified gaps and grey areas, a good deal of international law applicable to IDPs already existed. “What was required was to bring together the myriad of provisions now dispersed in a large number of instruments

and to tailor them to the specific needs of the internally displaced.”¹⁰

Armed with a mandate from the UN Human Rights Commission and the General Assembly to develop an “appropriate” framework based on the *Compilation and Analysis*, Francis Deng and his legal team began drafting the Guiding Principles on Internal Displacement over a two-year period.¹¹ This exercise involved broad consultations with representatives of international organizations, specialized agencies and institutions, such as the ICRC and UNHCR, regional bodies from Africa, the Americas and Europe, international legal experts, and NGOs from all regions of the world. The Guiding Principles, which were finalized at an expert consultation in Vienna in January 1998, were submitted by the Representative of the Secretary-General to the UN Human Rights Commission several months later.

III. THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

The Guiding Principles on Internal Displacement consist of 30 principles which are comprehensive in scope and apply to all phases of displacement. As the Introduction to the Guiding Principles indicates, they “address the specific needs of internally displaced persons worldwide.” As such, they identify key rights and guarantees relevant to protecting persons against forced displacement, and to protecting and assisting them both during displacement and during their return or resettlement and reintegration.

A key precept underlying the Guiding Principles is the concept of national sovereignty as a form of responsibility, which Francis Deng espoused and raised in his dialogues with governments. This concept essentially “... stipulates that States, as a measure of their sovereignty, have the fundamental responsibility to provide life-supporting protection and assistance for their citizens. If they are unable to do so, they are expected to request and accept outside offers of aid. However, if they refuse or deliberately obstruct access and put large numbers at risk, the international community has a right and even a responsibility to assert its concern... Deng repeatedly has pointed out that no State claiming legitimacy can quarrel with its commitment to protect all of its citizens. Sovereignty must mean accountability to one’s population and also to the international community in the form of compliance with international human rights and humanitarian agreement.”¹² In this connection, Roberta Cohen indicates that “it is worth noting that no government has ever explicitly challenged the concept of sovereignty as responsibility, no doubt because any government that did so would have to

10. R. Cohen, note 3, p. 465.

11. See UN Commission on Human Rights Res. 1996/52 (19 April 1996).

12. R. Cohen, note 5, p. 2.

argue that sovereignty would allow a State to deny life-sustaining support to its citizens.”¹³

Accordingly, the Guiding Principles provide that national authorities, consistent with their duty to respect international human rights and humanitarian law, are obliged to “prevent and avoid conditions that might lead to displacement” (Principle 5) and where it occurs, “have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction” (Principle 3) and to establish the conditions for ending displacement through voluntary return or resettlement” (Principle 28).

The Principles describe, but do not define, who is an internally displaced person. For the purposes of these principles, internally displaced persons are:

persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or man-made disasters, and who have not crossed an internationally recognized State border.¹⁴

As Professor Walter Kalin, the current Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, writes “this description of an internally displaced person highlights two elements: (1) the coercive or otherwise involuntary character of movement, and (2) the fact that such movement takes place within national borders.”¹⁵ Therefore, the Guiding Principles do not apply to migrants who voluntarily leave their homes for economic, social or cultural reasons. They do, however, apply to persons uprooted by natural or man-made disasters and development projects. Such persons not only may require life-sustaining aid, but frequently are discriminated against by national authorities on political, cultural or ethnic grounds or suffer other human rights abuses. It is important to note that the list of reasons for displacement in the Guiding Principles “is not exhaustive as indicated by the use of the words ‘in particular.’”¹⁶

As stated in the document itself, the Guiding Principles reflect and are consistent with international human rights and international humanitarian law.

13. R. Cohen, note 3, p. 466.

14. Introduction to Guiding Principles at para. 2.

15. W. Kalin, *Origin, Content and Legal Character of the Guiding Principles on Internal Displacement* in R. Cohen & W. Kalin (eds.), *The Guiding Principles on Internal Displacement and The Law of The South Caucasus, Georgia, Armenia, Azerbaijan* (American Society of International Law 2003), p. xv, xxv.

