



Protecting Internally Displaced Persons:

A Manual for Law and Policymakers

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Foreword and Acknowledgments

This manual represents the culmination of a three-year process of research and consultation that I initiated shortly after being appointed Representative of the Secretary General on the Human Rights of Internally Displaced Persons. The drafting of the manual was undertaken in furtherance of my mandate to engage in coordinated advocacy in favor of the protection and respect of the human rights of IDPs and, in particular, to continue my “efforts to further the dissemination, promotion and application of the Guiding Principles and to provide support for efforts to promote capacity-building and the use of the Guiding Principles, as well as the development of domestic legislation and policies” (Human Rights Council Resolution 6/32, paragraph 7(c)). The manual proceeds from the recognition that the Guiding Principles, as the key normative framework for addressing internal displacement, require more precise guidelines in order to be properly implemented.

The drafting of the manual was overseen by a Steering Group of experts from leading UN and other international agencies and organizations, regional human rights bodies, and academic institutions comprising Simon Bagshaw (UN OCHA), Guillermo Bettocchi (UNHCR), Janelle Diller (ILO), Maria Teresa Dutli (Head of the Advisory Service on International Humanitarian Law, ICRC), Lisa Jones (UN OCHA), Miloon Kothari (UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living), Susan Martin (Georgetown University), Barbara McCallin (Internal Displacement Monitoring Centre of the Norwegian Refugee Council), Manfred Nowak (Ludwig Boltzmann Institute for Human Rights, University of Vienna and UN Special Rapporteur on torture), and Bahame Nyanduga (Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons in Africa of the African Commission on Human and Peoples’ Rights).

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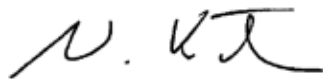
The Steering Group identified key topic areas for guidance to national authorities that are based on an initial study of existing laws and policies on internal displacement by Andrea Soelkner at the Ludwig Boltzmann Institute of Human Rights and then commissioned expert studies on each topic. These studies were prepared by Camillo Boano and Roger Zetter, Anne Charbord, Shivani Chaudhry, David Fisher, Conor Foley and Barbara McCallin, Ambra Gobena, Jeremy Grace and Erin Mooney, Karen Gulick, Erin Mooney and Jessica Wyndham, J. Oloka-Onyango, W. Courtland Robinson, David Tajgman, and Rhodri C. Williams. Their studies served as the departure point for the drafting of the manual and provide further information and analysis for researchers and practitioners in the field of internal displacement. They will be made available in a forthcoming joint publication by the Brookings-Bern Project and the American Society of International Law. Roberta Cohen of the Brookings-Bern Project was instrumental in making this project possible.

The government of Austria supported consultative meetings with expert practitioners from international organizations, governmental experts from countries dealing with internal displacement, and civil society, held in Vienna in September 2006 and May 2008 and hosted by the Ludwig Boltzmann Institute of Human Rights, to ensure that the text was realistic and informed by recent practice.

Funding for this manual is gratefully acknowledged as provided by the foreign ministries of Denmark, Finland, Luxembourg, Norway, and Sweden; the Canadian Department of Foreign Affairs and International Trade; the Swiss Department of Foreign Affairs; the U.K. Department for International Development; the U.S. Agency for International Development; and the Paul D. Schurgot Foundation.

Elizabeth Ferris and Khalid Koser drafted short sections of the manual, and Erin Williams edited it. The Brookings-Bern Project provided logistical support during its development.

The manual was prepared by Rhodri C. Williams.



Walter Kälin

Representative of the UN Secretary-General
on the Human Rights of Internally Displaced Persons



Introduction

This manual is meant to provide guidance to national authorities seeking to prepare and enact domestic legislation and policies addressing internal displacement in their country. In presenting advice on how to shape laws and policies addressing the protection and assistance needs of internally displaced persons (IDPs) and ensuring their rights, the manual draws on two key sources¹:

1. the rules of international human rights law and international humanitarian law, as reflected in the UN Guiding Principles on Internal Displacement (hereinafter Guiding Principles) (see annex 1 for the full text)
2. an increasing body of IDP-specific laws and policies already enacted and implemented by national authorities in countries of every region in the world

As the Guiding Principles underline, it is not the international community but national authorities that “have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction” (Principle 3(1)). The manual aspires to recognize the efforts made by national authorities in many countries to assist and protect IDPs, to highlight laws and policies that have been most compatible with international law norms, and to encourage and assist those in positions of responsibility in other countries affected by internal displacement to undertake the difficult but crucial task of drawing up protective laws and policies of their own.

To prevent internal displacement, protect the displaced during displacement, and find durable solutions for them once the cause of displacement no longer exists requires no more and no less than respect for human rights and, in armed conflict situations, the protective rules of international humanitarian law. As a result, in some situations the protection of IDPs’ rights demands the same measures as are necessary to protect the rights of all citizens, regardless of whether or not they are displaced. For instance, a central means of implementing the right to liberty and security of person is the passage of legislation setting out protections against arbitrary arrest or detention that are applicable to all citizens, whether or not they are displaced.

However, in many other cases, the fact of displacement works against IDPs, creating both physical and administrative obstacles to the realization of their rights that do not apply to non-displaced citizens. For instance, non-displaced persons are not in need of shelter nor do they have to leave their property behind, risking that it will be taken over by somebody else. Likewise, achievement of the right to political participation is beyond the reach of IDPs in situations where they can only exercise their right to vote at a place of origin they cannot safely return to. It is the technical and legal complexities of addressing such displacement-specific protection needs that are at the heart of this manual.

¹ Due to the technical character of this manual, the acronym IDPs is used throughout the text even though it tends to obscure the fact that those affected by displacement remain human beings with specific vulnerabilities and needs—a fact that is better reflected by the notion of *internally displaced* persons.

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This manual is addressed to national policymakers, competent ministries, legislators, and civil society groups concerned with internal displacement in the hope that it will be of direct and concrete assistance in crafting laws and policies that will prevent internal displacement wherever possible and mitigate its effects on the lives of IDPs worldwide. The manual will also be of use to the Representative of the Secretary General on the Human Rights of Internally Displaced Persons (RSG) and his international partners in their ongoing efforts to promote effective national laws and policies to prevent, address, and resolve internal displacement.

A. INTERNAL DISPLACEMENT AND ITS CONSEQUENCES

For the purposes of the Guiding Principles, the term “internal displacement” describes situations in which individuals and groups are (1) forced or obliged to leave and remain away from their homes, but (2) remain within the borders of their own countries.² The second element distinguishes them from refugees, who are also involuntarily displaced but across internationally recognized state borders. Internal displacement occurs typically in response to armed conflict, persecution, situations of widespread violence, natural and human-made disasters and, more recently, large-scale development projects. However, both the scale of the problem and the nature of the response have become far more significant in the last two decades.

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The effect of internal displacement on IDPs themselves, as well as on the local authorities and communities that host them, can be devastating. While the act of displacement itself often may violate the human rights of those affected, the subsequent loss of access to homes, lands, livelihoods, personal documentation, family members, and social networks can negatively affect the ability of IDPs to assert and enjoy an entire range of fundamental rights.³ Most obvious, IDPs immediately become dependent on others for basic needs such as shelter, food and water. At the same time, their vulnerability may be increased by barriers to accessing health care, education, employment, economic activities, and electoral politics in their areas of displacement. Moreover, the longer displacement continues, the greater is the risk that traditional family and social structures break down, leaving IDPs dependent on outside aid and vulnerable to economic and sexual exploitation. Such dependency, in turn, reduces the chances of durable solutions and sustainable reintegration into society once political and security conditions have changed to enable such solutions to take place.

2 Guiding Principles on Internal Displacement, Introduction, paragraph 2.

3 Erin Mooney, “The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern,” *Refugee Survey Quarterly* 24, no. 3 (2005): p. 9-26.

B. INTERNATIONAL RESPONSES AND THE GUIDING PRINCIPLES

Since the end of the cold war, the UN has facilitated domestic responses to internal displacement through the humanitarian assistance provided by its specialized agencies but also through the identification of the rules of international law that govern all states' responses to displacement.⁴ The first RSG, Dr. Francis Deng, was appointed in 1992 with a mandate to compile international standards composing the normative framework for addressing internal displacement. The result was the Guiding Principles on Internal Displacement, which were presented to the UN Commission on Human Rights in 1998. These principles reflect and are consistent with international human rights law and international humanitarian law and restate in greater detail guarantees relevant for the displaced that are implicit in the more abstract prescriptions of these bodies of law.

Since their promulgation, the Guiding Principles have since been accorded almost universal recognition as the normative departure point for dealing with displacement. The heads of state and government assembled in September 2005 in New York for the World Summit recognized the principles as an “important international framework for the protection of internally displaced persons,” an endorsement reiterated by the General Assembly on several occasions.⁵ At the regional level, the 2006 Pact on Security, Stability and Development in the Great Lakes Region of Africa includes a protocol obliging signatory states to enact national legislation to incorporate the Guiding Principles in their legal frameworks.⁶ Other regional organizations including the African Union, the Organization of American States and the Council of Europe have called upon their member states to use the Guiding Principles and incorporate them into their domestic laws and policies.⁷

As regards the responsibility of states affected by internal displacement, the Guiding Principles rest on two key tenets:

1. Sovereignty entails not only the right of each state to conduct its own affairs but also the primary duty and responsibility to provide protection and assistance without discrimination to its population, including the internally displaced, in accordance with international human rights and humanitarian law.⁸

4 These efforts have been strengthened since 2006 with the gradual implementation of a reform of the humanitarian system composed of three components: (1) creation of a Central Emergency Relief Fund (CERF); (2) improved support for UN resident and humanitarian coordinators; and (3) introduction of the cluster approach by designating clusters with an agency responsible for leading the cluster at the international as well as the country levels and for acting as provider of last resort if no other organizations are available in given situation to undertake necessary cluster activities. The clusters and designated agencies are nutrition (UNICEF), water and sanitation (UNICEF), health (WHO), shelter in conflict for IDPs (UNHCR), camp coordination in conflict for IDPs (UNHCR), protection in conflict for IDPs (UNHCR), logistics (WFP), telecoms (OCHA/UNICEF/WFP), early recovery (UNDP), and education (UNICEF).

5 See the 2005 World Summit Outcome document (A/RES/60/1), paragraph 132, as well as, for example, A/RES/62/153(2007), paragraph 10, and A/HRC/RES/6/32 (2007), paragraph 5.

6 International Conference of the Great Lakes Region, “Protocol on the Protection and Assistance to Internally Displaced Persons” (30 November 2006), Article 6.3. See (www.icglr.org/).

7 In 1999 the Commission of the Organization of African Unity (OAU), now reconstituted as the African Union (AU), formally acknowledged and expressed appreciation for the Guiding Principles. The AU is presently (in 2008) in the process of drafting a binding convention on internal displacement in Africa. See also Organization of American States, General Assembly Resolution 2277 (2007) and Council of Europe Recommendation 6 (2006) of the Committee of Ministers to member states on internally displaced persons.

8 Guiding Principle 3.1.

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2. While those displaced within their own country remain entitled to the full protection of rights available to the population in general, displacement gives rise to particular vulnerabilities on the part of those affected. Therefore, and in order to ensure that the displaced are not deprived of their human rights, states are obligated to provide special measures of protection and assistance to IDPs that correspond to these vulnerabilities in order to ensure that IDPs are treated equally with respect to non-displaced citizens.⁹

The Guiding Principles describe in detail the guarantees available to internally displaced persons that must be provided both in order to prevent arbitrary displacement and to mitigate and end it when it occurs. They cover all phases of displacement, including measures of protection against being displaced, protection during displacement, and rights relevant in the post-displacement phase when return or other durable solutions become possible. In addition, the Guiding Principles set out standards pertaining to the delivery of humanitarian assistance.

The Guiding Principles are grounded in existing human rights and humanitarian law standards. Thus, they reflect existing rules and clarify how they apply to internal displacement settings, instead of creating new obligations.¹⁰ This approach has facilitated rapid international acceptance of the Guiding Principles, as reflected in their increasingly common application in the domestic order of displacement-affected countries.

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C. NATIONAL AND REGIONAL RESPONSES: LAWS AND POLICIES

One of the most encouraging signs of international acceptance of the Guiding Principles on Internal Displacement has been the proposal, adoption, and implementation of numerous laws, policies, and decrees addressing internal displacement in all regions of the world. Almost twenty countries have enacted laws and policies explicitly based on the Guiding Principles to date, while other countries have acted to regulate specific problems related to displacement in a manner consistent with their international obligations without necessarily referencing the Guiding Principles.¹¹

These developments reflect a growing realization that internal displacement must be addressed at the national level, both as a matter of legal obligation and national interest. However, both the complexity of the international legal standards reflected in the principles and the range of domestic legislative and policy issues they must be applied to present significant obstacles to exercising national responsibility. By bringing

⁹ Guiding Principles 1.1 and 4.

¹⁰ The provisions of international human rights and humanitarian law providing the normative basis of each of the principles are described in Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, 2nd ed., Studies in Transnational Legal Policy 38 (American Society of International Law and Brookings Institution, 2008) (www.asil.org/pdfs/stlp.pdf).

¹¹ For a compilation of national laws and policies on internal displacement, see (www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx). For a searchable database, see (www.idpguidingprinciples.org).

together legal analysis with examples of domestic practice, it is hoped that this manual will address these obstacles and assist all states experiencing internal displacement to resolve it in a manner consistent with both their international obligations and the interests and aspirations of those displaced.

D. SCOPE OF THE MANUAL

The central aim of this manual is to provide guidance to those who are charged with researching, drafting, and commenting on domestic laws and policies addressing internal displacement. The need for normative frameworks addressing internal displacement exists not only in countries experiencing widespread violence or armed conflict but also those facing displacement by natural or man-made disasters, that is, potentially all countries. This is why states should consider preparing IDP laws and policies even in the absence of actual displacement.

The manual focuses on displacement caused by armed conflict and other situations of violence as well as disaster-induced displacement. Displacement and relocations triggered by development projects usually require specific responses that are different from these humanitarian situations, although they too can cause human suffering. This is why development-induced displacement, while mentioned where appropriate, is not a focus of this manual

While the guidance in this manual will need to be applied in accordance with the domestic legal order and drafting traditions of the countries where it is used, it should serve to provide specific guidance on approaches that laws and policies can take in order to structure responses to internal displacement that comply with relevant international law principles. The manual addresses comprehensively the specific protection needs of internally displaced persons during all phases of displacement, and thus it goes beyond issues linked to humanitarian assistance during the emergency phase of internal displacement.

While the manual is primarily meant as a tool for officials in ministries dealing with internal displacement, it may also assist members of parliament or ministries in charge of implementing activities dealing with internal displacement and thus help facilitate the implementation of laws and policies at the operational level. Nevertheless, much of its analysis and information may also assist these actors in shaping their decisions and actions.

E. HOW TO USE THIS MANUAL

In keeping with its central aim of assisting persons charged with drafting legislative and policy responses to internal displacement, the bulk of this manual focuses on a key set of protection issues that arise in situations where internal displacement has already occurred. Thus, while chapter 3 provides general advice on steps that can be taken *prior to displacement* in order to prevent or mitigate it, the “core chapters” in part III of the manual (chapters 4 through 16) focus on specific measures to be taken *during the time people are displaced* in order to address protection needs as well as to facilitate *durable solutions* that would end their displacement.

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Although chapter 5 on movement-related rights is most inherently related to the achievement of durable solutions, each of the other chapters includes important considerations that should be taken into account.

The manual does not contain a model IDP law or model IDP policy for several reasons. First, legislative traditions are too diverse to allow for a format that would do justice to this diversity. Second, IDP laws and policies should be written in a way that addresses the specific problems faced by IDPs in a given situation and focus on those issues that are of particular importance. Finally, such laws and policies should be the outcome of an inclusive process of analysis and assessment that involves all relevant stakeholders and is, *inter alia*, based on consultations with IDPs. Such an approach is incompatible with simply copying a model.

In this sense, the manual is based on a checklist approach identifying relevant questions and issues rather than lists of necessary content of provisions. However, each chapter contains a *list of minimum essential elements of state regulation*, that is, points that, at a minimum and regardless of available resources, should be part of IDP laws and policies.¹² These lists are summarized in annex 3. They may serve as points of departure for legal drafters, but in virtually all cases, it will be necessary to go beyond them in accordance with identified needs.

The manual may be used in a number of ways:

- ▶ For identification of relevant issues and guidance on preventing or mitigating displacement in the future, see part II, chapter 3.
- ▶ For identification of relevant issues and guidance on responding to an imminent or unfolding displacement crisis, the chapters in part III, taken together, provide an overview of the most important issues requiring regulatory action in order to assist and protect those affected.
- ▶ For identification of relevant issues and guidance on regulatory responses to particular protection issues in the context of protracted displacement or durable solutions, the individual chapters in part III may be consulted in detail.

Each of the core chapters should be read in conjunction with chapters 1 and 2, which set out general considerations on national responses to internal displacement that cross-cut all the topics covered in part III of the manual.

The core chapters in parts II and III of the manual are organized roughly in the order that their subject matter arises in the text of the Guiding Principles themselves. In order to provide a more complete overview of how the manual's recommendations correspond to the Guiding Principles, annex 2 summarizes each provision of the Guiding Principles and identifies any corresponding recommendations in the manual.

¹² The list of minimum essential elements of state regulation for chapters 1 and 2 can be found at the end of chapter 2.

F. STRUCTURE OF THE CHAPTERS

The thirteen core chapters in part III of the manual address protection needs that are discrete in the sense of corresponding to specific sectors of humanitarian assistance (in particular, chapters 4 to 8) and specific categories of recognized human rights. However, many of these issues are interlinked, and respect for one set of rights may be a precondition for the realization of many others. The best example may be the need for personal and identity documentation (chapter 11), without which crucial rights such as education and political participation may be unrealizable in displacement settings. Such linkages have been highlighted with cross-references throughout the text.

The structure of the core chapters in part III is meant to facilitate rapid identification of potential problems as well as possible regulatory responses. Each core chapter is composed of the following subsections:

- ▶ **Introduction:** This section identifies and briefly describes the relevant provisions of the Guiding Principles for each chapter topic.
- ▶ **Legal foundations:** This section summarizes the relevant minimum standards set out in international law for treatment of each topic, citing the most important international treaties and standards. In order to keep this section short, only the most important legal standards are referenced. More detailed information can be found in the annotations to the Guiding Principles.¹³
- ▶ **Regulatory framework:** This section generalizes about how the topic at hand tends to be regulated in domestic law, noting patterns or trends regarding both the manner in which relevant topics are regulated (for example, distinguishing those that tend to be covered in a single code, such as an electoral law, from those that might be the subject of multiple laws and regulations) and the level of government at which such regulation occurs (for example, how competences tend to be distributed between the central and regional or local levels).
- ▶ **Problems often encountered by IDPs:** This section draws out the specific protection implications of displacement for the topic at hand, noting both general concerns and particular risks faced by vulnerable groups within internally displaced populations.
- ▶ **Checklist: issues to be addressed by domestic laws and policies:** This checklist provides an overview of the key objectives that laws and policies on internal displacement should aim to achieve with regard to the relevant topic. It begins with a set of *minimum essential elements of state regulation* that reflect the hard core of what arguably are a state's obligations under international law or are necessary to achieve adequate protection of and assistance for IDPs, and thus they have to be given effect even in situations where the resources or capacity do not exist to implement other measures recommended in the chapters.

¹³ Kálin, *Guiding Principles on Internal Displacement: Annotations*.

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- **Necessary elements of state regulation:** This section provides more detailed guidance regarding how the objectives set out in the checklist should be achieved. In doing so, it provides recommendations for drafters as well as examples of human rights-compatible provisions adopted in existing national laws and policies whenever possible. Where relevant, this section also presents international standards and best practice guidelines. The structure of this section is roughly chronological, beginning with issues to focus on during the emergency or early stages of displacement and typically ending with guidance related to the facilitation of durable solutions.

The annexes facilitate the use of the manual by providing the full text of the Guiding Principles on Internal Displacement (annex 1), an index linking each of the Guiding Principles to the corresponding chapters of the manual (annex 2), a consolidated list of minimum core contents of IDP laws and policies (annex 3), and a list of further readings and resources (annex 4).

The use of examples from existing IDP laws and policies is meant to allow future drafters to benefit from the experience of the small but growing number of countries that have already sought to address the relatively unfamiliar and complicated issues of regulating internal displacement. However, these examples should also be taken with a note of caution. The provisions presented as examples should not be taken as models that can simply be transplanted into other laws without due regard for the legal framework and political and socioeconomic context of the country concerned. They simply represent one way of approaching a particular problem. Moreover, the inclusion of text from existing IDP laws and policies does not guarantee that (1) the law or policy in question, taken as a whole, is compatible with the Guiding Principles and compliant with international law; (2) the law or policy in question has been fully or satisfactorily implemented; or (3) the law or policy remains in force in the form in which it is presented.



PART I

Chapters 1 and 2 should be read in conjunction with each of the chapters in parts II and III of this manual, as they set out a number of issues relevant to all of them. **Chapter 1** addresses a series of cross-cutting issues arising as a direct result of the central obligations embodied in international human rights and humanitarian law and underlying the Guiding Principles. **Chapter 2** focuses on factors requiring attention at the domestic level in order to ensure that both the drafting and the implementation of IDP laws and policies foster an effective national response to internal displacement.

General Considerations

Chapter 1

The Guiding Principles and Human Rights–Based Protection

A fundamental tenet underlying the Guiding Principles on Internal Displacement is that the state obligation to protect and assist the internally displaced is based on existing international law, including settled rules of international human rights law and, in situations of armed conflict, international humanitarian law.

Human rights law sets out basic standards of protection each state owes to all citizens and persons living under its jurisdiction. These obligations go beyond the protection of life and physical security to encompass well-established and interrelated categories of civil, political, economic, social, and cultural rights (including those discussed in this manual). State authorities are required to *respect* these rights by not interfering with their exercise; to *protect* them by preventing foreseeable violations by private parties; and to *fulfill* them through positive measures facilitating their exercise. In cases in which states fail to meet these obligations, they are required to provide effective remedies that serve to rehabilitate those adversely affected, guarantee that such violations will not recur, and hold accountable those responsible.

Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
[...]

By identifying these legal obligations and clarifying their relevance for IDPs, the Guiding Principles underscore the primary duty and responsibility borne by all states with regard to their own internally displaced citizens and habitual residents. Addressing internal displacement is, in other words, a matter of applying rules of international human rights and humanitarian law in a national context to persons who are placed in a vulnerable position by their displacement but do not lose their rights as a result. This principle of the primary responsibility of national actors has a number of specific implications for states, discussed below.

A. DEFINING INTERNALLY DISPLACED PERSONS

There is no legal definition of who constitutes an “internally displaced person” in international law. The notion of IDPs set out in the introduction to the Guiding Principles is meant to be descriptive rather than normative, drawing attention to the characteristics of IDPs that make them inherently vulnerable.¹⁴ This notion has gained authority and is commonly used at the international level.

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Introduction to the Guiding Principles

2. 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 human-made disasters and who have not crossed an internationally recognized State border.

Two elements are decisive in identifying who is an IDP: (1) the *coercive or otherwise involuntary* character of movement—that is, movement caused by armed conflict, violence, disasters, and the like; and (2) the fact that such movement takes place *within national borders*. The second requirement is to be understood in a broad sense. It refers to the place where the displaced persons find refuge, and it also is met if, for example, displaced persons have to transit through the territory of a neighboring state in order to gain access to a safe part of their own country; first go abroad and then return (voluntarily or involuntarily) to their own country but cannot go back to their home or place of origin or habitual residence for reasons indicated in paragraph 2 of the Guiding Principles; or left voluntarily to another part of their country but cannot return to their homes because of events that occurred during their absence that make return impossible or unreasonable.

CASE STUDY

Notions of IDPs in Azerbaijan, Bosnia-Herzegovina, and Nepal

In order to cover persons who have transited through a neighboring country when fleeing or first sought refuge abroad before returning to their country of origin, some countries do not refer to border crossing but simply require that the displaced person be “within the territory” of the country¹⁵ or “living somewhere else in the country”¹⁶.

It is significant that the Guiding Principles do not refer to the notion of citizenship, thus indicating that foreigners may also qualify as internally displaced persons. Reference to “homes or places of habitual residence,” however, indicates that their presence in the country concerned cannot be of just a passing nature but must have reached some permanency. Thus, the following categories of persons qualify as IDPs:

- Internally displaced citizens of the country concerned
- Former refugees who have returned to their country of origin but are unable to return to their former homes or find another durable solution through social and economic integration in another part of the country

15 Law of the Republic of Azerbaijan on “Status of Refugees and Forcibly Displaced Persons (Persons Displaced within the Country)” of 21 May 1999, Article 1; Law on Refugees from Bosnia and Herzegovina and Displaced Persons in Bosnia and Herzegovina (1999), Article 4.

16 Nepal National Policies on Internally Displaced Persons, 2063 (2007), Article 3 (a).

- Displaced stateless persons who have their habitual residence in the country concerned
- Displaced nationals of another country who have lived there for a long time (maybe even generations) and have largely lost contact with their country of nationality
- Displaced nationals of another country who have their habitual residence in the country concerned because they been admitted permanently or for prolonged periods of time.

IDPs who are non-citizens, however, are not automatically entitled to rights mentioned in the Guiding Principles that may be specifically reserved to citizens under applicable international law, such as the right to vote and to participate in governmental and public affairs (Principle 22(d)).

Refugees displaced in their country of refuge or asylum remain refugees, but it would be appropriate to apply the Guiding Principles by analogy to the extent that applicable refugee law does not address their displacement-related needs. Similarly, displaced migrants with short-term permits or in irregular situations remain migrants, with lesser rights than those accorded to the permanent population of the country. However, as long as they have not left the country concerned, their rights as migrants must be respected. To the extent that these norms do not address their displacement-related needs for humanitarian assistance and protection, the Guiding Principles may be applied by analogy.

B. INTERNAL DISPLACEMENT IS NOT A LEGAL STATUS: REGISTRATION VS. STATUS DETERMINATION

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Unlike refugees, IDPs remain citizens or habitual residents of their country and are entitled to protection and assistance on that basis alone.¹⁷ They can invoke their right to protection under the rights listed in the Guiding Principles and contained in relevant international conventions because they are displaced and thus have specific needs, not because they are registered or formally recognized as IDPs. States therefore should not create a system whereby IDPs can enjoy their rights only after having been granted a legal status that could also be refused or revoked. From the perspective of international law, displacement is a factual state that triggers certain legal consequences,¹⁸ and unlike in refugee law,¹⁹ there is nothing like an “IDP status” that can be enjoyed only after it has been formally granted to an individual.

Nevertheless, it often is necessary to be able to identify who the displaced are. In many countries, individual registration serves the purpose of identifying IDPs. Registration of IDPs may be administratively useful or even necessary for a number of reasons. Such procedures can allow authorities to improve their response by:

17 The rights of displaced citizens of another country must be respected, but they may be more limited in scope than those of naturalized citizens, in accordance with international law; for instance, non-citizens typically do not enjoy the right to vote in national elections.

18 The same is true for other international instruments. For instance, the Convention on the Rights of the Child and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War apply to persons less than 18 years old and non-combatants automatically and without creating a distinct legal status for children and members of the civilian population. This does not rule out the necessity of determining whether a particular individual fulfils relevant criteria in cases of doubt.

19 In refugee law, granting of refugee status is necessary because without it refugees would just be aliens, without specific rights.

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- establishing the number, location, and key demographic characteristics of displaced populations;
- preventing fraudulent access to scarce humanitarian assistance by persons who do not need it; and
- facilitating the issuance of temporary identity cards to replace personal documentation lost in the course of flight (procedures for registering IDPs are discussed in chapter 11).

However, registration procedures should always be tied to specific and concrete goals, meaning that displaced persons should be registered not as IDPs per se but rather as IDPs entitled to receive specific benefits. Thus, it may be necessary to register recipients of benefits such as food assistance, medical care, waiver of school fees, or entitlement to stay in a camp. By contrast, it may not be necessary to register all IDPs who are not dependent on humanitarian assistance. Here, alternatives to registration, such as the profiling of displacement situations (see chapter 2, section C), may be considered.

For the reasons mentioned, registration should not become the basis for creating a new *legal* category of persons with IDP status. Nevertheless, some states have adopted procedures in response to displacement that have gone beyond simply registering IDPs and instead include “status determination” procedures similar to those used to recognize foreign refugees. Overly bureaucratic registration procedures or the creation of a legal IDP status are not only unnecessary but also raise significant protection concerns, including the following:

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- If humanitarian aid eligibility is entirely contingent on status determination, that may lead to bureaucratic delays in its distribution to displaced populations with urgent humanitarian needs because they have to await official recognition as IDPs.
- National IDP definitions or their application in practice may be narrower than the description in the Guiding Principles; for example, they may exclude persons displaced by military actions of certain armed groups but not others or as a result of disaster but not conflict. That may result in unequal treatment of people in equal need, effectively depriving them of their rights under international human rights and humanitarian law.
- If IDPs are located in isolated areas, they may be unable to register and thus formally ineligible for assistance.
- IDPs who are especially marginalized or traumatized by their experiences may wish to avoid contact with the authorities or may be reluctant to provide personal information.
- If benefits beyond those initially envisioned depend on IDP status, that would arbitrarily deny IDPs access to those benefits in cases in which they did not originally register, such as when rights related to property restitution later become available to those who registered for IDP status initially related to food distribution.

In cases in which the registration of IDPs and/or issuance of “IDP cards” are deemed administratively necessary, the name and other identifying features of the bearer should appear on the card in order to avoid abuses or fraudulent sale of the card. The issuance of IDP cards should be based on speedy, facilitated procedures that incorporate the following features:

- Registration processes should be non-discriminatory, open, fair, and transparent, with clear criteria for applications and timelines for decisions;
- Criteria for registration should be no more restrictive than the descriptive elements set out in the Guiding Principles and should not be limited to specific times or places to ensure that any further internal displacement (for example, displacement of communities in another part of the country or secondary displacement of IDPs who cannot find security where they were first displaced to) can be addressed without setting up a new mechanism;
- The decision-making process should be swift, particularly when registration is a prerequisite for aid, while providing a full opportunity to claimants to demonstrate eligibility. Specifically, all relevant evidence or information brought by claimants should be considered and appeals of negative decisions allowed.

Generally speaking, by focusing on specific registration processes (such as voting drives or registration for shelter, food assistance, and so forth) rather than creation of a catch-all IDP status, competent authorities can minimize the risk of preventing displaced persons in genuine need from obtaining benefits.

CASE STUDY

Combining voter identification and civil registration in Kosovo

The 2000 Municipal Election Program in Kosovo included a nationwide civil registration program that served as the basis for voter registration. According to the electoral framework only “habitual residents” could vote, provided that they could prove residence in Kosovo on or before January 1, 1998 (that is, prior to the escalation of hostilities that culminated in NATO’s 1999 military intervention). Since many Kosovars had lost or been stripped of their documents during the conflict and many municipal records lost or destroyed, the regulations governing civil registration allowed an exceptionally wide array of documents to prove eligibility (including utility bills, student ID cards, and membership in various Yugoslav clubs and associations).

The United Nations Mission in Kosovo (UNMIK) and OSCE established a Joint Registration Task Force (JRT) to administer the civil registration. Persons lacking documents filled in detailed questionnaires regarding their claim to eligibility, which were forwarded to their municipalities of origin for verification. As the volume of claims rose, the JRT established a second-level “inquiry” division, which was initially designed to combat fraud through random sampling of civil registration applications.²⁰ However, as the caseload of undocumented registrants grew, the inquiry division became the primary mechanism through which applicants who could not be identified through the review procedure would be provided one final opportunity to have their status verified. Ultimately, the review and inquiry divisions processed some 113,000 cases, approving the vast majority.²¹

20 OSCE Inquiry Division, “Final Report,” (October 2000), p.3 unpublished.

21 Ibid.

C. NON-DISCRIMINATION AND EQUALITY *VIS-À-VIS* NON-DISPLACED CITIZENS

Given that IDPs' rights derive from the fact that they remain in their own country, how should their rights with regard to the non-displaced population be defined? As set out above, IDPs suffer from distinct vulnerabilities as a direct result of being displaced, and the failure of the state to address those vulnerabilities through positive measures in the form of specific protection and assistance could lead to situations in which IDPs were discriminated against in relation to others. Non-discrimination and equality before the law are among the most important rights in addressing internal displacement.

Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.
[...]

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced [...].

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Discrimination against IDPs is most obvious in cases in which laws, policies, or official practices explicitly single out IDPs for less favorable treatment than others. That may reflect assumptions that the displaced sympathize with particular armed factions in a conflict. In other cases, such policies may reflect preconceived notions about how the displacement should end—for instance, when IDPs are indefinitely forbidden from taking any steps that might conceivably lead to local integration or make return to their homes less likely.

However, discrimination may also result from situations in which laws or policies that are unproblematic in normal settings impose undue burdens on IDPs, restricting the exercise of their rights. For instance, such problems can arise where rules continue to be applied that tie the exercise of certain rights (such as voting or school enrolment) to registered residence in a particular place. Such rules are often a matter of simple administrative convenience, but they can add to the vulnerability of IDPs when they fail to anticipate displacement by providing for exceptions or special measures that allow IDPs to easily re-register their residence or bypass such requirements. Even though such forms of differential treatment are entirely unintentional, they must be addressed in order to avoid discrimination against those affected.

At a broader level, the principle of equal treatment is fundamental to the approach to displacement taken in the Guiding Principles. That approach is based on the observation that displacement consistently results in specific, severe vulnerabilities and harms for those affected, such as the loss of homes, livelihoods, and social

networks. As a result, in order to place IDPs back on an even footing with the non-displaced population, the state should provide specific and targeted measures of assistance and protection of a nature and scope corresponding to the needs and vulnerabilities resulting from displacement. This approach is supported by numerous rules of international human rights law that prescribe positive or special measures in favor of vulnerable groups.²² Although such measures result in differential treatment, they are *not* prohibited as being discriminatory; rather, they are required by the basic principle that what is different must be treated differently, as long as they respond to genuine vulnerabilities and do not last longer than necessary to address them.

Discrimination may also work against non-displaced communities. That may happen when the level or type of protection and assistance provided to IDPs provides them with a standard of comfort noticeably higher than that of surrounding communities that have similar or even greater needs than the IDPs. Populations that host displaced groups often do so at significant cost to themselves and should be consulted on measures proposed to assist IDPs in order to ensure that those measures benefit all concerned. For instance, when IDPs are temporarily sheltered in important public buildings such as schools, consultations with host communities may facilitate the rapid resumption of classes through prioritized provision of alternative shelter. In such situations, instead of focusing solely on IDPs competent authorities should consider addressing the needs of *displacement-affected communities*—that is, not only the displaced but also host communities and communities receiving returning or relocated IDPs—to the extent that those needs are a consequence of the forced movement taking place.

D. NON-DISCRIMINATION WITHIN DISPLACED POPULATIONS AND PROTECTION OF VULNERABLE GROUPS

The same principles of non-discrimination that govern states' treatment of IDPs *vis-à-vis* the non-displaced population also hold within IDP populations. Internally displaced populations are typically diverse, and it is important to ensure that some segments do not arbitrarily receive worse treatment than others. Factors that can give rise to differential treatment within displaced populations include the following:

- **Cause of displacement:** In situations in which displacement has been caused by multiple factors, it is necessary to ensure that the particular vulnerabilities and risks faced by each group are understood and that all receive equal treatment. For instance, when armed conflict and natural disasters have led to parallel waves of displacement, it is crucial to ensure that those displaced by fighting do not receive worse treatment—for instance, because they are presumed to support an insurgency movement.
- **Location of displacement:** IDP populations concentrated in collective shelter settings, such as camps, may benefit from their accessibility. Dissemination of information, consultation, and distribution of humanitarian aid are simply easier in such settings. However, when significant additional groups of IDPs live dispersed among the general population, they should be entitled to a level of protection and assistance equal to their specific needs.

²² See CERD, Articles 1(4) and 2(2); CEDAW, Article 4; ILO Convention 111 (1958) on Discrimination, Article 5; Limburg Principles on the Implementation of the CESC (1986), paragraph 39.

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- **Inherent vulnerability:** Within IDP populations, certain groups are inherently more vulnerable to the risks posed by displacement than others. As a result, it is necessary to identify such groups and take measures to address their vulnerability.

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.
2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

Attention to the protection needs of inherently vulnerable groups should be an absolute priority in any internal displacement situation. Unlike other groups affected by factors that might lead to discrimination within a displaced population, groups with inherent vulnerabilities are likely to be present among any population of displaced persons. Some of the groups that raise the greatest concern include

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- single parents, particularly women-headed households;
- unaccompanied women;
- minors, especially when unaccompanied;
- older persons, especially when unaccompanied or otherwise without family support;
- persons with disabilities, chronic illnesses, or HIV/AIDS;
- traumatized persons;
- pregnant or lactating women;
- members of ethnic or religious minorities;
- indigenous peoples.

Women and children constitute the overwhelming majority of IDP populations worldwide, but many among them also are consistently among the most vulnerable components of displaced populations. Women often face discrimination and are highly vulnerable to sexual violence and exploitation (see section E, below). Displaced children face immediate threats of sexual or economic exploitation and recruitment, as well as the longer-term risk entailed in the interruption of their education and breakdown of social structures meant to protect them and foster their development.

Persons with disabilities, chronic illnesses, or HIV/AIDS, as well as pregnant or lactating women and the elderly, often have extra needs with respect to diet, water consumption, and medical treatment and

may be too immobilized to move to safer places or to use collective cooking, washing, or toilet facilities. Traumatized persons may not be able to cope with the challenges of life in displacement settings unless they get appropriate treatment. Finally, members of ethnic and religious minorities and indigenous peoples may speak only minority languages or may suffer discrimination from both the host community and other IDPs. Such groups often are especially liable to impoverishment and dependency in situations in which protracted displacement results in the breakdown of traditional social structures, norms, and livelihoods.

E. GENDER EQUALITY AND DISPLACEMENT

Laws and policies to protect and assist internally displaced persons should recognize particular vulnerabilities related to gender. In many situations, the physical security of both men and women is a concern, albeit for varying reasons. Women are vulnerable to sexual assault and rape both during and after displacement. Too often, they face sexual violence in the camps, which are typically crowded and insecure. Moreover, domestic violence often is higher during displacement. Women and children may encounter physical abuse from male family members in the camps or temporary homes as a result of tension, uncertainty about the future, and the breakdown of traditional norms and sanctions. Understanding the particular vulnerabilities experienced by women is an essential first step in ensuring that displaced women are protected. While women and girls are the large majority of victims in reported cases of sexual violence, it is also important to consider the particular vulnerabilities of young men, who may be sexually assaulted or disproportionately targeted for forced recruitment into militias. The way in which the authorities respond to reports of sexual and gender-based violence may either deter or encourage continued violence.

Gender should also be taken into account in setting up systems for the provision of humanitarian assistance, such as food, health care, and other relief supplies (see chapters 4 and 7–10). Registration of the displaced for benefits such as food often is done through male heads of household, who then are given assistance, goods, and services on the assumption that they will provide for their families. That means that women heads of households may encounter difficulties receiving assistance; moreover, experience has shown that aid distributed to male heads of household does not always benefit their families. In fact, many humanitarian organizations distribute food and relief to women, who more reliably ensure that their families, particularly vulnerable groups such as children and the elderly, are fed. In some cases, the distribution of food is used to coerce female beneficiaries into engaging in sexual acts. When food and relief is inadequate, women may leave camps alone to secure food or income and may be more vulnerable to violence by local militias or police or military forces.

Reproductive health care may not adequately take into account women's needs (see chapter 10). The importance of access to obstetric and gynecological care often is underestimated, especially for women who are pregnant or nursing or who have recently given birth.

Displaced men and women often face different obstacles when attempting to access local labor markets (see chapter 13). Both women and men may struggle to find suitable jobs, particularly when traditional livelihoods are destroyed. In urban areas, women often find it easier to find jobs as domestic workers than do men seeking employment in the informal sector, which can affect gender roles within the family.

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In situations in which it is socially unacceptable for women to work outside the home, women heads of household may have no way to support their families and may be especially vulnerable.

Solutions to displacement should be based on the voluntary and informed consent of all IDPs, but often decisions are made by the male head of household, even though there may be different views within the family. Moreover, for those returning to their communities of origin, resolution of land and property disputes continues to be strongly affected by the gender of the person making a claim, and women who have lost a spouse are especially vulnerable to discrimination (see chapter 12). In statutory land tenure systems, property deeds often are issued in the name of the male head of household making it difficult for widows or orphans to claim their traditional land and property. Customary systems often also limit women's inheritance and usage rights.

Principle 4

...

2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

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Principle 7

...

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:

...

- (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;

Principle 18

...

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 19

2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.

Principle 20

...

3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

Principle 23

...

3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit

Being aware of the gender differences in displacement is important in reviewing laws and policies to ensure that they do not, intentionally or unintentionally, result in discriminatory treatment. It has sometimes been the case that the extent to which laws discriminate against women or children was recognized only in situations of large-scale displacement. Establishing mechanisms for reporting such discrimination and for taking measures to remedy the discriminatory impact of laws and policies can benefit not only the displaced but also the population at large.

Framework for National Responsibility

As set out in Guiding Principle 3, national authorities have the primary duty and responsibility to provide protection and assistance to IDPs. What are governments expected to do in order to fully comply with that obligation? In order to assist them, the Brookings Institution–University of Bern Project on Internal Displacement (Brookings–Bern Project) developed a Framework for National Responsibility in 2005 to provide states with concrete benchmarks for addressing displacement.²³ The Framework set out twelve broad areas in which states can directly contribute to the mitigation and resolution of displacement. This section of the manual elaborates on each of those benchmarks in providing specific guidance relevant to the drafting of laws and policies.

A. PREVENTION

One fundamental step that states can take to exercise their responsibility with regard to internal displacement is to take steps to prevent it. Such measures should focus on both preventing unnecessary displacement and, when displacement is unavoidable, taking steps in advance to mitigate its harmful effects. As set out in Guiding Principle 5, the most important factor in preventing displacement is to accord full respect to international law, in particular human rights and humanitarian law—an undertaking that goes beyond the drafting of laws and policies and has implications for all branches of government.

