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**“Key challenges to ensure environmental security and sustainable development
in the OSCE area: Land degradation, soil contamination and water
management”**

Session III – Social effects of land degradation and soil contamination

Written contribution

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Topic: The issue of internal displacement in the OSCE context

Millions of persons remain internally displaced throughout the OSCE region as a result of armed conflicts, outbreaks of violence, as well as due to natural or human-made disasters. Unlike refugees who have an internationally established system of protection under the 1951 Convention Relating to the Status of Refugees, and can look to the UN High Commissioner for Refugees for support, the internally displaced persons have no comparable protection system to respond to their needs. They remain within their own countries, but often fall within a vacuum of responsibility in the state. Too often, their governments are unwilling or unable to provide for their protection and assistance needs. Thus, while primary responsibility for the security and well-being of the displaced population rests with their governments, the need for regional and international involvement is often essential.

In terms of legal status, refugees constitute only one narrowly defined group of displaced persons, with an emphasis on movement across international borders from persecution. Those who do not fall within this definition are left without a definitive legal status, and the international community is not under the same obligation to protect and assist them. For many years, a lack of internationally-accepted definitions outside of refugee law, and arguably a defined framework regulating their protection, has meant that the displaced have often been forgotten and marginalized, leaving many vulnerable to abuse.

Recognizing a growing number of displaced persons that have not crossed international borders and that are therefore not recognized legally as refugees, the UN appointed a Representative to the Secretary General (RSG) on the Human Rights of Internally Displaced Persons, Dr. Francis M. Deng, in 1992 to work on addressing this issue. In 1998 the Guiding Principles on Internal Displacement were published by the RSG, being the first international standards specifically tailored to the needs of the internally displaced, which constitute a normative framework for their protection and assistance. Although they are not legally binding, the Principles are consistent with international human rights and humanitarian law and analogous refugee law. The thirty Principles set forth the rights of the internally displaced and the obligations of

governments and other relevant actors toward these populations. They apply to all phases of displacement, offering protection prior to displacement, protection and assistance during displacement and in the return and reintegration phase.

Definition of IDPs comprised in the Guiding Principles, broadly describes IDPs as, *Persons or groups of persons who have been forced or obliged to flee or 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 border.*

Contained in this descriptive definition are several underlying reasons for displacement. While nearly all international organizations acknowledge the place of the Guiding Principles in the development of prevention, response and assistance strategies, most political and operational work has focused on persons displaced by armed conflict or outbreaks of violence. The circumstances of those displaced by disasters and development projects often mirror those displaced by conflict, especially in protracted situations. Nevertheless, the fate of those individuals displaced due to natural or human-made disasters or involuntary resettled due to development projects, has until recently received limited attention on the international level.

At the same time, those fleeing natural or man-made disasters that have crossed international borders are left outside of both the legal definition of a refugee and the descriptive definition of an IDP. It remains an issue of special concern to seek for solutions to ensure protection under international law for those suffering from severe environmental damage and degradation.

The Guiding Principles reflect the doctrine of 'sovereignty as responsibility' as the most suitable conceptual framework for dealing with internal displacement. It stipulates that when states are unable to provide protection and assistance to their citizens, they are expected to request and accept outside offers of aid. Should they refuse or deliberately obstruct access to their displaced or other affected populations and thereby put large numbers at risk, the international community has the right and responsibility to assert its concern.

State responsibility entails steps to prevent arbitrary displacement and resolve the root causes of conflicts. Once displacement occurred, state responsibility comprises acknowledging the problem, assessing the size and needs of IDP populations, developing national laws and policies, removing discriminatory laws and practices, establishing national institutions, training government officials, and safeguarding the full range of civil, political, economic, social and cultural rights of the displaced. The promotion of durable solutions for the displaced is another important benchmark of state responsibility, namely ensuring that IDPs enjoy safe and voluntary returns or resettlement, minority protection, and assistance with property restitution and reintegration.