16. *Ibid.*

Indeed, many of the principles, particularly those relating to *protection during displacement* in Section III (Principles 10-23), are essentially declaratory of customary law. The principles in this Section first restate applicable human rights law and then specify their relevance for IDPs by specifically spelling out what these guarantees mean in the context of displacement. Many of these principles blend basic international humanitarian law rules and principles with key human rights guarantees, thereby underscoring the shared purpose of both bodies of law, that is, to safeguard human life and dignity. Others have either been modeled on or are near verbatim transcriptions of provisions in humanitarian law treaties and thus apply to situations of conflict-induced displacement. For example, Principle 6 expressly recognizes a right not to be arbitrarily displaced. This right is inferred from various human rights guarantees, including freedom of movement and residence, and humanitarian law provisions dealing with the forced displacement of civilians during armed conflict. Paragraph 2 of Principle 6 sets forth categories of prohibited displacement, including displacement occasioned by armed conflict. By stating that such displacement would be arbitrary during armed conflicts unless the security of the civilians involved or imperative military reasons so demanded, this principle reflects several provisions of the Fourth (Civilian) Geneva Convention and the Protocols Additional to the Geneva Conventions.¹⁷ However, other basic guarantees, such as Principle 12 (3) on protection of IDPs from discriminatory arrest and detention resulting from their displacement, Principle 18 on the right to an adequate standard of living, Principle 21 on the protection of property, and Principle 23 on the right to education, also apply to those persons who may have been displaced by situations not entailing armed conflict, such as development projects or disasters.

Section IV of the Guiding Principles deals with the important issue of *humanitarian assistance*. As previously noted, Principle 25 reaffirms the primary duty and responsibility of national authorities to provide humanitarian assistance to their displaced citizens. This principle also provides that international humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced and that such an offer shall not be regarded as an unfriendly act or as interference in a State's internal affairs. Consistent with the principle of national sovereignty, this Principle implicitly recognizes that no such external assistance can be undertaken without the consent of the State concerned. However, in accordance with the concept of sovereignty as responsibility and provisions in humanitarian law instruments, such consent cannot be withheld for arbitrary reasons, especially if the government concerned is

17. See, e.g., ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (M. Nijhoff 1987), pp.1472-73.

unable or unwilling to provide the required assistance. As Walter Kalin notes, national authorities "... can hardly keep out all organizations providing such assistance for prolonged periods of time without falling into arbitrariness."¹⁸

The last section of the principles deals with the *post-displacement phase*, addressing return, resettlement and reintegration. These principles were largely inspired by and reflect certain basic tenets of refugee law. However, it should be recalled that since IDPs, unlike refugees, remain in national territory, they should retain and be entitled to exercise the full rights of citizenship. Although refugee law provided useful guidance to the drafters of these particular principles, that body of law is not directly applicable to IDPs who "should not be treated like refugees whose treatment is very often assimilated to the lower standards applicable to aliens legally present in the country of refuge"¹⁹ and who need the substitute international protection afforded by refugee conventions.

Principle 28 (1) stipulates the primary duty and responsibility of competent authorities to establish conditions and to provide the means by which IDPs may return *voluntarily*, in safety and with dignity, to their homes or habitual places of residence or to resettle *voluntarily* in another part of the country. While not tantamount to an individual right to return to one's home, this principle does set forth appropriate solutions to problems associated with post-displacement. Principle 28 (2) provides that special efforts should be made to ensure the full participation of IDPs in the planning and management of their return, resettlement or reintegration. It also provides that, if resettled in another part of the country, such IDPs should not be discriminated against as a result of their displacement and shall have the right to fully and equally participate in public affairs and have equal access to public services. Finally, Principle 29 (2) indicates that returned or resettled IDPs should be able to recover, to the extent possible, their property or possessions and, when not possible, to obtain appropriate compensation or other form of just reparation.

It is important to note that the Guiding Principles do not alter, replace or modify existing international law or rights granted to individuals under domestic law. Rather, they are designed in large measure to provide guidance on how the law should be interpreted and applied during all phases of displacement. By calling on "all authorities and international actors" to respect their obligations under international law, including human rights and humanitarian law, the principles also seek to prevent and avoid conditions that might lead to displacement in the future.

18. W. Kalin, note 15, p. xvii.

19. *Ibid.*, p. xviii.

A. The Legal Character of the Guiding Principles

The Guiding Principles, as elaborated, are not a legally binding document. As the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons has pointed out, unlike, treaties, declarations, resolutions or recommendations, “they have not been negotiated by States but prepared by a team of experts in close consultation with the concerned agencies and organizations and then submitted to the Human Rights Commission. Thus, they do not even constitute typical soft law, i.e., they do not belong to those recommendations that rest on the consensus of States and thereby assume some authority that may be even taken into account in legal proceedings, but whose breach does not constitute a violation of international law in the strict sense, and thus does not entail State responsibility. Their soft law character stems not from the process of elaboration but from their content which is solidly grounded in existing international law.”²⁰