Principle 5

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

Concrete steps to prevent and mitigate displacement should include a review of relevant national laws and policies to ensure that they incorporate basic international law protections as set out in the Guiding Principles (for more details see chapter 3).

²³ The Brookings Institution–University of Bern Project on Internal Displacement, “Addressing Internal Displacement: A Framework for National Responsibility” (April 2005) (www.brookings.edu/projects/idp/20050401_nrframework.aspx).

CASE STUDY**Early warning mechanisms**

In Colombia, Article 8 of Law No. 387 devolves the main responsibility for preventing and responding to forced displacement to the municipalities. At the national level, the early warning system (*sistema de alerta temprana*, or SAT) is the main instrument to prevent displacement. Representatives of the Ombudsman's Office closely monitor the situation of civilians in five key areas in Colombia and create reports analyzing the risks that the civilians may face because of military movements, possible armed hostilities, and other factors. Those reports are transmitted by the Ombudsman's Office in Bogotá to an Interministerial Committee for Early Warning (*Comité interministerial para la alerta temprana*, or CIAT), which is chaired by the Ministry of Interior and composed of representatives of the Ministry of Defence, the Vice-Presidency, the Army, the Operational Directorate of the National Police, the Security Police (DAS), and *Acción social*. Based on the reports and other information available to it, CIAT decides to issue an early warning, thus freeing budgetary and other resources in order to respond preventively to specific threats. Measures taken can range from the distribution of cell phones to threatened community leaders to the deployment of military troops.²⁴

In the Democratic Republic of Congo (DRC), troops of the UN peace-keeping mission (MONUC) can be deployed to areas where communities feel threatened by displacement. Such interventions often are triggered by the Protection Cluster set up by the UN, which comprises key humanitarian agencies and NGOs and is entrusted with identifying and addressing protection needs related to internal displacement.²⁵

B. NATIONAL AWARENESS

Raising awareness of the existence and nature of internal displacement among all relevant stakeholders and of the steps necessary to address it is an important precondition for the implementation of laws and policies on internal displacement. As set out in the Framework for National Responsibility, sensitization or awareness-raising campaigns can help promote national solidarity with the displaced and counteract the stigma associated with displacement. National awareness is especially important in the context of IDP laws and policies, which often may be required to respond to the particular vulnerabilities of IDPs through special measures, such as targeted humanitarian aid or facilitated document replacement, that are not available to others. It is therefore crucial for members of the general public and especially those living in communities hosting large numbers of IDPs to understand that such measures are neither politicized nor arbitrary, but rather necessary to place fellow citizens disadvantaged by displacement in a position of legal and material equality.

24 "Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin," Addendum, Mission to Colombia, A/HRC/4/38/Add.3 (2007), paragraphs 41 and 42.

25 "Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin," Addendum, Mission to the Democratic Republic of Congo, A/HRC/8/6/Add.3 (2008), paragraph 35 (available in French only).

C. DATA COLLECTION

Accurate information on the number, location, and condition of displaced populations is essential to implementing legislation and policies in a manner that meets IDPs' needs for protection. Proceeding with the implementation of laws and policies without a sound base of information on IDP populations presents the risk that scarce resources will be allocated to protection and assistance measures that IDPs do not need or that risks faced by specific vulnerable subgroups of IDPs will be left unaddressed.

Collection of relevant data—including on the number and composition of displaced communities, their locations, specific needs, and vulnerabilities—should begin at the moment of displacement and should continue, as systematically as possible, until durable solutions have been sustainably achieved.²⁶ Continuously updating data allows not only for correction of any inaccurate information gathered early on, but also for taking into account changes in the IDP population (such as ongoing or new displacement flows, statistics on new births and mortality, and so forth).

Data collection is not identical with registration (see chapter 1, section B), but registration may serve as one source of information among others. There is no single correct way to collect accurate information on internal displacement, but international agencies have developed a number of approaches to assessing the number, characteristics, and needs of IDPs that may be helpful as a starting point. The state authorities bear primary responsibility for compiling information on IDPs and often may have access to important sources of data such as census information, property registration databases, and other official records. Although it is crucial to protect the privacy of individuals by preventing the release of information specifically identifying them, the data in such administrative records may nevertheless be helpful in aggregate to gain a better understanding of key characteristics and protection needs of IDP groups. Clear standards on collection, storage, and use should ensure the security and confidentiality of data.

National authorities in displacement crises should encourage and facilitate the gathering and consolidation of data on displacement by international actors. Methodologies such as those set out in “The UNHCR Tool for Participatory Assessments in Operations” or the IDMC/OCHA’s “Guidance on Profiling Internally Displaced Persons” reflect lessons learned over the course of field experience in numerous displacement settings.²⁷ When international assistance in data collection is available, the state has an important role to play in facilitating international access to IDPs and providing an institutional framework for coordinating data collection and disseminating the results (see section G, below).

²⁶ For more details, see the chapters in part III. See also IDMC/OCHA, “Guidance on Profiling Internally Displaced Persons” (April 2008) (www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Protection/IDP_Profiling_Guidance_2007.pdf).

²⁷ UNHCR, “The UNHCR Tool for Participatory Assessments in Operations” (May 2006) (www.unhcr.org/publ/PUBL/450e963f2.html); IDMC/OCHA, “Guidance on Profiling Internally Displaced Persons” (April 2008) (www.humanitarianreform.org/humanitarianreform/Portals/1/cluster%20approach%20page/clusters%20pages/Protection/IDP_Profiling_Guidance_2007.pdf).

CASE STUDY

Official request for an academic survey of IDPs in Turkey

Turkey experienced significant internal displacement as a result of conflict with insurgency groups in its southeastern provinces during the early 1990s. One factor complicating a response was the fact that it took place during a period of rapid urbanization and high internal migration, leading to uncertainty regarding the number of IDPs and the distinction between them and economic migrants. In order to address that problem, the first RSG, Francis Deng, recommended the collection of comprehensive and reliable data on the nature and scale of the problem, including the number of persons displaced and “their current whereabouts, conditions and specific needs, and . . . their intentions with respect to return or resettlement.”²⁸ The Turkish government accordingly requested the Institute of Population Studies of Hacettepe University to assess the future plans of IDPs as well as their current circumstances. The findings of the survey, which were released in December 2006, provided detailed information gained through a mix of qualitative and quantitative techniques.²⁹ The report was welcomed as “an excellent basis for the Government to build on in planning programmes and strategies to address the challenges of finding durable solutions for internally displaced persons.”³⁰

D. TRAINING ON THE RIGHTS OF IDPS

Provision of training on internal displacement issues to government officials at all levels is a key element of the exercise of national responsibility and can contribute to all aspects of an official response. With respect to IDP laws and policies, it is especially crucial to ensure that all officials tasked with directly implementing such instruments understand

1. that IDPs retain their rights as citizens or habitual residents but that they face particular displacement-related risks and vulnerabilities that may prevent them from fully enjoying their rights;
2. precisely how officials themselves should proceed in carrying out their duties with regard to IDPs;
3. how any new routines and procedures for IDPs differ from the ordinary routines and procedures that officials are responsible for carrying out under normal circumstances; and
4. why the changes in the way that officials carry out their work are necessary.

Many of the specific measures recommended in this manual involve provision of special protections and assistance to IDPs or vulnerable subgroups of IDPs. For local administrative officials, in practice that may

28 “Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng,” submitted pursuant to Commission on Human Rights Resolution 2002/56, Addendum, “Profiles in Displacement: Turkey,” UN Doc. E/CN.4/2003/86/Add.2 (27 November 2002), paragraph 36.

29 For more information on the survey, see Institute of Population Studies, “Survey on Migration and Displaced Population” (www.hips.hacettepe.edu.tr/english/tgyona_eng.htm).

30 “Report of the Representative of the Secretary General on the Human Rights of Internally Displaced Persons, Mr. Walter Kälin,” in accordance with General Assembly Resolution 60/168 and Commission on Human Rights Resolution 2005/46, UN Doc. A/62/227 (13 August 2007), paragraph 12.

mean that they are expected to continue doing what they normally do (for example, registering people to vote, processing requests for identity documents, or certifying teachers) but on the basis of different requirements, such as lowered standards of evidence or otherwise relaxed criteria that appropriately reflect the particular circumstances of IDPs. Mastering new procedures in crisis circumstances may impose significant burdens on local officials.

Such pressures can lead to arbitrary or inconsistent application of the law—or even bureaucratic obstruction—if officials are not given clear guidance and explanations. IDP laws and policies should not only be clearly drafted and endorsed at the highest political levels but also be accompanied by training sufficient to allow the officials charged with implementing them to do so in an effective manner. Such training should provide not only guidance on the narrow technical and logistical issues raised by the application of new laws and policies but also a broader explanation of the problem of internal displacement—including the risks that it poses for those affected, particularly inherently vulnerable categories of IDPs (see chapter 1, section D)—and the obligation of state authorities at all levels to provide protection and assistance.

E. NATIONAL LEGAL FRAMEWORK

An important starting point in addressing displacement in laws and policies is the question of whether the current legislative framework needs to be changed. Experience shows that an effective response to displacement almost always requires legislative action. That is typically because (1) current laws pose unintended obstacles to the ability of IDPs to realize their rights or (2) they do not, on their own, provide a sufficient basis for addressing the needs of IDPs.

Most countries have a hierarchy of legal norms that must be respected in the process of responding to displacement. Generally speaking, the strongest rules, such as laws of a constitutional character, also are the hardest to make or change, while less binding forms of regulation can be passed more quickly and with less deliberation and consensus. The most binding norms in most systems are laws with constitutional status, which typically require passage by a qualified majority of the legislature. However, constitutional frameworks are generally very broadly framed and tend to include bills of rights that reinforce international human rights obligations at the domestic level, protecting the whole population, including IDPs. As a result, only in rare instances should constitutional change be necessary to respond to internal displacement.

Problems are more likely to arise at the level of ordinary laws, which may often be passed by national or regional legislatures by a simple majority. Ordinary laws rarely explicitly mention human rights; they tend to set out the concrete procedures and modalities through which individuals are able to realize internationally guaranteed rights in their daily lives. In playing this important role, laws often are supplemented by other types of regulation, such as executive orders or decrees (which may, under certain circumstances, have the force of law) and administrative regulations (which often are passed by the ministry or agency responsible for implementing a law in order to regulate any issues not covered in detail under the law).

One must keep in mind the many variations among the domestic legal orders of countries experiencing displacement, and it also is important to recall that rules or laws can be changed only by rules or laws of equal

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or greater weight. For instance, in some situations, it may be most expedient to issue a decree or administrative regulation addressing the most urgent aspects of a displacement crisis. While such a decree should include language affirming the rights of all IDPs, it cannot by itself amend pre-existing legislative provisions that may effectively prevent IDPs from exercising their rights. Rather, problematic legislative provisions must be identified and amended by new law. For example, while a decree or policy on IDPs should confirm the right of IDP children to education and set out institutional responsibilities and concrete steps for realizing that right, it does not on its own change the fact that existing legal provisions may make it practically impossible for displaced children to enroll in schools where they are displaced—for example, where enrolment would require proof of local residency or documentation from the child's previous school.

Taking that into account, the legal framework for responding to displacement can include at least two elements:

1. **Review and analysis of existing national legislation** with a view to identifying and amending provisions incompatible with international human rights and humanitarian law underlying the Guiding Principles. While some rules may be obviously problematic, others might appear non-discriminatory but raise issues in practice. For instance, requirements that individuals produce detailed documentation in order to exercise certain rights may be impossible to meet for IDPs, who typically lose access to their personal documents. Amendments to such rules should set out exceptions or alternative procedures for IDPs and should quickly be accompanied by any necessary implementing regulations in order to ensure that local authorities tasked with giving effect to the changed procedures have clear instructions on how to proceed.
2. **Passage of national laws** specifically regulating the response to internal displacement. Typically, such laws should be comprehensive, covering all phases of displacement, although, depending on the circumstances prevailing in a particular country, the emphasis may be on a specific phase of displacement. While the passage of such laws is to be encouraged, the drafting process should take place along with more rapid adoption of decrees and policies that support timely responses to internal displacement crises through measures requiring neither legal amendment nor the passage of new legislation (see sections F, below, and G, page 40).

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As a final note, the capacity of some countries to legislate or uniformly implement legislation may be severely limited in the context of humanitarian crises giving rise to displacement. In such cases, any existing domestic law and, when applicable, local customary rules should be interpreted in the spirit of the Guiding Principles in order to provide protection and assistance to IDPs. Such laws and rules cannot be invoked when they would contradict the generally accepted norms of international human rights and humanitarian law underlying the Guiding Principles.

F. NATIONAL POLICY, STRATEGY, OR PLAN OF ACTION

National policies, strategies, or plans of action can be adopted with less formal procedures and therefore often more rapidly than laws. They therefore may be appropriate in lieu of formal legislation, or they may

be used to elaborate and implement legislation that is adopted. National policies, strategies, or plans of action should provide a clear overall framework for organizing the response to internal displacement. Such policies, strategies and plans of actions should

- identify priorities for legislative drafting and amendment (see section E, page 37);
- complement existing laws by identifying priority actions and allocating specific roles to existing national and local government departments or agencies, as well as national human rights institutions (NHRIs) and civil society actors; and
- create or identify a mechanism for national coordination of the response to displacement (see section G, below).

While policies and plans may be drafted and adopted with fewer formalities than laws, the process should nevertheless be transparent and inclusive. The drafting of policies provides an unparalleled opportunity to consult with IDPs to ensure that their capacities, as well as those of relevant civil society actors, are harnessed in formulating a response to the problem of displacement. National policies should be broadly framed in order to allow for quick and coordinated action in response to future waves of displacement as well as existing situations. To that end, they should include provisions regarding all causes of displacement (in particular armed conflict and natural disasters) and all aspects of displacement (prevention, protection and assistance during displacement, and durable solutions), as well as specific measures to be taken to identify and protect especially vulnerable IDPs (see chapter 1, section D, above). Finally, policies and plans should be both accessible to IDPs (including through translation into languages understood by all displaced communities and through broad dissemination) and clearly implementable for local officials, who should be given uniform training on application of policies and plans and follow-up clarifications through official circulars when questions or problems arise (see section D, page 36).

CASE STUDY

State Strategy on IDPs in Georgia

In February 2007, the Prime Minister of Georgia adopted the country's State Strategy on IDPs. The strategy complemented an existing law regulating the status of IDPs by setting out broad principles affirming both the right of voluntary return for all IDPs once conditions are conducive to return and the need for specific measures to facilitate local integration under favorable conditions and to encourage economic self-sufficiency until return is possible. The strategy calls for review of existing legislation to identify and address obstacles to integration of IDPs (chapter V, para. 1), designates the Ministry of Refugees and Accommodations as the leading coordination body with regard to other governmental institutions, international donors, civil society, and IDPs (chapter VII, para. 1 and 3), and calls for the adoption of an action plan to secure adequate resources for the strategy's implementation, allocate functions among those involved, prioritize activities, and set out indicators for monitoring (chapter VII, para. 2). The action plan was adopted in August 2008.

G. NATIONAL INSTITUTIONAL FOCAL POINT

Appointment of a national focal point is a crucial step both to ensure sustained attention to internal displacement issues and to facilitate coordination, both among various branches and bodies of government and between them and other relevant actors, particularly domestic civil society groups, national human rights institutions, and international humanitarian agencies. National focal points take a number of forms in practice, including

- existing government agencies with relevant mandates that also are charged with coordination of IDP issues;
- new agencies or offices specifically set up to coordinate responses to displacement, often at the level of the Office of the President or Prime Minister;
- standing committees, working groups, or task forces institutionalizing the collaboration of all involved ministries and agencies.

In decentralized states where the mandates of sub-national, regional, and/or local officials may give them significant responsibilities vis-à-vis IDPs, coordination should be vertical as well as horizontal, in the sense that it should not only facilitate decision-making among the various relevant actors at the central level but also ensure that clear guidance, follow-up actions, and information flow smoothly between those actors and regional and/or local coordination bodies. Whether coordination is achieved through existing or new structures, the responsible bodies must be provided with adequate mandates and resources to carry out their tasks. In order to function, such bodies must have sufficient political weight to ensure that all relevant government ministries fully commit to the process and that the resulting proposals and recommendations can quickly be taken up to the highest levels of authority for approval.

In terms of the development and implementation of national laws and policies on internal displacement, institutional focal points have a vital role to play at almost every stage of the process. In particular, coordination bodies should have a mandate to

- request and receive all relevant data and records on IDP populations from other government agencies and ministries, both to develop and update a reliable body of data on the general characteristics and needs of IDP populations (see section C, above) and to assist, whenever possible, in generating bodies of evidence to support facilitated replacement of IDPs' personal documentation (see chapter 11);
- coordinate exercises to count ("profile"), gather relevant information on, and when necessary register internally displaced populations, as well as to compile, analyze, and disseminate updated information on the numbers, locations, characteristics, and needs of IDPs on a regular basis (see section C, above);
- assume responsibility for ensuring that the national response through every phase of the displacement crisis is guided by effective consultation with IDPs, including especially vulnerable groups (see section I, below);
- take all necessary steps to facilitate and coordinate the provision of assistance and, when relevant, protection by domestic and international humanitarian actors (see chapter 4);

- identify necessary amendments to existing laws and oversee the drafting process for new laws and national policies on internal displacement (see sections E and F, above);
- develop training materials for all officials at the national, regional, and local level charged with the implementation of laws and policies on internal displacement; provide ongoing follow-up, including responses to questions of legal interpretation and application; and disseminate best practices and guidance—for example, in the form of circulars (see section D, above);
- exercise authority and have the means to ensure the accountability of individual ministries, agencies, and departments mandated with specific responsibilities under the law.

H. MONITORING

Monitoring is essential both to ensure that the existing provisions of IDP laws and policies are being fully and consistently implemented and to identify gaps in those provisions and other areas in which national protection activities need to be organized and implemented. IDP laws and policies should not only include internal mechanisms for accountability (such as appeals or complaint mechanisms for persons denied benefits) but should also, when relevant, designate external monitoring processes. Such processes should be guided not only by the benchmarks and indicators identified in the process of collecting data on IDPs' protection needs (see section C, above) but also on the standards set out in international human rights law and reflected in the Guiding Principles. In most cases, the ideal body for monitoring the implementation of laws and policies on internal displacement will be national human rights institutions established in accordance with the Paris Principles³¹ or ombudspersons. The Office of the Attorney General may also play an important monitoring role. The monitoring role should in any case be sufficiently broad to ensure the consistency and effectiveness of national responses to displacement.³²

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I. PARTICIPATION BY IDPS IN DECISION-MAKING

The need to consult IDPs in all decisions affecting them and to facilitate their participation more broadly in community affairs is not simply a matter of courtesy; it is a matter of necessity founded on three key considerations:

1. *IDPs have a right to participation.* The internationally guaranteed rights to freedom of expression and political participation include rights to seek, receive, and impart information and to take part

31 UN General Assembly, "Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights" (Paris Principles), UN Doc. A/Res/48/134 (20 December 1993).

32 For more information on specific steps that can be taken by NHRIs to effectively monitor responses to internal displacement, see the Brookings Institution–University of Bern Project on Internal Displacement, "Addressing Internal Displacement: A Framework for National Responsibility" (April 2005), pp. 19–20; IASC, "Human Rights and Natural Disasters: Operational Guidelines on Human Rights Protection in Situations of Natural Disaster," Section I.4. (2007).

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in the conduct of public affairs.³³ As a result, ensuring that IDPs are provided with full information and that their views are sought and taken into account is a matter of human rights.

2. *IDP participation contributes to a more effective response.* The only way to truly understand the risks and threats that IDPs face, their capacities and coping mechanisms, and their aspirations for the future is to ask them directly. In doing so, care must be taken to ensure that vulnerable or marginalized subgroups within IDP populations are given opportunities to speak in security and/or confidentiality. Experience shows that programming built on the experience of IDPs will be better informed and therefore more effective both in meeting IDPs needs and efficiently allocating public resources.
3. *IDP participation reduces dependency and facilitates reintegration.* Encouraging IDP participation in decision-making can empower IDPs to take steps on their own to mitigate and end their displacement. By clearly identifying the problems that they face, IDPs can be encouraged to not only suggest what state responses would be most appropriate but also to develop their own complementary responses. In many cases, that might involve self-organization, which could begin as a response to very basic needs (for example, to maintain and clean latrine areas), but it could provide a platform for the assumption of more important roles over time.

Principle 7

[...]

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:

[...]

- (c) The free and informed consent of those to be displaced shall be sought;
- (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation.

Principle 18

[...]

3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

³³ See, for example, ICCPR, Articles 19 and 25.

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:
 - (a) The right to freedom of ... opinion and expression;
[...]
 - (c) The right to associate freely and participate equally in community affairs;
 - (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; ...

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country ... shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.
[...]

Other relevant principles: 3(2)

Information, consultation, and participation are important in two contexts, namely (1) the elaboration of laws and policies relevant to displacement and (2) the operational level of humanitarian assistance and other practical measures taken that affect IDPs.

(1) For the purposes of IDP laws and policies, participatory processes should be integral to the gathering of information on the specific needs of IDP populations and subgroups that should be addressed in policies and laws; in the drafting process; and in the process of monitoring and evaluation, with a view to making any necessary changes and amendments to the regulatory framework. Participatory processes should take into account the views of both vulnerable subgroups within the IDP population (see above, chapter 1, section D) and other affected persons outside the IDP community, including host communities.

CASE STUDY

IDP participation in drafting legislation and formulating policies

Since 2004, eleven governments of displacement-affected countries in the Great Lakes region of Africa have engaged in a political process meant to encourage sustainable peace and security, political and social stability, and shared growth and development.³⁴ Their determination was symbolized by the signing in 2006 of the Great Lakes Pact on Security, Stability, and Development. One of the protocols to the Great Lakes Pact sets out obligations of the states-parties not only to “enact national legislation to domesticate the Guiding Principles fully” but also to “ensure the effective participation of internally displaced persons in the preparation and design of the said legislation.”³⁵

³⁴ See International Conference on the Great Lakes Region (www.icglr.org/).

³⁵ International Conference on the Great Lakes Region, Protocol on Protection and Assistance to Internally Displaced Persons (30 November 2006), Article 6.

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IDP participation in drafting legislation and formulating policies (Cont.)

In Turkey, the southeastern province of Van launched an action plan on internal displacement in 2006. The plan was based on extensive consultation, not only with IDPs but other stakeholders such as “District Governorates and other local authorities, . . . non-governmental organizations (NGOs), private sector representatives, business and professional chambers, employer organizations [and] labor unions . . .” (section I). The plan envisions prospective participation of IDPs in its implementation, not only as a means of improving the provincial response but also as an end in itself: “Reducing an implicit ‘culture of dependency’ envisions the transformation of IDPs from passive recipients of assistance and services into active citizens involved in decision-making processes as well as service delivery mechanisms who demand roles of responsibility, especially with regard to determining the type, quality, quantity, place, and priorities of services” (section II, para. L).

34 (2) At the operational level, consultation is necessary when authorities are compelled, for example, for reasons of public safety, to relocate people from their homes and lands. The Guiding Principles specify not only that communities be informed and consulted about the need for relocation but also that they be involved in decisions about the planning and management of their relocation. While consultation should recognize the basic human right not be displaced on arbitrary grounds, it also makes good sense on a practical level. When affected persons understand why displacement is necessary and are involved in decisions about relocation sites and modalities, they are less likely to resist the move and more likely to offer suggestions to facilitate relocation. Authorities should provide information about the reasons for the relocation and about the relocation site in a timely fashion. Organization of “go-and-see” visits for representatives of the community can assuage some of the inevitable concerns about the move and can provide a forum for suggestions from the community to make relocation easier.

Participatory approaches can be effective in a variety of humanitarian assistance activities, including needs assessment and distribution of humanitarian assistance, camp creation and management, and livelihood programs. Those working operationally need to consult IDPs in order to better understand existing needs and capacities, to effectively target beneficiaries, and to provide the most relevant and efficient forms of assistance. IDP involvement in humanitarian projects ideally goes beyond initial assessments to include participation in design, implementation, and evaluation of programs. This type of participation demonstrates respect for those displaced and can foster greater empowerment among beneficiaries.

Effective participatory approaches are transparent, results-oriented, and perceived as equitable by IDPs. Many approaches to participatory planning strive to include IDPs who are representative of the diversity of those displaced in terms of gender, age, ethnicity, religious affiliation, caste, and so forth. That may mean scheduling sessions with different groups to ensure that IDPs feel free to speak openly. In some cases, consultations with IDP camp leaders, for example, can be effectively complemented by discussions with groups of women or ethnic groups not represented in camp leadership. Effective participation should be planned with sufficient understanding of the cultural and political context as well as the displaced community’s existing hierarchies. It is important that the process not exclude marginalized groups or put them at risk. Wherever possible, consultation with host communities should also take place, either in joint sessions with IDPs or in separate meetings.

Transparency and good communication are very important. For example, an organization with a mandate for food assistance may not be equipped to respond to community requests for livelihood programs. Such misunderstandings can create disappointment or even mistrust when agencies consult with IDPs. Informing IDPs of an agency's mandate and capacities from the outset helps to avoid unrealistic expectations.

IDPs may have recently suffered physical or psychological trauma. People may be too distressed, overwhelmed, or otherwise unable to participate in the planned activities, meetings, or consultations in the initial phase of displacement. At the same time, field staff should not underestimate the capacities of the displaced. There may be some people who are eager to join in planning and decisions that will affect the community. Others may not wish to participate immediately but may be ready to engage after the initial trauma has decreased.

Experience has shown that agencies carrying out participatory processes at the operational level should take into consideration

- their ability to access the population;
- their mandate, expertise, and relationship with the community;
- understanding of the IDP community and awareness of relationships between different groups within the community;
- the extent to which there are recognized IDP leaders who are representative of the population.

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Each of these factors may influence how participatory mechanisms are employed. For example, it may be easier to conduct personal interviews than focus group discussions with urban IDPs who live scattered across a city.

When possible, trained facilitators should carry out the participatory activities. There are risks involved in these processes, and experienced staff may be better equipped to manage them. It is important to consider the needs of participants as well: a facilitator trained to work with children may be best in child consultations, and female staff members may be needed to lead sessions when it is more socially or culturally appropriate.

When planning a participatory exercise, it is important to consider IDPs' availability. Working IDPs may be too busy to attend meetings during the day, so holding events at different times could allow for a wider participation. It typically is best to use accessible languages and avoid jargon. The location of participatory exercises should be considered. For example, in situations in which IDPs are visible to community bystanders, they may not feel comfortable or secure participating.

A variety of methods have been successful in conducting participatory exercises with IDPs, such as surveys, focus groups, personal interviews, and storyboarding. Each has benefits and limitations, and one method may be more appropriate than another in a given situation. It may also be useful to use more than one method in order to reach different beneficiaries.

IDPs have particular needs for reliable information when making decisions about whether to return to the community of origin, integrate into the community of displacement, or settle in another part of the country.

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In order to make a voluntary, informed decision, IDPs need to have not only a choice of alternatives, but also the information necessary to make a choice. That may include provision of telephone cards/mobile phones so that individuals can speak with members of their community, go-and-see visits by IDP representatives to communities of potential return, and information from authorities about available reintegration assistance. In situations in which local integration or settlement in another part of the country is being considered, it is important to consult with the host communities and local authorities as well as with the IDPs.

K. DURABLE SOLUTIONS

States have the responsibility to ensure that IDPs are able to find a durable solution to their displacement once the factors that caused their displacement no longer exist. That means providing a process by which IDPs can make a voluntary and informed choice about the resolution of their displacement and creating the conditions for that choice to be durable and sustainable.

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow 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. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

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There are three potential durable solutions: return to the place of former residence, local integration at the site of displacement, or resettlement to a third location within the country. While the possibilities for achieving durable solutions may, in cases such as armed conflict, take months or even years to be realized, experience has shown that the earlier authorities begin to plan for durable solutions, the more effective the solutions will be. That is because IDPs' needs or vulnerabilities related to displacement do not necessarily end once they have physically returned or relocated. For return, resettlement, or local integration to be both durable and sustainable, such vulnerabilities must be resolved. Key elements for sustainable durable solutions that allow former IDPs to remain and fully integrate at the location of their choice include the re-establishment of physical security, restitution of property, access to livelihoods and basic services, and non-discrimination. These elements are discussed in part III.

CASE STUDY

Planning for durable solutions in IDP policies

In Uganda, the 2004 National Policy for IDPs includes a strong commitment to the principle of voluntary return in safety and dignity, as well as voluntary resettlement (section 3.4.1). That commitment is backed by specific undertakings to provide objective and accurate information to IDPs as a precondition to making informed decisions on durable solutions; to foster family unity and take steps to ensure voluntary decision-making; to promote IDP participation in planning durable solutions; to prevent any discrimination against IDPs on the basis of having been displaced; and to support spontaneous return (sections 3.4.1 to 3.4.7).

IDPs who achieve self-sufficiency during displacement are more likely to restart normal lives once durable solutions become possible. Therefore, laws and policies on displacement should aim at ensuring that protection and assistance programs are geared toward enabling IDPs to do so by providing them with the tools needed for self-sufficiency. During displacement, assistance programs should aim not only to address the immediate material assistance needs of IDPs, but also to increase their capacity to begin to meet their own needs again as quickly as possible (see chapters 7 and 13). In all situations, the goal of laws and policies guiding national responses during displacement should be to encourage reintegration.

L. ADEQUATE RESOURCES

In order to be effective, any national response to internal displacement clearly needs to be backed with sufficient resources to be implemented as planned. That has several implications for IDP laws and policies.

First, it is important that the drafters of laws and policies have a realistic understanding in advance of what budgetary funds, human resources, and humanitarian goods (medicine, food, and so forth) are likely to be available. That underlines the importance of advance consultation with IDPs in situations in which displacement already has occurred in order to make sure that laws and policies serve to allocate scarce resources to meet clearly understood and prioritized needs (see section H, above). However, it is also crucial that laws and policies take into account—and facilitate—the role of domestic and international humanitarian actors in providing aid and assistance to supplement domestic aid in a coordinated manner (see section G, above, and section M, below, and chapter 4).

Second, once a decision is made to draft an IDP law or policy, care should be taken to begin coordinating its development with annual budget cycles and personnel and procurement procedures in order to minimize the time lag between the passage of the law or policy and the arrival of budgetary resources, appointment and/or hiring of dedicated staff, or authorization of purchase of the materials and/or premises necessary to give it effect. Such preparation is especially important in decentralized states, where responses to internal displacement must take place through coordination between central and regional and/or local levels of government.

Third, where responsibility is assigned to a particular authority (for example, municipalities), it must be ensured that the authority is provided with the necessary financial means. That may require amending certain laws and regulations (for example, those relating to fiscal decentralization).

CASE STUDY

Ensuring adequate resources to implement IDP laws and policies

The government of Azerbaijan has taken significant steps to ensure that sufficient resources are allocated to meet the needs of over 650,000 persons displaced since the early 1990s. As noted in a recent report of the RSG, “compared to the USD one million allocated by the Government for IDP assistance in 1995, this figure has risen to USD 200 million in 2006, of which 100 come from the State Oil Fund. At the time of the Representative’s visit, the Government was planning to allocate USD 225 million, 124 from the State oil fund, in 2007.”³⁶

³⁶ “Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin,” Addendum, Mission to Azerbaijan, A/HRC/8/6/Add. 2 (2008), paragraph 19.

M. COOPERATION WITH INTERNATIONAL AND REGIONAL ORGANIZATIONS

Cooperation with international and regional organizations that can offer expertise and humanitarian assistance is an exercise of sovereignty that benefits both state authorities and the internally displaced. In the case of humanitarian assistance, such cooperation is also a matter of international legal obligation (see chapter 4). In sudden and large-scale displacement situations, states can also immediately benefit from cooperation with humanitarian organizations with the mandates and expertise to assist with resource-intensive and technically complex tasks such as the tracing of missing persons (see chapter 6).

For the purpose of drafting IDP laws and policies, international and regional organizations with experience in addressing internal displacement can offer increasingly specialized technical assistance in both the drafting process and the essential elements of IDP regulations. Such technical advising typically draws not only on knowledge of the latest developments in international law in various sectors of humanitarian work but also on experience in assisting implementation and analyzing effects of other such laws and policies in the increasing number of countries that have taken this important step in exercising national responsibility.

N. SUMMARY: MINIMUM ESSENTIAL ELEMENTS OF STATE REGULATION

Based on the general considerations in Chapters 1 and 2, authorities should do the following:

1. Adopt a concept of who is an internally displaced person that is consistent with and not narrower than that used in the Guiding Principles on Internal Displacement. The definition of IDP must not create a specific legal status that is granted, refused, or ceased in individual cases; it should serve as a factual description of the circumstances of a person that is used to determine the applicability of IDP laws and policies.
2. Recognize the right of any IDP to be protected against discrimination on the ground that he or she is internally displaced as well as against discrimination in relation to other IDPs or non-displaced individuals and communities on any ground such as race, color, sex, language, age, disability, property, or birth; religion or belief; political or other opinion; national, ethnic, or social origin; legal or social status; or any similar criteria.
3. Provide for measures that cover all three aspects of displacement: preventing or minimizing displacement (for example, by creating disaster mitigation and preparedness plans and training security forces); responding to needs in the immediate displacement phase; and establishing conditions necessary for the achievement of durable solutions.
4. Provide for measures to raise awareness of the existence and nature of internal displacement and provide targeted training on the rights of IDPs.
5. Establish systems for the collection and protection of relevant data.
6. Designate an institutional focal point for IDP issues at the national level and, when appropriate, at the sub-national level.
7. Vest an institution such as the National Human Rights Commission or the ombudsperson's office with the authority and responsibility to monitor and report on the respect and protection of the rights of IDPs.
8. Ensure the consultation and participation of IDPs in all matters affecting them during all phases of displacement and provide sufficient information on such matters to enable them to make voluntary and informed decisions about their future.
9. Provide for the allocation of necessary human and financial resources.
10. Provide the necessary legal basis for cooperation with national and international humanitarian partners, including provisions to facilitate the immediate entry of humanitarian personnel and goods, such as by waiving regular visa and customs requirements.



PART II

Chapter 3 sets out issues related to protection from internal displacement. It discusses the concept of arbitrary displacement, identifies how laws and policies can contribute to preventing such displacement, and addresses the conditions that must be in place in order to render permissible those occasional forced evacuations and relocations that are truly unavoidable.

Protection from Displacement

Displacement, Evacuations, and Relocations

A. INTRODUCTION

Purpose: The purpose of Section II of the Guiding Principles, comprising Principles 5 through 9, is to ensure that individuals and groups are not subjected to involuntary displacement except when absolutely necessary and that in such cases, displacement is not carried out in an arbitrary manner, in violation of international law. Meeting the obligations identified in the Guiding Principles requires that states prohibit inherently arbitrary forms of displacement, including through steps to ensure respect for relevant rules of international humanitarian law in armed conflict settings as well as the imposition of criminal responsibility for arbitrary displacement that amounts to a war crime or crime against humanity. States should also take positive steps to prevent foreseeable displacement and mitigate particular populations' existing vulnerability to displacement. One crucial component of the latter responsibility is the development of national policies on permissible evacuations and temporary relocations that ensure that such procedures do not unnecessarily interfere with the rights of those affected. Finally, when large-scale development projects involve planned and permanent relocation of affected populations, those projects must comport with existing international standards in order to avoid human rights violations.

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Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.
2. The prohibition of arbitrary displacement includes displacement:
 - (a) When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at/or resulting in altering the ethnic, religious, or racial composition of the affected population;
 - (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (c) In cases of large-scale development projects which are not justified by compelling and overriding public interests;
 - (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
 - (e) When it is used as a collective punishment.
3. Displacement shall last no longer than required by the circumstances.

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Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.
2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health, and hygiene, and that members of the same family are not separated.
3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:
 - (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
 - (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
 - (c) The free and informed consent of those to be displaced shall be sought;
 - (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;
 - (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
 - (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

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Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists, and other groups with a special dependency on and attachment to their lands.

Other relevant principles: 5

Legal foundations:³⁷ Taken together, a number of key international law rules serve to prohibit involuntary displacement of individuals or groups without safeguards to ensure that such measures are unavoidable and proportionate to an important public aim. As discussed in chapter 5 of this manual, those rules also apply in situations in which displacement has already occurred, serving to ensure that IDPs are able to undertake movements necessary for their safety and to end their displacement through voluntary decisions on return, local integration, or resettlement.

In all situations, all IDPs should enjoy the right to freedom of movement and choice of residence, including the right to remain where they are, unless involuntary movement is (1) undertaken in a manner provided for by law; (2) necessary to protect national security, public order (*ordre public*), public health or morals, or

³⁷ For more details, see Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, 2nd ed., Studies in Transnational Legal Policy 38 (American Society of International Law and Brookings Institution, 2008), pp. 26–43.

the rights and freedoms of others; and (3) consistent with other recognized human rights.³⁸ In situations of armed conflict, both involuntary transfers of civilian populations within their own countries and deportations across international borders are prohibited except when justified by considerations of their own security or imperative military reasons, and evacuated persons must be permitted to return to their homes as soon as hostilities in the area have ceased.³⁹ Moreover, any such removals must be carried out in satisfactory conditions of hygiene, health, nutrition, and accommodation.⁴⁰ The unlawful deportation or transfer of civilians in armed conflict or failure to allow their return once any justification ceases may constitute a grave breach of international humanitarian law.⁴¹ More generally, acts of arbitrary displacement can amount to war crimes or crimes against humanity.⁴² Groups with a particular dependency on or attachment to their homes and lands should receive particular protection from displacement.⁴³

In disaster situations, respect for the right to be free from arbitrary displacement as well as other fundamental rights, such as the rights to life, physical integrity, and an adequate standard of living, should be protected through policies and activities that not only respond to humanitarian needs once a disaster has occurred but also proactively identify and mitigate disaster risk. Protection of the right to life, in particular, requires not only measures to ensure that authorities refrain from killing but also measures necessary to prevent foreseeable deaths.⁴⁴ Foreseeability in this sense refers to both the types of disasters or hazards that are likely to strike in any given area and risk factors that leave particular groups exposed to heightened vulnerability if they occur. Thus, states have the primary responsibility to protect the people and property in their territory from natural disasters through measures including the integration of risk reduction into development policies and the adoption or modification of legislation, “including regulations and mechanisms that encourage compliance and that promote incentives for undertaking risk reduction and mitigation activities.”⁴⁵ In accordance with the Hyogo Declaration and Framework for Action of the 2005 World Conference on Disaster Reduction as well as environmental conventions, such measures should be taken on the basis of dedicated national legislation and plans that are based on the informed participation of affected communities.⁴⁶

38 UDHR, Article 13; ICCPR, Article 12. Those rights may be temporarily suspended in cases of officially proclaimed public emergency. See ICCPR, Article 4.

39 Fourth Geneva Convention, Article 49; First Protocol to the Geneva Conventions, Article 85 (4)(a); Second Protocol to the Geneva Conventions, Article 17. See also Guiding Principle 6.2 (b). See also First Protocol to the Geneva Conventions, Article 87 (1), and Second Protocol to the Geneva Conventions, Article 4 (3)(e), for movement-related rights of children.

40 Fourth Geneva Convention, Article 49 (3); Second Protocol to the Geneva Conventions, Article 17(1).

41 Fourth Geneva Convention, Article 147, and First Protocol to the Geneva Conventions, Article 85 (4)(a) (defining transfer of populations within or outside occupied territories as a grave breach entailing individual criminal responsibility).

42 Rome Statute of the International Criminal Court, Articles 6, 7 (1)(d), and 8 (2)(e).

43 ILO Convention No. 169.

44 The right to life is protected in the ICCPR, Article 6; American Convention on Human Rights, Article 4; African Charter on Human and People’s Rights, Article 4; Arab Charter on Human Rights, Article 5; and European Convention on Human Rights, Article 6. The existence of positive obligations to take measures to prevent loss of life in disaster situations under such provisions has been implied by the UN Human Rights Committee in its General Comment 6 of 1982 (paragraph 5) and expressly confirmed by the European Court of Human Rights in *Öneryıldız v. Turkey*, Application 48939/99, judgment of 30 November 2004, as well as in *Budayeva and others v. Russia*, Applications nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, judgment of 20 March 2008.

45 World Conference on Disaster Reduction, 2005 Declaration, paragraph 4; Hyogo Framework for Action 2005–2015, paragraph 16.

46 World Conference on Disaster Reduction 2005, Hyogo Declaration, paragraphs 2–4; Hyogo Framework for Action 2005–2015; see also United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification (UNCCD), 33 I.L.M. 1328 (1994), Article 5; Aarhus Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (Aarhus Convention), 38 I.L.M. 517 (1999).

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In practice, evacuation and relocation from disaster-affected areas may be necessary to mitigate the safety and health consequences of environmental hazards and disasters.⁴⁷ In order for an evacuation to be permissible, there must be a foreseeable, serious, and imminent threat to life. Failure to evacuate affected populations when those conditions are present is a violation of the state's duty to protect the life of people under its jurisdiction.

Permanent resettlement of persons affected by large-scale development projects represents a clear interference with their rights to freedom of movement and choice of residence as well as other human rights. The resulting displacement is arbitrary unless it is justified by compelling and overriding public interests and is carried out in a manner that contributes to the continuous improvement in the living conditions of the affected persons and communities.⁴⁸

Regulatory framework: Domestic legal frameworks rarely set out an explicit guarantee of freedom from arbitrary displacement as such. However, many national constitutions affirm relevant rights, such as the right to freedom of movement and choice of residence. Moreover, specific rules of law and policy often set out concrete rules relevant to arbitrary displacement. These include standards such as

- military manuals and other regulations governing the conduct of national security forces;
- building codes, environmental plans, and zoning regulations;
- laws and policies on civilian crisis management and disaster response; and
- national development plans, legal provisions on expropriation of private or communally held property, and policies on the resettlement of populations affected by development projects.

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In addition to avoiding arbitrary displacement and wrongful loss of life in disasters, in order to mitigate the effects of any unavoidable displacement, competent authorities should review the relevant national laws and policies and ensure that they are compatible with human rights requirements necessary to persons threatened by displacement.

