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International Legal Community Makes Strides in Developing International Norms for Protecting and Assisting Internally Displaced Persons

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International Legal Community Makes Strides in Developing International Norms for Protecting and Assisting Internally Displaced Persons

by Ellen B. Zeisler

While world attention has focused on the problems of refugees, forced to flee their countries to escape persecution or armed conflict, an even greater number of individuals facing such crises remain in their own countries, uprooted from their homes or places of habitual residence. These internally displaced persons (IDPs) are like refugees in that they are vulnerable to discrimination and violations of their basic human rights. Unlike refugees who are protected in large part by major international conventions, however, international law frequently fails to protect the special needs of the internally displaced.

The United Nations High Commissioner for Refugees (UNHCR) estimates that there are approximately 13.2 million refugees in the world today. The Washington-based foreign policy think tank, the Brookings Institution, estimates that IDPs number between 20-25 million. Refugee law obliges states which are parties to the major refugee conventions to afford bonafide refugees certain rights. Internally displaced persons who do not cross international boundaries often have the same protection and assistance needs as refugees but are not covered by international

refugee instruments since they do not qualify as refugees.

Appointment of a UN Representative on Internally Displaced Persons

In response to the growing phenomenon of IDPs worldwide, the international community has in recent years focused on formally promoting the rights and needs of the internally displaced. In 1992, the UN Secretary-General, at the request of the UN Commission on Human Rights, appointed Dr. Francis M. Deng as the Representative on Internally Displaced Persons. Dr. Deng, a former Sudanese diplomat and Minister of State, was assigned the task of examining the problem of IDPs by undertaking missions to countries with large displaced populations. With some 35-40 countries facing acute problems of internal displacement, the Secretary General's Representative has already visited the former Yugoslavia, the Russian Federation, Somalia, the Sudan, El Salvador, Sri Lanka, Colombia, Burundi, Rwanda, Peru, Tajikistan and Mozambique. On the ground, Deng assesses the protection and assistance needs of IDPs and dialogues with governments and other relevant actors regarding the treatment of IDPs.

Deng is also addressing the problem of creating an effective institutional framework within the United Nations for dealing with internal displacement. No UN agency currently has an express mandate to protect and assist IDPs. The

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Human Rights and Health Care Reform: Lessons for the former Soviet Union

by David F. Chaukin*

For the past several years, since the dissolution of the Soviet Union, the United States has been working with such allied institutions as the World Bank to convert the economic systems of the former Soviet Union (FSU) countries from state socialism to free market economies. One of the areas in which the United States has been encouraging reform is in the health care financing and delivery systems of these newly independent states.

While the United States has much to teach Eastern Europe in the delivery of high technology health care services, there is good reason for the United States to proceed slowly in urging the

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UNHCR has regularly undertaken to assist IDPs but only on an *ad hoc* basis. As a result, IDPs often fall through the cracks when UN agencies fail to systematically coordinate their protection and assistance activities. In an effort to

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rectify this problem, the Representative will present a proposal to the UN Commission on Human Rights in its 1998 session for a cohesive and cooperative approach to the IDP problem both among the UN agencies and other non-governmental, regional, and international humanitarian organizations.

Assessment of International Legal Protection of IDPs

Together with a group of international legal scholars, including Washington College of Law Professor, Robert K. Goldman, Deng undertook to develop a normative framework for protecting the rights of IDPs. Because governments often cause or tolerate the internal displacement of their own citizens, the development of a normative framework enumerating the rights and needs of IDPs had become a pressing task for the international community. This normative framework would delineate the standards by which it could be ascertained whether or not governments were meeting their obligations toward the internally displaced in their territories.

At the request of the Secretary General's Representative, Goldman headed a study under the joint auspices of the American Society of International Lawyers (ASIL) and International Human Rights Law Group (IHLRG) to determine whether existing law provides sufficient legal protection for the internally displaced. With the assistance of Cecile Meijer, a WCL graduate, and a team of LL.M. and J.D. students, Goldman's group produced a 200-page study

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that examined existing international human rights, humanitarian, and refugee law, by analogy, to evaluate the extent to which each body of law meets the protection and assistance needs of displaced persons and to identify any gaps or shortcomings in the law.

The group assessed international protections in situations of tensions and disturbances or disasters, in situations of non-international armed conflict and in international armed conflict. While many provisions of international humanitarian and human rights law offer protection to the internally displaced, refugee law is not directly applicable to IDPs, because they have not crossed internationally-recognized borders, and, thus, do not qualify as refugees. However, inasmuch as IDPs find themselves in refugee-like situations in their own country, refugee law by analogy, can serve as an effective model for proposing rules and establishing guidelines to protect the needs of IDPs.