As governments may lack the capacities to provide protection, assistance or reintegration and development support to their displaced populations, or may fail to do so, the international community has become increasingly involved in these situations. Over the past decade, numerous humanitarian, human rights and

development organisations have come forward to provide protection, assistance, reintegration and development support to internally displaced persons. These include UNHCR, the ICRC, World Food Programme (WFP), UNICEF, the UN Development Programme (UNDP), the World Health Organisation (WHO), the International Organisation for Migration (IOM), the Office for the High Commissioner for Human Rights (OHCHR), and many NGOs. Nonetheless, the overall response has been often *ad hoc*, with the result that world-wide, large numbers of internally displaced persons do not receive adequate protection, assistance or reintegration and development support.

In the OSCE region, the internal displacement remains one of the most pressing human rights, humanitarian and political problems. While their numbers have decreased, due mainly to large-scale returns in countries such as Bosnia-Herzegovina and Croatia, approximately three million persons remain internally displaced in this region, in particular, in the Balkans, Central Asia and Caucasus. Given that the OSCE participating States have committed themselves to the principle that matters related to human rights are of direct and legitimate concern to all participating States, issues related to the plight of internally displaced persons may be and have been discussed in the Permanent Council of the OSCE in the context of discussions of the situation in various parts of the OSCE region.

Commitments of CSCE/OSCE participating States dealing explicitly with refugees and displaced persons were first developed in the 1990s, such in the CSCE Helsinki Document 1992 and the Document of the Stockholm Meeting of the CSCE Council of 1992. However, it was not until September 2000 that the OSCE first attempted to address the issue of internal displacement at an OSCE wide-forum. In 2000, the SHDM on *Migration and Internal Displacement* produced a number of recommendations for the OSCE participating States and OSCE institutions on how to address the problem of the internal displacement in the OSCE region. One of the key recommendations was to adopt a Ministerial Council's decision to integrate UN Guiding Principles as a reference for the OSCE activities. In 2003, the Maastricht Ministerial Council's Decision No 4/03 on Tolerance and Non-Discrimination was adopted, which stated that the UN Guiding Principles on Internal Displacement are to be taken as a '*useful framework for the work of the OSCE and the endeavors of participating States in dealing with internal displacement*'.

At the most recent OSCE-wide forum on internal displacement, the Supplementary Human Dimension Meeting on *Internally Displaced Persons* held in the fall of 2004, the UN RSG on the Human Rights of Internally Displaced Persons, Prof. Walter Kälin, indicated that the 'two most pressing components of that large issue in the OSCE region are: first, the impact of prolonged situations of displacement on the security and well-being of IDPs and, second, the impediments to truly voluntary, safe and dignified solutions to displacement'.

The OSCE's engagement in situations of internal displacement has expanded significantly over the past decade. Its conflict prevention machinery, for example, including its High Commissioner for National Minorities, has worked to avert mass displacement. Protection of internally displaced persons has become a part of the everyday work of a number of OSCE field presences. Their field staff has engaged in monitoring the safety and human rights of displaced persons, especially during returns. In Tajikistan, for example, OSCE field officers brought to the attention of the

authorities instances of harassment of internally displaced persons and have taken up individual cases of illegal house occupation to facilitate the return and reintegration of the displaced. The OSCE field presences have played an integral part in assisting with implementation of property restitution in the South Eastern Europe where some valuable lessons have been learned.

The ODIHR held a number of IDP-related activities in the past years. In particular, in May 2000 a workshop for high-level government officials from Armenia, Azerbaijan and Georgia was organized in Tbilisi, Georgia, jointly with the Brookings Institution Project on Internal Displacement and the Norwegian Refugee Council. Participants of the workshop reviewed internal displacement in Armenia, Azerbaijan and Georgia and the role that various stakeholders can play in addressing these concerns. As a follow-up to the meeting in Tbilisi, the ODIHR has been working very closely with local and international NGOs on reviewing compliance of domestic legislation in the Southern Caucasus with the Guiding Principles on Internal Displacement and developing recommendations on how to improve the normative frameworks for the protection of IDPs. This project was headed by the Representative of the UN Secretary General on Human Rights of Internally Displaced Persons. The legal reviews elaborated as a result of the project have since been serving as a basis for discussions on improvement of legislation among governmental agencies, NGOs, and the international community, including OSCE field presences in the Southern Caucasus. A compilation of the reviews has been co-published by the American Society for International Law and the Brookings Institution-SAIS Project on Internal Displacement.

