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ASIL Insight**Hurricane Katrina and Internally Displaced Persons**By [Frederic L. Kirgis](#)**Victims of hurricane Katrina are internally displaced persons, not refugees**

In widely circulated media reports in the days following the disaster of hurricane Katrina, victims of the hurricane were labeled “refugees.”^[1] Other reports had victims rejecting such classifications and insisting on their status as American citizens. As a matter of international law, it is clear that persons who were forced to flee the hurricane and the subsequent disasters on the Gulf coast are not refugees. Rather, the international community refers to such persons as internally displaced. A particular set of international standards applies to them.

Refugees are persons who flee abroad because their own government denies them human rights protection either by persecuting them actively or by not helping them against dangers emanating from third parties. International law protects such persons by means of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol^[2] and regional instruments such as the 1969 Refugee Convention of the Organization of the American States (OAS) and the 1984 Cartagena Declaration.

The victims of hurricane Katrina who had to flee their homes have neither left the United States nor lost any of their human rights vis-à-vis the U.S. government. However, they have left their homes involuntarily and thus are internally displaced persons within the meaning of the 1998 Guiding Principles on Internal Displacement. The Guiding Principles describe such 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 [international] border” (preamble, paragraph 2).

A normative framework for addressing the specific needs of internally displaced persons

No specific international convention (treaty) protects the rights of persons displaced within their own national borders by natural disasters or other causes. Nevertheless, as individuals who have not left their own country, they remain entitled to the full range of human rights that are applicable to the citizens of that country. The challenge is to identify those guarantees and concepts implicit in existing international law that respond to the special needs of internally displaced persons.

In 1992 the UN Commission on Human Rights appointed Dr. Francis Deng, of Sudan, as the first Representative of the UN Secretary General on Internally Displaced Persons. A few years later, he was asked to prepare an appropriate normative framework.^[3] Dr. Deng then developed the Guiding Principles on Internal Displacement and submitted them to the Commission in 1998.^[4]

This document details, in 30 principles, the specific meaning for internally displaced persons of the general human rights and humanitarian law guarantees found in international law. It covers all three phases of internal displacement: the pre-displacement phase, the situation during displacement, and the phase of return or resettlement and reintegration. As Dr. Deng stressed at that time, the purpose of these Principles was “to address the specific needs of internally displaced persons worldwide by identifying rights and guarantees relevant to their protection” and thus to provide guidance not only to the Representative in carrying out his mandate, but also to governments, intergovernmental and non-governmental organizations, and others, when they are faced with the phenomenon of internal displacement.

Dr. Deng underlined that the Principles “reflect and are consistent with international human rights law and international humanitarian law” and restate the relevant principles applicable to the internally displaced, which were then widely dispersed in existing instruments. Further, he said, the Guiding Principles would clarify any gray areas and address gaps that may exist.^[5] They

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were elaborated on the basis of a thorough compilation and analysis of norms applicable to situations of internal displacement as contained in relevant human rights law, international humanitarian law and refugee law instruments.^[6]

The Guiding Principles have not been iterated in a treaty. Nevertheless, in a resolution adopted on December 22, 2003 the UN General Assembly adopted a resolution recalling “the relevant norms of international human rights law, international humanitarian law and international refugee law” and recognizing “that the protection of internally displaced persons has been strengthened by identifying, reaffirming and consolidating specific standards for their protection, in particular through the Guiding Principles on Internal Displacement.”^[7] The World Summit Outcome document approved on September 16, 2005, by the UN General Assembly at the end of the meeting at the UN of more than 150 Heads of State and Government declares, “We recognize the Guiding Principles on Internal Displacement as an important international framework for the protection of internally displaced persons.”^[8]

These instruments were adopted by consensus, i.e. with the tacit agreement of the United States and other participating countries. Such instruments are not formally binding under international law, but they serve as evidence of what the international community recognizes as the relevant norms. Thus, the Guiding Principles provide guidance to all authorities faced with problems of displacement, including U.S. authorities at all levels. As experience in the context of the tsunamis of December 26, 2004 has shown, the practical value of the Guiding Principles (which have been referred to primarily when addressing displacement by armed conflict) extends to natural disasters.^[9]