Problems often encountered by IDPs: Thousands are displaced every year by armed conflict, disasters and environmental hazards, and large-scale development projects. In armed conflicts, people often are obliged to flee either because of the broader circumstances of the conflict or because they are directly forced to leave their homes by parties to the conflict. Sometimes civilians have to leave due to dangers arising from the conduct of hostilities such as shelling and bombing or from remaining remnants of war. In other cases, people are forced to flee because they are threatened, subjected to extortion or forced recruitment, or because they fear reprisals or collective punishment. In armed conflict settings, arbitrary displacement is most often a consequence of violations of international humanitarian law, including disregard for the obligation to at all times distinguish between civilians and combatants and the prohibition of directing attacks against civilians, of indiscriminate attacks, and of spreading terror among the civilian population. Arbitrary displacement also arises in cases of forced evacuations or when orders to leave a certain area not justified on the grounds of safety or military necessity, as well as when displacement initially justified on such grounds continues longer than required.

⁴⁷ Evacuations must be justified on such grounds. See Guiding Principle 6.2 (d).

⁴⁸ UN Commission on Human Rights, Basic Principles and Guidelines on Development-Based Evictions and Displacement, UN Doc. E/CN.4/2006/41 (14 March 2006)

Natural disasters tend to pose the highest risks for the most marginalized and vulnerable members of society, both in low-income urban areas where there is little supervision of land use and construction standards and in poor rural areas subject to environmental degradation, floods, and droughts.⁴⁹ In addition, women tend to be disproportionately affected by major disasters, often as a result of gender discrimination.⁵⁰ In many cases, advance planning and action could considerably reduce the risk of unnecessary displacement or mitigate its effects in situations such as planned evacuations and relocations that cannot be avoided. Although an increasing number of international standards have been developed to help prevent and mitigate displacement in disaster settings, national implementation requires a significant change in institutional focus, from response to preparedness. That change imposes short-term costs in exchange for gains that are hard to measure (for instance, the number of lives saved by mitigation measures can rarely be quantified).

Development projects, especially large-scale projects, often require relocation of affected populations. Some relocations may not be fully justified—for example, because the project, with some modifications, could have been implemented with less severe consequences for affected people. In other cases, relocation is carried out in a manner that violates the right to life and security or property, because no compensation is paid or offered sites are not suitable for relocation.

B. CHECKLIST: ISSUES TO BE ADDRESSED BY DOMESTIC LAWS AND POLICIES

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Minimum essential elements of state regulation:

At a minimum, competent authorities should do the following:

1. Recognize the right of persons to be free from arbitrary displacement.
2. Penalize arbitrary displacement in domestic law under circumstances in which it amounts to a crime against humanity or war crime in accord with the Rome Statute.
3. Take penal and administrative measures to ensure compliance with relevant rules of international humanitarian law, including rules on the conduct of hostilities and the duty to distinguish between civilians and combatants and between civilian objects and military objectives.
4. Adopt disaster policies that not only regulate response but also focus on disaster risk reduction and preparedness.
5. Include in national development plans and resettlement policies a clear statement that forced displacement or relocation induced by development projects must be authorized by law, justified by compelling and overriding public interests, required to protect those interests, and carried out with full respect for the human rights of affected persons. Also include provisions on the procedures through which any such displacement or relocation will be effectuated, available remedies including resettlement and compensation, and the right to administrative or judicial review.

⁴⁹ See UNDP, “Reducing Disaster Risk: A Challenge for Development,” 58 (2004) (hereinafter, “Reducing Disaster Risk”).

⁵⁰ See, for example, United Nations Department of Economic and Social Affairs, Division for the Advancement of Women, *Making Risk Environments Safer, Women 2000 and Beyond* (April 2004), p. 6; Pan American Health Organization, “Gender and Natural Disasters” (undated) (www.paho.org/English/DPM/GPP/GH/genderdisasters.pdf).

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In order to ensure that every individual's right to be free from arbitrary displacement is upheld, domestic laws and policies should:

- recognize the right to be free from arbitrary displacement;
- define arbitrary displacement as a crime in domestic law, at least in cases in which it would amount to a crime against humanity or a war crime in accordance with the Rome Statute of the International Criminal Court;
- Ensure respect for international humanitarian law in order to avoid arbitrary displacement in armed conflict settings;
- regulate all relevant aspects of disaster risk mitigation and set up the necessary measures, mechanisms, and procedures, including early warning systems and collection of data on potential hazards and at-risk groups;
- if evacuations in the event of armed conflict and disaster are undertaken, ensure that they are carried out a manner that respects the rights and the dignity of those affected;
- ensure sufficient communication and information sharing that the population is informed of possible dangers and risks;
- provide legal remedies, including criminal investigation and prosecution for neglect of duty, in case of deaths and displacement caused by a disaster, as well as compensation for the victims; and
- ensure that development-induced displacement occurs only when justified by compelling and overriding public interests and is carried out in a manner that contributes to the continuous improvement of the living conditions of the affected persons and communities.

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C. NECESSARY ELEMENTS OF STATE REGULATION

Is arbitrary displacement recognized as a crime in domestic law?

States should give effect to their obligations under international humanitarian law and human rights law by passing domestic legislation prohibiting arbitrary displacement, at least where it amounts to a crime against humanity⁵¹ or a war crime⁵² in accordance with the Rome Statute of the International Criminal Court; they also should provide for prosecution of those accused of ordering or carrying out such acts.

51 The 1999 Rome Statute defined such acts as follows:

Article 7—Crimes against humanity

1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: [...]
 - (d) Deportation or forcible transfer of population [...]
2. For the purpose of paragraph 1: [...]
 - (d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.

...
“The Elements of Crime” (ICC-ASP/1/3) define this crime as follows:

- “1. The perpetrator deported or forcibly transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.
2. Such person or persons were lawfully present in the area from which they were so deported or transferred.

CASE STUDY

Arbitrary displacement as a crime

Acts of arbitrary displacement that amount to crimes against humanity or war crimes should be defined in domestic law as crimes and be liable to prosecution as such. Examples of such provisions exist in many countries' domestic legislation.⁵³

For instance, German law provides for the prosecution for war crimes of anyone who, in connection with an international or non-international armed conflict, "deports or forcibly transfers, by expulsion or other coercive acts, a person who is to be protected under international humanitarian law and lawfully present in an area to another State or another area in contravention of a general rule of international law."⁵⁴

Domestic law may go beyond that minimum standard, as exemplified by Article 284A of the Colombian Penal Code:

"He who arbitrarily, through violence or other coercive measures directed against a sector of the population, causes one or several members of it to change his residency, will incur a [prison] sentence of 15 to 30 years, in addition to a fine of 500 to 2000 minimum salaries as determined by law, and a ban from public office for 5 to 10 years.

This definition [of forced displacement] does not cover population movements caused by the public forces when it is for the security of the population or for imperative military reasons, in accordance with international humanitarian law."⁵⁵

3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population."

The term "forcibly" is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression, or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.

"Deported or forcibly transferred" is interchangeable with "forcibly displaced."

52 The 1999 Rome Statute defined such acts as follows:

Article 8—War Crimes

2. For the purpose of this Statute, "war crimes" means [...]
 - (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts: [...]
 - (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand. . . .

"The Elements of Crime" (ICC-ASP/1/3) define this crime as follows:

1. The perpetrator ordered a displacement of a civilian population.
2. Such order was not justified by the security of the civilians involved or by military necessity.
3. The perpetrator was in a position to effect such displacement by giving such order.
4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict."

53 See, generally, the ICRC Database on National Implementation of International Humanitarian Law (<http://icrc.org/ihl-nat>).

54 Germany, Law Introducing the International Crimes Code, Article 1, Section 8 (1)(6).

55 Penal Code of Colombia (as amended on 6 July 2000), Article 284A. Colombia's "Basic Military Manual" (1995), prohibits parties to conflict from forcing the displacement of the civilian population (p. 30). With respect to non-international armed conflicts in particular, the manual states that it is prohibited to "oblige civilian persons to move because of the conflict, except if security or imperative military reasons so demand" (p. 77).

How can respect for international humanitarian law be ensured in order to avoid arbitrary displacement in armed conflict settings?

To minimize the risk of arbitrary displacement in armed conflict settings, competent authorities must ensure full respect for provisions of international humanitarian law, including those on the distinction between civilians and combatants.⁵⁶ Other key obligations include the duty to ensure that all involuntary movement of civilians is justified on grounds of their own security or imperative military reasons; to receive such civilians under satisfactory conditions of shelter, hygiene, health, safety, and nutrition; to ensure that family members are not separated; and to allow all affected persons to return voluntarily to their homes or places of habitual residence as soon as the grounds for their displacement cease to exist.

Preventive measures also should be taken that prepare security forces in advance to conduct themselves in accordance with international humanitarian laws, including the following:

- Competent authorities should issue clear orders and instructions on the obligation of the armed forces, and anyone acting on their instruction or under their direction and control, to comply with international humanitarian law.⁵⁷
- Competent authorities must ensure that the armed forces are adequately instructed on the content of international humanitarian law.⁵⁸
- Competent authorities must make legal advisers available, when necessary, to advise military commanders at the appropriate level on the application of international humanitarian law, including with respect to determination of when displacement may be necessary for the security of the affected population or imperative military reasons and when such grounds cease to exist and return must be allowed.⁵⁹
- Competent authorities must encourage the teaching of international humanitarian law to the civilian population.⁶⁰

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CASE STUDY

Instructions to armed forces in military manuals on allowing civilians displaced in armed conflict to return as soon as the grounds for their displacement have ceased to exist

Several military manuals reinforce the rule of international humanitarian law that displacement must be limited in time and that those affected must be permitted to return voluntarily to their homes or places of habitual residence.⁶¹ Kenya's "Manual on the Law of Armed Conflict" specifies that "temporarily removed persons . . . must be allowed to return or be brought back to their previous location."⁶² Likewise, the "Military Directive to Commanders of the Philippines" states that "displaced persons and evacuees shall be allowed and/or persuaded to return to their homes as quickly as tactical considerations permit."⁶³

56 ICRC, *Customary International Humanitarian Law*, vol. 1, "Rules," Rules 1–24.

57 Ibid., Rule 139.

58 Ibid., Rule 142.

59 Ibid., Rule 141.

60 Ibid., Rule 143.

61 See ICRC, *Customary International Humanitarian Law*, vol. 1, "Rules," Rule 132.

All parties to armed conflict are bound by the rules of international humanitarian law. However, in cases in which non-state actors are responsible for acts of arbitrary displacement in violation of international humanitarian law, competent authorities, including military commanders, remain responsible for ensuring that the affected populations are able to move via established escape routes to places of safety; that they are received under satisfactory conditions of shelter, hygiene, health, safety, and nutrition; that family members are not separated; and that they are able to return voluntarily without delay when conditions permit.

What are the necessary mechanisms and procedures for disaster risk reduction?

Laws and policies on disaster risk reduction should be based on explicit acknowledgment of the state's duty to reduce disaster risk. Such a duty may be implicit in situations in which states have recognized rights related to disaster risk reduction, such as the rights to development, a healthy environment, life, health, and an adequate standard of living. In recognizing the duty to reduce disaster risk, states should recognize a right to disaster information. When lives are lost not as an unavoidable consequence of a disaster but because authorities neglected their duty to take preventive and protective measures against clearly identifiable and imminent natural hazards, criminal investigations and prosecution must be undertaken and compensation paid to victims⁶⁴ (see below).

CASE STUDY

Assumption of a state duty of disaster risk reduction

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Some states have assumed a constitutional duty to reduce disaster risk. Ethiopia's constitution provides that the "Government shall take measures to avert any natural and man-made disasters."⁶⁵ Uganda's constitution commits the state to "institute an effective machinery for dealing with any hazard or disaster arising out of natural calamities or any situation resulting in general displacement of people or serious disruption of their normal life."⁶⁶ Macedonia's constitution mandates "proper urban and rural planning to promote a congenial human environment, as well as ecological protection and development."⁶⁷ South Africa's constitution guarantees

62 Kenya, "LOAC Manual (1997), *Precis No. 3, p. 13, cited in ICRC, Customary International Humanitarian Law, vol. 2, "Practice," chapter 38, paragraph 702.*

63 Philippines, "Military Directive to Commanders" (1988), paragraph 3(e), cited in ICRC, *Customary International Humanitarian Law, vol. 2, "Practice," chapter 38, paragraph 704.*

64 See European Court of Human Rights, *Budayeva and others v. Russia*, Applications nos. 15339/02, 21166/02, 20058/02, 11673/02, and 15343/02, judgment of 20 March 2008, paragraphs 138–143.

65 Constitution of the Federal Democratic Republic of Ethiopia (1994), Article 89 (3).

66 Constitution of Uganda (1995), Article 23.

67 Constitution of the Former Yugoslav Republic of Macedonia (1991), Article 8.

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Assumption of a state duty of disaster risk reduction (Cont.)

citizens the right to “an environment that is not harmful to their health or well-being,”⁶⁸ while Ecuador’s constitution establishes “the right to live in a safe environment that is ecologically balanced and free of contamination.”⁶⁹

Other states have acknowledged a duty to reduce disaster risks in their legislation. Costa Rica’s National Law on Emergencies and Reduction of Risk provides that “[i]t is the responsibility of the Costa Rican State to prevent disasters. To this end, all institutions are required to take account of risk and disaster concepts in their programmes and to include measures to reduce risks in their ordinary work, promoting a culture of risk reduction.”⁷⁰ Likewise, Indonesia’s 2005 Law on Disaster Management states that “the Republic of Indonesia has the responsibility of protecting all people of Indonesia and their entire native land in order to protect life and livelihoods, including from disaster[.]”⁷¹

A starting point for implementation of the responsibility to reduce disaster risk is the adoption of a dedicated plan or national legislation. Such a plan or law should decentralize disaster risk reduction tasks and responsibilities to the local level, both in formal accord with the allocation of competences in federal states and as necessary to ensure the most efficient use of local knowledge and resources.⁷² Disaster risk reduction laws and policies also should specify an institutional framework that allows input not only from relevant agencies and levels of government but also from all other concerned entities within the country, including civil society and private actors, as well as national Red Cross or Red Crescent societies. Such frameworks should clearly allocate duties among public actors, including responsibilities for implementation, oversight, and reporting.

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CASE STUDY

Required reporting on disaster risk reduction measures

Pakistan’s 2006 disaster management ordinance requires both the national and provincial governments to make annual reports of their disaster management activities to their respective legislative bodies.⁷³ South Africa’s 2002 disaster management law requires national, provincial, and municipal disaster centers to submit an annual report to their corresponding legislative body on their activities, the results of their monitoring of prevention and mitigation initiatives, and any disaster that occurred and problems experienced as a result, as well as an evaluation of disaster plans and strategies and recommendations.⁷⁴

68 Constitution of South Africa (1996), Article 24.

69 Political Constitution of Ecuador (1998), Article 23 (6).

70 Costa Rica: Ley Nacional de Emergencias y Prevención del Riesgo, Decreto Legislativo No. 8488, Expediente No. 14.452, Artículo 25 (2006) (unofficial translation)

71 Indonesia: Law Concerning Disaster Management (2005), preliminary paragraph (unofficial translation). See also Article 6 of the same law.

72 See World Conference on Disaster Reduction 2005, Hyogo Framework for Action 2005–2015, paragraph 16 (i)(d) (calling on governments to “[r]ecognize the importance and specificity of local risk patterns and trends, decentralize responsibilities and resources for disaster risk reduction to relevant sub-national or local authorities, as appropriate”).

73 See Pakistan, Ordinance No. 40 of 1996, National Disaster Management Ordinance, Articles 29–30.

74 See South Africa: Act No. 57, Disaster Management Act of 2002, Government Gazette No. 24252 (2003), Articles 24, 36, and 50.

Finally, in order to be effective, disaster risk reduction initiatives must receive adequate funding and resources.⁷⁵ The budget process should be specific and transparent with regard to how funds are allocated toward risk reduction objectives.

CASE STUDY

Ensuring funds and resources for disaster risk reduction measures

In Guatemala, the 1996 Law on the National Coordinator for the Reduction of Natural or Man-Made Disasters provides for the creation of a dedicated National Fund for Disaster Reduction.⁷⁶ In Pakistan, a 2006 disaster management ordinance called for the establishment of similar funds at both the national and the regional level.⁷⁷ In 2000, the Ethiopian government established a National Disaster Prevention and Preparedness Fund as well as an Emergency Food Security Reserve (a revolving grain stock).⁷⁸

Costa Rica's 2002 disaster management law not only created a national disaster fund but also required all departments and levels of government to maintain separate budget lines for disaster risk reduction activities and required all national agencies to direct 3 percent of any budget surplus that they might have each year into the national disaster fund.⁷⁹ Likewise, Madagascar allocates an annual budget line for disaster risk and management activities and requires each national ministry to allocate a proportion of its annual budget to disaster risk reduction and response activities.⁸⁰

What administrative and technical measures should be undertaken for disaster risk reduction?

Competent authorities should review and, when necessary, amend rules on development planning, land tenure and use, zoning, environmental protection, and construction of buildings. Such a review should proceed from an assessment of existing disaster risks and environmental hazards in recommending concrete measures (for example, reforestation in flood zones, or upgrading of building codes in earthquake-prone areas).

75 See World Conference on Disaster Reduction 2005, Hyogo Framework for Action 2005–2015, paragraph 16 (ii).

76 See Guatemala: Decreto 109–96: Ley de la Coordinadora Nacional para la Reducción de Desastres de Origen Natural o Provocado (1996), Artículo 15.

77 See Pakistan Ordinance, Articles 29–30.

78 See Francois Grünewald and others, “Ethiopia: Real Time Evaluation of the 2006 Emergency Response” (2006), p. 25 (<http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docid=1008392>).

79 República de Costa Rica, Ley Nacional de Emergencias, No. 7914 (February 3, 2002), Artículos 43–46 (www.ifrc.org/what/disasters/idrl/publication.asp).

80 See United Nations, Disaster Risk Reduction, Global Review 2007, pp. 46–47.

CASE STUDY

Incorporation of disaster risk reduction in land use zoning, building codes, and development plans

Development of areas susceptible to flooding can be undertaken in accordance with zoning regulations designed to minimize residential development and to promote other uses, such as agriculture, which are less likely to endanger human life and homes.⁸¹ For example, Algeria’s disaster management law provides for flood-risk maps setting out zones where no building at all is allowed and other lower-risk areas where building may be allowed if accompanied by special precautions against the effects of floods.⁸²

In the case of windstorms and earthquakes, a primary risk factor is the resilience of homes and buildings. Accordingly, review of building codes can reduce the potential displacement, death, and injury resulting from such hazards. Accordingly, Armenia included the “construction of buildings, engineering nets, hydro-technical structures, constructions, ways of transport communication, and highways with the necessary levels of safety and reliability” among the key preventive activities described in its 1998 Law on Population Protection in Emergency Situations.⁸³ In a similar vein, Saint Lucia specifically incorporated powers and procedures for hazard inspections of potentially dangerous buildings in its Disaster Management Act of 2006.⁸⁴ disaster risk reduction and response activities.⁸⁰

More generally, several states have incorporated disaster risk reduction goals into mainstream development planning. For example, India’s Disaster Management Act requires “every Ministry or Department of the Government of India to . . . integrate into its development plans and projects, the measures for prevention or mitigation of disasters in accordance with the guidelines laid down by the National Authority[.]”⁸⁵ Likewise, Indonesia’s disaster management law requires both the national and regional authorities to incorporate disaster risk elements into their development programming and to ensure that “[e]very development activity involving high disaster risks is equipped with disaster risk analysis as part of disaster management effort in accordance with power vested.”⁸⁶

Identification and monitoring of imminent hazards and development of early warning systems also are essential. Undertaking technical measures to avert imminent danger that is foreseeable or could be known through due diligence is, in accordance with the right to life, one of the positive obligations of competent authorities in disaster situations. Effective early warning systems can allow both competent authorities and affected communities to take preventive steps to mitigate the effects of disasters.

81 See United Nations Department of Economic and Social Affairs and others, “Guidelines for Reducing Flood Losses” (2004), p. 34–35.

82 See Algeria: Law No. 04–20 of December 25, 2004, concerning the prevention of major risks and the management of disasters in the framework of sustainable development, Articles 24–25.

83 See Armenia: Law on Population Protection in Emergency Situations (1998), Article 4 (www.brookings.edu/fp/projects/idp/Armenia_ProtectionLaw_1998.pdf).

84 See Saint Lucia: Law, No. 30 of 2006, Disaster Management Act of 2006, paragraph 23.

85 India: Disaster Management Act of 2005, Bill No. LV-F of 2005, paragraph 36 (b).

86 See Indonesia, Law Concerning Disaster Management (2005), Articles 6–7, 9, and 40.

CASE STUDY

Early warning systems for disaster risk reduction

Nicaragua's disaster management law sets out three color-coded levels of alert for disaster risk that correspond to various stages of an impending hazard and assigns specific departments and ministries with monitoring and making public announcements of threats.⁸⁷ Bangladesh has instituted a cyclone warning system that mandates that the government begin providing initial warnings on the basis of meteorological predictions 24 hours in advance of a potential cyclone, announce a "danger stage" 18 hours in advance, and announce a "great danger stage" 10 hours in advance.⁸⁸ Bangladesh's government also has entered into partnership with the Bangladesh Red Crescent Society and the International Federation of Red Cross and Red Crescent Societies to operate a "people-centered" cyclone preparedness program that employs radio broadcasts and 33,000 village-based volunteers using megaphones and hand-operated sirens to warn communities of impending storms.⁸⁹

Collection of information plays a central role in reducing disaster risk. Data about potential hazards (such as seismological records and meteorological information) are of clear importance, and updated population data aid authorities in locating areas where the characteristics or livelihood patterns of local populations render them especially vulnerable to the effects of disasters. Collection of population data should be mandated in law, carried out or at least coordinated by public institutions, and accorded adequate funding.

CASE STUDY

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Information collection for disaster risk reduction

South Africa's Disaster Management Act created a National Disaster Management Centre, tasked to "act as a repository of, and conduit for, information concerning disasters and disaster management."⁹⁰ Among the types of information the centre is required to collect are data on hazards, risk factors, and areas and communities that are especially vulnerable and information on indigenous knowledge of disaster management.⁹¹ The centre also is required to seek such information from any state organ or person; in the latter case, the person must comply under pain of criminal sanction.⁹²

In the course of gathering population data and developing and implementing disaster risk reduction laws and policies, authorities should take gender issues and the needs of marginalized or vulnerable groups into account, including through effective consultation and ongoing participation in the design and implementation of disaster risk reduction measures.

87 See Nicaragua, Ley No. 337: Ley Creadora del Sistema Nacional para la Prevención, Mitigación, y Atención de Desastres (2000), Artículos 26–30.

88 See Asian Disaster Reduction Center, "Total Disaster Risk Management: Good Practices" (2003), p. 66.

89 See International Federation of Red Cross and Red Crescent Societies, "World Disasters Report 2002: Focus on Reducing Risk" (2002), p. 16.

90 See South Africa, Act No. 57, Disaster Management Act of 2002, Government Gazette No. 24252 (2003), Article 17.

91 Ibid.

92 See *ibid.*, Articles 18 and 60.

CASE STUDY

Case study: Addressing gender issues and vulnerable groups in disaster risk reduction laws and policies

In Bangladesh, the 1999 Standing Order on Disaster Management includes a model Union/Municipal Corporation Disaster Action Plan, which calls for disaster committees to have at least two women representatives,⁹³ provide specialized training for women in how to provide first aid and purify water,⁹⁴ and draw up lists of families that might need assistance after a disaster, with special attention to female-headed households.⁹⁵

In India, the Gujarat State Disaster Management Policy lists “address[ing] gender issues in disaster management with special thrust on empowerment of women towards long-term disaster mitigation” among its primary objectives and provides a number of measures in its capacity-building activities with local communities and civil society groups to promote and support the role of women in disaster mitigation.⁹⁶

Peru’s Law Concerning Internal Displacements specifically requires the state “to take measures for the protection of Andean indigenous peoples, ethnic groups in the Amazon basin, *campesino* minorities, and other groups having a special dependency on their land or a special attachment to it.”⁹⁷

How can evacuations be undertaken without causing arbitrary displacement?

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Any planned evacuation or relocation must be necessary for the safety of the population involved or, in armed conflict, for reasons of military necessity. In the context of natural disasters, evacuations can be ordered and, if necessary, carried out forcibly when the following conditions are met:

- *They have a legal basis.* If an evacuation is undertaken without the necessary legal basis, it is unlawful and therefore arbitrary, constituting a violation of freedom of movement. In emergency situations and in the absence of a legislative act, such legal basis may take the form of a decree issued by the executive power.
- *They serve a legitimate aim.* There is a serious and imminent threat to the lives or physical integrity and health of the persons affected that warrants their forcible evacuation.
- *They are proportional.* All reasonable, less intrusive measures have been considered or tried but are insufficient to protect the lives or physical integrity and health of the persons concerned. Forced evacuation must be considered a last resort, as it constitutes a serious and direct infringement of the right to freedom of movement. Evacuations cannot be justified solely on the basis of the argument that other options would be more expensive.
- *They are carried out in a manner consistent with other human rights.* The people concerned have been – informed of the need to evacuate or be evacuated, the site of relocation, and the means of

93 See Bangladesh: Standing Order on Disaster Management (1999), at Annex H, paragraph (2).

94 Ibid., paragraph 9.3–9.4.

95 Ibid., paragraph 12.1.

96 See India: Gujarat State Disaster Management Authority, Gujarat State Disaster Management Policy (<http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN010616.pdf>).

97 Peru’s Law No. 28223 Concerning Internal Displacements (May 19, 2004), Article 9 (www.brookings.edu/projects/idp/Laws-and-Policies/americas_policies.aspx).

- evacuation, and that information is provided in a manner that is accessible to them and in a language that they understand;
- consulted with and enabled to participate in the identification of suitable alternatives, evacuation routes, and measures that to be taken to safeguard their belongings (both those left behind and those brought along) and family integrity;
 - evacuated in conditions that respect their dignity and safety;
 - protected from discrimination during the evacuation and in the place of relocation;
 - evacuated to a place that is safe, that allows for living conditions that respect their dignity, and that does not put them at further risk.

Property left behind should be protected when necessary, and throughout the evacuation process, people must be informed in a manner that is accessible to them and in a language that they can understand of the causes and duration of their relocation and of developments related to it.

If undertaken under those circumstances, a forcible or involuntary evacuation may be permissible or even required under human rights law. As soon as the grounds justifying IDPs' evacuation and continued absence from home have ceased to exist, IDPs should enjoy the right to return or to be provided with assistance to permanently resettle elsewhere if that is their wish.

How can the right to information about possible dangers and risks resulting from disasters be guaranteed?

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States should guarantee that the public has the right to access all information concerning its protection from disasters. In some states, that duty may be addressed in general legislation on access to governmental information. However, a number of states have adopted specific legislation on sharing information about environmental hazards.

CASE STUDY

Case study: Right to disaster information

Several state parties to the Aarhus Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters have codified a specific governmental responsibility to provide information about environmental hazards to the public upon request.⁹⁸ The Russian Federation's 1994 disaster management law provides that "citizens [...] have the right to be informed of hazard[s] they can be exposed to at certain places of their residence within the [Russian Federation's] territory as well as of safety-provision measures."⁹⁹

⁹⁸ See, for example, United Kingdom: Statutory Instrument No. 3391, Environmental Information Regulations (2004), Article 5; Belgium: *Loi du 5 août 2006 relative à l'accès du public à l'information en matière d'environnement*, *Moniteur Belge* (August 8, 2006), at 42538. Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), 38 I.L.M. 517 (1999).

⁹⁹ See Russian Federation : Law on Protection of Population and Areas from Natural Disasters and Human-Created Accidents (December 21, 1994), Article 18 (1) (unofficial translation) (www.adrc.or.jp/manage.php?URL=/management/RUS/Russia_Statute1.htm&Lang=en&NationCode=643).

What legal remedies should be provided in the event of authorities' failure to reduce disaster risks?

When competent authorities fail to take reasonable steps to prevent or mitigate disaster risks and that failure results in aggravated displacement and loss of life and property, victims should be entitled to legal remedies. On one hand, such remedies should involve a full investigation and disclosure of what acts or omissions gave rise to the damages incurred by IDPs and surviving relatives, as well as prosecution of any criminally responsible parties. On the other hand, the victims should be eligible for reparations, including compensation for the loss of close relatives, destruction of property, and loss of income while displaced (See chapter 12). In order to avoid the costs of mass litigation to both victims and the state, disaster management laws could define a statutory right to remedies to be applied through expedited administrative procedures, allowing large caseloads to be dealt with without primary recourse to the ordinary judicial system.

CASE STUDY

Rights to remedies in disaster management legislation

Indonesia's disaster management law sets out the responsibilities of national and regional governments for disaster risk reduction and includes a provision on "dispute resolution" that indicates a preference for seeking amicable solutions but, when that is not possible, allows for "out-of-court or in-court settlement."¹⁰⁰ A separate provision of the same law also makes it a criminal offense to "implement high-risk development without disaster risk analysis."¹⁰¹ Likewise, Armenia's emergency management law provides that "[o]fficials and citizens are responsible for the breach of the present law . . . and for creating conditions and preconditions for emergency situation[s] . . . [as] defined by the order of the legislation."¹⁰²

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How can arbitrary displacement be avoided in development projects?

In fulfilling citizens' economic, social, and cultural rights, states have the discretion to seek to improve living conditions through large-scale development projects, such as construction of dams, ports, mines, industrial plants, railways, highways, airports, and irrigation canals. When no feasible alternatives exist to implementing such projects in settled areas, displacement will inevitably result. Such displacements must be planned, as is the case with disaster-induced evacuations and relocations, but presumably they will be permanent. That represents a significant interference with affected populations' rights to freedom of movement and choice of residence, homes, and property.

In order to justify such interference and avoid engaging in arbitrary displacement, competent authorities should develop and implement laws and policies regulating all cases of resettlement in large-scale development projects, whether by public or private actors. Such laws and policies should clearly set out the public interest grounds that may justify displacement and relocation, the procedures by which displacement

¹⁰⁰ See Indonesia Law Concerning Disaster Management (2005), Article 47.

¹⁰¹ Ibid., Article 75 (a).

¹⁰² See Armenia, Law on Population Protection in Emergency Situations (1998), Article 23.

is to be effected, the scope of compensation, and the right to administrative or judicial review. Laws and policies governing planned permanent resettlement of development-affected populations should be in accordance with well-established international guidelines, including, in particular, the World Bank's Operational Policy 4.12 on Involuntary Resettlement as well as the Guiding Principles.¹⁰³ In particular, resettlement must be justified by compelling and overriding public interests (Principle 6 (1)(c)), and it must take place in a manner that does not give rise to human rights violations (Principles 7–9). In order to ensure human rights compatibility, resettlement laws and policies also should reflect the 2006 Basic Principles and Guidelines on Development-Based Evictions and Displacement.¹⁰⁴ Those principles further clarify the steps state authorities should take in order to avoid arbitrary displacement in the course of development projects, identifying criteria for ensuring the adequacy of resettlement sites and noting that voluntary return to development sites must be facilitated in exceptional instances in which conditions allow for it.¹⁰⁵

103 The World Bank, the Organization for Economic Co-operation and Development, and the Asian Development Bank have developed policies for the resettlement of development-affected populations meant to ensure that their livelihoods and standard of living are restored to at least their pre-displacement levels. See World Bank Operational Policy 4.12–Involuntary Resettlement (January 2001) (<http://wbln0018.worldbank.org/Institutional/Manuals/OpManual.nsf/tocall/CA2D01A4D1BDF58085256B19008197F6>); Organization for Economic Co-operation and Development, “Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects” (1991) ([www.oalis.oecd.org/olis/1991doc.nsf/ENGDATCORPLOOK/NT000009A6/\\$FILE/DCE1443.PDF](http://www.oalis.oecd.org/olis/1991doc.nsf/ENGDATCORPLOOK/NT000009A6/$FILE/DCE1443.PDF)); Asian Development Bank, Policy on Involuntary Resettlement (1995) (www.adb.org/Documents/Policies/Involuntary_Resettlement/default.asp?p=rsttlmnt).

104 UN Commission on Human Rights, “Basic Principles and Guidelines on Development-Based Evictions and Displacement,” UN Doc. E/CN.4/2006/41 (14 March 2006) (www2.ohchr.org/english/issues/housing/annual.htm).

105 Ibid., paragraphs 55 and 63.

PART III

Chapters 4 through 16 discuss substantive issues arising during and after displacement in the order they are addressed in the Guiding Principles. **Chapter 4** deals with humanitarian assistance, **chapters 7 through 10** with social rights issues (food, water and sanitation, basic shelter and adequate housing, and health), and **chapter 15** with education. Property and livelihood issues are addressed in **chapters 12 and 13**. Other chapters cover movement-related rights (**chapter 5**), family life (**chapter 6**), documentation (**chapter 11**), and electoral rights (**chapter 14**). **Part III** ends with short references to other regulatory issues that do not necessarily require IDP-specific regulation. These chapters should be read in conjunction with **chapters 1 and 2** that deal with cross-cutting issues that are also relevant in the context of the topics dealt with in this part of the manual.

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Protection during and after Displacement

Humanitarian Assistance

A. INTRODUCTION

Purpose: Principle 3 of the Guiding Principles is meant to protect the right of IDPs to humanitarian assistance necessary to ensure their survival and the fulfillment of their basic needs. Principle 25 sets out the primary responsibility of the national authorities to provide humanitarian assistance both through their own efforts and by facilitating the work of international humanitarian organizations.

Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.
2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.
3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Other relevant principles: 7(2), 4, 10, 18, 19, 24, 26, 27, and 30.

Legal foundations:¹⁰⁶ Obligation to provide humanitarian assistance: International law does not explicitly provide for a right of internally displaced persons to humanitarian assistance except in situations of international armed conflict, where civilians in occupied territories have the right to directly solicit and

¹⁰⁶ For more details, see Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, 2nd ed., *Studies in Transnational Legal Policy* 38 (American Society of International Law and Brookings Institution, 2008), pp. 111–24.

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receive humanitarian assistance from international humanitarian organizations.¹⁰⁷ However, as assistance is often necessary for the meaningful exercise of rights to adequate food (see chapter 7), water (see chapter 8), housing (see chapter 9), essential medical services (see chapter 10), clothing and other necessities, and, ultimately, life, certain entitlements to humanitarian assistance are implicit in the provisions of international human rights¹⁰⁸ and humanitarian law¹⁰⁹ guaranteeing a minimum level of subsistence. By securing humanitarian assistance, states take necessary steps to fulfill displaced persons' rights to an adequate standard of living and the highest attainable standard of health.¹¹⁰ All states are obliged to take steps, on their own and with international assistance and cooperation, to progressively achieve the full exercise of these rights to the maximum of their available resources and by all appropriate means.¹¹¹

In displacement settings, these obligations mean that

- the competent authorities must use all possible means at their disposal, including requesting, accepting, and facilitating international humanitarian aid, to provide IDPs with the minimum essential levels of food, water, shelter, and medical care from the moment that displacement occurs;¹¹²
- during the course of displacement, the competent authorities must move as expeditiously and effectively toward full realization of these rights as possible, without taking any deliberately retrogressive measures.¹¹³ In practice, this means continuously identifying steps that can be taken, in consultation with IDPs and coordination with international humanitarian actors, to provide food, water, shelter, and health services in a manner that most adequately and appropriately corresponds to the specific needs of IDPs in general and to particularly vulnerable groups within IDP populations (see chapter 1, section D).
- in the course of protracted displacement or durable solutions, the competent authorities must take steps to ensure IDPs non-discriminatory access to humanitarian assistance on terms no less favorable than those enjoyed by the non-displaced population.

Duty to facilitate and regulate humanitarian assistance: During armed conflict, humanitarian organizations have an explicitly recognized right to offer humanitarian assistance.¹¹⁴ In all situations of armed conflict, parties to the conflict are entitled to carry out controls of humanitarian relief, but must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character

107 Fourth Geneva Convention, Article 30: "Protected persons shall have every facility for making application to the Protecting Powers, the International Committee of the Red Cross, the National Red Cross (Red Crescent, Red Lion and Sun) Society of the country where they may be, as well as to any organization that might assist them."

108 In particular, ICESCR, Articles 11 and 12.

109 Fourth Geneva Convention, Articles 49(3) and 55; First Additional Protocol to the Geneva Conventions, Articles 54(2) and 69; Second Additional Protocol to the Geneva Conventions, Articles 14 and (17)(1).

110 ICESCR, Articles 11 and 12.

111 ICESCR, Article 2(1).

112 UNCESCR, General Comment 3 (1991), paragraph 10.

113 UNCESCR, General Comment 3, paragraph 9.

114 Geneva Conventions, common Article 3(2); Second Additional Protocol to the Geneva Conventions, Article 18(1).

and provided without adverse distinction.¹¹⁵ Parties to conflicts must also ensure the freedom of movement of authorized humanitarian relief personnel essential to the exercise of their functions, subject only to temporary restrictions on the basis of military necessity, and must protect humanitarian personnel, goods, and equipment from attacks and diversion from their intended beneficiaries.¹¹⁶ Willfully impeding relief supplies even amounts to a war crime if it is carried out as part of the use of starvation of civilians as a method of war.¹¹⁷ Finally, they must ensure that humanitarian relief personnel and their goods and objects are protected against attacks¹¹⁸ and that the attackers are punished.¹¹⁹

In disaster situations, states bear primary responsibility for care of the victims, including through consenting to and appealing for humanitarian assistance.¹²⁰ The work of internationally recognized relief agencies in disaster relief should be facilitated through the waiver of requirements for transit, entry, and exit visas for relief personnel acting in their official capacity as representatives of such agencies as well the expedition through minimized customs inspections and documentation requirements and waiver of otherwise applicable duties or restrictions on export, transit, or import of relief goods and equipment.¹²¹

Regulatory framework: Most national constitutions protect the right to life and a growing number also protect social and economic rights relevant for humanitarian assistance, such as rights to shelter, water, food, or essential medical care. However, few states recognize an explicit right to humanitarian assistance as such. Although many states have domestic legislation related to specific aspects of disaster response, few have comprehensive frameworks regulating humanitarian assistance. Mechanisms for the facilitation and regulation of humanitarian aid in armed conflicts and disasters may be based on decrees or policies in cases where they merely require new coordination among existing public authorities. Likewise, the humanitarian obligations and responsibilities of military actors may be set out in policies and particularly in military manuals.

However, new legislation or amendments are likely to be required in several further scenarios related to humanitarian regulation:

- The creation of any new domestic humanitarian coordinating body should be based on the passage of an organic law.
- Definition of crimes related to humanitarian assistance such as attacks on humanitarian relief personnel but also diversion or obstruction of aid or sexual exploitation by relief workers should be set out in criminal codes.

115 Fourth Geneva Convention, Articles 23 and 59; First Additional Protocol to the Geneva Conventions, Article 70; Second Additional Protocol to the Geneva Conventions, Article 18; ICRC, Customary International Humanitarian Law, Volume I: Rules, Rule 55.

116 See, for example, First Additional Protocol to the Geneva Conventions, Articles 70 and 71; ICRC, Customary International Humanitarian Law, Volume I: Rules, Rule 56.

117 Rome Statute, Article 8(b)(xxv).

118 First Additional Protocol to the Geneva Conventions, Article 71(2); ICRC, Customary International Humanitarian Law, Volume I: Rules, Rules 31 and 32.

119 Rome Statute, Article 8(2)(b)(iii) and 8(2) e)(iii).

120 See, for instance, UN General Assembly Resolutions 46/182 (1991), 45/100 (1990), and 43/131 (1988) affirming the responsibility of each state “first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory.”

121 See “Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance,” adopted by the 30th International Conference of the Red Cross and Red Crescent (30 November 2007).

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- Measures necessary to expedite the admission of humanitarian workers from abroad, the import of aid and equipment, and the domestic registration of humanitarian agencies should be crafted as amendments setting out exceptions to the ordinary rules in laws on immigration, customs and registration of legal persons, respectively.

Legislation on humanitarian assistance in many countries covers all relevant situations and beneficiaries, not just displacement. Displacement-specific laws or provisions may be appropriate in order to address specific humanitarian needs of IDPs (for example, camps) or situations of particularly large-scale displacement when separate structures to address the problem are needed.

Problems often encountered by IDPs: As a result of their displacement, IDPs are no longer able to access fundamental economic and social rights, particularly those related to an adequate standard of living and the highest attainable standard of physical and mental health.¹²² As a result, humanitarian aid comes to represent an important means of fulfilling these rights during displacement with the goal of eventually encouraging the assumption or resumption of their self-sufficient exercise. However, IDPs often face problems with both the accessibility and adequacy of humanitarian aid. In some cases, lack of access may result from IDPs' remote location or lack of information about available aid. In armed conflict situations, humanitarian access to IDPs may be blocked by ongoing fighting and insecurity; the presence of land mines or unexploded ordnance; or by lawlessness, fear of reprisal, or widespread gender-based violence, and IDPs may be unable to reach delivery points themselves for the same reasons. In other situations, arbitrary distinctions between different categories of IDPs or corruption may prevent access to aid. These factors tend to work most strongly against precisely those vulnerable groups—such as the elderly and disabled, ethnic minorities, or unaccompanied women or children—who need assistance the most but may have limited mobility or face other barriers to access. Moreover, displaced beneficiaries are often not consulted and have little choice but to accept whatever aid is available, regardless of whether the nature, amounts, or means of distribution of such aid is appropriate to their needs.

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In some cases, the manner in which aid is distributed can give rise to new protection concerns. Examples include

- failures to consult with vulnerable groups, such as female heads of household, in planning the distribution of aid, resulting in unsafe or non-transparent systems that deny access to aid to such groups or expose them to risks of exploitation;
- provision of aid to IDPs in a manner that increase resentment and tensions with surrounding communities or other groups in the area and could expose IDPs to the risk of attack;
- provision of aid that is insufficient or inadequate, encouraging IDPs to engage in risky coping strategies such as collecting firewood or other necessities in areas where they are exposed to attack or sexual assault;
- provision of aid that is religiously or culturally inappropriate and thus unacceptable for religious minorities or indigenous peoples.