Goldman's group's study revealed that while existing international law provides some protection for IDPs, there exists significant gaps in which the law fails to protect the specific needs of IDPs. One example is the absence of a right to restitution of property lost (or compensation for its loss) as a consequence of displacement during armed conflict situations. Other gaps occur where a legal norm is not applicable in all circumstances. For example, because human rights law is usually binding on state actors only, IDPs lack sufficient protection in situations falling short of armed conflict where violations are attributable to nonstate actors. In addition, there are numerous areas where a general norm exists, but a corollary, more specific right relevant to the protection needs of IDPs has not been articulated. One example is the prohibition of return to situations of imminent danger. As all the case law refers to return

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across *international* frontiers, a prohibition of inhuman return of IDPs to dangerous areas within their own countries must be established to ensure that they will get protection. Another example can be found in the area of nondiscrimination, where conventions prohibit discrimination, *inter alia*, on the basis of "other status" of the person concerned. Although this can be interpreted to include the status of being displaced, no authoritative body has yet rendered such a decision. Although the prohibition of arbitrary detention is clearly recognized in international law, the preconditions for lawful detention of IDPs in closed camps are unclear.

The study also found that existing international law fails to sufficiently protect the rights of IDP women and children. Women IDPs are especially vulnerable to gender-specific violence such as rape. Children and unaccompanied minor IDPs become susceptible to forcible recruitment into a government's or dissident group's armed forces and to forced slavery and its contemporary manifestations.

In 1995, the Secretary General's Representative on IDPs gave the UN Human Rights Commission a Compilation and Analysis of Legal Norms relevant to IDPs based on both Goldman's study and a study prepared by the Ludwig Boltzmann Institute of Human Rights in Austria. An international group of legal experts, including Goldman, again with a team of WCL students, then began to draft a set of guiding principles based on the Compilation to create a normative framework for the protection and assistance needs of IDPs.

Guiding Principles on Internal Displacement

Their final product, entitled Guiding Principal on Internal Displacement, was presented by the Special Representative to an expert consultation of all UN agencies and important NGOs working within the field convened by the Government of Austria in Vienna in January of this year. The Guiding Principles is the first international document of its kind, specifically tailored to address and meet the

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needs of IDPs. It is hoped that this non-binding document consisting of 30 principles, will, by delineating their essential rights, enhance protection and assistance to the internally displaced and provide authoritative guidance to states and all other authorities, groups and persons in their relations with IDPs. The Guiding Principles may eventually achieve the status of customary international law and could pave the way to the development of a binding legal instrument.

The Guiding Principles define internally displaced persons as:

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

The Guiding Principles are comprehensive in scope, enumerating general principles applicable to IDPs, as well as addressing their specific needs during various phases of displacement.

The Principles identify rights and guarantees relevant to protecting persons from forced displacement, to protecting and assisting them during displacement, as well as during their return or resettlement and reintegration.

The Principles identify rights and guarantees relevant to protecting persons from forced displacement, to protecting and assisting them during displacement, as well as during their return or resettlement and reintegration. The final document will be presented to the UN Human Rights Commission at its 54th session in Geneva in March of this year.

Key Players Convene to Discuss the Future of the Guiding Principles

At the Vienna meeting in January, the Secretary General's Representative, and his team of legal experts met with key players in the international community who work with internally displaced populations. The goal of the expert consultation was to fine tune the

Guiding Principles and to discuss their implementation in the field. Representatives from UN agencies, international, non-governmental, and regional humanitarian and human rights organizations strategized on the dissemination of the Principles in the field. The UNHCR, for example, has already integrated the UN Representative's Compilation and Analysis into a reference manual for field staff dealing with IDPs.

Other UN agencies and NGOs participating in the conference stressed that the Guiding Principles would serve as a practical guide for their field staff when working with IDPs and as a yardstick to measure authorities' treatment of displaced populations. Conference participants also stressed the use of the Guiding Principles to aid international organizations working with IDPs in the field, to forge a coordinated approach to displacement. To this end, participants discussed the need to receive more endorsements of the Principles from NGOs and the need to develop a systematic and periodic review of the implementation of the Guiding Principles.

Regional representatives at the Vienna conference pointed out the varied approaches to the treatment of the IDP phenomenon throughout the world. For example, in the Americas the legal community has taken a progressive approach to the problem of internal displacement by establishing in 1992 an inter-institutional mechanism dealing with the internal displacement in the Americas. Also, the Inter-American Commission on Human Rights has increasingly considered problems related to IDPs in the region by undertaking country visits and considering cases raising issues pertaining to displacement. In Europe, field missions by the Organization for Security and Cooperation in Europe (OSCE) have included IDPs in their mandates and have contributed to the safe return of IDPs. In Asia and Africa, where regional organs have been slower to treat problems of internal displacement, representatives discussed the possibility of holding conferences on internal displacement in which the work of the UN Representative and the Guiding Principles could be integrated on the ground. 🌐

An analysis of the legal framework pertaining to internal displacement co-authored by Professor Goldman and Swiss legal scholar Walter Kalin will appear in a book entitled Masses in Flight: The Global Crisis of Internal Displacement by Roberta Cohen and Francis M. Deng to be published by the Brookings Institution this Spring.