Furthermore, the ODIHR has a long-term experience in working on the issue of free choice of a place of residence in the countries of the Eastern Europe, Caucasus and Central Asia. In these countries, IDPs as one of the most vulnerable groups of population, have been particularly affected by Soviet-era internal restrictions on freedom of movement, being denied right to work, to vote or to get social services. In several situations, the freedom of movement of IDPs within their country's borders is greatly limited. The ODIHR is continuously involved in improvement of the situation of IDPs by providing assistance to developing a conceptual and legal basis for the reform of such population registration systems across the former Soviet Union.

Moreover, the ODIHR contributes to improvement of the situation of IDPs by mainstreaming these issues into the relevant fields of involvement, such as its work on gender issues, election observation, rule of law, access to justice issues' as well as on specific problems of Roma IDPs.

The SHDM on *Internally Displaced Persons* in 2004 produced a number of recommendations for the OSCE participating States and OSCE institutions on how to continue addressing the problem in the OSCE region. One of the main recommendations called for the use of the UN Guiding Principles as a framework for the work of the OSCE and the endeavours of participating States in dealing with internal displacement and to adopt the human rights based approach as the core of any response to internal displacement.

The participating States were called to assume a national responsibility for IDPs by protecting their physical security and surveying their needs and by developing strategies to ensure their rights, and to develop detailed laws and policies to address

the needs of displaced populations, using the Guiding Principles on Internal Displacement as a framework. It is not sufficient to simply enact the Guiding Principles directly into domestic law or policy. In order to make them applicable, it is necessary to create specific institutions and procedures at the national level and to translate the general norms of the Guiding Principles into detailed legislation and policies that facilitate their application on the ground. Such laws and policies must address assistance and protection as well as the needs of all displaced persons, including those displaced by conflict, natural disasters or development projects. Collaboration and access should be given to regional and international organizations to reinforce national efforts at addressing displacement. Such cooperation should be seen as an extension of national responsibility to displaced populations.

The participants of the forum urged the OSCE to continue mainstreaming the issue into all relevant activities of the organization. For example, special attention is paid to the voting rights of IDPs in the OSCE election observation work, monitoring IDPs' ability to vote and promoting reforms to ensure the full exercise of their right to political participation. The OSCE could support the participating States in the development of national laws, policies and programmes on internal displacement, including on issues of property restitution and compensation. In addition, there were numerous calls for the OSCE to facilitate the exchange between OSCE participating states, international and regional organizations of on best practices and information on legal aspects of addressing internal displacement. Sharing the experience of several OSCE field presences in South-East Europe on issues, such as property restitution, could also prove useful for other parts of the OSCE region.

Preventing internal displacement remains one of the essential responsibilities of the state and areas for application of the OSCE conflict prevention mechanism. In terms of environmentally-induced displacement, the economic and environmental dimension has a role to play in terms of preventing environmental degradation in affected areas, as is being done by the joint Environment and Security Initiative.

International response to displacement remains primarily a reactive one, often led by large-scale humanitarian aid. Nevertheless, the humanitarian response to the IDP crisis cannot be a substitute for the political one, as finding durable solutions to the plight of IDPs requires effectively dealing with the basic causes of displacement. In addition, the efficiency of the international assistance crucially depends on the complementarity of action amongst the main agencies involved. Both national and international NGOs also play a great role in complementing the state responsibility, by reaching out to the affected communities.

Despite significant efforts, much remains to be done in the region, and the OSCE is well-positioned to continue providing assistance in seeking durable solutions for the IDPs in its framework of comprehensive approach involving political, human rights, economic and environmental aspects of the problem.