The above problems may be exacerbated by failings on the part of the competent authorities to exercise

¹²² ICESCR, Articles 11 and 12.

their responsibility for provision of assistance. In the worst cases, such authorities may deny the existence of displacement or of any responsibility to provide assistance to those affected and deny entry to international humanitarian agencies or curtail their access to certain parts of the country or certain communities in need of assistance. However, even where competent authorities are committed to meeting their assistance obligations, their intentions may be frustrated by a lack of coherent institutional arrangements and regulatory mechanisms for coordination of assistance on the one hand or a simple lack of capacity and resources on the other. In some cases, excessively formalistic registration requirements are imposed on IDPs who have no access to documentation (see chapter 11). Access for international humanitarian agencies can also be complicated by the failure to waive or facilitate visa and customs requirements, lengthy procedures for applying for domestic legal status, and general insecurity or targeting of aid workers. Finally, in some cases the failures of international actors to coordinate their own roles and presence and to ensure appropriate assistance can present an obstacle.

B. CHECKLIST: ISSUES TO BE ADDRESSED BY DOMESTIC LAWS AND POLICIES

Minimum essential elements of state regulation:

At a minimum, competent authorities should do the following:

Create a mechanism responsible for coordinating the provision of humanitarian assistance to IDPs.

1. Assign to relevant authorities or organizations at the national and local levels clear and specific obligations in the area of humanitarian assistance to IDPs and provide them with the necessary means to do so.
2. Establish mechanisms and procedures to identify beneficiaries of humanitarian assistance on the basis of need and particular vulnerability.
3. Determine criteria for the delivery of humanitarian goods and services in accordance with recognized international minimum standards.
4. Set up criteria and mechanisms ensuring humanitarian access to all persons in need.
5. Eliminate any obstacles hindering the provision of humanitarian goods from domestic sources, such as subsidies or price regulations on domestic commodities that set their prices above global prices.
6. Facilitate the import and internal transport of humanitarian goods not sufficiently available domestically (for example, by waiving or relaxing import restrictions and quotas, customs duties, and other taxes) and the speedy entry of foreign humanitarian workers and organizations to the country (for example, by streamlining visa requirements and expediting permits).
7. Provide for the criminal penalization of attacks by state as well as non-state actors against humanitarian relief personnel and their material, transport, and supplies when such attacks would amount to a war crime under the Rome Statute.
8. Provide, in the aftermath of an armed conflict, other situations of violence, or natural or man-made disasters, for humanitarian assistance for a transitory period as well as measures to reestablish food security and the provision of water and sanitation, health services, and education at the locations where IDPs find durable solutions.

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In order to ensure that IDPs can exercise their right to be provided with humanitarian goods and services necessary to ensure their survival and the fulfillment of their basic needs during and after displacement, domestic laws and policies should

- set out a system for coordination and facilitation of humanitarian aid linking competent ministries, military and security forces, relevant levels of government, and domestic and international humanitarian actors;
- assign clear powers and responsibilities to provide humanitarian assistance to relevant authorities and governmental agencies or non-governmental organizations at the national as well as local level and provide them with the necessary means to fulfill these tasks;
- set out obligations to make full information on available humanitarian assistance accessible to all IDPs in a language they understand as well as to involve IDPs, including marginalized and vulnerable groups, in the planning and implementation of assistance programs;
- set out clear procedures for assessing the need for international humanitarian aid and initiating invitations to international agencies—or responding to their offers—in a systematic manner. International humanitarian actors should be legally entitled to facilitated procedures for domestic registration and legal personality; visa and entry procedures for international personnel; customs procedures for the import of humanitarian aid and equipment; as well as access, protection, and support in providing aid.
- ensure humanitarian assistance to all persons who are in humanitarian need, regardless of the causes of their need or whether they are displaced or not. Such provisions must be specific in the sense of guaranteeing access to particular humanitarian goods and services in quantities and of a quality corresponding to their specific needs as well as minimum international standards.
- exclude or abolish fees and remove excessive bureaucratic requirements in the provision of humanitarian aid;
- set out eligibility criteria based solely on need in cases in which distribution of humanitarian goods and services requires registration of the recipients. In principle, such registration should not entail the creation of a domestic legal status for IDPs.
- target humanitarian aid toward assisting IDPs in attaining or resuming sustainable livelihoods and economic self-sufficiency, both during displacement and in the context of durable solutions;
- set out effective monitoring, quality control, and individual complaint mechanisms to guide the implementation of laws and policies on humanitarian aid;
- define attacks on humanitarian workers and their material and goods as well as obstruction and diversion of humanitarian aid and sexual exploitation of recipients by aid workers as domestic crimes.

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C. NECESSARY ELEMENTS OF STATE REGULATION

Who should be involved from the outset in coordinating the provision of humanitarian assistance to IDPs?

At the national level, humanitarian assistance should be one of the central issues dealt with by an institutional coordination mechanism for addressing displacement (see chapter 2, section G). Such a mechanism entails a

clear system for decision-making and coordination among all relevant actors. National disaster and emergency laws and policies (including IDP laws and policies) should specify the respective roles and responsibilities among various ministries and bodies at the national level as well as with respect to provincial and local bodies. Such frameworks should also regulate coordination with the military and security forces as well as non-governmental bodies with important humanitarian functions, such as domestic relief associations, human rights monitoring bodies, and international humanitarian agencies.

At the national level, successful coordination has often been based on the creation of both a central executive office and a commission that links the high-level policy-making structure with one or more technical committees. In such cases, the central executive office should also be charged with ensuring the facilitation, coordination, and quality monitoring of international assistance. Coordination between the national and provincial or local levels should take into account the important role that the latter often play in implementing decisions taken at the central level and their greater understanding of local circumstances and contextual factors.

CASE STUDY

Case study: National coordination of humanitarian assistance

Disaster management offices in Tanzania and Colombia are located directly within the prime minister's office, providing them with the authority to coordinate the work of powerful line ministries.¹²³ Nicaragua's National System for the Prevention, Mitigation, and Response to Disasters (SINAPRED) provides for parallel committees and executive disaster offices at the national, regional, and municipal levels, with clear lines of communication between them and the incorporation of civil society at each level.¹²⁴ A similar approach is taken by Uganda and Angola in their respective IDP policies.

In Sri Lanka, the Consultative Committee on Humanitarian Assistance (CCHA) is a high-level forum for coordination and policy-making led by the Minister of Disaster Management and Human Rights and attended by key ministries, United Nations staff, and key bilateral donors. There are subcommittees on IDP resettlement and welfare, logistics and essential services, livelihoods, health, and education.¹²⁵

An important role for humanitarian coordination mechanisms is to coordinate relations between civilian authorities and the police and security forces. IDP laws and policies—or those addressing disasters and emergencies more broadly—should assign clear roles related to the protection of civilians and humanitarian aid to both the military and the police. As a general matter, the following principles should apply:

- The police should have an explicit mandate in national law to protect civilians, including IDPs, and humanitarian aid providers. This mandate should be separate from any role assigned to the military,

123 See InterWorks, "Model for a National Disaster Management Structure, Preparedness Plan, and Supporting Legislation," (July 1998), p. 5 (www.undmtp.org/).

124 See Decreto No. 53-2000, Reglamento de la Ley Número 337, Ley Creadora del Sistema Nacional para la Prevención, Mitigación, y Atención de Desastres (www.ifrc.org/what/disasters/idrl/publication.asp).

125 "Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Mission to Sri Lanka," A/HRC/8/6/Add.4, paragraph 25.

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and the police should remain independent of the military.

- Responsibility for the security of IDPs in camps or other collective shelter arrangements should be clearly set out. As a general rule, the military should be responsible for security only outside the perimeter of camps, while the police may be present within camps in order to provide security among their residents.
- The military may play a role in relief activities, but this role should be clearly limited to supporting civilian humanitarian actors in order to avoid undermining their perceived neutrality. Appropriate military roles include providing transportation and facilitating logistics upon request and repairing infrastructure. Military actors should not be involved directly in the distribution of assistance.¹²⁶
- The military should be trained on human rights and humanitarian law principles related to IDPs as well as international humanitarian quality standards, and required to comply with these rules. The military must at all times respect the principles of humanity and impartiality, for instance, by refraining from conditioning humanitarian assistance on the provision of information or other collaboration by affected persons.

CASE STUDY

Allocation of police and military responsibilities for IDP security in Uganda

The Ugandan National Policy for IDPs clearly allocates responsibility between the army (the Ugandan Peoples Defence Forces, or UPDF) and police in protecting IDPs, both during displacement and in the context of return and resettlement:

“The Ministry of Internal Affairs, in consultation with the Ministry of Defence shall provide protection to IDPs camps and places of resettlement. The police will be responsible for maintaining law and order among the displaced communities and communities where the displaced persons are returning or resettling including night commuters.

The UPDF shall ensure protection of the perimeters and areas surrounding IDPs' sites and during return and resettlement, deploy to deter and halt armed attacks on the former internally displaced until such a time when their security is ensured.

The UPDF, the Uganda Police and specialized units of other national security agencies shall ensure the security of the personnel of humanitarian and development agencies.”¹²⁷

Humanitarian coordination mechanisms should also facilitate the inclusion of national Red Cross or Red Crescent Societies¹²⁸ and similar domestic relief societies in responses to displacement. Laws and policies on disasters, emergencies, and internal displacement should promote the operation of such societies, by guaranteeing them appropriate assistance and assigning them appropriate roles in planning and implementing

126 This is the strong recommendation for military actors involved in international assistance activities in the “Oslo Guidelines on the Use of Civil and Military Assets in Disaster Relief” (as revised in 2006) (www.ifrc.org/idrl) and Inter-Agency Standing Committee, “Guidelines on the Use of Civil and Military Assets in Complex Emergencies” (2003) (www.humanitarianinfo.org/iasc).

127 Republic of Uganda, The National Policy for Internally Displaced Persons (2004), p. 19.

128 In many countries, they are the most important relief actors apart from the government. There are currently 185 recognized national societies within the Red Cross and Red Crescent Movement, representing more than 20 million active volunteers.

disaster response.¹²⁹ State authorities should recognize such organizations and may coordinate their work but must also respect their independence and allow them to work purely according to humanitarian principles, as well as to seek and receive foreign funding and donations.

CASE STUDY

Facilitation of the work of domestic relief societies in Venezuela

The Venezuelan law on civil protection provides that qualified personnel of “voluntary organizations” providing disaster relief in conjunction with the civil defense authorities be provided logistical assistance as well as life and accident insurance in the course of their activities.¹³⁰

In responding to displacement, coordination mechanisms must also ensure that the displaced—and particularly vulnerable categories of IDPs—have the opportunity to participate meaningfully in the planning and implementation of humanitarian aid programs (see chapter 2, section I). In the past, assistance programs have often provided aid in a “take it or leave it” manner with planning from the top down. Such approaches have left IDPs with little means of influencing the process, resulting in aid programs that may have been inappropriate in light of IDPs’ particular cultural, health, or culinary needs or implemented in a manner raising protection concerns, for instance, by leaving women without independent access to food aid and therefore liable to exploitation by male food recipients or by distributing aid in a manner that left the recipients exposed to attacks by others seeking to divert it. A key precondition for successful consultation is that IDPs are fully informed on potential benefits and approaches to distributing them.

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CASE STUDY

Dissemination of information on IDP assistance in Uganda and Nepal

Uganda’s national policy provides that the Ministry of Information must ensure free broadcast of information concerning assistance to IDPs on all mass media under its control, provides for support for long-distance radios for local IDP committees and bodies, and commits the Ministry of Information to work with other branches of government to further distribute information.¹³¹ Nepal’s 2007 policy provides for “massive dissemination” of information on IDP relief programs and calls for IDP organizations to be “involved in the process of delivery of services.”¹³²

129 In order to be recognized, a national Red Cross or Red Crescent society must be given a formal role under domestic law as an “auxiliary to the public authorities in the humanitarian field,” while at the same time retaining “an autonomous status which allows it to operate in conformity with the Fundamental Principles of the Movement.” See “Statutes of the International Red Cross and Red Crescent Movement,” Article 4.

130 Ley de la Organización Nacional de Protección Civil y Administración de Desastres, Artículo 21, Official Gazette of the Bolivarian Republic of Venezuela, No. 5.557 (November 13, 2001).

131 Republic of Uganda, The National Policy for Internally Displaced Peoples, pp. 38–39.

132 “Nepal Policies on Internally Displaced Persons,” Sections 8.2.10 and 8.2.13.

How should international assistance be requested and facilitated?

IDP and national disaster laws should clearly set out procedures for determining when international assistance is required and requesting such assistance, including specification of the responsible organs for undertaking these actions. While keeping in mind the basic obligation not to arbitrarily refuse consent to offers of humanitarian aid, national coordination mechanisms should engage in a dialogue with international actors to ensure that the aid provided meets quality standards, is culturally appropriate, and is of a nature and quantity that meets the specific needs of IDP populations.

CASE STUDY

National obligations and procedures for appealing for international assistance

Peru's law concerning internal displacements, specifically provides that "when the magnitude of the problem demands it, the State must call upon the participation of International Organizations, including Agencies of the United Nations System, in order to participate in terms of protection and assistance or to collaborate in an advisory capacity."¹³³

Colombia's law on IDPs provides that "the forcibly displaced have the right to request and receive international assistance and that engenders the international community's corresponding right to provide humanitarian assistance."¹³⁴

In Fiji, the National Disaster Management Plan of 1995 provides that an initial appeal, either general or to specific countries, is made by the Prime Minister on the advice of the National Disaster Controller, a high-level official.¹³⁵ Once this overarching appeal has been made, specific requests for particular elements of operational support and relief assistance are made by the National Disaster Controller through the Ministry of Foreign Affairs, after consultation with the Emergency Committee (composed of a number of ministries and the Fijian Red Cross). Even before the government has made an official appeal, recognized NGOs may seek support from their respective international organizations, provided the National Disaster Controller is notified.

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IDP laws and policies should provide for the rapid and systematic entry of humanitarian workers into the country. This includes rules for expediting or waiving visa and work permit requirements for relief personnel. National law should also eliminate unnecessary restrictions and bypass lengthy procedures for customs clearance of relief goods and equipment, waive customs duties and tariffs on relief consignments, and remove any obstacles to internal transport of such goods and equipment. Such provisions should also apply in cases where it is vital to move humanitarian personnel, goods, and equipment through countries not experiencing displacement in order to address a crisis in another country in the region.

133 Republic of Peru, Law No. 28223 Concerning Internal Displacements (2005), Article 4.2.

134 Republic of Colombia, Law No. 387 (1997), Article 2.

135 See International Federation of Red Cross and Red Crescent Societies, "Fiji: Laws, Policies, Planning and Practices on International Disaster Response (July 2005)," p. 14-15 (www.ifrc.org/idrl).

CASE STUDY

Facilitating the legal entry of humanitarian workers and the import of relief goods

The Norwegian Immigration Act of 1998 and its implementing Regulations allow for the issuance of a temporary “emergency visa” where “strong grounds so indicate that the reason that the visa is lacking is deemed excusable” and for special treatment in the issuance of a work permit for persons “engaged in activity of an ideal or humanitarian nature” so long as “the need for foreign labour is deemed to be essential to the activity.”¹³⁶

In Guatemala, national law provides for the deployment of “Centers for the Coordination of Humanitarian Assistance” consisting of mobile teams of representatives from the various ministries and governmental departments with authority over the entry of persons, goods, and equipment into the country at air, sea, and land ports in order to provide speedy processing for international relief. This system was successfully tested for the first time during the response to Tropical Storm Stan in 2005.¹³⁷

Domestic law should also allow for expedited procedures for the registration of foreign humanitarian organizations and for them to benefit quickly from the legal personality necessary to open bank accounts, enter into contracts, and hire staff. To the extent possible, they should also be exempted from taxation.¹³⁸ In disaster and displacement settings, these registration procedures should be administered by the state’s coordination mechanism. Like quality control, domestic coordination of international aid is an element of a state’s duty to ensure that aid reaches those in need, and it can also substantially improve the impact of international aid.¹³⁹ Particularly in armed conflict situations, however, such coordination must allow for a substantial degree of independence for humanitarian organizations to fulfill their mandates and not be perceived to be under the control of a party to the conflict.

How should the obligation to provide humanitarian assistance be integrated into national law?

Domestic legal frameworks regulating disaster management, civil protection and rehabilitation in situations of civil unrest or armed conflict and resettlement of persons affected by publicly-funded development projects should create clear obligations to provide humanitarian assistance or even guarantee a right to such assistance to all IDPs who are in humanitarian need without regard to the cause of their displacement. Provisions

136 See Act Concerning the Entry of Foreign Nationals into the Kingdom of Norway and their Presence in the Realm (Immigration Act), No. 64 (June 24, 1998, and as updated on July 28, 2000), Section 113; Regulations Concerning the Entry of Foreign Nationals into the Kingdom of Norway and their Presence in the Realm (Immigration Regulations), Decree No. 1017 (December 21, 1990, and as updated on January 1, 2000), Section 4a(b).

137 See International Federation of Red Cross and Red Crescent Societies, “Legal Issues in the International Response to Tropical Storm Stan in Guatemala (2007), p. 20.

138 For international organizations, such as the United Nations, such exemptions are required by the doctrine of privileges and immunities. Similar rights have been extended to the international components of the Red Cross and Red Crescent Movement. See, generally, International Federation of Red Cross and Red Crescent Societies, “Background Information Sheet: Privileges and Immunities and Disaster Relief” (April 26, 2006) (www.ifrc.org/what/disasters/idrl/publication.asp).

139 See, for example, International Federation of Red Cross and Red Crescent Societies, “World Disaster Report 2002,” p. 70, which notes that “one of the most striking lessons from both years of flooding is that coordination of the relief effort worked best when Mozambicans led—or fully participated in—all aspects of the disaster response.”

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setting out rights to humanitarian aid should also include a right to request and receive humanitarian assistance from any party in a position to provide it, including international humanitarian organizations, domestic relief societies and authorities exercising de facto control over territories where populations find themselves in humanitarian need in armed conflict situations, without fear of reprisal or punishment.

CASE STUDY

Legal right to humanitarian assistance in Indonesia

Indonesia's recently adopted law on disaster management provides that "every person affected by a disaster [defined broadly to include "events that threaten and disrupt lives and livelihoods caused either by natural and/or non-natural and man-made factors to claim a toll, environmental damage, loss of assets, and psychological impact,"] is entitled to assistance fulfilling basic needs."¹⁴⁰

Obligations to provide humanitarian assistance and respective rights should be specific in the sense of guaranteeing access to particular humanitarian goods and services including shelter, food, water, essential medical care, sanitation, clothing, and other necessary goods. Legal entitlements to humanitarian aid should be framed in a manner that anticipates the foreseeable humanitarian needs of IDPs in the context of local factors such as climates and typical livelihood and culinary needs. However, they should also be open-ended in order to accommodate other needs that might arise.

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CASE STUDY

Specification of assistance entitlements in Japan, Thailand, and Angola

The Japanese Disaster Relief Act provides that prefectural governors shall ensure, among other things: "1) Provision of accommodations (including emergency temporary housing); 2) Distribution of cooked rice and other foods, supplies of drinking water; 3) Distribution and/or loan of clothing, bedding, and other basic necessities; 4) Medical and natal care; 5) Rescue of disaster victims; 6) Emergency repairs of housing subject to disaster; 7) Distribution and/or loan of funding, equipment, and materials required to maintain livelihoods; 8) Distribution of school supplies 9) Interment; 10) Other matters in addition to those in the preceding sub-paragraphs as specified by government ordinance."¹⁴¹

The Thai Ministry of Finance has issued a detailed set of criteria and practice of providing assistance for disaster victims in case of emergency setting forth rules and amounts of cash assistance to be provided to victims of natural disasters, with precise amounts to cover meals, kitchen utensils, purchase of clean water, bedding, soap, washing powder, toothpaste, buckets, gasoline, and a number of other items. However, this document takes into account the possibility of unanticipated humanitarian needs through a clause stating that "in case it is necessary to provide assistance beyond these criteria and practice, an approval should be sought from the Ministry of Finance."¹⁴²

140 Indonesia, Law Concerning Disaster Management (2007), Articles 1(1) and 26(2).

141 Disaster Relief Act of 1947, Law No. 108 (October 18, 1947, as amended on December 25, 1984), Article 23, (www.ifrc.org/what/disasters/idrl/publication.asp).

142 See Thailand's Ministry of Finance, "Criteria and Practice of Providing Assistance for Disaster Victims in Case of Emergency" (2003), B.E. 2546 (www.ifrc.org/what/disasters/idrl/publication.asp).

Specification of assistance entitlements in Japan, Thailand, and Angola (Cont.)

The Angolan “Regulations for the Application of the Norms on the Resettlement of Displaced Populations” sets out specific entitlements for IDPs in transition and in resettlement for food (equivalent to 2,100 kilocalories or kcals), various types of kitchen utensils, bedding, soap, health care, medication, and other items and services.¹⁴³

In any cases in which IDP laws or policies set out specific quantities of aid to be given per individual or household, the amounts should proceed from any relevant recognized international standards¹⁴⁴ but be appropriate in light of local contextual factors. Matters to consider include factors related to demand, such as the specific needs of IDPs (including vulnerable subgroups) in light of their cultural traditions, the local climate, and so on, as well as factors related to supply, such as available stocks of humanitarian goods and the capacity of roads and other transportation links to places where IDPs are located. Laws and policies should also identify minimum quality standards, for example, for the potability of water or quality of food and materials as well as the actual conduct of assistance. Finally, provision of humanitarian aid generally—and essential medical care in particular—should in principle not be subject to fees or excessive bureaucratic requirements.

CASE STUDY

Domestic regulation of the quality of humanitarian aid

Peru's 2004 law on internal displacement provides that “at the time of providing the assistance, international humanitarian organizations and the other competent agencies shall extend due consideration to the protection of the needs and human rights of the internally displaced persons and shall adopt timely measures in this regard. In that activity, the aforesaid organizations and agencies shall respect the pertinent national and international standards and codes of conduct.”¹⁴⁵

In responding to the 2004 tsunami, the Sri Lankan authorities required that all transitional housing structures must comply with the Sphere Handbook's minimum standards.¹⁴⁶ In the same context, Indonesia required international recovery assistance providers to submit plans indicating how they would involve

143 See Republic of Angola, “Regulations for the Application of the “Norms on the Resettlement of Displaced Populations” (July 20, 2001) (www.internal-displacement.org).

144 Such as the Sphere Standards; see the Sphere Project, “Humanitarian Charter and Minimum Standards in Disaster Response,” 2004 ed. (Geneva 2004) (hereinafter Sphere Standards).

145 Republic of Peru, Law No. 28223 Concerning Internal Displacements (2004), Article 12 www.brookings.edu/projects/idp/Laws-and-Policies/peru.aspx.

146 See “Transitional Shelter—Summary of Government Policy and Present Discussion on Utilities (Water & Electricity) (Draft),” UNHCR Media Release, dated 7 July 2005 ([www.humanitarianinfo.org/srilanka/catalogue/Files/Reference/Guidelines/United%20Nations/gl_Transitional%20Shelter%20Summary%20Of%20Government%20Policy%20And%20Present%20Discussion%20On%20Utilities%20\(Water%20&%20Electricity\).pdf](http://www.humanitarianinfo.org/srilanka/catalogue/Files/Reference/Guidelines/United%20Nations/gl_Transitional%20Shelter%20Summary%20Of%20Government%20Policy%20And%20Present%20Discussion%20On%20Utilities%20(Water%20&%20Electricity).pdf)).

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Domestic regulation of the quality of humanitarian aid (Cont.)

local communities and rehabilitation actors in their projects and to abide by a code of ethics.¹⁴⁷ Similarly, in Pakistan, the government signed an agreement with local and international humanitarian organizations working on earthquake reconstruction to abide by a version of the Code of Conduct for the International Red Cross and Red Crescent Movement and Non-Governmental Organizations in Disaster Relief.¹⁴⁸

IDP laws and policies providing for humanitarian assistance should ensure that particularly vulnerable groups of IDPs, such as unaccompanied women and children or the disabled and elderly—are identified, consulted as to the nature of their particular humanitarian needs and provided with aid accordingly (see chapter 1, Section D).

CASE STUDY

Attention to the needs of vulnerable groups for aid

Azerbaijan's law concerning the Protection of Civilian Persons and the Rights of Prisoners of War makes specific reference to "special attention" for vulnerable groups.¹⁴⁹ Similarly, Nepal's IDP policy provides that its humanitarian relief efforts for IDPs will "tak[e] into consideration the conditions of such vulnerable displaced persons as orphan children not having guardians, pregnant women, single women and mothers with small children, disabled and aged persons, the facilities of humanitarian assistance and treatment will be provided with priority."¹⁵⁰

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How should IDPs be registered and de-registered for humanitarian aid?

As discussed in chapter 1, section B, in cases in which distribution of humanitarian goods and services requires registration of the recipients, eligibility should be based solely on specific need and should not entail the creation of a domestic legal status for IDPs. Given the essential and time-sensitive nature of humanitarian aid, it is doubly important that any such registration process be accessible and swift, and that negative decisions be subject to an effective appeals process. Domestic law must guarantee that routes to aid eligibility exist for all persons in humanitarian need.

147 See "Decree of President of the Republic of Indonesia Number 69 of 2005 Concerning Participation of Foreign Organizations/ Individuals in Providing Grants for the Rehabilitation and Reconstruction of the Region and Life in Nanggroe Aceh Darussalam Province and Nias Islands in North Sumatra Province" (November 14, 2005).

148 See "Government Welcomes Code of Conduct for NGOs in Quake-Affected Bagh," UN OCHA's Integrated Regional Information Networks (IRIN) (June 13, 2007).

149 See Roberta Cohen and others, eds., *The Guiding Principles on Internal Displacement and the Law of the South Caucasus: Georgia, Armenia, Azerbaijan* (Brookings Institution and American Society of International Law, 2003) (hereinafter the Law of the South Caucasus), p. 280.

150 "Nepal National Policy on Internally Displaced Persons" (2007), Section 8.2.4, (www.brook.edu/fp/projects/idp/idp_policies_index.htm).

The goal of humanitarian aid, both during displacement and in the context of durable solutions, should be to assist IDPs in attaining or resuming sustainable livelihoods and economic self-sufficiency. In practice, this means that aid programs should be designed in consultation with IDP communities and targeted toward their most vulnerable members in a manner that avoids open-ended or non-conditional transfers of cash or goods and that encourages positive coping mechanisms and the practice and transfer of existing livelihood skills. Aid should be provided in a manner that facilitates sustainable access to necessities such as food, water, and shelter with a view toward the reintegration of IDPs into society (see chapters 6 to 9). Consideration should be given to transitional solutions in which IDPs who have not achieved economic self-sufficiency are integrated into any generally available programs, such as social welfare systems, in order to provide necessary services in an affordable manner. Otherwise, consideration should be given to means of gradually shifting from free provision to cost sharing, with IDPs eventually required to, for example, make rental or installment payments for shelter and pay reasonable fees on the basis of equity for medical services.

How can humanitarian aid for IDPs be monitored and improved over time?

The provision of humanitarian goods and services should be monitored and subject to continuous quality control. IDPs should be continuously consulted on the adequacy of health-related responses and should participate in planning these services and facilities throughout the process. In monitoring the provision of aid, the criteria of *adequacy* should not be stated in a static way but should be adapted to changing circumstances including continual improvement of the selection, targeting, and distribution of humanitarian goods and services with the goal of not only meeting immediate needs but also encouraging long-term self reliance. When individual IDPs allege that access to humanitarian assistance has been interfered with, laws and policies should explicitly give them recourse to judicial remedies, such as appeals against decisions on ineligibility for aid and compensatory measures in a case of wrongful decisions.

For the purposes of monitoring and evaluating the day-to-day effectiveness of assistance programs, courts may not be as well suited as are administrative bodies with the requisite technical expertise and a mandate to analyze the entire system and provide recommendations for improving it, rather than to examine individual complaints. IDP laws and policies should therefore include non-judicial mechanisms for the contemporaneous monitoring of aid processes. Such monitoring should focus on the adequacy, integrity, quality, and coordination of humanitarian responses to displacement, with a specific institution or institutions given the authority to accept complaints in order to both correct problems in individual cases (such as the wrongful denial of aid to persons in humanitarian need) and to make recommendations about how the overall system could be improved. national human rights institutions (NHRIs) are often particularly appropriate to play such a role, given their independence, credibility, commitment to human rights, and established practices for acting on individual complaints.

CASE STUDY

Monitoring of aid distribution by NHRIs

In 2002, the Sri Lanka Human Rights Commission (SLHRC) started a very successful IDP project supported by the United Nations High Commissioner for Refugees that created seven regional offices for addressing IDP complaints and issues, many of which related to the (non-) delivery of humanitarian assistance.¹⁵¹ In the wake of the 2004 tsunami, the SLHRC also created a Disaster Relief Monitoring Unit, with the responsibility of monitoring both government and non-government sector aid, consulting with beneficiaries, and advising operational departments of the government.¹⁵² It received and acted on a large number of complaints (up to 200 per day in the initial phases), organized consultative meetings of aid beneficiaries, and also developed a Code of Conduct for Civil Servants to address issues of allocation of resources, community empowerment, information sharing, and corruption, among other topics.¹⁵³

Likewise, NHRIs in India, Indonesia, Nepal, the Philippines, and Thailand have all taken active roles in addressing IDP rights issues.¹⁵⁴ In 2005 NHRIs in the Asia-Pacific region adopted a set of guidelines based on positive experiences made in the region, affirming such a role,¹⁵⁵ and a number of institutions both in the region and elsewhere have already been active in this regard.

In Africa, the Uganda Human Rights Commission has established itinerant tribunals in northern Uganda to hear complaints of human rights violations; reported extensively on these issues to the parliament and other parts of government, and is integrated into national institutional structures for dealing with IDPs, including the Inter-Agency Task Force and the Human Rights Promotion and Protection Subcommittee.¹⁵⁶

How should serious irregularities in the distribution of humanitarian assistance be sanctioned?

Finally, IDP laws and policies regulating humanitarian assistance should allow for national auditing and regulatory bodies to monitor the process and inspect facilities in order to ensure that aid is not being diverted or misused and that the quality of health-sensitive goods such as food aid meets the applicable national standards. Where serious irregularities are detected, IDPs adversely affected should receive compensation

151 See Asia Pacific Forum of National Human Rights Institutions / Brookings Institution—SAIS Project on Internal Displacement, National Human Rights Institutions and Internally Displaced Persons—Visit to the Sri Lanka Human Rights Commission: 30 November–3 December 2004 (www.asiapacificforum.net/training/idp/brookings-bern/srilanka.doc).

152 See International Federation of Red Cross and Red Crescent Societies, “Legal Issues in the International Response to the Tsunami in Sri Lanka” (publication pending), p. 25–26.

153 International Federation of Red Cross and Red Crescent Societies, “Legal Issues in the International Response to the Tsunami in Sri Lanka” (publication pending), p. 25–26.

154 See the reports on the IDP activities of each of these institutions (www.asiapacificforum.net/training/idp/brookings-bern/national.htm).

155 See “Guidelines on Internally Displaced Persons in the Context of Natural Disasters: A Common Methodology for National Human Rights Institutions” (2005)

156 See Uganda Human Rights Commission, *Sixth Annual Report* (September 2004), chapter 7 (www.uhrc.org/reports.php?y=2003&subCatId=1); Brookings Institution—University of Bern, background paper for the Workshop on the Implementation of Uganda’s National Policy for Internally Displaced Persons. Kampala, Uganda, July 3–4, 2006, p. 5 (www.brookings.edu/fp/projects/idp/idp.htm).

and any evidence of crimes should be referred for prosecution. Attacks on humanitarian workers and their goods and equipment as well as serious misuse of humanitarian aid such as obstruction of its distribution, diversion, or sexual exploitation of recipients by aid workers should be specifically defined as domestic crimes.

CASE STUDY

Attacks on humanitarian workers and goods established as a war crime

Rome Statute of the International Criminal Court, Article 8: War Crimes

2. For the purpose of this Statute, “war crimes” means

[...]

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

[...]

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance [...], as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

[...]

(iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance [...], as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

Penal Code of Azerbaijan, Article 116: Violations of the Norms of International Humanitarian Law in Time of an Armed Conflict

116.0. Violations of international humanitarian law in time of an armed conflict, i.e.:

[...]

116.0.3. directing attacks against personnel recruited [...] to provide humanitarian assistance, against personnel, buildings, installations and transports, using the distinctive emblems of the red cross and of the red crescent;

[...]

is punished by deprivation of liberty for a period of 7 to 15 years or by life imprisonment

Movement-Related Rights

A. INTRODUCTION

Purpose: Principles 14, 15, and 28(1) of the Guiding Principles as well as Principle 12 are meant to ensure that IDPs, once they have been displaced (on the pre-displacement phase see chapter 3) are able to move freely during displacement, both in order to avoid unsafe situations and to be able to undertake other necessary travel. IDPs should in principle be able to choose where to live while displaced and to voluntarily reassess such decisions once the reasons for their displacement or barriers to their voluntary return have ceased to exist.

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Principle 15

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow 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.
[...]

Other relevant principles: 5, 6, 7, 8, 9, 20, and 29

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Legal foundations:¹⁵⁷ Freedom of movement encompasses the right of everyone lawfully within a country to move freely and to choose one's place of residence within its borders as well as the right to leave one's own country and to freely return to it.¹⁵⁸ By implication, this right also includes freedom from involuntary movement or residence in a place not of one's choosing, implying the responsibility of states to facilitate the voluntary return of IDPs to their original place of residence as well as, if IDPs choose to do so, local integration or settlement in another part of the country. These rights are subject to restrictions where necessary and proportional on the basis of national security, public order, public health or morals, or the rights and freedoms of others, and these rights may be temporarily suspended in cases of officially proclaimed public emergency.¹⁵⁹ The right to leave one's country, in particular, is also related to the right to seek and enjoy asylum from persecution outside one's country of origin or habitual residence.¹⁶⁰ Internment and confinement of IDPs to camps can only be an exceptional measure in accordance with human rights and humanitarian law where it is absolutely necessary.¹⁶¹

Regulatory framework: Movement-related rights may often be subject to constitutional protection, subject to specified limitations. In such cases, limitations on free movement and choice of residence should be set out in domestic laws, which should be reviewed in times of displacement in order to ensure that they do not impose unreasonable burdens on IDPs in light of their specific situation. Laws enacted specifically to address the situations of IDPs should include general provisions addressing the freedom of IDPs to move and reside within and outside their country. It also might prove necessary to amend pre-existing laws, should their application result in discrimination against IDPs in these areas (such as provisions requiring persons to apply for travel documents at their place of registered residence). Affirmative measures to facilitate IDP movement, such as procedures for IDPs to pass military checkpoints or transportation provided to return sites may often be implementable pursuant only to the issuance of orders or executive decisions or decrees, rather than legislative measures.

Problems often encountered by IDPs: Displacement itself can be defined as the absence of freedom of movement and choice of residence, in that IDPs' vulnerability derives from the fact that they have been forced or obliged to leave their places of residence and remain unable to return home. Sometimes, persons who want to flee to a safe part of the country remain trapped and are not allowed to escape danger zones. Sometimes, they manage to flee but are then forced to go back to their places of origin where dangers still persist.

Once displacement has occurred, IDPs may be subjected to further arbitrary restrictions on their movement. In some cases, such restrictions may be based on remnants of the Soviet *propiska* system or on similar administrative limitations on taking up residency in other parts of the country, effectively placing IDPs in an illegal situation for having fled from danger. In other cases, temporary measures meant to uphold security such as military checkpoints may effectively restrict the movement of IDPs, particularly in cases where

157 For more details, see Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, 2nd ed., Studies in Transnational Legal Policy 38 (American Society of International Law and Brookings Institution, 2008), pp. 65–70.

158 UDHR, Article 13; ICCPR, Article 12.

159 ICCPR, Articles 4 and 12(3).

160 UDHR, Article 14.

161 ICCPR, Article 9(1); Fourth Geneva Convention, Article 78.

they do not have access to documentation. Finally, once conditions have been created allowing return, the ability of IDPs to exercise their rights by choosing where to continue their post-displacement lives are often curtailed. An important element of durable solutions to displacement is the full restoration of the rights of freedom of movement and choice of residence, allowing each IDP a free choice and appropriate assistance in either returning home, integrating where displaced, or resettling permanently elsewhere.

B. CHECKLIST: ISSUES TO BE ADDRESSED BY DOMESTIC LAWS AND POLICIES

Minimum essential elements of state regulation:

At a minimum, competent authorities should do the following:

1. Recognize IDPs' right to freedom of movement, including specifically the rights to seek safety in another part of the country and to be protected against forced return to or resettlement in any place where their life, safety, liberty, and health would be at risk.
2. Abolish administrative obstacles that may exist, limiting the possibility of IDPs to reach safe areas or, when conditions allow, to return to their homes.
3. Recognize the right of all IDPs to make a voluntary and informed choice between return, integration at the location of displacement, or resettlement or relocation in another part of the country.
4. Provide for specific measures (such as humanitarian demining, re-deployment of police forces, or demobilization drives in return areas) to ensure safety and security for returning IDPs.

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In order to ensure that IDPs can exercise their right to freedom of movement and choice of residence during and after displacement, domestic laws and policies should

- ensure that national legislation does not present an obstacle to IDPs' leaving their places of registered residence to seek safety;
- ensure that lack of access to documentation does not prevent IDPs from exercising the right to freedom of movement within the country or the right to leave the country;
- give effect to IDPs' rights to freedom of movement and choice of residence during displacement through measures such as facilitated access to documentation, and provision of adequate security in the vicinity of IDP settlements;
- ensure that IDPs are not interned in or confined to camps. If in exceptional circumstances such internment or confinement is absolutely necessary, it must be ensured that such measures do not last longer than required by the circumstances.
- take concrete measures to allow IDPs to find a durable solution to their being displaced and, in particular, to ensure voluntary choice on the part of IDPs by securing the viability of return, local integration, and resettlement or relocation options. Such measures include provision of information, consultation decision-making processes, physical security, assistance and humanitarian access,

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transportation, access to the law, restoration of assets, economic and social integration, and political participation. Targeted measures should also be undertaken to identify and address the specific needs of returning IDPs *vis-à-vis* IDPs who choose local integration or resettlement in another part of the country.

C. NECESSARY ELEMENTS OF STATE REGULATION

Does legislation on local registration of residence interfere with movement rights in the context of displacement?

National legislation that requires individuals to seek official permission to travel or reside outside their areas of registered residence—or which penalizes such travel or residence—represents a significant interference with the right to freedom of movement and choice of residence even under normal circumstances. As such, internal registration procedures should not be arbitrary or discriminatory, and they must be applied in a manner that takes into account the needs of IDPs. The most well-known example of such legislation is the Soviet-era *propiska* system, which continues to be applied in some successor states to the Soviet Union. For IDPs, such legislation may penalize flight from circumstances of danger and illegalize residence in other, safer parts of the country. Such rules should be identified in the course of drafting laws and policies on internal displacement and either suspended for the duration of the displacement crisis or repealed.

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CASE STUDY

Repeal of Soviet-era *propiska* controls on movement in Georgia

Although Article 22 of the Georgian Constitution guarantees the right to free movement and choice of residence for all staying legally within the territory of Georgia, the Soviet *propiska* system of mandatory registration in residence remained in force for several years after independence in 1991. This “internal passport” system constituted an obstacle to freedom of movement for all citizens of Georgia but particularly for its internally displaced population. The system was abolished in 1996, in a move welcomed by the UN Human Rights Committee and other observers.¹⁶²

In some cases, rules requiring official permission to leave certain areas may be introduced on security grounds during a state of emergency or a crisis situation. Such regulations should be carefully reviewed in order to ensure that they neither hinder the ability of IDPs to move themselves away from dangerous situations nor prevent them from being able to undertake movements necessary for the realization of other rights, such as local travel necessary in order to exercise rights to work or education.

162 UN Human Rights Committee, “Concluding Observations on Georgia,” UN Document CCPR/C/79/Add.74 (1997).

Does lack of access to documentation constitute a barrier to IDP movement within or outside their country?

In situations where internal displacement co-exists with general insecurity or armed conflict, persons seeking to move within the country may be required to produce documentation establishing their identity at checkpoints in order to pass. However, as set out in chapter 11 of this manual, IDPs are inherently likely to have lost access to their personal documentation. It is therefore particularly important that civilians fleeing armed conflict or natural disaster should not be impeded from reaching areas of safety or undertaking movements necessary for the realization of their rights solely on the basis of failing to possess personal documentation.

Until such time as a systematic approach to IDPs' documentation issues is possible, security forces manning checkpoints and other competent officials must be given guidelines that do not rule out necessary movements by IDPs without documentation. In cases where permanent or provisional documentation is issued to IDPs on a facilitated basis (see chapter 11), it is crucial that such documentation be recognized as valid throughout the country. Measures undertaken to provide IDPs with documentation should be coordinated with the security forces in cases where domestic movement is subject to restrictions. The goal should be to give representatives of the security forces—and other concerned public bodies—the opportunity to raise any questions they have in the planning stages of such facilitated issuance exercises in order to ensure that the resulting documentation is recognized and given effect throughout the country.

Everyone, including IDPs, should be able to leave their country, including in order to seek asylum abroad. Competent authorities are generally obliged to allow persons to leave the country, including through the issuance of passports, and other travel documents may not place any arbitrary limitations on the exercise of this right.¹⁶³ Any restrictions imposed on departure to other countries, such as exit visas or controls, should be imposed on an exceptional basis and only when necessary to achieve specific purposes, such as preventing unaccompanied minors or persons indicted for crimes from leaving the country. Women should be allowed to travel outside their country without having to seek any authorization from male relatives.

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What can be done to facilitate IDP freedom of movement during displacement?

Persons who have been displaced must not be prohibited from leaving danger zones. In situations of armed conflict, security forces should be given clear guidance and orders in this regard. Once in safety, shelter in camps or collective shelter should be made available to IDPs in cases where they have no other means of housing themselves. However, IDPs should not be confined to such facilities and should enjoy the right to freely move in and out of them. Under no circumstances should IDPs be encouraged or required to return to their place of origin as long as return would not be safe or to move to places where they would face significant risk or insecurity.