As previously stated, many of the principles, especially those relating to the displacement phase, were deduced from more general human rights norms or principles that are already part of customary international law. This is amply documented in the *Compilation and Analysis*, as well the *Annotations*²¹ to the Guiding Principles prepared by Professor Kalin. Furthermore, the recently published study on customary international humanitarian law prepared by the ICRC bears out that the Guiding Principles, as applied to situations of armed conflict, restate in large measure customary international law.²²

To the extent that UN bodies, regional inter-governmental organizations and States, through domestic laws and judicial decisions, invoke and reiterate the applicability of the Guiding Principles in situations of internal displacement, the normative character of these principles will undergo change and over time many, if not all, of them *may* crystallize into and become part of customary international law. And, I would submit, that this process is well under way. For example, although the UN Commission on Human Rights and the General Assembly initially only “took note” of the Guiding Principles and the Representative’s stated intention to use them in his work, subsequent resolutions contained much stronger language, suggesting an

20. W. Kalin, “The Guiding Principles as International Minimum Standard and Protection Tool”, *Refugee Survey Quarterly* (2005) [forthcoming].

21. W. Kalin, *Guiding Principles on Internal Displacement, Annotations* (American Society of International Law 2002).

22. J. M. Henckaerts & L. Doswald - Beck, *Customary International Humanitarian Law*, Vol. 1 (Cambridge University Press, ICRC, 2005).

endorsement of the document. In 2003, the Commission, for instance, expressed “appreciation” for the principles, called them a “standard”, welcomed their “dissemination, promotion and application” worldwide, and welcomed the fact that “an increasing number of States, United Nations agencies and regional and non-governmental organizations [were] applying them.”²³ For his part, Secretary-General Annan strongly supported the Guiding Principles, calling them a “notable achievement” in the humanitarian area and in a report to the Security Council in 1999 requested that body to call on States to observe the principles in situations of mass displacement and recommended that the General Assembly and ECOSOC encourage States to develop national policies and laws “consistent with” the Guiding Principles.²⁴ In March 2005, the Secretary-General in his report in UN reform, *In Larger Freedom*, urged States to accept the Guiding Principles as “the basic international norm of protection.” Based on this report, the Chairman of the UN General Assembly has circulated a draft Declaration for adoption by the Heads of State and Government in September of this year which contains language that recognizes the Guiding Principles as “the minimum international standard for the protection of internally displaced persons.” Furthermore, the Security Council has begun citing the principles in its resolutions and presidential statements.

Comparable support for the principles can be found at the regional level. For example, in Europe, the Parliamentary Assembly of the Council of Europe has urged Member States to incorporate the Guiding Principles into their domestic law and the Organization for Cooperation and Security in Europe has recognized the Principles as a “useful tool” in fashioning national policies on internal displacement.²⁵ The African Union (formerly the Organization of African Unity) has formally acknowledged the principles, and the Economic Community of West African States called on its members to disseminate and apply them. In addition, the Intergovernmental Authority on Development in the Horn of Africa called the principles in a ministerial declaration a “useful tool” in the development of national policies on internal displacement. Within the Organization of American States, the Inter-American Commission on Human Rights, the principal organ in the Americas for promoting and protecting human rights, endorsed the Guiding Principles in 1998 and was the first regional human rights body to create that same year a Special Rapporteur on internally displaced persons – a position I have held. The Commission has used the principles as a benchmark in monitoring States’

23. UN Commission on Human Rights, Res. 2003/51 (23 April 2003).

24. UN, Report of the Secretary-General to the Security Council, *Protection of Civilians in Armed Conflict*, UN Doc. S/1999/957, recommendation 7; UN, Report of the Secretary-General to the Economic and Social Council, *Strengthening the Coordination of Emergency Humanitarian Assistance*, UN Doc. E/2003/85 (2003).

25. R. Cohen, note 3, pp. 469-70.

responses to internal displacement in both Colombia and Peru. Moreover, since the late 1990s, both the Commission and the Inter-American Court of Human Rights have issued numerous binding orders requiring the government of Colombia to protect thousands of displaced persons who are at risk in connection with the ongoing internal armed conflict in that country.