The United States has ratified two multilateral treaties that are relevant in the context of hurricane Katrina. They are the International Covenant on Civil and Political Rights and the International Convention on the Elimination of all Forms of Racial Discrimination. Unlike the victims in most countries affected by the tsunamis, the citizens of the United States are not directly protected by the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women or the Convention on the Rights of the Child, because the United States has not ratified those conventions. Moreover, in the absence of armed conflict, international humanitarian law is not applicable despite the fact that troops have been sent to the disaster areas to restore law and order.

The three phases of displacement

As has been mentioned above, the Guiding Principles cover all three phases of displacement, namely protection against displacement, protection during displacement, and the post-displacement phase. In accordance with general international law, the Principles stress that during all three phases, the primary duty and responsibility for protecting and assisting the displaced lies not with the international community, but with national authorities (Principle 3). Although Principle 3 refers to national authorities, under the international law of state responsibility the national State would be responsible at the international level for the conduct of a constituent state or local authority as well.^[10] Each of the Principles mentioned below is relevant to the disaster caused by hurricane Katrina.

(1) Protection against displacement

Natural disasters present particular challenges for the fulfillment of the national responsibility to protect persons from displacement. Earthquakes, floods, tornados, tsunamis and other natural disasters are beyond the capacity of any State to prevent. However, as affirmed in the “Hyogo Declaration” adopted at the World Conference on Disaster Reduction, held in Kobe, Japan, in January 2005, “States have the primary responsibility to protect the people and property on their territory from hazards and ... to give high priority to disaster risk reduction in national policy, consistent with their capacities and resources available to them.”^[11]

In this regard, international human rights law, in particular the right to life, plays an important role. A State’s obligations with respect to the right to life include not only the negative obligation to refrain from arbitrary deprivation of life by its own agents, but also the obligation to take positive measures to protect persons within its jurisdiction from foreseeable threats to life from other sources, whether emanating from third parties or from natural disasters. This approach has been taken by both regional and global human rights monitoring mechanisms. For example, in *Öneriyildiz v. Turkey*,^[12] the European Court of Human Rights was confronted with a situation where a methane explosion at a landfill site caused a landslide engulfing ten dwellings and killing

thirty-nine people. A Grand Chamber of the Court found the Turkish authorities in breach of the right to life, as State officials and authorities did not do everything within their power to protect the victims from the immediate and known risks to which they were exposed. At the global level, the Human Rights Committee has said that States have a duty to take positive measures to protect the right to life expressed in article 6 of the International Covenant on Civil and Political Rights. **[13]** Guiding Principle 5 similarly calls on authorities to prevent and avoid conditions that might lead to displacement of persons.

Guiding Principle 6(2)(d) contemplates forced evacuation in cases of disasters, to the extent that the safety and health of those affected so requires. This is based on and is in line with Article 12(3) of the Covenant on Civil and Political Rights, which recognizes that freedom of movement may be restricted if provided by law and necessary to protect such things as public health. However, even in this situation Principles 7 and 8 continue to apply. These Principles call for the examination of all possible alternatives to displacement, and for provision of proper accommodation in satisfactory conditions of safety, nutrition, health and hygiene. In addition, the evacuation is to be carried out in a manner respecting rights to life, dignity, liberty and security of those affected. Principle 4(1) says that the Principles are to be applied without discrimination of any kind, such as race, sex, ethnic or social origin, age or disability.

(2) Protection during displacement

The Covenant on Civil and Political Rights sets forth basic human rights, including the right to life, the right to security of person and liberty of movement. These rights are detailed with greater specificity in the Guiding Principles. Under Principles 10, 11 and 12, the rights to life, physical integrity and personal security of all individuals affected by displacement are protected.