Basic measures to facilitate the mobility of IDPs during displacement can include elements of both assistance and protection. On the assistance side, the provision of subsidized transportation for IDP communities may in some cases be crucial for the exercise of their rights. In particular, where it is necessary to place IDPs in

163 UN Human Rights Committee, General Comment 27 (1999), paragraphs 8–10 and 17.

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collective shelter that is further than walking distance from nearby towns, the provision of transportation may be crucial in allowing IDPs to pursue independent livelihoods and access training and educational opportunities that would not otherwise be available (see chapters 13 and 15). At a minimum, however, adequate security should be provided to ensure the physical protection of IDPs who are required to move outside of camps or collective centers, in situations where doing so entails risks of attacks, theft, or gender-based violence.

Are IDPs able to make voluntary choices regarding durable solutions?

IDPs should not, under any circumstances, be pressured or compelled either to remain in or to return or move to places where their life, liberty, safety, or health would be at risk. In accordance with this principle, official support for organized return programs should only begin when it is clear that minimum guarantees exist for the security of returning IDPs. In situations of conflict-related displacement, such guarantees usually exist only pursuant to agreement on a cease-fire or an official settlement to the conflict. States should ensure, in the course of negotiating peace agreements, that all domestic parties are bound by specific obligations to create the conditions for voluntary return, local integration or resettlement in another part of the country, and socioeconomic integration of IDPs in these locations.

CASE STUDY

Negotiating concrete return commitments in peace agreements

The 1995 Dayton Peace Accords ended a four-year armed conflict in Bosnia that had displaced 1 million people to other countries and a further 1 million within Bosnia. The greatest perceived challenge in facilitating durable solutions for IDPs and refugees was creating the conditions for voluntary return in safety and dignity. In order to address this problem, the accords included a separate annex (annex 7) that set out the right of all persons displaced by the conflict to voluntary return and that committed the domestic authorities to numerous specific measures in support of this undertaking:

Article I: Rights of Refugees and Displaced Persons

[...]

2. The Parties shall ensure that refugees and displaced persons are permitted to return in safety, without risk of harassment, intimidation, persecution, or discrimination, particularly on account of their ethnic origin, religious belief, or political opinion.

3. The Parties shall take all necessary steps to prevent activities within their territories which would hinder or impede the safe and voluntary return of refugees and displaced persons. . . .The Parties shall take immediately the following confidence building measures:

- a. the repeal of domestic legislation and administrative practices with discriminatory intent or effect;
- b. the prevention and prompt suppression of any written or verbal incitement, through media or otherwise, of ethnic or religious hostility or hatred;
- c. the dissemination, through the media, of warnings against, and the prompt suppression of, acts of retribution by military, paramilitary, and police services, and by other public officials or private individuals;

Negotiating concrete return commitments in peace agreements (Cont.)

- d. the protection of ethnic and/or minority populations wherever they are found and the provision of immediate access to these populations by international humanitarian organizations and monitors;
- e. the prosecution, dismissal or transfer, as appropriate, of persons in military, paramilitary, and police forces, and other public servants, responsible for serious violations of the basic rights of persons belonging to ethnic or minority groups.

[...]

Article II: Creation of Suitable Conditions for Return

1. The Parties undertake to create in their territories the political, economic, and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group.

[...]

2. The Parties shall not discriminate against returning refugees and displaced persons with respect to conscription into military service, and shall give positive consideration to requests for exemption from military or other obligatory service based on individual circumstances, so as to enable returnees to rebuild their lives.”¹⁶⁴

Prior to the existence of guarantees of safe return, some IDPs may spontaneously return to their former homes, often with the intent of gathering belongings, harvesting crops, or checking on the condition of their property. Such spontaneous return in insecure circumstances should be neither officially encouraged nor taken as a sign that the conditions have been created for general return. However, IDPs should not be prevented or discouraged from undertaking such spontaneous returns. In particular, they should remain eligible for any official IDP status they have received, as well as assistance and protection they enjoy as a result of being displaced. As long as the conditions that originally forced or obliged IDPs to flee remain essentially unchanged, any return is likely to be transient and cannot be considered a durable solution.

Once the conditions for voluntary return in safety and dignity exist, IDPs should, in principle, enjoy a free choice between returning to their place of origin, integrating into the area they were displaced to, or resettling to another part of the country. In this sense, they should enjoy the same right as any other citizen to choose their place of residence within the country. However, in light of the unstable conditions and damage to infrastructure that often accompany armed conflict or natural disasters, as well as the heightened vulnerability arising from displacement, IDPs often require specific measures of protection and assistance in order to be able to exercise their right to choice of residence and to attain durable solutions. Several key conditions must be met with regard to both potential return destinations and places of potential local integration or relocation to another part of the country in order for IDPs’ choices to be deemed possible and fully voluntary:

1. **Information:** Throughout displacement, IDPs should be provided with full and updated information in a language they understand regarding their situation, including (a) conditions at their places of

164 General Framework Agreement for Peace in Bosnia and Herzegovina (1995), annex 7 (www.ohr.int/dpa/default.asp?content_id=375).

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origin, including the security situation, the presence of mines, the condition of their homes and lands as well as local roads and infrastructure, the availability of jobs, schools for children, and health facilities; and (b) specific forms of assistance available to IDPs for both return and local integration or resettlement or relocation in another part of the country and any deadlines or conditions for applying for them, as well as how to access generally applicable social assistance, social security, income generation, and vocational training programs.¹⁶⁵

2. **Freedom of movement:** An additional measure crucial to durable solutions is the reestablishment of full freedom of movement throughout the country as quickly as possible after the causes of displacement have been addressed. Methods can include dismantling security checkpoints, repairing transportation infrastructure, and encouraging public and private transportation links. Freedom of movement facilitates informal assessment visits by IDPs considering return to their places of origin (see below) and allows IDPs to maintain supportive links between those who choose to return immediately and those who remain temporarily or permanently in areas where they were displaced.
3. **Consultation:** Competent authorities should actively seek to involve IDPs in the design of protection and assistance programming in support of both return and local integration or resettlement or relocation in another part of the country. In addition to enhancing the voluntariness of IDPs' choices of durable solutions, such consultations can give the authorities an informed sense of IDPs' preferences, allowing them to anticipate where demands on assistance programs and protection activities are likely to be highest. In situations in which IDPs are organized into hierarchical communities or where men traditionally take decisions on behalf of their households, it is particularly important to provide separate opportunities for vulnerable or potentially vulnerable individuals and groups to express their preferences and concerns regarding durable solutions.¹⁶⁶
4. **Assistance:** The provision of assistance should not be used to influence the choices of IDPs regarding durable solutions. For instance, return should not be coerced through the threat of peremptory discontinuation of assistance to IDPs who do not go back to their homes of origin. IDPs may be required to choose—within a reasonable time from the point when return in safety and dignity becomes possible—between specific types of assistance facilitating local integration or resettlement in another part of the country, on one hand, and other types of assistance facilitating return on the other. However, both types of assistance should be equally accessible and of equal quality.
5. **Humanitarian access:** An important way for the competent authorities to demonstrate their commitment to free choice of durable solutions for IDPs is to continue to seek and facilitate the work of domestic and international humanitarian actors in playing an appropriate role in assisting IDPs, and, where appropriate, helping to protect their rights. Allowing such actors full access to all sites of IDP return, local integration, or resettlement or relocation in another part of the country is a key element of facilitating their work.

165 See IASC, “Benchmarks for Durable Solutions for Internally Displaced Persons” (2007), p. 4.

166 See, for example, UNHCR, “Handbook—Voluntary Repatriation: International Protection” (1996), chapter 4.1.

6. **Security:** One of the most central roles of the competent authorities in durable solutions settings is the maintenance of security and public order. IDPs must be able to return, remain where they were displaced, or resettle elsewhere without the threat of attacks, intimidation, or harassment. Competent authorities should also address threats presented by mines and unexploded ordinance.
7. **Legal protection:** In case IDPs are attacked or threatened—or in other situations in which their rights are interfered with—IDPs must have full and equal access to domestic legal institutions. In cases of security incidents, the police must investigate and refer any evidence to prosecution services, in accordance with law. IDPs must also have full regular access to courts and administrative bodies.¹⁶⁷ It may be necessary to provide IDPs with a degree of priority in some spheres of administrative activity where they may have suffered particular disadvantages as a result of displacement, such as the issuance of replacement documentation (see chapter 11).
8. **Recovery of property:** A type of legal protection particularly crucial for the achievement of durable solutions is the recovery of assets lost in the course of displacement and compensation for harms suffered as a result. Such measures most commonly take the form of restitution of lands and property, a topic discussed in more detail in chapter 12 of this manual. However, recovery programs should, if possible, also include personal property such as farm equipment, bank accounts and other financial assets, and back social security benefits. As seen in a number of settings, such assets can be crucial to the revival of IDPs' pre-displacement livelihoods, facilitating their return (see the discussion of such measures in relation to economic activities in chapter 13). However, when IDPs are restored to their full pre-displacement rights to dispose over their property and possessions, they will in many cases be able to legally sell, rent, or exchange them, generating income streams that can support durable solutions other than return.
9. **Economic, social, and cultural reintegration:** Whether they choose to return or resettle, IDPs should enjoy the preconditions for an adequate standard of living including access to livelihoods and basic public services on an equal basis with the non-displaced population.¹⁶⁸ Key issues addressed in other chapters of this manual include access to food and the means to acquire it (chapter 7), water (chapter 8), housing (chapter 9), health services and facilities (chapter 10), employment and income generation activities (chapter 13), and appropriate educational opportunities (chapter 15).
10. **Political rights:** Whether they return or not, IDPs should enjoy full access to their rights to vote and to be elected (see chapter 14) as well as their broader rights to freedom of association and participation in public affairs without discrimination.¹⁶⁹

167 IASC, “Benchmarks for Durable Solutions for Internally Displaced Persons,” p. 7.

168 IASC, “Benchmarks for Durable Solutions for Internally Displaced Persons,” p. 8.

169 IASC, “Benchmarks for Durable Solutions for Internally Displaced Persons,” p. 9.

CASE STUDY

Supporting voluntary durable solutions in IDP policies

In Uganda, the 2004 National Policy for IDPs includes a strong commitment to the principle of voluntary return in safety and dignity, as well as voluntary resettlement (Section 3.4.1). This commitment is backed by specific undertakings to provide objective and accurate information to IDPs as a precondition to informed decisions on durable solutions; to foster family unity and take steps to ensure voluntariness; to promote IDP participation in planning durable solutions; to prevent any discrimination against IDPs on the basis of having been displaced; and to support spontaneous return (Sections 3.4.1 to 3.4.7).

What specific steps can be taken to assist IDPs who choose to return?

States also can provide crucial assistance to IDPs in terms of the actual procedures for returning. IDPs should be given assistance in making temporary “go and see” or “assessment visits” to their places of origin in order to ascertain the condition of their homes and lands and the basic economic and security conditions that prevail there. It should be possible to undertake such visits without losing any registered IDP status or benefits as a result and prior to arriving at a decision about whether to seek return or resettlement assistance. In cases where persons displaced from a particular area or city have tended to cluster in another particular area while displaced, it may be possible to anticipate potential return movements and facilitate them through providing free daily transportation between displacement and return sites. Competent authorities may either provide such services directly or facilitate their provision by humanitarian actors. However, in either case, the authorities must take steps to provide adequate guarantees of security for such transportation links. Security measures should be designed through consultation with IDPs dependent on such transportation services. Specific measures might include police escorts along the entire route of bus lines as well as periodic changes of routes or scheduled departures, rest stops, and arrival times.

CASE STUDY

Supporting public transportation along “return axes”

In both Bosnia and Kosovo, UN agencies set up free bus lines along major “axes of return” or routes connecting areas with large IDP populations with areas that the IDPs had been displaced from. In Bosnia, UNHCR set up about 30 bus lines between 1997 and 1999, carrying hundreds of passengers every day, and was able to commercialize all of them through handover to private companies by the end of 2002.¹⁷⁰ In recognition of the fact that freedom of movement remained a problem for ethnic minorities in Kosovo as late as 2006, UN “humanitarian bus lines” there were handed over to the competent authorities rather than commercialized. The August 2006 transfer of responsibility from the UN Interim Mission in Kosovo (UNMIK)

170 (<http://www.internal-displacement.org/>).

Supporting public transportation along “return axes” (Cont.)

to the Ministry of Transport and Communication came with assurances that any changes to the then-existing services would be undertaken on the basis of participation by Kosovo’s ethnic communities.¹⁷¹

This commitment was regulated through the passage of an administrative instruction setting out procedures for minority communities to request service:

Article 2: Requests for Humanitarian Bus Transportation

2.1 A minimum of 10 inhabitants of location that are not included along the existing Routes, and claim that their freedom of movement is limited, shall be entitled to request that their locations be reached by the humanitarian bus transportation service.

2.2 For this purpose, they shall submit jointly a Request either for the creation of a new route or for the extension or modification of an existing route.”¹⁷²

IDPs who do choose to return as a group should be assisted with organized transportation to their places of origin when necessary. Such transportation should be planned carefully in advance in order to ensure that families and groups who wish to return together (see chapter 6) are able to do so, bringing with them all the property and possessions they were able to retain or acquire during their displacement.

What specific steps can be taken to assist IDPs who choose not to return?

IDPs who choose to permanently resettle outside their pre-displacement home of origin should be assisted in integrating into local social service and social security programs, job markets, and educational opportunities in such a way as to be sure that they can restart normal lives and enjoy the rights that any other citizen who might move to the area would. Because IDPs are often marginalized or even traumatized by the experience of displacement and may come from different linguistic and cultural backgrounds, such local integration is likely to initially require outreach and special measures tailored to the needs of IDPs by the local authorities.

In any internal displacement situation, a “residual” population of particularly marginalized and vulnerable IDPs may be unable to achieve durable solutions on their own and risk missing out on return, local integration and resettlement opportunities. Such groups include IDPs who were impoverished, marginalized, or landless prior to their displacement, for whom return may not be an option because they have neither a place nor a livelihood to return to. Other groups facing similar risks include unaccompanied elderly and sick persons as well as unaccompanied children. Although tracing efforts may allow some such people to be reunited with surviving family members, many others will require special assistance in order to ensure them safe and dignified durable solutions.

171 UN News Service, “In Step Forward, Kosovo Government Takes Over Minority Transportation from UN,” press release (31 August 2006).

172 Provisional Institutions of Self-Government in Kosovo, Ministry of Transport and Communications, Administrative Instruction No. 2007/6, “Procedure for the Submission and Assessment of Requests for Humanitarian Bus Transportation” (24 December 2007). The instruction provides for a Technical Commission to decide on such requests within 90 days of receipt, based on a standardized assessment process. In cases of negative decisions or administrative silence, the instructions set out clear appeals procedures.

CASE STUDY

Ensuring that IDPs are integrated in generally available social support programs

In 2006, the municipality of Van in southeastern Turkey adopted an action plan for addressing displacement. The plan proposes to support local integration of impoverished IDPs through the “expansion of existing initiatives”:

“IDPs have made extensive use of Governorate of Van initiatives realized with the aim of increasing household welfare, including a Food Bank, Green Network, micro-credit program and Child Research Rehabilitation and Training Center (CAREM). Through broad use of information technologies, the Green Network allows poor populations to benefit from various social assistance services without having to wait in long queues.

Beyond providing merely for basic nutrition, the Food Bank comprises units that also provide clothing, cleaning supplies, stationery and other basic necessities in an effort to minimize access deprivation of IDPs and other poor populations. Through this practice, rather than depending on donations of food and clothing selected for them by others, households below the poverty line are able to exercise their own priorities and preferences in satisfying their needs.

While these services are directed towards poor households in general, other services address specific populations that, due to sex and age, occupy relatively disadvantaged positions within the household. For instance, women entrepreneurship is supported through a micro-credit program initiated with the contribution of both government agencies and NGOs active in Van. Another disadvantaged group, children working on the street, is provided with services by CAREM, a facility established to provide rehabilitation, socialization, training and health care that receives support within the framework of a joint project administered by the Ministry of Labor and Social Security and the ILO on the Elimination of Worst Forms of Child Labour in Turkey. Activities conducted jointly with the ILO have commenced parallel to the very recent start of cooperation between the Governorate of Van and ILO, which represents a partnership between the public sector in Turkey and the international community that will contribute to the efficiency of service provision.”¹⁷³

173 “Van Provincial Action Plan for Responding to IDP Needs” (2006), (<http://www.brookings.edu/projects/idp.aspx>).

Chapter 6

Family Life

A. INTRODUCTION

Purpose: Guiding Principles 16 and 17 protect the right of IDPs to non-interference with and protection of family life, obliging states to take measures to preserve family unity, pursue family reunification, determine the fate of the missing, and treat the dead with appropriate respect.

Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.
3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.
4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

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Principle 17

1. Every human being has the right to respect of his or her family life.
2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.
3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.
4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

Other relevant principles: 4(2), 25, and 29(1).

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Legal foundations:¹⁷⁴ Uniquely as an institution, the family is protected in international human rights law, and every human being has the right to respect of his or her family life.¹⁷⁵ As the fundamental unit of society, the widest possible protection and assistance should be accorded to the family, particularly while it is responsible for the care and education of dependent children.¹⁷⁶ Protection should extend not only to family members in direct legal or natural relationships but equally to persons belonging to families through shared life, mutual support, or emotional ties, in situations where they consider themselves to be part of a family and wish to live together.¹⁷⁷

Spouses must be accorded full equality of rights and responsibilities in family life, with women equally entitled to exercise their rights in the parenting and custody of minor children, as well as to own, access, manage, and dispose of family property.¹⁷⁸

Special measures of protection and assistance must be taken on behalf of all children and young persons, and states are obligated to render appropriate assistance to parents in the performance of their child-rearing responsibilities.¹⁷⁹ In all actions concerning children, the *best interests of the child* shall be a primary consideration.¹⁸⁰ All children have the right to be registered immediately after birth, to acquire a name, and to know and be cared for by their parents; they should not be separated from their parents against their will.¹⁸¹ Competent authorities must respect the responsibilities, rights, and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians, or other persons legally responsible for the child.¹⁸²

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The right to respect of family life implies the responsibility to adopt appropriate domestic measures to protect the unity of the family and to facilitate its reunification. In situations of internment or detention during armed conflict, and in camps or other communal shelter generally, family members must be accommodated as a unit and provided facilities for leading a proper family life.¹⁸³ In any situation in which family members become separated, all appropriate steps must be taken to facilitate their reunification.¹⁸⁴

174 For more details, see Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, 2nd ed., Studies in Transnational Legal Policy 38 (American Society of International Law and Brookings Institution, 2008), pp. 71–82.

175 UDHR, Article 12; ICCPR, Article 17; ACHR, Article 11; ECHR, Article 8; European Social Charter, Article 9; Fourth Geneva Convention, Article 27; ICRC, “Customary International Humanitarian Law,” Vol.1: Rules, Rule 105.

176 UDHR, Article 16; ICCPR, Article 23; ICESCR, Article 10; ACHR, Article 17; European Social Charter, Article 33.

177 UN Human Rights Committee, General Comment 19 (1990), paragraph 2, and General Comment 28 (2000), paragraph 27; UNCESCR, General Comment 4 (1991), paragraph 6; ICRC, *Commentary to Additional Protocol I to the Geneva Conventions*, p. 859.

178 UDHR, Article 2(1); ICCPR, Articles 3 and 23(4); ICESCR, Article 3; CEDAW, Articles 15 and 16; UN Human Rights Committee, General Comment 19 (1990), paragraph 8.

179 UDHR, Article 25(2); ICESCR, Article 10(3); CRC Article 18(2); Fourth Geneva Convention, Articles 24 and 50.

180 CRC, Article 3; CEDAW, Article 16(1)(d).

181 CRC, Articles 7 and 9.

182 CRC, Article 5.

183 Fourth Geneva Convention, Article 82(2)–(3); First Additional Protocol to the Geneva Conventions, Articles 75(5) and 77(4).

184 ICCPR, Article 23; Fourth Geneva Convention, Articles 26 and 27; First Additional Protocol to the Geneva Conventions, Article 74; Second Additional Protocol to the Geneva Conventions, Article 4(3)(b). See also Fourth Geneva Convention, Articles 25 and 26; Second Additional Protocol to the Geneva Conventions, Article 74 (protecting communication among family members as a means of reuniting them).

In particular, competent authorities must take all necessary measures to trace and re-unite children with parents or relatives.¹⁸⁵ Competent authorities also must take all feasible measures to account for persons reported missing in displacement settings, and authorities have a duty to provide family members with all relevant information on their fate, as well as to keep them apprised of the progress of investigations.¹⁸⁶

In armed conflict settings, competent authorities must search for and collect civilian dead, prevent their mutilation or despoliation, endeavor to return mortal remains and personal effects of the deceased or dispose of them in a respectful manner, and respect and maintain their graves.¹⁸⁷

Regulatory framework: Some national constitutions set out general provisions protecting the family, and domestic laws may include a family code or may separately regulate issues related to marriage, inheritance, registration of births, and child welfare in considerable detail. Similarly, the handling of corpses and mortal remains and the desecration of graves may be addressed in public health and criminal codes, respectively. In some societies, family law questions may be regulated further at the local level through customary rules that may or may not be recognized by and compatible with the national legislative framework. Specific issues arising in the context of displacement such as preserving family unity, family reunification, and provision of information on missing persons are rarely regulated in domestic law.

Problems often encountered by IDPs: In the chaos attendant to displacement, family members can easily be separated from one another. Separated IDPs may face insurmountable obstacles to finding their missing family members, particularly when people have dispersed widely, communications networks are disrupted, and there are legal or practical impediments to freedom of movement. In situations of mass displacement due to armed conflict or natural disaster, the chances of locating a missing family member or learning of their fate are greatly increased if there is widely available access to a central mechanism for the reporting of missing persons and the collection and coordination of data. IDPs whose relatives remain missing often experience extreme mental anguish and may find it difficult to begin to repair their lives until they are reunited with their loved ones or learn of their fate.

Separation of displaced families increases the vulnerability of all persons concerned, as the family functions as the most basic source of protection and stability for every individual member. In many situations, women are not accorded the same legal capacity as men, leaving them liable to exploitation and gender-based violence. Women heads of household experience additional difficulty maintaining their families if they are denied access to family property or encounter laws or customs that restrict or reassign custody of their children to a male relative. On the other hand, in some societies, newly single fathers may have difficulty with the demands of their dual role as sole caregiver and sole provider, placing additional strains on the fabric of the family.

185 ICCPR, Article 24; CRC, Articles 8(2), 22, and 38; African Charter on the Rights and Welfare of the Child, Article 25(2) (b); First Additional Protocol to the Geneva Conventions, Article 32.

186 Fourth Geneva Convention, Article 26; First Additional Protocol to the Geneva Conventions, Article 33; ICRC, Customary International Humanitarian Law, Volume 1: Rules, Rule 117; African Charter on the Rights and Welfare of the Child, Article 19(3).

187 Fourth Geneva Convention, Article 16; First Additional Protocol to the Geneva Conventions, Articles 33(4) and 34; ICRC, “Customary International Humanitarian Law,” Volume 1: Rules, Rules 112–16. See also Rome Statute of the International Criminal Court, Article 8(2)(b)(xxi).

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When children are separated from family members, their vulnerability to sexual exploitation, trafficking, gender-based violence, and recruitment increases. Separation of other vulnerable IDPs (for example, the elderly or people with disabilities or chronic illness) from relatives who act as caregivers can also raise fundamental risks to life and health.

Even if families remain together during the displacing event, the risk of separation remains high throughout displacement, and separation may occur even at the time that durable solutions appear possible. First, families who remained together during flight may subsequently experience separation as a necessary adaptation or coping strategy. Such “voluntary” separation may result from a number of causes. Parents may leave their children in the hands of institutions—whether state-run or un-registered and un-regulated “charitable” institutions—or agree to early or forced marriages as a response to conditions of physical insecurity, hunger, or lack of shelter. Parents may leave the family to seek work elsewhere or send their children to work. In addition to causing separation in violation of the right to family unity, such coping strategies raise serious risks of exploitation for the child. If sensitive to these risks and to the imperative of family unity, government and humanitarian programs may proactively address these threats.

In some cases, government and humanitarian actors may actually, though inadvertently, foster family separation. Families can become separated when one member obtains specialized medical treatment or during a poorly planned mass transportation of IDPs. In some contexts, government policy has been to encourage IDPs to return as soon as the conditions are deemed physically safe. Yet if proper, sustainable conditions for return have not been re-established—if schools and medical clinics have not re-opened, if parents do not have access to livelihoods or feel that the situation is not fully secure, if homes have been destroyed and temporary shelter is not deemed adequate—parents may leave part of their families behind in camps or host communities. Finally, adoptions that are permitted either too quickly following a natural disaster or other mass displacement or before all tracing mechanisms have been exhausted may result in a permanent rupture of family life.

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B. CHECKLIST: ISSUES TO BE ADDRESSED BY DOMESTIC LAWS AND POLICIES

Minimum essential elements of state regulation:

At a minimum and regardless of available resources, competent authorities should do the following:

1. Recognize the right of IDPs to family unity, including both the right to remain together in displacement and the right to domestic reunification when separated.
2. Recognize the right of family members to know the fate of missing relatives and the corresponding duty of the state to endeavor to establish the fate of the missing.
3. Establish or assign to a governmental authority the competence and responsibility to coordinate and undertake tracing and reunification activities and identification and proper disposal of mortal remains.
4. Establish the legal basis for and facilitate active cooperation with international and national humanitarian actors with recognized mandates and expertise in tracing, reunification, and the treatment of mortal remains, such as the International Committee of the Red Cross and national Red Cross and Red Crescent societies, UNICEF, and Save the Children Alliance.

In order to ensure that IDPs can enjoy their right to respect of family life during and after displacement, domestic laws and policies should further

- for purposes of family unity, reunification, and tracing, adopt a definition of *family* that is broad and flexible, based on emotional, social, and economic ties and dependencies;
- incorporate the principles of *best interest of the child* and *respect for family life* in relevant policies and require that they be appropriately considered and reflected in programmatic activities;
- institute a universal and mandatory birth registration system;
- facilitate systematic identification of existing family units and unaccompanied IDPs when IDPs are registered for humanitarian assistance or other benefits and allow for the use of this information in prevention and tracing activities;
- design the provision of humanitarian assistance in a manner that allows and encourages families to remain together, particularly providing targeted assistance to the most vulnerable families;
- facilitate inquiries and tracing requests and establish a centralized database or registry for the collection, coordination, management, and protection of all information relating to missing persons and requests for reunification;
- provide appropriate protection and assistance to vulnerable unaccompanied IDPs such as female heads of household, children, and the elderly;
- provide a legal mechanism, pending resolution of the fate of the missing, to allow for the appointment of a representative of the missing person to safeguard their assets and interests and address the immediate needs of the missing persons' dependents (including custody and guardianship of minors and access to and use of assets for family needs);
- facilitate the placement of separated and unaccompanied children in appropriate interim care arrangements and ensure that legal adoption is not considered until there is no longer any reasonable hope of successful tracing and reunification with family members;
- facilitate investigation of the fate of deceased family members and provision of information, mortal remains, and personal effects to the family, including through cooperation with international and national humanitarian actors with recognized expertise in this area.

C. NECESSARY ELEMENTS OF STATE REGULATION

How can protection of IDPs' family life be coordinated?

At the national level, family issues should be explicitly integrated among those dealt with by an institutional coordination mechanism (see chapter 2, section G). Such coordination should ensure a clear allocation of roles as between the central government, local authorities, and non-governmental implementing partners, taking into account the latter parties' awareness of the local context.

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The need for tracing and reunification usually arises in exceptional situations of armed conflict or natural disaster and usually involves large numbers of IDPs. As a result, states are rarely prepared for the technical, administrative, and logistical challenges inherent in establishing an institutional structure dedicated to these functions. While it is important to have an independent state authority with responsibility to ensure the appropriate tracing of missing persons and identification of mortal remains,¹⁸⁸ the state need not do this single handedly. International humanitarian actors, particularly the International Committee of the Red Cross (ICRC) and national Red Cross and Red Crescent Societies, are universally recognized as experts in tracing activities. This includes developing central databases for the collection of data on missing persons, as well as deploying context specific techniques—from photo kiosks to radio broadcasts and Internet sites—to facilitate reunification.¹⁸⁹ In addition, the ICRC often employs forensics experts to conduct needs assessments and provide operational support and training on the collection, identification, and management of mortal remains.¹⁹⁰ In accordance with Guiding Principle 17.3, competent authorities should actively seek cooperation with such agencies in order to facilitate the quickest possible start to tracing activities. Where possible, the role of the ICRC and the national societies should be reflected in national IDP policies.

CASE STUDY

Incorporation of humanitarian actors, including Red Cross and Red Crescent Societies, in IDP laws and policies

Colombia's law on protection of and assistance to IDPs specifically includes representation of the Colombian Red Cross on district and municipal committees that are tasked with supporting the National System for Comprehensive Assistance to Populations Displaced by Violence.

Uganda's National Policy for Internally Displaced Persons contains provisions on family reunification that closely follow Guiding Principle 17(3), as well as provisions on family unity during return and resettlement:¹⁹¹ "To foster family unity, the relevant Government institutions in cooperation with humanitarian and development agencies shall make every effort to ensure that internally displaced persons are returned or resettled together when they so desire. Where such efforts fail, a mechanism shall be established for their reunification."

What key principles should be reflected in all policies and actions of the state?

An important element in protecting family unity is the adoption of a broad and flexible definition of *family* for the purposes of recognizing the rights to family unity and reunification. In some cases, IDPs may belong to communities with social structures not recognized in domestic statutory law. In others, persons who are not directly related to each other may consider themselves to be a family, may live together and have shared dependencies, and may desire to remain together during displacement. The principle of family unity should

188 On the capacity and duties of such a governmental entity, see ICRC, "Guiding Principles/Model Law on the Missing" (2007), Article 12.

189 ICRC, "Restoring Family Links, A Guide for National Red Cross and Red Crescent Societies" (2000); "Missing Persons, Report of the Secretary-General," A716/476 (2006), paragraph 43.

190 "Missing Persons, Report of the Secretary-General," paragraphs 45–48. See also ICRC, "Management of Dead Bodies after Disasters: A Field Manual for First Responders" (2006).

191 Republic of Uganda, The National Policy for Internally Displaced Persons (2004), Sections 3.4.3 and 3.7

be respected for all those who define themselves as a family based on emotional ties and mutual reliance, including common law marriages and polygamous family arrangements.

In addition, IDP laws and policies should explicitly adopt the *best interests of the child* and *respect for family life* as key principles to be respected in their implementation, such that they are considered in all programmatic activities. Indicators related to family protection should be included in ongoing monitoring of the response to internal displacement.

How can family unity be preserved?

There are a number of things states can do to minimize the chance of separation and to strengthen the possibility for reunification if separation nevertheless occurs. First, if IDPs are registered for the purpose of providing humanitarian aid or other benefits,¹⁹² the registration process may also serve to support family unity and reunification through the identification of existing family units and unaccompanied IDPs. Registration procedures should also encourage IDPs to provide information on missing or separated family members that can be fed directly into tracing programs. To support these functions, registration processes should capture essential information concerning the identity of the individual, accompanying family members, the place and date of initial displacement, and the current residence. Particular priority should be given to identifying and registering unaccompanied and separated children.¹⁹³

Recognition of the legal identity and civil status of displaced persons is instrumental to their ability to exercise their human rights (see chapter 11). Legal recognition can also provide an essential link in family reunification and respecting the right of family to know the fate of the missing and the dead. In particular, births, deaths, marriages, and divorces of internally displaced persons must be registered and documented.¹⁹⁴ As a preventive measure, the mandatory issuance of birth certificates for all children is particularly important for preserving family unity and facilitating family reunification.¹⁹⁵

CASE STUDY

Registration of IDP births

Angola's Standard Operational Procedures for the Enforcement of Norms on the Resettlement of Displaced Populations imposes a general obligation upon the Provincial Delegation of the Ministry of Justice to register births and issue personal and national identity cards.¹⁹⁶

192 See chapter 1, section B, as well as chapter 11 of this manual.

193 ICRC, UNHCR, UNICEF, International Rescue Committee, Save the Children Federation–U.K., World Vision International, “Inter-Agency Guiding Principles on Unaccompanied and Separated Children,” Section 3(b).

194 See Global Protection Cluster Working Group, “Handbook for the Protection of Internally Displaced Persons” (provisional release, 2007), action sheet 2.

195 “Inter-Agency Guiding Principles on Unaccompanied and Separated Children,” p. 27.

196 Article 12.

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It is also important to recognize that the provision of humanitarian aid can have either a negative or a positive effect on family unity. Most importantly, states must assure that all aid and support—whether food aid, livelihoods assistance, or essential services—is provided in a manner to allow and encourage families to remain together. Assistance should be viewed through a “lens” of family unity. Families with children must have adequate access to food, shelter and security, lest they be forced to adopt coping strategies requiring separation of family members. Targeted aid provision, such as programs providing high nutrient food to families with young children, or identifying and providing additional support to the most vulnerable families, may prevent caregivers from feeling that they must find other means necessarily involving separation (institutionalization, early marriage, abandonment) in order to care for their families.

The incorporation of the right to family unity in state policy should be reflected in all programs and activities with IDPs. For example, shelter should be provided in a manner that allows families to live together with a minimum degree of privacy and with facilities sufficient for family life (see Chapter 9). Careful advance planning of any movement of displaced communities will minimize risk of separation, but special measures must address the additional risk to the most vulnerable, such as the use of identifying arm bands on young children. Evacuations of children without their family members should only be carried out as a last resort, subject to strict safeguards, and with the objective of family reunification at the earliest possible opportunity.¹⁹⁷

CASE STUDY

100

Avoiding family separation when facilitating movement of IDPs

Angola’s Standard Operational Procedures for the Enforcement of Norms on the Resettlement of Displaced Populations requires the entity responsible for implementation of return and resettlement processes to “ensure that IDP populations not in condition to be transported for medical reasons remain in the location accompanied by their family members.”¹⁹⁸

Uganda’s national policy directs the District Disaster Management Committees “to ensure family reunification . . . during movements from camps to resettlement sites”¹⁹⁹ and instructs relevant Government institutions to “make every effort to ensure that internally displaced families are returned or resettled together when they so desire.”²⁰⁰

How can separated family members be reunified?

Just as family members have a right to know the fate of their missing relatives, authorities have a corresponding responsibility to endeavor to establish that fate, primarily through means of an effective investigation. As mentioned above, when family separation takes place in the course of displacement, communications networks may be inaccessible or inoperable, and freedom of movement may be limited

197 “Inter-Agency Guiding Principles on Unaccompanied and Separated Children,” pp. 24–26.

198 Article 7(j). See also Article 11(g): “The provincial entity . . . shall . . . keep the family members together during the resettlement or return process.”

199 The National Policy for Internally Displaced Persons, Section 2.4.1.viii.

200 The National Policy for Internally Displaced Persons, Section 3.4.

or extremely difficult. Thus an essential tool is the establishment of a central database or registry through which all information on the missing, and those searching for them, may be channeled.²⁰¹ While the state itself may establish a central database or network, the ICRC has particular expertise in doing so. As there are likely to be multiple humanitarian actors encountering cases of separation and the missing, the key is to ensure that all information from all sources is coordinated and consolidated in a central location. Where the technical capacity exists, the internet provides a useful platform for providing updated information on separated family members in an inexpensive and accessible manner. However, a number of tested means of tracing separated family members exist and can be adapted to particular displacement contexts.²⁰²

CASE STUDY

Cooperation and information sharing with international organizations on the missing

Annex 7 to the 1995 Peace Agreement for Bosnia and Herzegovina provides an example for domestic legislation, establishing the obligation of each party to “give full and unrestricted access by UNHCR, the International Committee of the Red Cross (ICRC), the United Nations Development Programme (UNDP), and other relevant international, domestic and non-governmental organizations to all refugees and displaced persons, with a view to facilitating the work of those organizations in tracing persons [...] and other activities vital to the discharge of their mandates and operational responsibilities without administrative impediments.” (Article III, para. 2.) It further creates a duty to provide information on the missing to the ICRC: “The Parties shall provide information through the tracing mechanisms of the ICRC on all persons unaccounted for. The Parties shall also cooperate fully with the ICRC in its efforts to determine the identities, whereabouts and fate of the unaccounted for.” (Article V)

“The Guiding Principles/Model Law on the Missing” developed by the ICRC includes a draft provision directing that “The [authority] and other concerned State authorities shall cooperate with the International Committee of the Red Cross and the National Red Cross/Red Crescent society, in accordance with their mandates, with a view to tracing the missing persons and protecting the rights of their families.”²⁰³

IDPs and others subject to registration for tracing purposes must be informed about the objectives of these processes and kept updated on their progress. Information used for tracing purposes should allow separated family members to be identified without revealing their location and should be treated in accordance with data protection safeguards.²⁰⁴

Ideally, families should be reconstituted as they existed prior to displacement, subject to all the family members’ agreement and considerations of the best interest of any children.²⁰⁵ In situations where separated families locate each other but where it is not feasible to reunify them, it is crucial that they be able to remain

201 “Guiding Principles/Model Law on the Missing,” Article 14.

202 See Global Protection Cluster Working Group, Handbook for the Protection of Internally Displaced Persons (Provisional Release, 2007), Action Sheet 9, Section 5.4.

203 “Guiding Principles/Model Law on the Missing,” Article 17(4).

204 See, for example, ICRC, “Guiding Principles/Model Law on the Missing,” Article 18.

205 UNHCR, “International Protection,” Note on Family Reunification (EC/SCP/17) (1979).

in contact. The ICRC can offer expertise with the setting up of family news networks to compensate for disrupted communications networks often encountered in displacement settings.

CASE STUDY

Case study: Promoting tracing and reunification activities during resettlement and return

Angola's Standard Operational Procedures for the Enforcement of Norms on the Resettlement of Displaced Populations provides for an Ad Hoc Group for Technical and Administrative Support to monitor resettlement and return. Among the indicators to be considered are family tracing activities, birth databases, and activities to support family reunification. This group is required to submit monthly reports to a provincial commission which in turn reports to a national body.²⁰⁶

Pending reunification, how can unaccompanied IDPs be protected?

In addition to establishing institutional responsibility for tracing, IDP laws and policies should reduce the vulnerability of separated family members pending reunification. Separated and unaccompanied children in particular are entitled to special protection and assistance. The Inter-Agency Guiding Principles on Unaccompanied and Separated Children provide useful guidance on appropriate care arrangements for children pending reunification or other durable solutions.²⁰⁷ The “best interests of the child” principle²⁰⁸ must serve as the standard governing all actions and decisions affecting children, whether undertaken by government agencies, courts or NGOs.²⁰⁹ Wherever possible, separated children should be placed with extended family or members of their original community; placement in foster homes or institutions should occur only when no better options exist. Unaccompanied children should also be provided with access to education as quickly as possible in order to provide structured activities and reduce their exposure abduction, trafficking, recruitment or exploitation (see Chapter 15).²¹⁰

Where children remain unaccompanied for a protracted period or after durable solutions become a possibility, efforts to reunify them, if possible, with their parents should continue. In the meantime, some form of transitional care is preferable to formal adoption, as the latter is generally irrevocable and would preclude reunification with any family members who could subsequently be traced. Forms of interim care include community-based care based on existing social structures familiar to displaced children, foster care with households outside their family, or, less desirably, institutional care.²¹¹ All interim care arrangements should be subject to monitoring to ensure that separated and unaccompanied children are not neglected,

206 Standard Operational Procedures for the Enforcement of Norms on the Resettlement of Displaced Populations, Article 20.

207 “Inter-Agency Guiding Principles on Unaccompanied and Separated Children,” Section 3(d).

208 CRC, Article 3.

209 See generally UNHCR, “UNHCR Guidelines on Determining the Best Interests of the Child” (2008).

210 For detailed discussion on protection of IDPs from trafficking, see “Handbook for the Protection of Internally Displaced Persons,” action sheet 7.

211 For a detailed discussion of measures and criteria for providing interim care and durable arrangements to separated and unaccompanied children, see chapters 4 and 5, respectively, of “Inter-Agency Guiding Principles on Unaccompanied and Separated Children.”

abused, exploited or otherwise subjected to violations of their rights. The principles of the best interest of the child and family unity should be the explicit basis for providing care to unaccompanied and separated children.

Unaccompanied women and girls, as well as female heads of household, may experience certain risks due to discrimination in access to humanitarian assistance, shelter, public services or documentation. Women heads of households who have lost their husband/father may find that they are denied access to family property or financial assets, further jeopardizing their ability to care for and preserve their family. Laws and practices must guarantee the full equality of women, including fully recognition of their rights and responsibilities as heads of households and parents, and particularly with regard to custody of minor children and access to family assets. Domestic law should further provide a mechanism whereby a representative of a missing family member may be appointed to protect his or her legal interests. Upon proof that relatives of the missing person were dependant upon that person, such a representative would also be able to authorize use of the assets to support the remaining family.

Women should be entitled to receive assistance and documentation in their own names, should have equal access to economic inputs including property and credit, and should be included in educational and vocational training programs (see Chapter 13). In some cases, the realization of these rights may require review and amendment of existing legislation, as well as steps to address the effect of customary rules and practices.

Unaccompanied and separated IDPs with particular needs and vulnerabilities should be identified and consulted for the purposes of ensuring that they receive appropriate protection and assistance. Such groups include pregnant women, the elderly, single-headed households, and people with disabilities.

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CASE STUDY

Case study: Efforts to reunify separated IDP children with their families

Angola's Standard Operational Procedures for the Enforcement of Norms on the Resettlement of Displaced Populations requires the provincial entity responsible for social assistance and reintegration "to identify children separated from their families."²¹² The entity must also create a database with photographs of separated children and share information with other provinces in order to facilitate family reunification.²¹³

How can IDPs receive information on the fate of missing family members?

Efforts by the competent authorities and humanitarian actors to trace the location of separated relatives for the purposes of family reunification may also serve in some cases to establish and provide information on the circumstances under which such relatives died. However, in situations such as armed conflict or natural disaster where many missing relatives of IDPs may be presumed to have died, more systematic steps should

²¹² Article 11(c).

²¹³ Article 11(d), 11(f).

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be taken in order to investigate the precise circumstances of the deaths of those deceased with a view to returning their remains and personal effects, wherever possible, to their families.