On the national level, the Guiding Principles have begun to have a practical impact. A small but increasing number of governments have begun to develop policies based on the principles and have also incorporated their provisions into national law.²⁶ For example, the Colombian government has an inter-ministerial body which looks to the principles in its work on behalf of IDPs. Furthermore, Colombia's Constitutional Court has issued two judgments citing the Guiding Principles in support of IDPs' claims that they were not being provided with timely and sufficient assistance. In 2004, Peru's congress passed legislation based on the Guiding Principles that provides benefits for the displaced. The government of Angola has incorporated the principles in a law pertaining to the resettlement of persons displaced by the civil war. Also, in Afghanistan, the principles are informing the provisions of a decree relating to the safe return of IDPs. The government of Georgia has announced at the UN that it would bring its internal law into line with the principles. In addition, various States, e.g., Burundi, Colombia, the Philippines, Sri Lanka, and Uganda, have developed national policies based on the principles.²⁷ Moreover, several non-State actors involved in civil strife have used the principles. Specifically, in Sudan, the former Sudan People's Liberation Movement and Army used the principles in devising its policy on IDPs, and the Liberation Tigers of Tamil Eelam have received some training based on them.²⁸

The response of humanitarian agencies and NGOs working in the field to the principles has been particularly noteworthy. For example, the Inter-Agency Standing Committee, composed of all the heads of the key international humanitarian and development organizations, welcomed the principles and has had their staffs apply them in their work with IDPs. The Office for the Coordination of Humanitarian Affairs published 10,000 copies of the principles and sent them throughout the world. Moreover, UNHCR developed various programs based on the principles for displaced persons in Sri Lanka and other countries. Global and local NGOs, working with lawyers, academics, women's associations and others, have played an important role in promoting and seeking meaningful implementation of the principles. They have disseminated the principles, translated them into local languages, organized training sessions, and developed Power Point presentations, comic

26. *Ibid.*, p. 470.

27. *Ibid.*

28. *Ibid.*, p. 471.

strips, and handbooks to make them relevant to local conditions.”²⁹ To date, the Guiding Principles have been translated into 35 languages, including Assamese, and are being translated at present into Gujarati, Bodo, Karbi, and Meitei. According to reports received from the field, displaced communities and IDP associations have found themselves “empowered” by the principles. In Sierra Leone after learning of their rights, IDPs reportedly used the principles to call on UN agencies to provide education in camps.³⁰

The foregoing review indicates that there is ample evidence suggesting that international and regional organizations and an increasing number of States throughout the world have gradually come to accept the authoritative character of the Guiding Principles. It is submitted that these principles, which are based on hard law, are today not only an indispensable, practical tool, but also the minimum international standard for protecting the rights of IDPs and providing guidance to governments, international agencies, regional organizations and NGOs in their dealing with them. Accordingly, the Guiding Principles, from a normative standpoint, have succeeded in filling a major gap in the international protection system for persons involuntarily uprooted from their homes.

IV. CONCLUSION: THE NEED FOR EFFECTIVE DOMESTIC IMPLEMENTATION OF THE GUIDING PRINCIPLES

The Guiding Principles do not have any monitoring or enforcement mechanisms which can be invoked by IDPs in need of protection and assistance. Moreover, acceptance of the principles by States does not necessarily guarantee their effective implementation. In this regard, Professor Kalin notes that many governments faced with internal displacement, even when disposed to act, “lack the necessary capabilities and tools including laws, policies and institutions to do so.”³¹ He pointed out in his first report as Representative on the Human Rights of IDPs that, while attempts to incorporate the Guiding Principles into domestic law and policies and into regional international law are encouraging, some resulting laws and policies have not always succeeded in clarifying “how the rather abstract general principles of international law articulated by the Guiding Principles should translate into concrete action on the ground.”³² For this reason, he announced his intention “to assist governments by developing, in broad consultation with relevant actors, a manual which would provide law and policy makers with

29. *Ibid.*

30. *Ibid.*

31. W. Kalin, note 21, p. 5.

32. E/CN.4/2005/84

detailed guidance as to the content, institutional arrangements and procedures necessary to make the Principles operational at the domestic level.”³³ This approach is consistent with the Secretary-General’s exhortation to Member States that they commit themselves to incorporate the Guiding Principles into their domestic law.

It is my understanding that the government of India, while expressing skepticism at the UN about the legal standing of the Guiding Principles, has begun to acknowledge their value as a practical tool for dealing with internally displaced populations. However, rather than continuing to adopt essentially ad hoc responses to internal displacement whose effects might discriminate between different groups of IDPs in different parts of the country, the Indian government might want to contemplate the advantages of enacting a comprehensive national law dealing with the internally displaced patterned on the Guiding Principles. By so doing, it would effectively “nationalize” basic rules to assist and protect IDPs, ensure, consistent with constitutional guarantees, that all its displaced citizens would be treated equally, and would, thereby, assume a major leadership role in Asia on this issue.

33. W. Kalin, note 21, p. 10.