Under Principles 14 and 15, rights to freedom of movement, including in or out of camps, and choice of residence, as well as the right to seek safety in another part of the country, are provided for. Under Principle 18, all internally displaced persons, without discrimination, have the right to an adequate standard of living, including, at a minimum, equal access to food, shelter, water, housing, clothing and health care. Principle 20 says that individuals have the right of recognition as persons before the law, such that State authorities are obliged to provide the necessary documentation, including that lost in the course of displacement, without unreasonable restrictions.

Guiding Principle 21 focuses on property rights. It provides that no one shall be arbitrarily deprived of property, and that possessions left behind should be protected against destruction and illegal appropriation, occupation or use.

(3) Protection after displacement

Rights of the displaced do not cease once the initial displacement comes to an end. The Covenant on Civil and Political Rights again provides a basis for the Principles on return, resettlement and reintegration. Article 12(1) of the Covenant supplies a basic right to liberty of movement and freedom to choose a residence. Guiding Principle 28(1) calls on States' authorities to establish the conditions and means for internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. An important corollary, set forth in Principle 29(2), is that assistance is to be extended by the competent authorities to internally displaced persons seeking to recover, to the extent possible, lost or dispossessed property and possessions. Under Principle 28(2), special efforts should be made to ensure the full participation of the displaced persons in the planning and management of their return or resettlement and reintegration.

Conclusions

The relevant international human rights treaties and the derivative Guiding Principles on Internal Displacement set out a comprehensive framework aimed at protecting people from displacement and guiding decision-makers during and after any displacement. They apply to situations of natural disaster just as they do to other contexts of displacement. State action oriented around these standards will go far to safeguard the rights of the displaced and to respond sensitively to human tragedies such as those caused by hurricane Katrina.

About the author

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Footnotes

- [1] For example, see CNN's report of August 29, 2005, Superdome shelters thousands of Katrina Refugees, available at <http://www.cnn.com/2005/WEATHER/08/29/superdome.ap/>.
- [2] The Convention was adopted on July 28, 1951, by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of December 14, 1950. The Protocol was approved by the Economic and Social Council in resolution 1186 (XLI) of November 18, 1966 and was taken note of by the General Assembly in resolution 2198 (XXI) of December 16, 1966.
- [3] See Commission on Human Rights Resolution 1996/52 (UN Doc. E/CN.4/RES/1996/52, April 19, 1996) calling "upon the Representative of the Secretary-General to continue, on the basis of his compilation and analysis of legal norms, to develop an appropriate framework in this regard for the protection of internally displaced persons."
- [4] UN Doc. E/CN.4/1998/53/Add.2. The Principles were developed after Dr. Deng had submitted a 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) and Part II, Legal Aspects Relating to Protection Against Arbitrary Displacement (UN Doc. E/CN.4/1998/53/Add.1). All these documents, together with Annotations of the Guiding Principles are reprinted in Walter Kälin, Guiding Principles on Internal Displacement – Annotations, American Society of International Law, Studies in Transnational Legal Policy No. 32 (Washington D.C., 2000).
- [5] Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39, Addendum, Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2 (February 11, 1998), Introductory note to the Guiding Principles, paras. 9 and 10.
- [6] 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 (1995) and Part II, Legal Aspects Relating to Protection Against Arbitrary Displacement, UN Doc. E/CN.4/1998/53/Add.1 (1998).
- [7] UN Doc. A/RES/58/177, preambular paragraphs.
- [8] Draft Outcome Document, para. 132, available at http://www.un.org/summit2005/Draft_Outcome130905.pdf.
- [9] See: Protection of Internally Displaced Persons in Situations of Natural Disaster, A Working Visit to Asia by the Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, 27 February to 5 March 2005, available at www.ohchr.org/english/issues/idp/index.htm.
- [10] International Law Commission's Articles on State Responsibility, art. 4, UN Doc. A/RES/56/83, Annex (2002). See James Crawford, The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries 94-99 (2002).
- [11] UN Doc. A/CONF.206/6.
- [12] Application No 48939/99, judgment of November 30, 2004.
- [13] CCPR General Comment No. 6, para. 5 (1982), in UN Doc. A/37/40, Annex V (1982).

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