Competent authorities should use all resources at their disposal to find such information, and should also cooperate with humanitarian actors with recognized mandates and expertise in the areas of tracing and reunification. One common mechanism used by states to meet these obligations is the creation of special Commissions or National Information Bureaus on Missing Persons with the mandate and resources to carry out or coordinate investigation and tracing efforts.²¹⁴ The duty on the competent authorities to investigate missing relatives remains as long as there is any uncertainty about their fate.

How should the remains of the dead be handled?

The treatment and disposal of mortal remains, including the collection and disposal of corpses, is typically regulated in non-IDP specific legislation, such as laws on public health and safety. Meanwhile, criminal codes should protect both corpses and gravesites from mutilation and despoliation. The ICRC's Guiding Principles/Model Law on the Missing offers provisions addressing the obligation to properly search for and recover the dead, the treatment of mortal remains, and proper procedures for burial and exhumation.²¹⁵

214 Examples include the Croatian Government Commission for Detained and Missing Persons and the State Commission of the Republic of Azerbaijan on Prisoners of War, Hostages and Missing Persons.

215 "Guiding Principles/Model Law on the Missing," Articles 19, 21, 22.

A. INTRODUCTION

Purpose: Principle 18(2)(a) of the Guiding Principles is meant to ensure that IDPs have access at all times to adequate food or the means for its procurement, in particular through the direct provision of essential food aid when necessary. The right to adequate food applies throughout displacement, although food security should be secured over the medium term through a transition from direct provision of food or means for its procurement to provision of assistance to IDPs in achieving or resuming self-reliance (see chapter 13). The fulfillment of the right to adequate food also is a key precondition for achieving durable solutions.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - (a) Essential food...;
 - [...]
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Other relevant principles: 3, 22 1(b), and 25.

Legal foundations:²¹⁶ Food is necessary for survival; its provision, therefore, is an essential precondition for the exercise of virtually all other human rights. The right to an adequate standard of living includes the right to adequate food.²¹⁷ The right to adequate food is fulfilled when every man, woman, and child has physical and economic access at all times to adequate food or means for its procurement.²¹⁸ Adequacy of food is evaluated according to the following factors:

- *Availability* of food of sufficient quality and quantity to satisfy the dietary needs of individuals throughout all stages of the life-cycle and according to gender and occupation. Such availability may be achieved both through both the ability of individuals to feed themselves directly and through

216 For more details see Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, 2nd ed., *Studies in Transnational Legal Policy* 38 (2008), pp. 82–5.

217 ICESCR, Article 11; CEDAW, Article 14 (h); CRC Article 27 (1).

218 UNCESCR, General Comment 12 (1999), paragraph 6.

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market systems for distributing food from sites where it is produced or processed to where it is needed.²¹⁹

- *Physical access* to food for everyone, including physically vulnerable individuals and disadvantaged groups.²²⁰
- *Economic access* to food, in the sense that the cost of food should not be such that it compromises the attainment of other basic needs.²²¹
- *Cultural and consumer acceptability* of food, taking into account non-nutrient based values attached to food and its consumption.²²²
- *Quality* of food, including absence of adverse substances, whether through contamination or naturally occurring toxins.²²³
- *Non-discrimination in access* to food. Adequate food must be accessible for all, including the most vulnerable individuals or marginalized sections of the population, without discrimination in fact or in law.²²⁴

The core obligation of states in respecting the right to adequate food is to take necessary action to mitigate and alleviate hunger and to refrain from any activities that would hinder IDPs' access to available food.²²⁵ In all situations, the right to adequate food must be ensured without discrimination of any kind, including on the grounds of displacement.²²⁶

In armed conflict situations, starvation as a method of warfare and targeting of foodstuffs, crops, livestock, drinking water supplies, or irrigation works are illegal, and occupying powers are responsible for ensuring that local populations have food.²²⁷ Starvation as a method of warfare constitutes a war crime.²²⁸ When necessary, parties to armed conflicts must fulfill their obligation to secure adequate food by seeking, permitting, and facilitating international humanitarian actors to deliver food aid,²²⁹ and occupying powers must ensure that the civilian population has food supplies.²³⁰

In any situation of natural or other disasters in which individuals or groups are unable, for reasons beyond their control, to enjoy the right to adequate food by means at their disposal, states are obliged to fulfill that right through direct provision of food or means for its procurement.²³¹

219 Ibid., paragraphs 8, 9, and 12.

220 Ibid., paragraph 13.

221 Ibid., paragraph 13.

222 Ibid., paragraph 11.

223 See UNCESCR, General Comment 12, paragraph 10.

224 Ibid., paragraph 18.

225 CESCR, Article 11 (2); UNCESCR, General Comment 12, paragraph 6.

226 CESCR, Article 2 (2); UNCESCR, General Comment 12, paragraph 18.

227 First Protocol to the Geneva Conventions, Article 54; Second Protocol to the Geneva Conventions, Article 14; ICRC, *Customary International Humanitarian Law*, vol. 1: "Rules," Rule 53.

228 Article 8 (2)(b)(xxv), Rome Statute of the International Criminal Court.

229 Fourth Geneva Convention, Articles 50 and 59; ICRC, *Customary International Humanitarian Law*, vol. 1: "Rules," Rule 54; see also ICESCR, Article 11(2); UNCESCR, General Comment 12, paragraphs 17 and 38.

230 Fourth Geneva Convention, Article 55.

231 UNCESCR, General Comment 12, paragraph 15.

Priority in food aid should be given to the most vulnerable populations, including IDPs generally and particular subgroups with special food needs, such as children, pregnant or lactating women, persons with HIV/AIDS, and the elderly.²³² Food aid should be safe, culturally acceptable, provided in ways that do not adversely affect local producers and markets, and organized so as to facilitate the achievement or resumption of food self-sufficiency on the part of the beneficiaries.²³³

Regulatory framework: At the domestic level, the right to adequate food is rarely accorded explicit constitutional protection. Food production and distribution often take place simultaneously at the household, community, regional, and national level and as a result may be regulated through a broad, diverse body of laws addressing issues such as agricultural production, nutritional and safety standards, handling and treatment, and import and export rules. Laws and policies enacted specifically to address the needs of IDPs should include both general provisions confirming the right of IDPs to adequate food as well as more specific measures, such as benchmarks and indicators and inclusion of food-related criteria in coordination, information gathering, consultation, and monitoring mechanisms. Laws also should clarify the powers and responsibilities of the governmental agencies concerned and assign powers and responsibilities as appropriate (including, when relevant, to local government authorities).

Problems often encountered by IDPs: Displacement disrupts access to food by both separating those who supply themselves with food from the means of producing it (for example, productive land) and separating those who purchase their food from both the income sources and the markets necessary to buy it. As a result, all IDPs, regardless of the causes of their displacement, tend not to enjoy access to their traditional sources of food and therefore are inherently vulnerable to deprivation of this most vital resource. Inadequate food exposes the most inherently vulnerable members of IDP communities—children, pregnant or lactating women, and the ill and the elderly—to specific health risks, and culturally inadequate food may be rejected, particularly by indigenous peoples. IDPs often suffer the consequences of disruptions in food supply caused by bureaucratic hurdles or weak institutional arrangements.

The obstacles to economic self-sufficiency typically faced by IDPs (see chapter 13) often leave them dependent on humanitarian aid for their daily food. Such dependency creates the immediate risk of sexual exploitation by those in charge of food distribution and underscores the importance of laying the ground for durable solutions by ensuring that IDPs' existing livelihood skills are retained and passed on and new livelihood skills are acquired. Some IDPs may have suffered from chronic food insecurity prior to displacement, increasing their vulnerability to malnutrition and complicating their prospects for durable solutions based on food security.

Coping strategies adopted by IDPs in response to food shortages or inappropriate or inadequate food aid often raise fresh protection risks. For instance, attempts to supplement food aid by leaving encampments or safe areas to seek food or outside income may expose IDPs to the risks of attack and sexual violence. Even when adequate food supplies are available, distribution systems that force IDPs to carry food long distances and do not provide food directly to vulnerable categories of IDPs may increase the risk of attack and exploitation. Finally, often IDPs may find themselves resented by neighboring communities, both during

232 CEDAW, Article 12 (2); Fourth Geneva Convention, Article 23 (1); UNCESCR, General Comment 12, paragraph 38.

233 UNCESCR, General Comment 12, paragraph 39.

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displacement and on their eventual return home, because they may receive food of a higher quality than the food available to others or because they may compete for available sources of food or means of procuring food, jeopardizing local food security.

B. CHECKLIST: ISSUES TO BE ADDRESSED BY DOMESTIC LAWS AND POLICIES

Minimum essential elements of state regulation:

At a minimum, competent authorities in displacement situations should do the following:

1. Recognize IDPs' right to adequate food.
2. Provide for the penalization, as a war crime, of the use of starvation as a method of war, in accordance with the Rome Statute of the International Criminal Court.
3. Designate a governmental authority to be responsible for the procurement, storage, and distribution of food to IDPs and the allocation of sufficient funds for that purpose.
4. Seek and accept support from the international community if needs cannot be sufficiently satisfied at the domestic level.
5. Establish procedures to identify and rank beneficiaries of food and other nutritional aid on the basis of need and particular vulnerability.
6. Eliminate any obstacles hindering the domestic sourcing of food, such as subsidies on domestic commodities or price regulations that set their prices above global levels.
7. Facilitate the importation of food aid (for example, by waiving import restrictions, quotas, and customs duties and other taxes).

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In order to ensure that IDPs can exercise their right to adequate food during and after displacement, domestic laws and policies should

- recognize IDPs' right to food and designate a responsible governmental agency with a mandate that covers IDPs as beneficiaries to procure, store, and distribute food and food-related aid and/or seek support from the international community if needs cannot be sufficiently satisfied at the domestic level;
- identify and take into account IDPs' pre-displacement and current food sources and needs;
- ensure that IDPs are consulted on their food needs and participate in the design of any food-related aid undertaken;
- ensure that measures to secure IDPs' right to food through provision of food or means for its procurement target those who are most vulnerable and provide food in a manner that supports the achievement or resumption of food self-sufficiency;
- ensure that food-related aid results in the provision or procurement of sufficient amounts and types of food of a quality adequate to provide for IDPs nutritional needs—including those of especially vulnerable groups—without forcing them to resort to unsustainable coping strategies;
- ensure that food-related aid is provided in a culturally appropriate manner for the IDP populations

concerned and that it is sourced, distributed, and prepared in a manner that does not have an adverse affect on local markets or the environment;

- ensure that food-related aid is accessible, to the extent possible, to all IDPs in need of it and that special measures are taken to make aid accessible to groups that are vulnerable in light of their marginalization or limited mobility;
- improve provision of food-related aid continually through monitoring and evaluation, complaint procedures, consultation, and participation of recipient IDPs in planning;
- update cash and cash-equivalent benefits to reflect changes in the cost of living; and
- make food-related aid available when necessary to support durable solutions, particularly to support IDPs' return to their homes.

C. NECESSARY ELEMENTS OF STATE REGULATION

What institutional arrangements are necessary to secure IDPs' right to food?

Often, the right to adequate food for IDPs cannot be secured—not because of lack of food and the means to acquire it for free distribution but because the necessary institutional arrangements have not been made, authority and responsibility for implementing assigned tasks have not been allocated, and the means to implement those tasks have not been provided. Ideally, one governmental agency at the national level or several agencies at the regional or local level should be responsible for addressing the dietary needs of IDPs, through (i) the distribution of adequate sums of money and/or vouchers to allow IDPs to buy their own food; and/or (ii) the procurement, storage, and distribution of food to IDPs in need; and/or (iii) seeking support from the international community if needs cannot be sufficiently satisfied at the domestic level.

If food has to be imported for humanitarian purposes, import restrictions and quotas as well as customs requirements may hinder or at least delay the influx of food needed to avoid malnutrition or even death among the displaced. In such cases, it is important to have legal arrangements in place that allow the temporary removal of such obstacles (see chapter 4).

CASE STUDY

Case study: Institutional arrangements in Colombia

In Colombia, according to Article 15 of Law No. 387 of 1997, registered IDPs receive short-term humanitarian assistance consisting mainly of food aid for three months; aid can be extended for a further three months, if necessary. Such aid is provided through the local representatives of the Office of the High Counselor to the Presidency for Social Policy and International Cooperation, known as Acción Social, or international partners of Acción Social, including the International Organization for Migration (IOM) and the International Committee of the Red Cross (ICRC).

What information regarding IDP populations is useful in assessing how best to secure their right to adequate food?

In the context of efforts to count, locate, and assess the needs of IDP populations (see chapter 2, section C), competent authorities should actively seek and compile information related to IDPs' dietary habits and food needs.²³⁴ Such information includes

- pre-displacement livelihood strategies for producing or otherwise acquiring food;
- the basic staple foods relied on by the IDP population and how they were processed, packaged, and stored;
- patterns of household consumption, including the proportion of labor or income that went directly to acquiring sufficient food and how and by whom food typically was prepared;
- food-related cultural, hygienic, or religious practices of the IDP population or any subgroups thereof, including any prohibitions on certain types of foods or culturally significant use of condiments;
- any pre-existing obstacles that the IDP population or specific subgroups faced in exercising their right to adequate food, including any pre-displacement incidence of malnutrition; and
- what food resources are immediately available to IDPs where they are displaced and their coping strategies for addressing any food inadequacies.

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Wherever possible, food distribution to IDPs should be based on a nutritional survey undertaken to assess the immediate requirements of the population. Information on the accessibility and appropriateness of food aid should be collected and evaluated continuously to facilitate monitoring (see below) and address identified problems. Participation of affected communities in the design of food aid and food security programming is especially important throughout the process to identify the most appropriate forms of food aid and the safest and most equitable means of distributing it. Host communities and other communities in the area of displacement (and the area of return, in the context of durable solutions) should also be consulted, as both the sourcing of food aid and its introduction into local markets can have important effects on local patterns of food production and trade.

In many societies, women may be dependent on men to provide food (or the income used to buy food), making them especially vulnerable to exploitation in situations in which the distribution of food-related aid is poorly planned or non-transparent. On the other hand, women often have the primary responsibility for preparing and cooking food in the household and may be especially knowledgeable about appropriate types of food and cooking techniques. In addition, when distribution systems are set up in a manner that ensures that food or the means for its procurement are placed directly in the hands of women, it is more likely to benefit the entire household.²³⁵ However, direct distribution of food-related aid to women may jeopardize their ability to engage in other tasks and participate in livelihood or training activities and even expose them to security risks.²³⁶ In light of all those factors, it is especially important to ensure that women are involved

234 For more detailed information on assessing the food security and nutrition of persons affected by disasters, see Sphere Standards, chapter 3.

235 World Food Program, Gender Policy, WFP/EB/2002/4-A (2002), paragraph 6.

236 Ibid., paragraph 30.

in the design and planning of food-related aid in order to identify risks in distribution systems as well as means of addressing them.

Who should be involved from the outset in coordinating the response to inadequate food for IDPs?

At the national level, food should be one of the central humanitarian assistance issues dealt with through an institutional coordination mechanism (see chapter 2, section G, as well as chapter 4). In situations in which intervention to provide food directly to IDPs and other at-risk groups is deemed necessary, such activities should be closely coordinated with other humanitarian assistance providers, at both the central and the local level.

The coordination process should include not only public bodies but also private sector actors responsible for issues such as agriculture and food safety in order to combine public decision-making authority with the necessary technical expertise. A key objective of coordination should be the identification of legislative and administrative obstacles and gaps, such as barriers to moving food from areas within the country where surpluses exist to areas where displaced populations have strained local supplies.²³⁷ Coordination efforts should also identify and, when possible, remove obstacles to the domestic sourcing of food, such as subsidies on domestic commodities or price regulations that render prices uncompetitive vis-à-vis international prices.

Coordination with international humanitarian actors is also especially important in relation to food aid. Food aid often may be provided by international donors when there is a risk that domestic supplies may be inadequate to cope with the scale of the crisis. As a result, domestic authorities may need to be prepared to arrange for the import, transportation, quality control, and storage of large amounts of donated food. In light of the need to transition from food aid to assistance in achieving food self-sufficiency as quickly and smoothly as possible in emergency settings, coordination between national and international actors in food, development, and other sectors also is crucial.

Under what circumstances is food aid for IDPs necessary, and what aims should it seek to achieve?

Food-related aid to IDPs often takes two forms. First, free food aid (involving either direct distribution of food or means of procuring food such as cash or vouchers) may be distributed to all IDPs in sufficient amounts to close any gap between their actual daily caloric intake and the minimum amount needed to avoid malnutrition and disease. Second, when IDPs are at risk from malnutrition or already suffering from its effects, supplementary and therapeutic feeding programs should be undertaken in accordance with existing international guidelines.²³⁸ In all cases, food assistance should be provided on the basis of demonstrated need, and it should be available to both displaced and non-displaced populations. However, because IDPs usually are separated from the resources that they used to produce their own food or generate income for food before displacement, they are inherently vulnerable to hunger and malnutrition.

237 Margret Vidar, "State Recognition of the Right to Food at the National Level," Research Paper No. 2006/61, UNU-WIDER, Finland, 2006.

238 UNHCR, UNICEF, WFP, and WHO, "Food and Nutrition Need in Emergencies" Rome, 2003. (www.who.int/nutrition/publications/en/nut_needs_emergencies_text.pdf).

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Free food aid is the primary topic of this chapter. Although general food distribution is common in displacement and humanitarian disaster settings, it should be seen as a temporary measure that as quickly as possible begins to target specific vulnerable groups among IDPs and that also recognizes and encourages opportunities for food self-sufficiency. The goal of food aid should be to fill the immediate gap between the caloric and nutritional needs of IDPs and what they are able to acquire for themselves through sustainable activities. In situations of food scarcity, IDPs often engage in unsustainable coping strategies in order to access food. Such coping strategies usually entail significant risks (for example, in cases in which hunger drives IDPs to engage in prostitution or the sale of organs) or costs (for example, in cases in which IDPs sell vital assets such as livestock in order to satisfy their short-term food needs). Food aid is necessary when no more sustainable means of procuring food is currently available.

However, in principle food aid should be provided on an interim basis, pending the achievement or resumption of self-sufficiency through sustainable patterns of production or acquisition of food that foster long-term food security. In seeking to support IDPs' self reliance, competent authorities should recall the fact that food aid is not only a means of meeting basic needs but also a form of income transfer that allows IDPs to invest their resources in other ways of achieving self-sufficiency, along with more conventional forms of recovery assistance such as training or agricultural inputs. In addition, food aid can in some cases encourage IDPs to participate in programs that will help them achieve greater self-reliance (for instance, when free lunch is provided in schools). In sum, the provision of food aid should be closely coordinated with longer-term efforts to assist IDPs in achieving sustainable means of procuring their own food, as discussed in chapter 13.

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Supplementary feeding programs are meant to pre-empt malnutrition or address existing cases by providing the affected population with food rations and health inputs.²³⁹ In many respects, questions related to the provision of supplementary feeding rations are similar to those raised in broader food aid distribution settings, but reference should always be made to updated international guidelines.²⁴⁰ Issues related to IDP access to primary and in-patient medical care are covered in chapter 10.

How should food aid be designed to be adequate and accessible for IDPs?

Legislation and policies meant to address displacement should ensure that when necessary, food aid is provided in a manner that fulfills the right of IDPs to adequate food. That involves taking into account a series of key criteria and how they apply during displacement.

Availability: Food aid should be available in a sufficient quality and quantity to address or prevent hunger and malnutrition and reduce or eliminate the need on the part of IDPs to engage in unsustainable or risky coping strategies in order to acquire food. On the basis of that principle, IDPs often may be entitled to greater support than non-displaced communities; typically, however, non-displaced communities will be more able to produce or acquire sufficient food to at least partially meet their needs. Foods should be safe, free from adverse substances, and distributed well in advance of any expiration date. In addition to providing

239 Sphere Standards, Correction of malnutrition standard 1: Moderate malnutrition, p. 145; Correction of malnutrition standard 2: Severe malnutrition, p. 148.

240 UNHCR, UNICEF, WFP, and WHO, "Food and Nutrition Need in Emergencies," Rome, 2003. (www.who.int/nutrition/publications/en/nut_needs_emergencies_text.pdf)

a minimum number of calories per day, foods should be of a nutritionally balanced variety, ensuring that sufficient protein, fats, and micronutrients are included in IDP diets.²⁴¹

Specific sub-categories of IDPs that have particular food needs that must be met through additional nutrients and support include the following:

- Children under two years of age. Infants under six months of age should be exclusively breastfed. However, when doing so is not possible, they should receive adequate amounts of a safely prepared breast-milk substitute. Beyond six months, young children require energy-dense food in addition to breast milk.
- Pregnant and lactating women may require supplementary food, including minimum levels of iron and folic acid.
- Elderly persons should receive food that provides a high level of protein and micronutrients and is easy to prepare and consume.
- Persons with chronic illnesses or HIV/AIDS need supplementary food rations that include a high level of micronutrients and/or blended foods that are easy to consume.
- Persons with physical disabilities may require energy-dense foods that are easy to consume.²⁴²

Appropriateness: In addition to its amount and quality, non-nutrient based characteristics of food may determine how well it meets the needs of IDPs. Cultural acceptability is a key issue which plays an especially important role if the displaced belong to indigenous peoples or certain religious groups. Beyond that, IDPs ideally should be provided with food that they are familiar with and know how to prepare. If they are given unfamiliar food, care must be taken not to violate any cultural or religious prohibitions (particularly in cases in which prohibited ingredients in processed foods would not be evident to the consumer) and to provide clear instruction on how to store, handle, and prepare the food. Packaging of food should include such instructions, as well as nutritional information and expiration dates, in a language that IDPs understand. Finally, whenever possible, culturally important condiments such as sugar or chilies should be provided.²⁴³

CASE STUDY

Case study: Consultation of IDPs on the Composition of Food Rations in Azerbaijan

“In Azerbaijan, the World Food Programme (WFP) provides food assistance to a large percentage of the estimated half-million internally displaced. After discussions with displaced community leaders, WFP has modified the composition of the food ration to alternative—equally nutritious and comparably priced—commodities, based on the community’s stated preferences. For example, a simple change in the pulse allotment from green peas to white beans, as requested by the community, boosted community morale and retained some element of community control over its diet.”²⁴⁴

241 Sphere Standards, General nutrition standard 1: All groups, p. 137.

242 Sphere Standards, General nutrition standard 2: At-risk groups, p. 140.

243 Lorenzo Cotula and Margret Vidar, “The Right to Adequate Food in Emergencies,” FAO Legislative Study No. 77 (2002), p. 77.

244 IASC, “Field Practice in Internal Displacement” (1999).

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The appropriateness of food aid can also be considered in relation to the host community and local environment. Food aid should not only be available on the basis of need to non-displaced as well as displaced persons, but, in principle, it should also be purchased locally. In practice, however, care should be taken to ensure that the benefit that local purchase provides to producers in the area is not outweighed by an unacceptable increase in the price of staple goods for local consumers. Another issue is the effect of food aid on the local environment. For instance, if IDPs traditionally prepare food over wood fires, the provision of food with long cooking times may contribute to deforestation.

Accessibility: One of the most important factors in determining the adequacy of food aid is its accessibility for vulnerable sub-groups as well as the general IDP population. Given that food aid is free, economic accessibility generally is not an issue unless the location of distribution points requires IDPs to pay for transportation (see below). However, economic accessibility may become an issue as food aid is phased out and greater emphasis is placed on direct support to promote IDPs' economic self-reliance (see chapter 13).

The greatest challenge in developing IDP-specific food aid policies is typically posed by the issue of physical access. IDP populations themselves may often be inaccessible, whether due to their remote location and geographic obstacles or their dispersal among the general population. As a result, it may be difficult or impossible for them to travel to food distribution points or to the places where they must register to be eligible for food aid. However, dispersed or inaccessible IDPs may have even more acute food needs than those that are easily accessed in collective shelter facilities or camps. In order to ensure equality of treatment, it is crucial that IDP policies mandate special measures to assess and fulfill the food needs of dispersed IDPs as well as surrounding communities.

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Even within collective shelter facilities or camps, moreover, food distribution points should be established at locations that are safe and convenient for IDPs and they should be open at times of day that do not discourage self-reliant economic activities because they overlap with times when IDPs are normally engaged in work or childcare. Information on when and where distributions take place, the quantity and type of food provided, and any eligibility requirements must be available on an updated basis to all potential recipients. Safe access to means of procuring or cooking food should also be secured. It is especially important to ensure that IDPs who leave camp to tend crops or collect firewood are protected. In the latter case, protection might involve either security escorts ("firewood patrols") or the introduction of stoves, alternative fuels, or food that cooks more quickly.

Finally, the marginalization or limited mobility of particular vulnerable groups may require special measures to ensure their equal physical access to food and to prevent abuse or exploitation:

- Women and girls should be clearly entitled to receive food in their own name and on behalf of dependents in order to avoid situations in which the distribution process presents opportunities for sexual exploitation. IDP policies should also seek to involve women formally in management decisions regarding food distribution, including day-to-day operational aspects.
- Distribution points should be organized with sufficient basic amenities (for example, shelter from the sun) and security that women, children, elderly persons, and persons with disabilities are able to wait for and receive food aid without physical hardship or risk of having it taken from them by force.

- In the case of highly immobile IDPs, such as some elderly, chronically ill, or disabled persons, food should be directly delivered to them where they live or through their caregivers.

How can food aid to IDPs be improved over time?

As set out in chapter 4, the provision of humanitarian goods and services should be monitored and subject to continuous quality control. For food, as for other humanitarian goods, IDP policies should encourage the establishment of complaint procedures that address individuals' concerns about eligibility criteria or the adequacy of food aid. Most important, IDPs should be continuously consulted on both the adequacy of food aid and the effectiveness of distribution procedures and should participate in the planning of food aid throughout the process.

It often is possible to encourage sustainable food security among IDPs by providing them with the opportunity and the necessary tools and seeds to produce their own food on government-owned or unused land. That can be accompanied by a gradual phase down of food assistance as family food production increases. In urban areas, measures aimed at income-generating activities or integration of IDPs into the local labor market may help to make IDPs more self-sufficient (see chapter 13). In all cases in which cash transfers or vouchers are included as forms of food-related aid, the value of the package provided to beneficiaries should be periodically reviewed and adjusted in order to ensure that it has kept up with inflation rates and increases in the cost of living.

How should the right to adequate food be fulfilled in the context of durable solutions?

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The shift from providing food aid to encouraging self-sufficiency and prospective food security is critical (see chapter 13) in helping IDPs choose durable solutions. In particular, provision of agricultural implements, seeds, or animals at the time of return may be crucial. If IDPs are successful in developing or reviving livelihood skills, their decisions regarding durable solutions are more likely to be voluntary and informed by considerations of where the conditions are likely to be best for achieving or maintaining self-sufficiency. If that transition has not been made, then IDPs' choice of durable solutions risks being dictated by passive considerations of where continued humanitarian aid or social security support is most likely to be available.

Even in the best cases, however, return often poses particular challenges. Returning IDPs often face the necessity of reconstructing homes, reinvesting in economic inputs, and clearing abandoned land to make it productive again. The timing of return may be such that IDPs miss planting seasons and must wait a long time before their first harvest. Under such circumstances, safe return may be effectively supported through a special food aid program—sometimes necessary over one or more planting seasons—that allows IDPs to re-establish themselves without facing hunger or malnutrition. Such programs should be time-bound, and they should encourage rather than discourage the transition to independent food security—by, for example, limiting the assistance to the period of initial return and to periods of general food shortages in the community (lean seasons).

Chapter 8

Water and Sanitation

A. INTRODUCTION

Purpose: Principle 18 (2)(a) of the Guiding Principles is meant to ensure that internally displaced persons have secure and non-discriminatory access at all times to sufficient safe potable water for personal and domestic uses and to sanitation services, both of which are crucial for the well-being, health, and even survival of the displaced. That right applies throughout displacement and constitutes a precondition for enjoyment of the right to adequate food, the right to adequate housing, the right to health, and the right to participate in economic activities. Respect for the right to adequate water also constitutes a key precondition for achieving durable solutions.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - (a) ... potable water;
 - [...]
 - (d) ... sanitation.
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Other relevant principles: 3, 18 (2)(d), 19, and 25.

Legal foundations:²⁴⁵ Access to water is necessary for survival and therefore an essential precondition for the exercise of virtually all other human rights. The right to an adequate standard of living includes the right to adequate water.²⁴⁶ Fulfillment of that right is a precondition for the exercise of many other related rights, including the rights to life and human dignity, adequate food and housing, health, and participation in economic activities.²⁴⁷ The right to adequate water is fulfilled when every man, woman, and child has secure and non-discriminatory access at all times to sufficient safe potable water for personal and domestic uses in order to prevent disease.²⁴⁸ Fulfillment of that right not only involves the supply of potable water

245 For more details, see Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, 2nd ed., Studies in Transnational Legal Policy 38 (2008).

246 ICESCR, Article 11; CEDAW, Article 14 (2)(h); CRC Article 24 (2)(c); UN Committee on Economic, Social, and Cultural Rights (UNCESCR), General Comment 15 (2000), paragraph 3.

247 UNCESCR, General Comment 15, paragraph 3.

248 Ibid., paragraph 37.

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for drinking, cultural and productive activities, washing, and food preparation; it also involves measures to prevent, treat, and control diseases linked to water, in particular through adequate sanitation.²⁴⁹ Adequacy of water is evaluated according to the following factors:

- *Availability*: A sufficient and continuous supply of water must be available for each person's personal and domestic uses, including drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene. Sufficiency of water should be calculated taking into account particular requirements arising from health, climate, and work conditions.²⁵⁰
- *Physical access to water*: Adequate water facilities and services must be within safe physical reach and in the immediate vicinity of each household, educational institution, and workplace.²⁵¹
- *Economic access to water*: Adequate water facilities and services must be affordable for all and should not impose direct or indirect costs that compromise the realization of other rights.²⁵²
- *Access to information*: IDPs have the right to seek, receive, and impart information on water-related issues.²⁵³
- *Water quality*: Water must be both safe (free from hazardous materials) and acceptable with respect to color, odor, and taste.²⁵⁴
- *Non-discrimination*: Adequate water facilities and services must be accessible for all, including the most vulnerable individuals or marginalized sections of the population, without discrimination in fact or in law.²⁵⁵

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The core obligations of states with respect to the right to adequate water include ensuring secure access to the minimum essential amount of safe water that is sufficient for personal and domestic uses to prevent disease through provision of water facilities and services at a reasonable distance from each household.²⁵⁶ In all situations, states have an immediate obligation to ensure adequate water without discrimination of any kind, including on the grounds of displacement or residence in informal settlements.²⁵⁷ In armed conflict situations, targeting of drinking water installations and supplies or irrigation works is illegal, and states must ensure that civilians have access to adequate water.²⁵⁸

249 CEDAW, Article 14 (2); CRC, Article 24 (2); UNCESCR, General Comment 15, paragraphs 29 and 37 (i).

250 UNCESCR, General Comment 15, para. 12(a).

251 UNCESCR, General Comment 15, para. 12(c)(i).

252 UNCESCR, General Comment 15, para. 12(c)(ii).

253 UNCESCR, General Comment 15, para. 12(c)(iv).

254 UNCESCR, General Comment 15, para. 12(b).

255 UNCESCR, General Comment 15, paragraph 12(c)(iii).

256 Ibid., paragraphs 37 (a) and (c).

257 ICESCR, Article 2 (2); UNCESCR, General Comment 15, paragraphs 13–16 and 37 (b).

258 First Protocol to the Geneva Conventions, Articles 54 and 56; Second Protocol to the Geneva Conventions, Article 54; Fourth Geneva Convention, Article 55; UNCESCR, General Comment 15, paragraph 22.

In situations of displacement, states must make special efforts to provide adequate water facilities and services to internally displaced persons, whether they are located in camps or dispersed in urban and rural areas.²⁵⁹ States may fulfill that obligation either through direct provision of such facilities and services or through provision by non-state actors, as long as the latter are effectively regulated and provide adequate, safe, and affordable services.²⁶⁰ When necessary, states must fulfill their obligation by seeking, permitting, and facilitating international humanitarian support to ensure the availability and accessibility of potable water and sanitary services.²⁶¹ Priority in humanitarian water and sanitation provision should be given to those most vulnerable to deprivation of those services, including internally displaced persons generally and particular sub-groups with special needs, such as children, pregnant or lactating women, persons with HIV/AIDS, and the elderly.²⁶²

Regulatory framework: At the domestic level, the right to adequate water is rarely accorded explicit constitutional protection. However, water often is treated as a public good, and most states accordingly assume responsibility for regulating the provision of water, subsidizing its price, and providing the necessary infrastructure and facilities. Provision of water and sanitation services in many countries is the responsibility of local authorities. In practice, the fact that residents of informal settlements often are ineligible for public provision of water services has resulted in a situation in which the poor may pay inflated prices to private providers for water.²⁶³ In other settings, states have privatized aspects of water provision in an organized manner. Thus, provision of water facilities and services by both public authorities and private actors often is regulated in domestic law. In the context of the UN Millennium Development Goals, states have committed themselves to reduce by half the proportion of people without sustainable access to safe drinking water.²⁶⁴ Domestic responses to internal displacement should include review of existing laws on water provision to identify and address any obstacles to the enjoyment of the right to adequate water by displaced persons, as well as general affirmation of that right in displacement-specific legislation and policies. Such texts should also set out specific benchmarks and indicators regarding the adequacy of water facilities and services, as well as coordination, information gathering, consultation, and monitoring mechanisms.

Problems often encountered by IDPs: As a result of their displacement, the internally displaced typically are cut off from the sources of water that they relied on prior to displacement for their personal and household needs. The supply of potable water and sanitation services where they find themselves displaced may be inadequate or nonexistent. The lack of sufficient potable water can endanger lives and health, and it poses a particular risk to groups vulnerable to dehydration, such as children and the chronically ill. When water supplies exist, they may not be of sufficient quality to guarantee safe consumption. The manner in which water and sanitation facilities are provided may also fail to correspond to important social or cultural practices of IDP communities. In the absence of sanitation facilities and good hygienic practices on the part of displaced communities, the disposal

259 UNCESCR, General Comment 15, paragraph 16 (f).

260 *Ibid.*, paragraphs 24, 26, and 27.

261 Fourth Geneva Convention, Articles 50 and 59; ICESCR, Article 11 (2); UNCESCR, General Comment 12, paragraphs 17 and 38.

262 UNCESCR, General Comment 15, paragraph 16.

263 UNDP, "Beyond Scarcity: Power, Poverty, and the Global Water Crisis," Human Development Report (2006).

264 UN Millennium Development Goals (2005), Goal 7. The goals also included commitments to halt and begin to reverse the incidence of malaria and other major diseases, many of which are water-borne or spread through water-related vectors (Goal 6).

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of human excreta can encourage the spread of disease and render local water supplies unsafe. The provision of water and sanitation facilities to displaced persons can also lead to new risks in cases in which insufficient privacy or long distances to water and sanitation facilities leave women and girls exposed to rape and other gender-based violence. New strains placed by displaced populations on local water resources can also heighten tensions with host and neighboring communities, particularly in cases where water is needed not only for personal needs but also for economic activities, such as raising livestock and cultivating crops. In the context of durable solutions, water services and facilities often must be restored at sites of return and sustainable solutions must be sought for the water needs of displaced persons who choose to resettle. Disputes over water rights often are a root cause of armed conflict and reintegration measures should seek to assess and minimize the risk of new or renewed tensions over water resources.

B. CHECKLIST: ISSUES TO BE ADDRESSED BY DOMESTIC LAWS AND POLICIES

Minimum essential elements of state regulation:

At a minimum, competent authorities should do the following:

1. Recognize IDPs' right to potable water.
2. Designate an agency at the local level to be responsible for the provision and maintenance of water and sanitation services for IDPs, whether they are in camps or not.
3. Seek and accept assistance from the international community if needs cannot be sufficiently satisfied at the domestic level.
4. Establish procedures to identify and rank beneficiaries of water and sanitation services on the basis of need and particular vulnerability.

To ensure that internally displaced persons can exercise their right to adequate water services and sanitation facilities during and after displacement, domestic laws and policies should

- recognize IDPs' right to adequate water and designate relevant authorities to be responsible for providing water and sanitation services to the displaced in accordance with established minimum standards;
- recognize the water use and sanitation practices of internally displaced persons and affected populations while promoting methods for personal hygiene and safe use of water;
- incorporate ongoing consultation with the displaced and affected populations regarding their water and sanitation needs and encourage their participation in the design of services, in the maintenance and improvement of facilities, and in activities to promote good hygiene;
- ensure the availability of a continuous supply of potable water in sufficient quantity and quality to provide for personal and domestic uses for both displaced and affected populations;
- ensure that measures are taken to ensure access to potable water for categories of displaced persons who are vulnerable in light of their marginalization, special water or sanitation needs, or limited mobility;

- provide sanitation services and facilities in sufficient quantity and in convenient and secure locations affording safety, privacy, and hygienic conditions for all internally displaced persons;
- improve the provision of water and sanitation services to displaced persons through continuous monitoring and evaluation, complaint procedures, and an ongoing process of consultation and participation; and
- ensure that equitable, adequate, and targeted water and sanitation services and facilities support durable solutions in a manner that avoids new or renewed disputes over water resources.

C. NECESSARY ELEMENTS OF STATE REGULATION

What institutional arrangements are necessary to secure IDPs' right to potable water?

Displaced populations often do not have access to potable water and sanitation services because no governmental agency is responsible for providing them. Usually, local authorities are assigned that task; in some countries, such services have been privatized. In both cases, it is essential that the relevant authorities and entities are obliged by law, concession, or contract to provide services not only to the local population but also to IDPs in accordance with established minimum standards.²⁶⁵ If they are unable to do so, they should be obliged to seek support from the international community.

What information regarding IDP populations is useful in assessing how best to secure their right to water?

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In the context of efforts to count, locate, and assess the needs of IDP populations (see chapter 2, section C), competent authorities should actively seek and compile information related to IDPs' water use and hygienic practices.²⁶⁶ Such information includes

- pre-displacement sources of water;
- the average amount of water used daily for personal and household needs by IDP populations;
- patterns of water use, including information on who in the household typically was responsible for fetching water, washing clothes, and preparing food.
- hygienic practices and the manner in which human excreta was disposed of prior to displacement;
- water-related cultural and religious practices of the IDP population and sub-groups;
- any pre-existing obstacles that the IDP population or specific sub-groups in the IDP population faced in exercising their right to adequate water and the coping strategies that they used to address them; and
- what water resources, facilities, and services (including sanitation facilities) are immediately available to IDPs where they are displaced and their coping strategies for addressing any inadequacies.

265 See, for example, Sphere Standards, "Minimum Standards in Water Supply, Sanitation, and Hygiene Promotion," Annex 5: References, p. 96.

266 See Sphere Standards, "Water Supply and Sanitation Initial Needs Assessment Checklist," p. 89; Protection Cluster Working Group, "Protection of Conflict-Induced IDPs: Assessment for Action" (Provisional Release, 2008), Part 1, Section 8.

267 Sphere Standards, Water supply standard 2: Water quality, Guidance note 1, p. 67.

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Whenever possible, water and sanitation facilities should be based on a sanitary survey assessing conditions and practices in IDP communities that may present a public health risk.²⁶⁷ Information on the adequacy of water and sanitation services and facilities should be collected and evaluated on a continuous basis in order to facilitate monitoring (see below) and address identified problems. Consultation with and the participation of affected communities in the design of water and sanitation programming are especially important throughout the process in order to identify the safest and most equitable means of providing facilities and services. Host communities and other communities in the area of displacement (and the area of return in the context of durable solutions) also should be consulted, as they are likely to be dependent on water resources at risk of depletion or contamination due to use by IDPs.

Who should be involved from the outset in coordinating provision of water and sanitation facilities and services to IDPs?

At the national level, water and sanitation services should be one of the central humanitarian assistance issues dealt with by an institutional coordination mechanism (see chapter 2, section G, and chapter 4). Interventions to provide water and sanitation to IDPs and other at-risk groups should be closely coordinated with those of other humanitarian assistance sectors, both at the central and local levels. The coordination process should include not only public bodies but also any private sector actors with relevant technical expertise. A key objective of coordination should be to identify legislative and administrative obstacles and gaps, such as barriers to extending utilities networks to areas where IDPs are concentrated.

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Coordination with international humanitarian actors also is important with regard to water and sanitation. Unlike food aid or medicines, adequate supplies of water usually should exist in the area where IDPs are located and should only exceptionally have to be transported long distances or imported. However, international humanitarian actors often can provide helpful technical expertise. The provision of water and sanitation facilities and services involves technical, scientific, and logistical questions that often are regulated in both domestic law and standards and international best practice guidelines for humanitarian disasters.²⁶⁸ Those standards need not be repeated in IDP-specific laws and policies, which should focus on broader protection questions related to safe and non-discriminatory access to such facilities. As a result, they are not covered in detail in this chapter.

Processes for designing and maintaining water and sanitation facilities and services are especially conducive to the participation and empowerment of IDPs, particularly in collective shelter settings. IDPs have a direct interest in clean, well-functioning, and safe facilities for collecting water, washing, preparing food, and eliminating bodily wastes. It often may be necessary to provide IDPs with information on good hygienic practices, particularly when available water and sanitation facilities are of a type that is unfamiliar to them. However, it is equally important to seek their input and actual participation in planning and designing water and sanitation facilities, disseminating good hygienic practices within their communities, and providing for the day-to-day organization of services and maintenance of facilities.²⁶⁹ Committees set up to manage communal water and sanitation facilities should be gender-balanced and representative of all displaced sub-

268 See, for example, Sphere Standards, “Minimum Standards in Water Supply, Sanitation, and Hygiene Promotion,” Annex 5: References, p. 96.

269 Sphere Standards, Hygiene promotion standard 1: Programme design and implementation, p. 60.

groups. Internally displaced persons also should receive training on good hygienic practices and safe use of water (such as boiling before consumption).

In many societies, women and girls may be expected to take primary responsibility for fetching water for the household as well as household tasks involving the use of water, such as washing clothes and preparing food. When that is the case, women may be vulnerable in the short term to gender-based violence when they go to fetch water and over the long term to loss of opportunities to secure an education and a livelihood as a result of the daily demands imposed by the task. On the other hand, women and girls are especially knowledgeable about household use of water. Accordingly, particular efforts should be made to ensure the participation of women and girls in planning water and sanitation services and facilities.

How should services and facilities to provide IDPs with potable water be designed to be adequate and accessible?

IDP specific legislation and policies should ensure that potable water is provided in a manner that fulfills the right of IDPs to adequate water. That involves taking into account a series of key criteria and how they apply in situations of displacement.

Availability: Potable water should be available to IDPs in a sufficient and continuous supply for each person's personal and domestic uses, including drinking, personal sanitation, washing of clothes, food preparation, and personal and household hygiene. Although there is increasing consensus on a standard daily minimum amount of water for such purposes, adequate availability should be assessed in context and in consultation with IDPs and surrounding communities in displacement settings.²⁷⁰ Analysis of IDPs' minimum potable water needs should take into account both the prevailing climate and any cultural or other practices on the part of the IDP population that may either require additional water or allow for the provision of less water, at least when necessary on a short-term basis, without risking the safety and health of individuals. Even in situations of scarcity, adequate water must be available to categories of IDPs with particular water needs, such as children, persons with chronic illness or HIV/AIDS, and persons engaged in necessary physically demanding labor (for example, construction of shelter).

In cases in which all or part of the displaced population consists of pastoralists, planning for the provision of water and sanitation should take into account the requirements of displaced families' livestock. Although it may be possible for the direct water needs of livestock to be satisfied through sources of water that are not fit for human consumption, such as nearby rivers or ponds, the effect of such use on surrounding communities should be taken into account in order to avoid conflict. In addition, given the high value of livestock, shelter arrangements for pastoralists should allow for animals to live in direct proximity to their owners (see chapter 9). In particular, the sanitation issues arising from such arrangements should be addressed in the design of settlements and in consultation with IDPs. In protracted displacement situations, water can also be a crucial economic input in assisting displaced agriculturalists to feed themselves and achieve sustainable livelihoods (see chapter 13). However, the use of local water resources for IDPs' agricultural activities should be agreed on with surrounding communities in order to avoid conflict.

²⁷⁰ One broadly accepted minimum standard is fifteen liters of water per person per day. Sphere Standards, Water supply standard one: Access and water quantity, p. 63.

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Quality: In the emergency phase of displacement, the safety of drinking water is a key consideration. Water should be free from harmful microorganisms, chemical substances, and radiological hazards.²⁷¹ However, when there is no alternative to water supplies of intermediate quality, they should be used nevertheless in order to ensure a minimum daily water intake for as long as necessary to introduce measures to improve the quality of existing supplies or make safer water supplies available.²⁷² Over the course of displacement, the quality of water should be improved as quickly as resources allow, with safety concerns addressed as an absolute priority, followed by acceptability issues such as the color, odor, or taste of drinking water.

Physical access: Adequate water facilities and services must be within safe physical reach of every IDP and in the immediate vicinity of each household, educational institution, and workplace. Systematic provision of water to IDPs is easier in situations in which they are concentrated in collective shelter settings or camps. However, even within such settings, care should be taken to ensure that every household has a water point a reasonable distance away and that water points are located in safe, well-lit areas. IDPs also should be provided with containers for collecting and storing water that are clean, hygienic, easy to carry, and appropriate to their needs.²⁷³ IDPs with limited physical strength or mobility, such as children, the chronically ill or persons with HIV/AIDS, the physically disabled, and the elderly should be directly provided with water whenever possible, rather than having to collect it themselves.

In situations in which IDPs are dispersed or inaccessible, provision of adequate water becomes more complicated. When IDPs are mixed with non-displaced rural or urban populations that are experiencing water scarcity, efforts to provide water should aim to improve adequacy for both host communities and IDPs. In cases in which IDPs are living in significant numbers in private rental accommodations, IDP laws and policies might compensate families that house IDPs by discounting or paying their utility bills, including fees for water. Even in situations of displacement, adequate water facilities and services must be accessible for all without discrimination, including the most vulnerable individuals or marginalized sections of the population.

Economic access: Adequate water facilities and services are costly but initially must be provided free to IDPs. Over the course of protracted displacement situations, it may be acceptable to introduce fees for the use of water and sanitation facilities and services, as long as the fees do not compromise or threaten IDPs' realization of other rights (in practice, that means that fees are unlikely to cover full costs as long as IDPs have not attained some degree of economic self-sufficiency). An alternative way of both sharing the burden of providing water facilities and actively improving such services is to involve IDPs formally and directly in the management of both water and sanitation facilities. However, even when IDP maintenance committees are formed, the competent authorities still bear the ultimate responsibility for ensuring respect for IDPs' right to adequate water.

A particular risk arises in situations in which IDPs live in areas where the supply of water is controlled by private parties. That can occur when displaced communities live in transitional shelter on privately owned land and when they are dispersed in urban or peri-urban informal settlements without access to public utilities. In such situations, private control of water supplies can lead to prices that IDPs cannot afford,

271 UNCESCR, General Comment 15, paragraph 12 (b).

272 Sphere Standards, Water supply standard 1: Access and water quantity, Guidance note 4, p. 65.

273 Sphere Standards, Water supply standard 3: Water use facilities and goods, Guidance note 1, p. 70.

facilitating exploitation of IDPs and possibly even forcing them to resettle elsewhere. It therefore is crucial that laws and policies recognize IDPs' right to adequate water and the state's corresponding duty to regulate private suppliers. When necessary, IDPs' rights to adequate affordable water and to self-management of local water supplies and facilities should be guaranteed through local agreements with private suppliers made under the auspices of the local competent authorities.

CASE STUDY

Free access to water and sanitation for IDPs living on privately owned land

The municipal government of Bossaso in northern Somalia has facilitated agreements binding on both IDP communities in temporary settlements on private land and the owners of the land they are living on. The agreements set out not only the basic conditions for land use (such as the notice period for IDPs to vacate the area in cases in which the landlord wishes to use the land for other purposes) but also protective guidelines on issues such as the location and availability of crucial facilities and fire prevention measures. Together with separate arrangements with the local water agency on subsidized payment rates, the agreements guarantee IDPs' access and self-management rights to key water and sanitation facilities without fees imposed by the landowner:

"The Mayor of Bossaso, the landowner, and the IDP Committee, representing the IDP community residing temporarily in 100 Bush, agree to implement the attached layout of the land and respect the following principles:

[...]

Access to water

- Water taps will be positioned on Main Lanes, maximum 250m away from every household.
- Water taps to be managed by members of the IDP Community through agreements with [the local water agency]. No fees will be charged by the landowner.

Pit latrines

- A sufficient number of Temporary Pit Latrines (minimum 1 toilet per 20 people) are located at strategic points to ensure security (especially for women and children at night)
- Latrines to be managed and kept in good condition by the IDP community (fees can be charged to cover maintenance costs). No fees will be charged by the landowner.
- Use of toilets segregated by sex, in equal number for men and women."²⁷⁴

Appropriateness: In many cultures, the manner in which water is fetched and used may have great significance. For instance, women may gather at a certain time of day to fetch water, providing them with a regular opportunity to socialize, exchange information, and maintain the social links that support the community. For indigenous groups in particular, continued access to particular sources of water, such as rivers, may be a means of preserving culture and traditions during displacement. To the extent possible, water facilities and services for displaced persons should be built on understanding and respect for such practices. For instance, the means of providing water or the times at which it is made available should be adapted accordingly, and security should be provided when necessary to allow the displaced to safely access traditional water sources such as rivers that lay beyond the bounds of settlements.

274 Agreement between Bossaso Municipality, Landlord of 100 Bush Settlement, IDP Committee of 100 Bush (undated draft).

CASE STUDY

Regulation of water and sanitation for IDPs during displacement

The National Policy on IDPs in Uganda assigns responsibility to the Ministry for Water, Lands, and Environment (MWLE) and to local governments to provide clean and safe water to IDPs. District water officers of the MWLE are assigned to prioritize return and resettlement areas on the basis of clean and safe water sources and to encourage the construction of pit latrines. District health service directors of the Ministry of Health are tasked with propagating good hygiene practices, and all authorities are instructed to work together with both IDPs and host communities. International humanitarian agencies generally are invited to render support with water and sanitation issues.²⁷⁵

How should services and facilities to provide for IDP sanitation needs be designed to be adequate and accessible?

The aim of sanitation services and facilities for IDPs should be to preserve their safety and dignity and to prevent the spread of water-borne disease. In urban settings, IDPs may either have access to sewerage facilities or live in neighborhoods where such services can be provided. However, in many cases it will not be possible to provide improved sewerage to IDPs and latrines must be used. In providing such sanitation facilities to IDPs, a number of protection concerns should be kept in mind:

- *Availability:* A sufficient number of toilets must be provided for the sanitation needs of IDPs, particularly in collective shelter settings.²⁷⁶ Separate toilets for men and women should be provided in public areas.
- *Accessibility:* Sanitary facilities should be located in the immediate vicinity of IDPs who use them. They also should be designed in such a manner as to be usable by children, pregnant women, elderly persons, or persons with physical disabilities.²⁷⁷
- *Safety and hygiene:* Toilets should be a safe distance from shelter areas and should be well lit at night. They should provide privacy and allow for the disposal of women's sanitary products, in accordance with local norms and practices. They also should be located away from water sources and designed to be easy to keep clean and to minimize the breeding of disease-carrying insects, such as mosquitoes and flies. Proper design, construction, and maintenance of sanitation facilities is an important step in minimizing health risks related to displacement (see chapter 10).

How can water and sanitation services for IDPs be improved over time?

As set out in chapter 4, the provision of humanitarian goods and services should be monitored and subject to continuous quality control. For water and sanitation, as for other humanitarian goods and services, IDP policies should encourage the establishment of complaint procedures that address individuals' concerns

²⁷⁵ Republic of Uganda, National Policy for Internally Displaced Peoples (2004), Section 3.1.3.

²⁷⁶ Sphere Standards, Excreta disposal standard 1: Access to and number of toilets, p. 71.

²⁷⁷ Sphere Standards, Excreta disposal standard 2: Design, construction, and use of toilets, p. 73.

about access to and/or the adequacy of the aid provided. Most important, IDPs should be continuously consulted on the adequacy of water and sanitation services and facilities and should participate in planning and managing those services and facilities throughout the process.

How should the right to adequate water be fulfilled in the context of durable solutions?

IDPs' decisions on whether to return to their homes or resettle elsewhere are significant in determining what type of measures are necessary to safeguard their rights to adequate water. In the case of IDPs who choose not to return, the goal should be to provide equitable access to existing water facilities and services in the place of local integration or resettlement. For IDPs who have not achieved economic self-sufficiency, that means in practice that they should be eligible to benefit on an equal basis from measures undertaken by the state to ensure adequate water and sanitation services to all socially disadvantaged groups.²⁷⁸ Integrating IDPs who can afford to pay regular fees for water facilities and services should do so. In cases in which resettlement is accomplished through the upgrading or formalizing of settlements inhabited exclusively or primarily by IDPs (see chapter 9), such measures should include the extension of services and utilities available to the broader population, including water and sewerage, to those settlements.

In the case of return to pre-displacement homes and places of residence, IDPs should receive assistance in reintegrating, including through measures to secure their right to adequate water, such as the restoration of water sources or the repair of communal water systems. Returning IDPs should not be held responsible for any utility charges, including those for water and sanitation services that accrued while they were displaced. Where returnees' homes or public infrastructure have been damaged or destroyed, competent authorities should facilitate the reconstruction of infrastructure, including water pumps, water pipes, public water supply points, and sewerage. In cases in which IDPs return to areas where inadequate water services and facilities existed before displacement, measures should be taken to ensure minimum essential amounts of safe water for personal and household use to avoid disease in the interim and to provide full access to adequate water as soon as resources allow. Ultimately, returnees also should be integrated into the general system for provision of adequate water, with the same obligation as the non-displaced population to pay affordable fees (and the same eligibility for low-cost programs for the vulnerable).

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CASE STUDY

Regulation of water and sanitation for IDPs in the context of durable solutions

The Angolan Decree No. 79 of 2002 on Standard Operating Procedures for the Enforcement of the "Norms on the Resettlement of Displaced Populations" elaborates on water and sanitation in Article 17:

"1. The Provincial Government shall:

- a) Ensure that adequate measures are taken for the provision of water and sanitation;
- b) Collaborate with the community to ensure appropriate management of water and sanitation systems, including aspects related to water quality;
- c) Carry out other tasks as assigned.

278 UNCESCR, General Comment 15, paragraphs 13, 16(c), and 27.

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Regulation of water and sanitation for IDPs in the context of durable solutions (Cont.)

2. To implement paragraph 1, the Provincial Government, through relevant bodies of agriculture and rural development, fishing and the environment, social assistance and social reintegration, and former soldiers and war veterans, shall adopt the following procedures:
 - a) Enable access to potable water for IDPs;
 - b) Place the public water supply points not further than 500 meters from the houses;
 - c) Guarantee the supply of drinking water;
 - d) Enable the functioning of each water pump to serve 600 persons for 10 hours a day; [...]"

Rights to water resources, like rights to land and homes, are disputed in many cases and can be the root cause of new or renewed violence or even armed conflict. The end of displacement gives rise to particular risks, whether in the context of local integration when the temporary water needs of displaced populations effectively become permanent or in the context of return when tensions over water resources that may have led to conflict or displacement in the past may be revived. In that respect, a key element of any reintegration plan should be an assessment of the demands placed by resettling or returning communities on local water resources and the resulting potential for conflict. Reintegration plans should include any measures that are found necessary, on the basis of the assessment, to facilitate sustainable and equitable access to vital water resources for all affected populations.

Basic Shelter and Adequate Housing

A. INTRODUCTION

Purpose: Principle 18(2)(b) of the Guiding Principles reflects the need to respect IDPs’ rights to adequate housing through the provision of safe, habitable emergency and transitional shelter during displacement and assistance that meets their own housing needs in the context of durable solutions.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:

[...];

(b) Basic shelter and housing;

[...]

Other relevant principles: 1(1); 7(2); 12(2); 14(2); and 18(2)(a), (c), (d)

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Legal foundations:²⁷⁹ All persons enjoy the right to adequate housing, as a component of the right to an adequate standard of living.²⁸⁰ The right to adequate housing entails the right of every person to gain and sustain a safe and secure home and community in which to live in peace and dignity.²⁸¹ Discrimination on the basis of displacement is forbidden in the provision of adequate housing, and IDPs should be recognized as a disadvantaged social group entitled to particular consideration in the implementation of national housing policies.²⁸² “Adequate housing” is defined as that which affords its occupants:

279 For more details, see Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, 2nd ed., Studies in Transnational Legal Policy 38 (American Society of International Law and Brookings Institution, 2008), pp. 85–86.

280 UDHR, Article 25; ICESCR, Article 11; UN-Habitat, “The Habitat Agenda Goals and Principles, Commitments and Global Plan of Action” (1996), paragraphs. 60 and 61. International humanitarian law does not directly protect civilian housing and shelter; it prohibits the destruction of private property (see Fourth Geneva Convention, Article 53) and protects objects that are indispensable for survival (see First Additional Protocol to the Geneva Conventions, Article 54(2)), a notion that arguably covers shelters at least in harsh climates.

281 UNCESCR, General Comment 4 (1991), paragraph 7; Commissioner on Human Rights, “Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context,” Miloon Kothari, UN Document E/CN.4/2006/41 (2006), paragraph 10. For a more detailed discussion of the criteria for adequacy of housing, see Commission on Human Rights, “Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context,” Miloon Kothari, UN Document E/CN.4/2003/5 (2006), paragraph 61. In addition, gender-specific considerations related to the adequacy of housing are presented in Commission on Human Rights, “Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context,” Miloon Kothari, UN Document A/HRC/4/18 (2007), annex 3.

282 UNCESCR, General Comment 4, paragraph 8(e).

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- legal security of tenure, especially in the form of protection against forced evictions;
- available services and infrastructure (access to water; energy for cooking, heating, and lighting; sanitation and washing facilities; food storage; and waste disposal, and so on);
- affordable housing costs such that the attainment of other basic needs is not threatened;
- habitability in the sense of adequate space, physical safety, and protection from cold, damp, heat, rain, wind, structural hazards, and disease vectors;
- sufficient accessibility that disadvantaged or vulnerable groups are not left without shelter appropriate to their particular needs;
- a physical location allowing affordable access to employment options, health care services, schools, child-care centers, and other social facilities and avoiding risks from pollution sources;
- appropriate construction and materials for the expression of cultural identity;²⁸³
- compliance with safety standards aimed at minimizing damage from future disasters.²⁸⁴

In the context of humanitarian responses to displacement, housing for IDPs often takes the very basic form of “shelter,” or a habitable, covered living environment with privacy, security, and dignity.²⁸⁵ The adequacy of housing attained by IDPs or provided to them, particularly in the form of “settlements” or communities of shelters, must be judged under the circumstances and in light of the resources available to competent authorities and humanitarian actors. However, states are under a continuous obligation to take whatever steps are possible and necessary to achieve adequacy of housing, in consultation with those affected, including the homeless.²⁸⁶ In doing so, particular consideration must be given to the needs of groups living in unfavorable circumstances, such as IDPs.²⁸⁷

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In practice, this means that competent authorities in displacement settings should strive to meet relevant minimum standards (in the form of national safety or habitability rules and international guidelines), both by continually seek to provide better housing alternatives and by following timelines for improving, upgrading, or replacing the least adequate forms of shelter occupied by IDPs. In all situations, IDPs should be afforded maximum choice in terms of both the types of shelter options available to them and their location (see chapter 5) and should not be interned or confined in camps unless under exceptional circumstances.²⁸⁸ Wherever possible, competent authorities should support and facilitate “self-help” by IDPs willing and able to take steps to house themselves.²⁸⁹

Regulatory framework: The right to housing is included in some national constitutions, and many countries have national plans for ensuring the provision of housing to poor, under-housed, or homeless groups. The

283 UNCESCR, General Comment 4, paragraphs 8(a)–(g); “The Habitat Agenda Goals and Principles, Commitments and the Global Plan of Action.”

284 IASC, “Operational Guidelines on Human Rights and Natural Disasters” (2006), paragraph C.3.2.

285 See Global Protection Cluster Working Group, “Handbook for the Protection of Internally Displaced Persons” (provisional release, December 2007), action sheet 12: Shelter and Physical Planning; “Operational Guidelines on Human Rights and Natural Disasters,” paragraph B.2.4.

286 UNCESCR, General Comment 4, paragraph 12.

287 UNCESCR, General Comment 4, paragraph 11.

288 See Guiding Principle 12.2.

289 UNCESCR, General Comment 4, paragraph 10.

many components of adequate housing discussed above are usually regulated through a variety of national laws ranging from zoning regulations, building codes, and rules on utilities and service provision to laws regarding lease relations and setting out various forms of assistance and subsidization for low-income tenants and homeowners. However, such domestic frameworks rarely anticipate internal displacement and are typically not sufficient on their own for the development of a response to the shelter needs of IDPs. Thus, while they should be respected (for example, through the provision of IDP shelter that meets minimum standards in national building codes), their provisions often need to be supplemented through new rules in IDP laws and policies that draw on existing international practice and expertise in providing guidance on how IDP shelter should be located and managed.

Problems often encountered by IDPs: Displacement of IDPs deprives them of homes that provide shelter from the elements as well as privacy and protection of their person and possessions from intruders. Along with access to food, potable water, sanitation, and essential medical services, shelter is one of the fundamental and immediate needs of IDPs, without which their lives will be at risk. However, the deprivation of the basic protective physical features of homes is compounded for IDPs by the loss of access to jobs, livelihood resources, education, and social services that they typically enjoyed in their former homes.

In cases of unplanned or unanticipated displacement, no contingency plans for the provision of shelter may be in place, requiring IDPs to “self-settle” in areas of safety, often without any secure tenure in the rural or urban informal settlements that may result and no initial support from the competent authorities or international humanitarian actors. In some cases, IDPs may find shelter through “host family” arrangements in which friends, relatives, or other private individuals take them in, sometimes on the condition of rental payments. In other cases, IDPs may be allocated (or simply take up residence in) “collective centers,” habitable pre-existing buildings such as hotels, schools, or administrative buildings.²⁹⁰ In some cases, self-settled IDPs may be traumatized by their experiences and actively avoid any identification as IDPs or even any such contact with public authorities that may be necessary for them to register for assistance.

Whether self-settlement takes a “dispersed” form, with displaced families scattered throughout rural settlements or urban neighborhoods, or is more heavily grouped in the form of informal or formal camps or collective centers, it is associated with a number of risks. Influxes of IDPs may often provoke resentment among their host-communities by placing new burdens on existing social services networks, job markets and natural resources. These tensions can lead to discrimination and economic exploitation of IDPs or even attacks and gender-based violence. Where IDPs are in dispersed settings, it may be harder to monitor their situation and ensure that they have access to humanitarian assistance and are not subject to arbitrary evictions from private rental accommodations or collective centers. Where they are concentrated, they can be more easily accessed, but people in overcrowded collective shelters, camps, or settlements may be particularly at risk of contagious diseases, sexual and gender-based violence, forced recruitment, and infiltration or attack by armed groups.

290 “Handbook for the Protection of Internally Displaced Persons,” action sheet 13: Shelter.

B. CHECKLIST: ISSUES TO BE ADDRESSED BY DOMESTIC LAWS AND POLICIES

Minimum essential elements of state regulation:

At a minimum, competent authorities should do the following:

1. Recognize the right to basic shelter and adequate housing for IDPs.
2. Designate a governmental agency responsible for addressing shelter and housing needs of displaced persons.
3. Seek and accept support from the international community if needs cannot be sufficiently satisfied at the domestic level.
4. Establish procedures to identify and prioritize beneficiaries of basic shelter and adequate housing on the basis of need and particular vulnerability.
5. Remove legal obstacles as contained, for example, in building and similar codes, for the construction of transitional shelters or the rebuilding of houses in return or relocation areas.
6. Create specific guarantees to protect IDPs against forced evictions when general guarantees are insufficient.

In order to ensure that IDPs can exercise their right to basic shelter and adequate housing during displacement, domestic laws and policies should

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- recognize the right to adequate housing and designate responsibility to relevant authorities to ensure, and where necessary, provide adequate shelter and housing to the displaced;
- incorporate housing issues in national coordination mechanisms, facilitating international technical assistance and empowering local government responses;
- take into account IDPs' pre-displacement and current housing traditions, practices, and needs;
- build on consultation of IDPs on their housing needs and their participation in the design of programs and services to help them meet these needs, taking into account their pre-displacement housing practices;
- assist IDPs in the emergency stage of displacement in moving themselves and their possessions to safe areas where emergency shelter is available or provided;
- provide IDPs with transitional shelter pending reconstruction or safe access to their homes in cases where rapid return is possible. Design transitional housing in grouped settlements in consultation with IDPs so as to minimize protection risks and maximize adequacy.
- provide IDPs and local host communities with appropriate assistance, allowing them to self-settle in places of their choice under adequate housing conditions, wherever possible, in cases where rapid return is not possible
- provide grouped transitional shelter in settlements that are located in safe areas with access to humanitarian aid distribution, as well as social, educational, medical facilities, and employment and livelihood opportunities in situations in which neither return nor self-settlement with host families or host communities is possible;
- provide for allocation of abandoned housing to shelter IDPs only when demonstrably necessary as

a last resort on the basis of exploration of all other possible options and on an explicitly temporary basis;

- design all housing assistance to IDPs so as not only to maximize current adequacy but also to facilitate voluntary durable solutions;
- protect IDPs against forced eviction;
- provide appropriate assistance to IDPs to allow them to find adequate and sustainable housing solutions in the context of re-integration.

C. NECESSARY ELEMENTS OF STATE REGULATION

What institutional arrangements are necessary to secure the right of IDPs to housing?

States usually have no particular authorities specifically responsible for providing shelter to displaced persons. Laws and policies should clearly assign responsibility for this task, for example, to local authorities, disaster relief organizations, or National Red Cross and Red Crescent Societies.

What information regarding IDP populations is useful in assessing how best to secure their right to housing?

In the context of efforts to count, locate, and assess the needs of IDP populations (see chapter 2, section C), competent authorities should actively seek and compile information related to their housing traditions and needs, including average family size, population density in the area of origin, the extent to which shelter is traditionally shared by multiple generations, residential gender or age segregation, activities undertaken at home, and typical construction materials and techniques. Depending on resources and available capacity, the shelter needs and risks facing IDPs should be assessed as fully as possible.²⁹¹

Who should be involved from the outset in coordinating the provision of housing to IDPs?

At the national level, housing should be one of the central humanitarian assistance issues dealt with by an institutional coordination mechanism (see chapter 2, section G. on general coordination, as well as chapter 4 on the role of such coordination in humanitarian assistance contexts). Interventions to protect IDPs' right to housing should be closely coordinated with other humanitarian assistance sectors and particularly those related to food (chapter 7), water and sanitation (chapter 8), and health (chapter 10), at both the central and local levels. In situations of dispersed displacement, particularly where IDPs self-settle in rural or urban host communities, the role of local government in facilitating sustainable and adequate housing arrangements is often crucial. Local authorities should be provided with support and advice and encouraged to take steps to address the housing needs of IDPs in manners that are also sustainable for local communities. Coordination

²⁹¹ See, for example, Sphere Standards, chapter 4: Minimum Standards in Shelter, Settlement, and Non-Food Items, appendix 1: Shelter, Settlement, and Non-Food Items Initial Needs Assessment Checklist, p. 238.

with international humanitarian actors is also important with regard to the right to housing. International actors can support national responses with both technical advice and direct support to housing and shelter programs. The participation of IDPs, including vulnerable and marginalized subgroups, should always be sought when designing and implementing programs to provide shelter and improve its adequacy.

CASE STUDY

Inclusion of the right to shelter in IDP laws and policies

In Uganda, the National Policy²⁹² states that the government, supported by humanitarian and development agencies, shall provide basic shelter and housing to IDPs. Section 3.9(a, b) states that “physical and primary social needs of individuals, families and communities for safety, security and privacy are sufficiently met. . . . Shelter and housing facilities are within proximity to local infrastructure and strategically placed for IDPs for easy access to food, water, firewood, medical facilities and other basic necessities.”

[...]

According to the Federation of Bosnia and Herzegovina Law on Displaced-Expelled Persons and Repatriates, Article 11, IDP status entitles a person to a number of rights and benefits, such as “accommodation, food, social reintegration and psychological support, health care, education for children and youth and other essentials”. In the Republika Srpska, one of Bosnia’s regions, the Law on Displaced Persons, Returnees and Refugees regulates legal IDP status and its cessation, as well as rights and entitlements to certain benefits, such as cash assistance, basic health care, elementary education, unemployment benefit, loans to start income-generation projects, and temporary basic accommodation.²⁹³

In Georgia, the law on IDPs²⁹⁴ guarantees the right to adequate housing for IDPs, who enjoy the special status of “persecuted.” Persons seeking the status of persecuted have a right to “reside in places of temporary residence and benefit from free charge utilities services.” For those who hold the status of persecuted, the Ministry of Refugees and Accommodation, along with corresponding executive agencies and local self-government, ensures the realization of the rights of persecuted persons in places of temporary residence: they provide temporary residence and food within the established norms.

How can IDPs be received in the emergency phase of displacement?

In cases of unplanned, large-scale movements of IDPs, families and other social groups should be permitted to remain together and assisted in moving to places of safety together with whatever possessions they have managed to bring with them. To the extent possible, their choice of destination should be respected. IDPs are in many cases able to find shelter with host families, including friends and relatives, in safer parts of the country, and this should be encouraged in order to minimize the disruption and isolation caused by displacement.

292 Office of the Prime Minister, Department of Disaster Preparedness and Refugees, Uganda, The National Policy for Internally Displaced Persons (August 2004), p. 28.

293 Article 15, Republika Srpska Official Gazette, No. 33/99 (26 November 1999).

294 Article 15, Republika Srpska Official Gazette, p. 27.

How should a location for emergency shelter be selected in the emergency phase of displacement?

Where IDPs are not able to find shelter for themselves, IDPs should be provided with emergency shelter—through the use of available collective centers or, in the worst case, tented encampment—at an appropriate location as possible.²⁹⁵ The concentration of large numbers of IDPs in camps can initially be useful during the distribution of humanitarian aid, but these camps with their high population density can also raise security issues, particularly when IDPs are targeted for attack or when vulnerable individuals become targets for recruitment or exploitation.

In emergency situations in which IDPs urgently require grouped shelter, the following considerations should be kept in mind in choosing a location:

- Safe distance from whatever violence, armed conflict, or disaster caused the displacement
- Absence of factors that could lead to natural or other disasters or to other health risks (for example, industrial pollution or malarial swamps)
- Proximity and accessibility to assistance distribution networks and humanitarian actors
- Absence of factors that would jeopardize the civilian character of such camps or settlements

Beginning in the emergency phase, the competent authorities and other humanitarian actors should provide IDPs with critical non-food items such as mosquito nets, necessary items of clothing and bedding, cooking equipment appropriate to their needs, soap, and containers for collecting and storing water.²⁹⁶

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When rapid return of IDPs is possible, how can their shelter and housing needs be met?

IDPs may often wish to return to their homes as soon as possible. In natural disaster settings, in particular, return should be encouraged as soon as it can be determined that basic conditions of safety exist (see, chapters 5 and 12). Facilitating such return can help such communities to resume normal lives and livelihoods more quickly, with the assistance of surrounding communities, and avoid artificially prolonging displacement or investment in unneeded shelter elsewhere.²⁹⁷ In situations where IDPs' homes and properties are destroyed or damaged or where outstanding property disputes require resolution, it may be necessary to provide some type of transitional shelter as near as possible to IDPs' homes in order to facilitate return. Some possibilities include

- placing grouped transitional shelter as close as possible to IDPs' places of origin;
- facilitating the temporary placement of IDPs in the homes of families or friends in or near the place of origin;

295 See "Handbook for the Protection of Internally Displaced Persons," action sheet 13: Shelter, Annex: Site Selection Review: Issues for Consideration.

296 Sphere Standards, chapter 4, part 2: Non-Food Items, p. 230.

297 UNDRO, "Shelter after Disaster: Guidelines for Assistance" (1982), p. 22.

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- providing temporary or emergency shelter (for example, tents, building materials, or trailers) next to damaged homes;
- allowing the temporary occupation of habitable collective centers in or near the place of origin.

When return is not possible for prolonged periods of time, how can IDPs be assisted in self-settling?

In cases where ongoing safety concerns dictate against early return, consideration should be given to transitional shelter that can provide shelter, safety, and privacy to IDPs pending creation of the conditions for return or resettlement. In such situations, reliance on grouped shelter, such as camps or collective centers should be a last resort. Instead, IDPs should be permitted to make their own shelter arrangements wherever possible, including with host families or host communities in rural settings. In all transitional shelter situations, the competent authorities must take steps to improve inadequate housing afforded to IDPs and to adopt specific measures to avoid forced evictions of IDPs when any general guarantees of tenure security turn out to be insufficient.

Where IDPs find shelter with host families or communities, the competent authorities still bear responsibility for securing and improving the adequacy of the resulting housing arrangements, but they should do so in a manner that benefits host communities and avoids isolating IDPs. A range of possible interventions exist, from providing technical advice to supplementary cash subsidies or vouchers for either the host families of IDPs or IDPs themselves when they are not receiving shelter in collective centers or camps. Local governments where IDPs have settled should be provided with all necessary support and technical advice and should be encouraged and empowered to take steps to improve the adequacy of IDP housing in ways that are sensitive to the needs of the broader non-displaced community in the area. Housing interventions should aim to integrate displaced populations into host communities, with housing and infrastructure upgrades generally available and standardized in order to avoid tension or resentment, as between beneficiary groups.

In rural areas, construction materials might be provided in order to allow dispersed IDPs to build their own shelter on land that local families or the community allow them to occupy. Where hosting IDPs has led to a deterioration in local living standards, infrastructural assistance such as the upgrading of roads and utilities, drilling of wells, or expansion of school facilities can help to offset such problems. As a general matter, where IDPs have settled in buildings or facilities that serve important public functions, such as schools, community halls, or religious buildings, the competent authorities should try to provide other local shelter options so such buildings can be returned to their original use at least partially.

In urban settings, families providing accommodation to IDPs—whether on the basis of family ties or private rental agreements—may be given assistance with housing costs such as utility bills. Alternatively it may be possible to find ways to offer IDPs assistance through subsidization of their private rental payments. Where IDPs have self-settled in urban informal settlements, due consideration should be given to the possibility of seeking to upgrade such neighborhoods through establishing and regularizing legal tenure, extending utilities and sanitation services, and charging reasonable fees for their use.

CASE STUDY

Local government regulation of the housing needs of IDPs

The municipal government of Bossaso in northern Somalia has undertaken a number of innovative steps, in conjunction with local UN agencies and humanitarian NGOs, to regularize the shelter situation of IDPs in informal settlements and camps, improving the safety and adequacy of their housing.²⁹⁸

First, the municipal government has facilitated agreements binding on both IDP communities in temporary settlements on private land and the owners of the land they are living on.²⁹⁹ These agreements set out not only the basic conditions for use of the land (such as the notice period for IDPs to vacate the area in cases in which the landlord wishes to use the land for other purposes) but also protective guidelines on issues such as the location of water points, latrines and shared facilities, and fire prevention measures.

Second, the municipality has cooperated with UN-Habitat and the Danish Refugee Council in constructing low-cost shelter units for the resettlement of both displaced communities and other under-housed communities in the municipality. These units are allocated according to criteria developed by a Bossaso IDP Beneficiaries Selection Committee through contracts signed between the Bossaso City Council and individual IDPs.³⁰⁰ According to the terms of such contracts, beneficiaries must maintain the housing they receive, pay necessary taxes and fees, and avoid using it for unlawful purposes. In exchange, the city council guarantees them tenure security, the right to pass the housing on to lawful dependents, and the right to transfer, sell, or mortgage the property after fifteen years of continuous lawful possession.

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When no other options exist, where should transitional collective shelter be located?

Where neither return, nor shelter with host communities is possible, IDPs should be provided with transitional shelter in grouped settlements such as collective centers or camps. The location and design of such shelter are crucial factors in ensuring their adequacy and safety. Beyond the factors to be considered in locating emergency shelter (see above), a further set of sustainability considerations should be taken into account when considering whether particular sites are suitable for longer-term IDP settlements.³⁰¹ These include

- safe and sustainable access to essential natural resources such as potable water, wood for construction or fuel, or grazing land, bearing in mind the cooking, livelihood, and dietary customs of the IDPs involved;
- sanitation possibilities;
- basic physical characteristics such as drainage, topography, elevation, vegetation, and climactic conditions;

298 See, generally, UN Habitat Somalia, “Rethinking IDP Response in Protracted Crisis Situations: A Rights-Based Approach from Disaster Prevention to Durable Solutions—The Case of Bossaso-Somalia” (undated).

299 Agreement between Bossaso Municipality, Landlord of 100 Bush settlement, IDP Committee of 100 Bush (undated draft).

300 “Memorandum of Agreement between Bossaso East Resettlement Scheme Beneficiary No. and Bossaso City Council” (undated).

301 Sphere Standards, Shelter and Settlement Standard 1: Strategic Planning, p. 211.

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- the distance from local towns with relevant administrative and law enforcement functions, as well as from employment markets, educational and vocational training institutions, and healthcare facilities;
- the distance to sensitive or protected areas such as nature reserves and water reservoirs serving broader populations and agricultural or grazing land that is already under extensive use;
- the effect on local populations, keeping in mind the possibility of ethnic or religious tensions, the likelihood of competition for local natural resources and essential public services, and the possibility of expansion of the settlement in response to further displacement;
- local land use and property rights, keeping in mind that owners or lawful users of land and buildings requisitioned for the purpose of founding grouped IDP settlements or for the use of their inhabitants should be clearly identified and should receive rent and just compensation for losses in the value of the property or its eventual expropriation; and
- the potential for eventual upgrading, including the possibility of acquiring legal title to the land; any environmental, zoning, or other restrictions on improvement or construction; and proximity to utility (water and electricity) networks and transportation infrastructure.

How can transitional grouped settlements be designed to maximize protection?

Beginning in the emergency phase, grouped settlements should be laid out and built in a manner that takes into account (1) the minimum privacy and space requirements of families, (2) the protection needs of vulnerable IDPs, (3) the security and free movement of the population as a whole, and (4) the cultural or religious requirements of IDP populations.³⁰² As early as possible in this process, the design, layout, construction, and administration of such settlements should be based on consultation with IDPs. If possible, these consultations should not only take into account the views of traditional or elected community leaders but also provide opportunities to vulnerable or potentially vulnerable groups to discuss any concerns they have in isolation from the rest of the IDP population. The opinions of women, in particular, should be sought on all aspects of communal shelter, sanitation and the distribution of assistance.

The planning and preparation or construction of grouped settlements should take into account the size and family structure of IDP groups, ensuring appropriate amounts of separate space for each family unit. Within the space allocated to each family, partitions should be provided to allow separation either by sex or by age (for example, of parents and children) and to provide privacy. Such measures can also be important in preventing gender-based violence, particularly in situations when separation between the sexes is culturally important. Important facilities such as distribution points for food and other assistance, water points, and latrines should be well lit at night and distributed throughout the settlement so as to be within safe physical reach of all residents. Finally, the size of such settlements should be planned to avoid overcrowding.³⁰³

Particularly vulnerable IDPs, including or the disabled and elderly should, if possible, be given separate accommodations that correspond to their particular needs. In the case of IDPs vulnerable to gender-

302 Sphere Standards, Shelter and Settlement Standard 2: Physical Planning, p. 215.

303 Resources permitting, the overall settlement (including common facilities, administration offices, storage space, and so on) should have a minimum surface area of 45 square meters per person, and residential space should be about 3.5 to 4.5 square meters per person. See “Handbook for the Protection of Internally Displaced Persons,” action sheet 13: Shelter.

based violence or exploitation, such as unaccompanied women or children and female-headed households, protection measures should consist of having separate accommodations, including separate latrines and washing areas, and priority access to distribution points for food and water. For IDPs with limited mobility such as the elderly and disabled, appropriate measures might include regular monitoring of their condition, separate facilities, and facilitated or priority access to humanitarian assistance. Finally, ethnic or religious minorities within IDP communities should be provided with separate facilities to the extent necessary for them to practice their cultural or religious traditions or to avoid tensions with the majority community.

In terms of overall security and freedom of movement for the population of grouped settlements, the following basic considerations should be taken into account in all circumstances:

- Security should be provided in camps, in particular by monitoring, through law enforcement personnel and camp committees drawn from among the displaced communities. Appropriate mechanisms to address instances of violence and other violations of the human rights of camp residents should be established.
- Persons concerned should be allowed to move freely in and out of camps. Such movement should not be restricted or prohibited unless it is necessary for the protection of the security or health of camp residents or that of the population in the vicinity. If there are restrictions, they should not remain in force any longer than absolutely necessary.
- In order to maintain the civilian character of camps at all times, appropriate measures should be taken to avoid the presence of uncontrolled armed elements in camps and settlements. Where such elements are present, they should be separated from the civilian population in the camp. The presence of armed state police or security forces should be limited to the extent strictly necessary to provide security.
- Once the immediate emergency phase is over, camps set up by armed forces or groups should be managed by civilian authorities or organizations. The role of police and security forces should be limited to providing security.³⁰⁴

Factors in terms of cultural appropriateness might include using traditional and locally available construction materials and methods in order to ensure that IDPs can repair or improve their own dwellings and that they do not become dependent on the purchase of outside construction materials. Another important issue is layout—in cases where communities are displaced together, the placement of their shelters to create enclosed common space may allow them to watch each other's children and belongings.³⁰⁵ Such “neighborhood planning” in grouped shelter can increase community protection and coherence while maintaining privacy for individual families.³⁰⁶

304 “Operational Guidelines on Human Rights and Natural Disasters,” points A.4.3 to A.4.6.

305 “Handbook for the Protection of Internally Displaced Persons,” action sheet 13: Shelter.

306 IASC, “Guidelines for Gender-based Violence Interventions in Humanitarian Settings Focusing on Prevention of and Response to Sexual Violence in Emergencies” (Geneva, 2005), p. 54.

CASE STUDY

Case study: Specific national guidelines on housing IDPs

The Angolan IDP resettlement policy emphasizes provision of shelter and housing in areas as close as possible to sources of local construction materials and respect for the local housing customs.³⁰⁷ Trees used for the construction of the shelters should be re-planted and projects may be supported through food-for-work activities. The policy also sets out guidelines on the technical characteristics of housing.³⁰⁸

“The minimum housing standards to be observed during the construction of shelters in resettlement sites are defined as follows: The shelters shall have a total area of 30 m² divided in 20 m² covered, 4m² for kitchen and 6 m² as vegetable garden; Between a shelter and another there shall be a minimum distance of 2 metres; Between an array of shelters and another there shall be a minimum distance of 6 metres; Between a block of shelters and another there shall be a minimum distance of 15 metres; Each block may be composed of 25 shelters in arrays of 5 in order to guarantee security, vital space and privacy; Between an array of shelters and another, ditches shall be opened for pluvial drainage; An area shall be identified beyond 100 meters to be used as graveyard in accordance with the local burial traditions; An area shall be identified for community meetings in accordance with the mechanisms of local administration and the traditions of communities to be resettled.”

How should the temporary allocation of abandoned property be treated?

In situations of multiple, overlapping displacements, property abandoned by some IDPs or refugees may be available in places where other IDPs require shelter. In such circumstances, the competent authorities are required to protect abandoned property and possessions from unregulated appropriation or looting and may not give IDPs permission to occupy such housing through simple self-help.³⁰⁹ However, where no other appropriate shelter options exist, competent authorities may initiate a process of formal *temporary* allocation of abandoned properties in order to address the immediate humanitarian crisis.³¹⁰ However, such allocation must meet a number of minimum criteria in order to avoid violating the rights of the displaced owners and lawful occupants and users of such properties:

- All other options for housing IDPs must have been explored demonstrably and either exhausted or specifically considered and ruled out as impracticable.
- Such allocations must be undertaken on the basis of special regulations with legal force that set out specific criteria for eligibility as well as procedures for temporary allocation of property, regulation of its use, and return to its displaced owners or lawful possessors and users. Such regulations should assign specific responsibility for the administration of the process and legal liability for any resulting damage to the properties in question to specific public authorities.

307 Article 3(a) of the Angolan Government Regulations for the Application of the Norms on the Resettlement of Displaced Populations of 2001.

308 Article 3(b) of the Angolan Government Regulations for the Application of the Norms on the Resettlement of Displaced Populations of 2001.

309 Guiding Principle 21.3.

310 Arguably, temporary allocation of abandoned private property in occupied territories by occupying powers is prohibited.

- Allocations of abandoned property may be open-ended, for example, without a set end-date, but should be explicitly temporary, pending the arrangement of more appropriate shelter, the cessation of need or the restoration of the property to the displaced owner or lawful occupant or user.
- Allocation must proceed strictly on the basis of specific criteria based on demonstrable humanitarian need. If the occupants of abandoned property turn out to have access to other property elsewhere or are in a position to return to their own homes in safety and dignity, they should immediately lose all rights to continue occupying the abandoned property.
- Prior to moving in, those allocated abandoned property should sign a statement affirming that they understand the temporary nature of the allocation as well as any liability they have for damage to the property or possessions therein. An inventory of the condition of the property and its fixtures should be taken and, whenever possible, remaining personal property should be safeguarded (for example, by being locked into a separate room).
- In protracted displacement situations, displaced owners or lawful occupants or users should be paid rent at standardized rates for the use of their homes as humanitarian shelter. If they cannot be located at the time, rental payments should be made to escrow accounts that can be claimed later.
- Specific procedures for the restoration of such properties to the possession of their displaced owners or lawful occupants or users should be included in any regulations on allocation and management of abandoned property. In principle, this restoration should occur upon the demand of the former owner or lawful occupant or user rather than upon cessation of the temporary occupant's humanitarian needs. This consideration argues for treating such allocations as a transitional solution and moving IDPs to more sustainable shelter arrangements as quickly as possible.

How can shelter assistance during displacement be designed in a manner to facilitate eventual durable solutions?

As early as possible, the competent authorities should begin planning for how the provision of shelter assistance can contribute to the attainment of voluntary durable solutions for IDPs once the conditions have been created. In all cases, domestic responses to displacement should include measures to ensure that IDPs who ultimately choose to return and those who choose to resettle enjoy equal access to adequate housing on a prospective basis. Measures that can be taken include the following:

- Ensure that steps are taken to secure the claims of IDPs to remedies—including restitution and compensation—for deprivations of their rights to property and possessions suffered in the course of displacement regardless of whether they eventually choose to return (see chapter 12).
- Public buildings used as collective centers should either (1) be replaced with more appropriate housing, and at least partially returned to their normal use in cases where they serve important public functions or (2) be upgraded so as to meet adequacy requirements and eventually provide permanent housing solutions.
- In cases where shelter arrangements provided by the competent authorities or humanitarian agencies have proved to be sustainable, consideration should be given to upgrading and regularizing such settlements and providing security of tenure that can eventually facilitate the resettlement of IDPs who opt not to return. Pending the creation of conditions for return, IDPs can be provided with incremental tenure, or legal rights to the housing they are allocated that serve to protect them from

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forced evictions at all times and that become stronger with length of residence, affording IDPs in protracted displacement situations with the possibility to seek full ownership.

- In cases where return is likely to be an option in the medium term, attention should be given to construction methods that would allow transitional housing to be both adequate to IDPs' needs during displacement and transportable so as to facilitate return.
- IDPs who have self-settled or who wish to resettle permanently outside of official IDP settlements should be consulted in order to ascertain what types of assistance would be most helpful in ensuring sustainable access to adequate housing.

CASE STUDY

Facilitating adequate housing solutions for long-term displacement pending the possibility of voluntary durable solutions

Although one of the main aims of the Georgia State Strategy for IDPs is to create the conditions for the eventual safe and dignified return of IDPs, it also sets out measures to support their decent living conditions while displaced. A number of these measures relate to IDPs' housing situation. For instance, Chapter V of the Strategy recommends the closure of collective centers in which IDPs have lived under substandard conditions, in a manner that fosters more adequate housing solutions:

"2.1 Effective resettlement of IDPs represents a precondition for the improvement of their living conditions and for their integration as well. The existence of approximately 1,600 collective centers, most of which are unsuitable for living, on the territory of Georgia not only poses a threat to the lives and welfare of their residents, but also hinders the social and economic advancement of the country. Resolving the issue of collective centers will assist in improving the living conditions of IDPs and will address the following significant issues:

- a) Collective centers of public purpose will regain their primary function of social institutions (hospitals, schools, etc.);
- b) Collective centers which have commercial value will be vacated for private investment. Monetary compensations, which will be given to IDPs in exchange for vacating the places they are currently occupying for residence, shall be relevant and adequate to market prices;
- c) The collective centers that are suitable for living and have a specific importance, will be transferred to IDPs, if they so desire, for self-privatization (price for the privatization should be determined by considering the social condition of each IDP).

2.2. IDPs shall be protected against arbitrary / illegitimate eviction.

2.3. State assistance will be provided based on strictly determined selection criteria, according to which IDPs residing in the private sector and those in the collective centers shall be offered specific assistance tailored to their needs. The programs listed below provide for the stable and long-term improvement of living conditions of IDPs:

- a) Use of specialized social institutions, within state programs, for IDPs with limited mental/physical abilities who are in need of special care (different types of shelters for groups of persons with specific health needs);

Facilitating adequate housing solutions for long-term displacement... (Cont.)

- b) Social assistance, within state programs, to healthy elderly and other vulnerable IDPs (those without a breadwinner, etc.) without any income (deinstitutionalized care for those who cannot survive independently and will not be able to become self-reliant in the future, though do not need special care);
- c) Financial assistance (ex. vouchers or other forms of assistance) for those IDPs who do not have a place to live or who leave collective centers, to support them to purchase a residence;

2.4. Transfer of residences into private ownership will be especially encouraged, though this option shall not take place automatically. Participation and contribution of IDPs in this process is a precondition for their purchasing of flats.³¹¹

How can housing assistance to IDPs be improved over time?

As set out in chapter 4, the provision of humanitarian goods and services should be monitored and subject to continuous quality control. For housing, as for other humanitarian goods, IDP policies should encourage the establishment of a process for handling complaints that address individuals' concerns about eligibility criteria or the adequacy of food aid. Most important, IDPs should be continuously consulted on the adequacy of their shelter and housing and should participate in the planning of housing assistance throughout their displacement. IDPs should also have access to information and effective and rapid legal remedies in situations when their inadequate housing conditions place them at risk or when they face the threat of forced evictions.

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How should IDPs' housing needs be met in the context of durable solutions?

When the conditions for durable solutions have been created and it is possible for IDPs to return voluntarily and in conditions of safety and dignity to their homes of origin, shelter assistance should focus on supporting both return and resettlement in a manner that provides sustainable and adequate housing solutions and prevents forced evictions. In the context of return, shelter-related assistance in favor of durable solutions may include help with reconstruction of damaged or destroyed homes (a precondition for the return of individual families) and local infrastructure from schools and municipal buildings to roads and basic utilities (in support of the restoration of functioning communities) (on restitution of property, see chapter 12).

In providing such assistance, it is crucial to ensure that IDPs who did not have formal title to the land and housing they habitually occupied or used—or who were homeless, landless or squatters in informal settlements—are also provided with assistance in attaining no less favorable a housing solution than they enjoyed prior to displacement. In practice, the lack of clear title to a specific property may complicate the access of returnee tenants to either public reconstruction assistance or credit. In such situations, competent authorities should, whenever possible, seek to provide legal recognition to settled occupation and use of housing by non-owners such that they are eligible for reconstruction assistance in the event they seek to return. Ideally, the competent authorities should seek to rebuild or build collective housing where necessary to support the voluntary return of its residents.

311 Decree No. 47 on Approving of the State Strategy for Internally Displaced Persons (2007), chapter 5.

CASE STUDY**Reconstruction assistance for displaced squatters and tenants**

In January 2005 the Indonesian government announced a policy directive that all earthquake- and tsunami-affected families and households would be entitled to reconstruction or rehabilitation assistance and that all eligible households would receive a simple thirty-six square meter house for free or adequate assistance to reconstruct their partially destroyed and still repairable housing units. Subsequently, tenants were also made eligible for assistance.³¹² In March 2006 the Aceh and Nias Rehabilitation and Reconstruction Agency (BPN) promulgated regulation 21/2006, which offered pre-tsunami landowners who needed new land “freehold land and a basic 36 square meter house.” Those who had rented or squatted in their accommodations prior to the tsunami and could no longer return home were offered “a cash payment for land/housing on credit” that included 40 percent of the cost of a basic 36 square meter home in Banda Aceh for former renters and 25 percent of this cost for former squatters.³¹³

As discussed in chapter 5, “residual” caseloads of the most impoverished and traumatized IDPs may remain in grouped shelters after most other residents have found durable solutions, either through return or durable resettlement. In such cases, the most feasible approach may be to try to provide some more sustainable form of local integration by ensuring that these IDPs are able to access local social welfare programs—including social housing—on no less favorable a basis than that received by local residents.

CASE STUDY**Providing IDPs with access to social housing schemes**

In Serbia, the 2002 National Strategy for Resolving the Problems of Refugees and Internally Displaced People focuses on ensuring the conditions for repatriation of refugees and IDPs and activities for providing conditions for local integration recommending the development of both social housing and affordable housing.³¹⁴

In Colombia, Decree 951 of 2001 extended the social housing policy to IDPs through a mixed system of subsidies, credit, and savings.³¹⁵ The grants are allocated either to purchase new and second-hand houses or to improve the infrastructure of the accommodation or to legalize the land tenure status of a house.³¹⁶

A. INTRODUCTION

Purpose: Principle 18(2)(d) of the Guiding Principles is meant to ensure that IDPs are provided, at a minimum, with essential medical services. Beyond this, Principle 19 requires states to provide wounded and sick IDPs with medical care, as well as psychological and social services, and to pay special attention to the health needs of women as well as to prevention of contagious and infectious diseases.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
[...]
(d) Essential medical services...
[...]

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Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.
2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.
3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

Other relevant principles: 18 (2)(a)–(c)

Legal foundations:³¹⁷ Every person has the right to enjoy the highest attainable standard of physical and mental health without discrimination.³¹⁸ The right to health encompasses not only access to timely and

317 For more details see Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, 2nd ed., Studies in Transnational Legal Policy 38 (American Society of International Law and Brookings Institution, 2008), pp. 89–91.

318 ICESCR, Article 12; CERD, Article 5(e)(iv); CEDAW, Articles 11(1)(f) and 12; CRC, Article 24.

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appropriate health care but also to “underlying determinants of health,”³¹⁹ such as access to an adequate supply of safe and nutritious food (see chapter 7), safe and potable water and adequate sanitation (see chapter 8), and housing (see chapter 9), as well as other human rights standards including healthy occupational conditions (see chapter 13) and access to health-related education and information (see chapter 15).³²⁰ Other determinants of health include hospitals, clinics and other health-related facilities, trained medical and professional personnel who receive domestically competitive salaries, and essential drugs.³²¹ Elements of respect for the right to health include

- **Availability:** Functioning public health and healthcare facilities, goods, services, and programs must be available in sufficient quantity, including all underlying determinants of health.³²²
- **Physical accessibility:** Health facilities, goods, and services, as well as the underlying determinants of health must be within safe physical reach of all sections of the population, especially vulnerable and marginalized groups.³²³
- **Economic accessibility:** Health facilities, goods, and services must be affordable for all, with payment for healthcare services and the underlying determinants of health based on equity, such that socially disadvantaged groups are not disproportionately burdened with health-related expenses vis-à-vis others.³²⁴
- **Information accessibility:** Having access to information includes the right to seek, receive, and impart information on health issues, subject to the right to have personal data treated with confidentiality.³²⁵
- **Acceptability:** Health facilities, goods, and services must respect medical ethics and confidentiality, as well as the cultural, gender, and life-cycle requirements of individuals and groups.³²⁶
- **Quality:** Health facilities, goods, and services must be culturally, scientifically, and medically appropriate.³²⁷
- **Non-discrimination:** Health facilities, goods, and services must be accessible to all without discrimination and particularly to the most vulnerable and marginalized sections of the population.³²⁸

319 UNCESCR, General Comment 14 (2000), paragraph 4.

320 UDHR, Article 25(1); ICESCR, Article 11(1); UNCESCR, General Comment 14, paragraph 11.

321 UNCESCR, General Comment 14, paragraph 12(a); World Health Organization, “Model List of Essential Medicines” (www.who.int/medicines/publications/essentialmedicines/en/).

322 UNCESCR, General Comment 14, paragraph 12(a).

323 UNCESCR, General Comment 14, paragraph 12(b)(ii).

324 UNCESCR, General Comment 14, paragraph 12(b)(iii).

325 UNCESCR, General Comment 14, paragraph 12(b)(iv).

326 UNCESCR, General Comment 14, paragraph 12(c).

327 UNCESCR, General Comment 14, paragraph 12(d).

328 UNCESCR, General Comment 14, paragraphs 12(b)(i) and 30.

In armed conflict situations, starvation and targeting of foodstuffs, crops, livestock, drinking water supplies, or irrigation works are illegal, and occupying powers are responsible for ensuring that food and medical supplies are available to local populations.³²⁹ During armed conflicts, in particular, states must fulfill their obligation to provide the highest attainable standard of physical and mental health by giving medical attention to the wounded and sick³³⁰ as well as by seeking, permitting, and facilitating international humanitarian support and passage of medical supplies as well as ensuring the safety of medical workers.³³¹ Priority in humanitarian provision of health facilities, goods, and services should be given to those most vulnerable to their deprivation, including IDPs, in general, and particularly subgroups with special needs such as children, pregnant or lactating women, persons with HIV/AIDS, and the elderly.³³²

Regulatory framework: At the domestic level, the right to health is reflected in an increasing number of national constitutions, and national legislation often sets out entitlements to free or subsidized services for those unable to afford them otherwise. Generally, national laws will also regulate the provision of medical services, including a range of issues such as licensing to practice medicine, administration of hospitals and clinics, regulation of pharmaceutical products, and medical insurance. Such laws should be reviewed to ensure that they do not result in de facto discrimination against IDPs (for instance through highly formal documentation requirements to qualify for treatment). However, it may be possible to work largely within the existing legal framework to provide services to IDP populations, so long as the existing rules do not exclude measures such as the confirmation of IDPs as a particularly vulnerable group requiring special assistance (including subsidized care), the development of new facilities at sites of displacement, and the creation of coordination mechanisms for gathering and analyzing information on the health needs of IDPs and developing appropriate policy responses. However, additional regulations may be necessary when no existing rules exist for addressing health needs in emergency situations or at locations beyond the reach of existing service providers or when existing arrangements do not cover IDPs.

Problems often encountered by IDPs: As a result of displacement, IDPs generally lose access to medical facilities, goods, and services they previously relied on for physical and mental health care. Displacement also undermines protective social and community networks that foster mental health and psycho-social well-being and leads to deterioration in virtually all the underlying determinants of the health of those affected, with reduced access in particular to food (see chapter 7), water and sanitation, (see chapter 8) and housing (see chapter 9). The experience of displacement tends to aggravate pre-existing physical and mental conditions, and deprivations, injuries, and trauma sustained during displacement can give rise to new health conditions, including post-traumatic stress disorder (PTSD) or other mental health problems. IDPs are at high risk of attack, injury, and sexual assault in the course of flight, and they often find themselves isolated from family and social networks and without access to medical care where they find refuge.

329 First Protocol to the Geneva Conventions, Article 54; Second Protocol to the Geneva Conventions, Article 14; Fourth Geneva Convention, Article 55.

330 Geneva Conventions, common Article 3(2); Fourth Geneva Convention, Articles 16, 55, and 56; First Additional Protocol to the Geneva Conventions, Article 10; Second Additional Protocol to the Geneva Conventions, Articles 7(2) and 8.

331 Fourth Geneva Convention, Articles 23, 50(5), and 59; ICRC, Customary International Humanitarian Law, Volume I: Rules, Rules 25, 28, and 29.

332 UNCESCR, General Comment 14, paragraph 40.

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Sometimes, IDPs are confronted with a lack of medical services that are capable of reaching remote areas not covered by regular health services, where IDPs are displaced. IDPs may also face an insufficient response during the emergency phase of displacement, with large numbers of cases overwhelming existing clinics and hospitals.

In situations where IDPs are displaced in the vicinity of existing medical facilities, they may nevertheless lack access to them because of discrimination, concerns about the burden they will place on local health service provision, and linguistic or bureaucratic obstacles. IDPs frequently do not have access to their documentation, making it difficult to establish their identity for the purposes of seeking medical treatment (see chapter 11) or to produce medical records establishing pre-existing conditions and courses of treatment. In situations where IDPs are displaced in areas inaccessible to existing population centers, IDPs will continue to suffer avoidable deaths and infirmity unless basic medical facilities are set up quickly to meet their basic needs. In some cases, failure to understand and respect the cultural and religious traditions of displaced communities in providing medical care may render it inaccessible to them (for instance, where no female doctors are present, female IDPs may refuse to be examined).

The nature of IDP shelter and settlements can jeopardize their health in cases in which high population density, lack of privacy, and inadequate sanitation increase the risks of attacks, sexual assaults, and the spread of contagious and water-borne disease (see chapters 8 and 9). Subgroups of IDPs that are particularly likely to need medical care, such as women, children, the elderly, the physically and mentally disabled, and those suffering from chronic illness or HIV/AIDS or trauma, are exposed to particular risks by its lack. Lack of access to medical services also creates the risk that IDPs will not receive medical documentation vital for the exercise of their rights, such as birth certificates for their children born during displacement and death certificates for deceased relatives and spouses.

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B. CHECKLIST: ISSUES TO BE ADDRESSED BY DOMESTIC LAWS AND POLICIES

Minimum essential elements of state regulation:

At a minimum, competent authorities in displacement situations should do the following

1. Recognize the right to health for IDPs.
2. Designate an agency or organization that is responsible for providing essential health services to IDPs in cases when IDPs cannot easily access regular services available to the general population.
3. Seek and accept from assistance from the international community if IDP needs cannot be satisfied sufficiently at the domestic level.
4. Establish procedures to identify and prioritize beneficiaries of health services on the basis of need and particular vulnerability.
5. Provide for the waiver of standard and universal requirements (for example, specific documentation, residency requirements, and health insurance coverage) that limit or exclude access of IDPs to health services and for free access to such services on the basis of need and particular vulnerability.

In order to ensure that IDPs can exercise their right to the highest attainable standard of physical and mental health during and after displacement, domestic laws and policies should

- recognize the right to health and designate responsibility to a governmental agency or an organization such as the Red Cross and Red Crescent Society to provide essential health services to IDPs in emergency situations or at locations that are too far away from existing health services to be accessible by the displaced. Such an entity should also be responsible for seeking support from the international community if needs cannot be sufficiently satisfied at the domestic level.
- identify and take into account IDPs' pre-displacement and current health traditions, practices, and needs;
- consult with IDPs on their health needs and their participation in the design of services;
- provide for essential health care and maintain and restore the underlying determinants of health during the emergency phase of displacement;
- provide IDPs with safe physical access to existing health facilities during displacement on terms no less favorable than those available to the non-displaced population;
- provide IDPs who do not have safe physical access to existing health facilities with health services to the extent possible, including providing services with international humanitarian assistance;
- improve provision of health services to IDPs continually through monitoring and evaluation (including health information systems), complaints procedures, and consultation and the participation of recipient IDPs in planning;
- ensure adequate health services and facilities in support of voluntary durable solutions.

C. NECESSARY ELEMENTS OF STATE REGULATION

What institutional arrangements are necessary to secure the right to health to IDPs?

States usually have authorities (for example, a Ministry of Health) that deal with health issues and provide and oversee the delivery of health services. Special institutional arrangements may only be needed to ensure that essential health services are provided in emergency situations or at locations that are too far away from existing services to be accessible by IDPs, either by governmental agencies, domestic non-governmental organizations such as the National Red Cross and Red Crescent Societies, or the international community. In addition, referral systems should be set up, and IDPs as well as all humanitarian actors assisting IDP populations should be provided with full information on this system including the location of primary and secondary healthcare facilities. In some settings, cooperation among regions or between the central and regional levels may be necessary to ensure that referral systems for IDP are able to operate across administrative boundaries.

What information regarding IDP populations is useful in assessing how best to secure their right to health?

In the context of efforts to count, locate, and assess the needs of IDP populations (see chapter 2, section C), competent authorities should actively seek and compile information related to their current state of health

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and any pre-existing health issues. Such information includes

- any available epidemiological reports or medical records regarding IDP populations or the regions where displacement has occurred, keeping in mind the need to respect patient confidentiality;
- general health indicators for IDP populations, including pre-displacement rates of disease (morbidity) and death (mortality), as well as the prevalence of any nutritional deficiencies (see chapter 7);
- data on pre-displacement immunizations;
- prevalent hygienic practices and the manner in which human excreta was disposed of prior to displacement (see chapter 8);
- cultural and religious customs related to health practiced by IDP populations and subgroups, including those customs related to traditional preventive care, healing practices and medicines, birth, handling of the dead, and medical examination of women;
- the prevalence of any cultural and religious practices with negative consequences for human rights and health such as female genital mutilation, preferential feeding and care of male children, or stigma attached to particular diseases or medical conditions;
- any pre-existing obstacles that the IDP population or specific subgroups in the IDP population faced in exercising their right to health and coping strategies used to address them;
- information on the nature and prevalence of injuries; physical and mental trauma, including gender-based violence and post-traumatic stress disorder; and diseases that IDPs sustained in the course of displacement;
- the health facilities, goods, and services that are immediately available to IDPs where they are displaced and any obstacles (lack of capacity, language, and lack of documentation) that IDP face in accessing them.

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Whenever conditions permit, the planning of health facilities, goods, and services to IDPs should be based on the establishment of a health information system (HIS) that allows relevant public health data to be collected, analyzed, and used to improve the response to IDPs' health issues on an ongoing basis.³³³ Such data should be disaggregated whenever possible by sex and age in order to ensure that gender- and age-specific health risks are quickly identified and addressed. In collecting such information, competent authorities must respect the confidentiality of medical records and data and should never share information on specific patients with others not directly involved in the patient's care without the patient's permission.³³⁴

Who should be involved from the outset in coordinating the provision of health services to IDPs?

At the national level, health should be one of the central issues of humanitarian assistance that is dealt with by an institutional coordination mechanism (see chapter 2, section G on general coordination, as well as chapter 4 on the role of such coordination in humanitarian assistance contexts). In order to ensure that the response to IDPs' medical issues is treated as an integral part of broader national health policies, the ministry determined to be competent in dealing with IDP health and medical issues at the national level should be

333 Sphere Standards, Health Systems and Infrastructure Standard 6: Health Information Systems, p. 270.

334 Sphere Standards, Health Systems and Infrastructure Standard 6: Health Information Systems, Guidance note 3, p. 271.

directly involved in leading this aspect of the response to displacement.³³⁵ Interventions to protect IDPs' right to health should be closely coordinated with other humanitarian assistance sectors, and particularly those related to food (chapter 7), water and sanitation (chapter 8), and shelter (Chapter 9), both at the central and local levels. A key objective of such coordination should be the identification of legislative and administrative obstacles and gaps. For instance, competent authorities should identify all relevant national treatment protocols for the management of common diseases and injuries as well as essential drugs lists or national formularies and review them to ensure they are updated and appropriate to the needs of displaced populations.³³⁶

Coordination with international humanitarian actors is also important with regard to the right to health. International actors can support national responses with health goods and services that may be scarce in displacement settings, such as medicine, equipment, expertise, and skilled medical personnel. In some displacement settings, international humanitarian agencies have demonstrated the capacity to set up health facilities, such as field hospitals dedicated to providing essential care to disaster victims. As a rule, international humanitarian aid should support national efforts through the provision of supplemental health goods, services, and expertise, rather than duplicating national efforts through the creation of parallel facilities. However, in situations where there is no other cost-effective way of providing appropriate health services (such as emergency situations that overwhelm existing services or cases where IDPs do not have physical access to existing healthcare facilities), requesting and facilitating the provision of international field hospitals may be a necessary part of the national response to displacement.³³⁷

The provision of medical goods, services, and facilities involves technical, scientific, and logistical questions that often are regulated in both domestic law and standards and in international best practice guidelines for humanitarian disasters.³³⁸ These standards should be referenced, but they need not be repeated in IDP-specific laws and policies, which should focus on broader protection questions related to safe and non-discriminatory access to health facilities. As a result, they are not covered in detail in this chapter.

Processes for designing health goods, services, and facilities are particularly conducive to the participation of IDPs. Consultation with the affected communities can help to identify health risks and issues as well as effective coping mechanisms and strategies adopted to deal with them. For instance, IDP communities may engage in preventive or healing techniques that can complement the provision of formal medical services. Encouraging IDPs to maintain traditional health practices is also one way of encouraging community responses to displacement that can contribute to IDPs' psychosocial wellbeing by rebuilding or replicating protective family and community networks disrupted by displacement.³³⁹ Consultation with IDPs can also identify harmful traditional practices and the particular medical needs of vulnerable groups within IDP populations.

335 Sphere Standards, Health Systems and Infrastructure Standard 2: Supporting National and Local Health Systems, p. 261.

336 Sphere Standards, Health Systems and Infrastructure Standard 5: Clinical Services, Guidance note 4, p. 268.

337 Sphere Standards, Health Systems and Infrastructure Standard 2: Supporting National and Local Health Systems, Guidance note 5, p. 263.

338 See, for example, Sphere Standards, Minimum Standards in Health Services, appendix 4: References, p. 305.

339 IASC, "Guidelines on Mental Health and Psychosocial Support in Emergency Settings" (2007), pp. 12–13.

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Ideally, participation mechanisms should not only facilitate the formation of groups or committees to actively follow up on particular health issues and disseminate public health information, but also the identification of traditional caregivers and medical personnel within IDP populations who can be trained (as necessary) and paid to provide essential medical services, such as skilled birth attendance. Training on preventive health promotion, including good hygienic and sanitation practices, should be available to all IDPs, regardless of whether they have a formal or traditional health background. Similarly, information and training on sexual and reproductive health and family planning should be made available in the context of consultations on health issues. In situations in which IDP populations have physical access to existing health facilities and services, consultations should extend to host communities and other communities in the area of displacement, in order to identify measures that can be taken to ensure that IDP access does not overburden local capacity or lead to tensions.

How can IDPs be provided with essential medical services in the emergency phase of displacement?

In the acute emergency phase of a disaster, when displacement has just occurred and the situation on the ground remains volatile, health-oriented responses should focus on the fundamental necessity of restoring the underlying determinants for IDPs' exercise of the right to health. In humanitarian settings, this means rapid provision of essential food or the means for its procurement (see Chapter 7), potable water and sanitation (see Chapter 8), and basic shelter and housing (see Chapter 9). Securing humanitarian access to IDPs, stabilization of the situation and rapid fulfillment of these basic humanitarian needs will prevent excess morbidity and mortality and lay the groundwork for a return to some degree of normality through more systematic health interventions. Health services should be provided to the greatest extent possible during the emergency stage. If insufficient resources exist to address all serious injuries and illness, medical services should be allocated on the basis of a systematic triage system that seeks to prioritize treatment in order to provide the greatest health benefit to the greatest number of people.³⁴⁰

In addressing the mental health and psychosocial support needs of IDPs in the emergency phase of displacement, the emphasis should be placed on social interventions that address anxiety, trauma and the disintegration of family and social support networks by providing information to IDPs, encouraging them to participate in common interest activities and to maintain pre-displacement cultural and religious activities, and to resume educational and recreational activities for children and adolescents as soon as possible (see Chapter 15 on Education).³⁴¹ Special attention should also be given to initial steps to anticipate and address the effects of gender-based violence (GBV), prevent the transmission and outbreak of communicable diseases and provide emergency obstetric care for pregnant women. Finally, IDPs with chronic illnesses and long-term medical needs (persons with HIV/AIDS, mental illness, diabetes and heart conditions) should be identified and their courses of medications and/or treatment resumed as soon as possible.

340 Sphere Standards, Control of Non-Communicable Diseases Standard 1: Injury, Guidance, note 2, p. 287.

341 Sphere Standards, Control of Non-Communicable Diseases Standard 3: Mental and Social Aspects of Health, p. 291.

What issues need to be considered in providing medical care to IDPs through existing facilities?

Once the emergency phase of displacement is over, IDPs located in the vicinity of existing medical facilities and services should, in principle, be able to access them on no less favorable terms than the non-displaced population. Integration of IDP populations into existing medical facilities serves to avoid the risk that parallel medical systems for IDPs either discriminate by providing less adequate service than that available to the surrounding community or create tensions where, for instance, high levels of international assistance lead to a higher standard of care for IDPs. There is increasing consensus within the international humanitarian community that health-related humanitarian aid should serve to increase the capacities of existing national systems rather than bypassing them.³⁴² However, there are a number of complications involved in integrating IDP populations into existing health facilities:

- **Capacity:** Where large numbers of IDPs are displaced in relatively sparsely settled areas, their health needs may threaten to overwhelm local systems, based both on the higher incidence of injuries and disease they are likely to have vis-à-vis the non-displaced population and their sheer numbers. In particular, in situations where it appears likely that return may quickly become feasible, the investment in local health systems necessary to integrate IDPs fully may not be justified and international assistance may best be used to develop provisional responses, such as field hospitals, to IDPs' health needs pending return. However, where there is no clear prospect of quick return, international assistance should be requested and used to build up local facilities and services in consultation with both IDPs and the local non-displaced population. IDP communities can often contribute directly, both through relieving the burden on local facilities by continuing to practice traditional forms of preventive care and healing practices, and through contributing displaced traditional caregivers and trained medical personnel to the local pool of health professionals.
- **Cultural and language barriers:** IDPs' access to local medical services may be limited by the existence of cultural and religious traditions that are not compatible with the health and medical practices of the host community. In other situations, the two communities may not share a common language. Under such circumstances, it may be particularly important to recruit medical personnel for primary care services from among the IDP population, to the extent possible. Such recruitment would require the identification of both traditional care-givers and any displaced medical or health professionals and provision of supplemental training needed to ensure that national treatment protocols are respected. Under such circumstances, separate primary care and clinical or outpatient health facilities might initially be set up to serve the IDP community's specific health needs, including through service in a language they understand and adherence to traditional practices. Integration with local systems, by contrast, might begin with higher order referral services, such as inpatient surgical procedures or specialized psychological or psychiatric care.
- **Documentation:** In many domestic systems, access to health services may be contingent on personal documentation establishing IDPs' identity and other relevant information such as eligibility for social security benefits (see Chapter 13 on Employment, Economic Activities and Social Security). However, IDPs rarely dispose over or have access to such documentation. Likewise, both formal and

342 Sphere Standards, Health Systems and Infrastructure Standard 2: Supporting National and Local Health Systems, p. 261.

practical difficulties may arise in situations where IDPs with chronic mental or physical illnesses do not have access to medical records establishing prior course of treatment. Lack of documentation cannot justify the failure to provide IDPs with the highest attainable standard of physical and mental health. In situations where such problems prevent IDPs from accessing medical goods, services, and facilities, the competent authorities should take the steps outlined in chapter 11 to ensure that relevant documentation is issued to IDPs in facilitated proceedings or that an exception is otherwise made to strict documentation requirements.

Other bureaucratic obstacles to IDPs' exercise of their right to health should also be addressed. For instance, requirements that healthcare beneficiaries visit several offices in order to arrange for care or appear in person at short intervals for prescription extensions should be waived where IDPs must travel long distances to health facilities and cannot afford transportation.

- **Economic accessibility:** Health services are costly, but IDPs tend to be impoverished by displacement, and so presumptively they should be entitled to free or subsidized health services, particularly during the early stages of displacement. Over the course of protracted displacement situations, it may be acceptable to introduce or increase fees or co-payments for the use of health facilities and services or to require contributions to social security funds or acquisition of other forms of health insurance so long as this does not disproportionately burden IDPs. Any such charges should be calculated on the basis of the principle of equity. According to this principle, payment for healthcare services and the underlying determinants of health should not burden disproportionately socially disadvantaged groups vis-à-vis others who are better off. For IDPs and other marginalized populations, in particular, the costs of health services should not compromise or threaten the realization of other human rights.

CASE STUDY

Providing health services during displacement

In Colombia, Law No. 387 on internal displacement provides that “the General Social Security System in Health shall implement ready to use mechanisms so that populations affected by displacement may access rehabilitation, hospital, psychological, dental, surgical, and comprehensive medical assistance services pursuant to that which is established in Law 100 of 1993.”³⁴³

The Georgian State Strategy for IDPs includes a number of provisions related to healthcare for IDPs:

“Chapter III

2.2. Integration of the Displaced Population

2.2.1. It is necessary to create, or to eradicate the hindering factors, for IDPs to enjoy legal, political, living and socio-economic conditions like other citizens of Georgia. It should be pointed out that from the legal viewpoint, IDPs have all the rights as other citizens of Georgia; despite this, however, they are not fully integrated in the society:

[...];

³⁴³ Law No. 387 (1997), Article 19(4).

Providing health services during displacement (Cont.)

b) IDPs have the right to equally benefit from state and other programs of [...] healthcare [...], that the government of Georgia or the non-governmental sector offers to any citizen of Georgia;

Chapter V

2. Improvement of Living Conditions for IDPs

[...]

2.3. State assistance will be provided based on strictly determined selection criteria, according to which IDPs residing in the private sector and those in the collective centers shall be offered specific assistance tailored to their needs. The programs listed below provide for the stable and long-term improvement of living conditions of IDPs:

a) Use of specialized social institutions, within state programs, for IDPs with limited mental/physical abilities who are in need of special care (different types of shelters for groups of persons with specific health needs);

3. Improvement of socio-economic conditions of IDPs

3.1. Improvement of living conditions of IDPs depends upon access to adequate social services, first of all in the spheres of healthcare and education. In order to achieve these goals, the state strategy envisages implementation of following activities:

a) It is necessary to conduct a survey of the health status and morbidity of IDPs. Special attention should be paid to researching the prevalence of diseases of probable high risk among IDPs. It is recommended to elaborate medical and psycho-social assistance/rehabilitation programs for IDPs;³⁴⁴

How should medical care be provided to IDPs who do not have physical access to existing facilities?

In cases where IDPs are not located within safe physical reach of existing health services and facilities, and it would be unsafe or otherwise inappropriate for them to relocate, international humanitarian assistance should be sought and facilitated, whenever possible, in meeting their health needs. In situations where IDPs are geographically concentrated or living in collective shelter settings, it may be both necessary and cost-effective to set up dedicated field hospitals to serve their needs. In situations where IDPs are more dispersed, it may be necessary to consider mobile clinics.³⁴⁵ Whenever possible, such health services should seek to encourage the continuation of traditional preventive medicine and healing techniques and support the continued activity of displaced traditional caregivers and medical professionals.

How can health services for IDPs be improved over time?

As set out in chapter 4, the provision of humanitarian goods and services should be monitored and subject to continuous quality control. As discussed above, the establishment of a functioning health information system (HIS) allows for the rapid identification of problems and emerging threats, contributing to continuous

344 Decree No. 47 of the Government of Georgia on Approving of the State Strategy for Internally Displaced Persons—Persecuted (2007).

345 Sphere Standards, Health Systems and Infrastructure Standard 4: Primary Health Care, Guidance note 2, p. 265.

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improvement of health services. In the case of health, as for other humanitarian goods, IDP policies should encourage the establishment of complaints procedures that address individuals' concerns about eligibility criteria or the adequacy of services. Most important, IDPs should be continuously consulted on the adequacy of health-related responses and should participate throughout the process in the planning of these services and facilities.

How should the right to health be fulfilled in the context of durable solutions?

In durable solutions settings, IDPs' decisions on whether to return to their homes or resettle elsewhere are significant in determining what type of measures will be necessary to safeguard their rights to health on an ongoing basis. In the case of IDPs who choose not to return, the goal should be to provide access to existing health facilities and services in the place of local integration or resettlement. For IDPs who have not achieved economic self-sufficiency, this will in practice mean that they should be eligible to benefit on an equal basis from measures undertaken by the state to respect the principle of equity in pricing health services for all socially disadvantaged groups. Integrated IDPs who can afford to pay regular fees as well as relevant social security or insurance payments may eventually be required to do so.

In the case of return to pre-displacement homes and places of residence, IDPs should receive assistance in reintegrating, including measures to secure their right to health. Where relevant, the competent authorities should facilitate the reconstruction of health and medical infrastructure and ensure that returning medical professionals are encouraged to provide their services. In cases where return takes place in areas where inadequate health services and facilities existed before displacement, measures should be taken in consultation with the local population to ensure the provision of the highest attainable standard of physical and mental health as soon as resources allow. Ultimately, returnees should also be integrated into general health services systems, with the same obligations to pay affordable fees (and the same eligibility for equitable fees for the vulnerable) as the non-displaced population.

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CASE STUDY

Providing health services in return areas in Angola

In 2001 the Council of Ministers of Angola adopted a decree setting out specific measures to support the provision of health services to IDPs in the context of durable solutions:

“Article 7 (Rehabilitation of Infrastructure)

The Provincial Governments will be assisted by UN Agencies and other partners in the rehabilitation of health posts and health centres as well as schools in the resettlement and return sites.

Article 8 (Social Assistance)

1. Appropriate Government sectors will support health [...] at the resettlement and return sites and will ensure that essential medicines [...] are supplied, without prejudice to the provisions of other articles herein.

2. [...]

3. Humanitarian organisations will be invited to support Provincial Governments in the provision of [...] essential medicines.”³⁴⁶

346 Angola, Council of Ministers, Decree No. 1/01 (5 January 2001).

Recognition, Issuance, and Replacement of Documentation

A. INTRODUCTION

Purpose: The practical significance of Principle 20 of the Guiding Principles is to ensure that IDPs are not unable to exercise their rights simply because they lack the necessary documents or are unable to have lost documents replaced. Where personal documentation is a precondition for the exercise of key rights, states should ensure that IDPs have effective access to such documentation.

Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates, and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.
3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

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Legal foundations:³⁴⁷ Everyone has the right to recognition everywhere as a person before the law.³⁴⁸ This right is not subject to exceptions and is non-derogable in times of crisis.³⁴⁹ It must be respected without distinction of any kind,³⁵⁰ including that based on internal displacement. In accordance with this principle, states should take affirmative steps to ensure that IDPs have sufficient documentation to be able to establish their identities and enjoy their human rights and legal entitlements on the same basis as other citizens. Women and men should enjoy equal rights to obtain necessary documents and to have them issued in their own names. Every person is entitled to registration and a name immediately at birth,³⁵¹ and states are obligated to provide immediate assistance with a view to re-establishing the identity of any child

347 For more details, see Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, 2nd ed., *Studies in Transnational Legal Policy* 38 (American Society of International Law and Brookings Institution, 2008), pp. 92–95.

348 UDHR, Article 6; ICCPR, Article 16.

349 ICCPR, Article 4(2).

350 UDHR, Article 2; ICCPR, Article 2(1).

351 ICCPR, Article 24(2). See also Fourth Geneva Convention, Article 50(2): Occupying powers must take all necessary steps to facilitate the identification of children and the registration of their parentage.

illegally deprived of some or all of his or her deprived of some or all of the elements of his or her identity.³⁵² Marriages must also be registered in order to ensure respect for the equal rights of both parties.³⁵³ States are specifically obliged to ensure that vulnerable groups such as refugees and interned civilians in occupied territories are provided with basic documentation.³⁵⁴

Regulatory framework: At the domestic level, documentation requirements can appear in many different areas of legislation, and IDPs are often unable to meet them because they had to leave behind relevant documents when they fled or lost them in the course of their flight. Some of the most common issues arise with respect to identification requirements to apply for identity cards or travel documents, to receive medical care or social insurance, to enroll children in new school districts, to register to vote, and to receive pensions or other acquired rights. In such cases, responding to IDPs' needs may require both the review of different areas of legislation in order to ensure that they do not impose unreasonable requirements on IDPs and the introduction of policies or legal measures that provide for facilitated re-issuance of documentation and recognition of registered IDP status as an alternative means of accessing rights or benefits. Although laws and policies on internal displacement should affirm IDPs' rights to documentation, full implementation of these rights is likely to require legal amendment or binding interpretations of existing laws allowing for provisional measures to facilitate issuance and recognition of documentation in light of IDPs' particular circumstances.

Problems often encountered by IDPs: In the course of displacement, IDPs frequently lose their personal identity papers or leave them behind and can no longer access the places where they left them or the authorities that could re-issue them. Both armed conflict and natural disasters can also lead to the destruction of official records and archives. Particular challenges may be faced by subgroups of IDPs, such as women, minorities, or indigenous communities, whose civil status or rights were not recorded to the same extent as other citizens' even prior to displacement. As a practical matter, individuals are often required to establish their identity or legal status as a precondition to exercising rights or receiving entitlements. However, because IDPs often no longer have access to such documentation, the application of such requirements in internal displacement settings may arbitrarily curtail their rights. Responses to such problems can range from facilitated issuance of existing types of legal documents to the provision of officially recognized provisional documentation for IDPs, establishing their identity and entitling them to rights and benefits. Issuance of such "IDP cards" may give rise to risks, including exclusion of some IDPs through overly narrow eligibility requirements and accessibility and confidentiality concerns, or discriminatory reactions by officials and the non-displaced

352 CRC, Article 8(2). See also "Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally", Adopted by UN General Assembly resolution 41/85 of 3 December 1986, (<http://www.unhchr.ch/html/menu3/b/27.htm>).

353 CEDAW, Article 19(2). See also Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1964).

354 See Refugee Convention, Articles 12(2): Rights "previously acquired by a refugee and dependent on personal status," such as those related to marriage, shall be respected by contracting states; Article 25(2)–(3): The authorities "shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities," which are to be accepted as proof of identity "in the absence of proof to the contrary"; and Articles 27 and 28: These pertain to the requirement to issue identity papers and travel documents to refugees not possessing a valid travel document; Fourth Geneva Convention, Article 97(6): When civilians are interned by occupying powers, "family or identity documents in the possession of internees may not be taken away without a receipt being given... internees shall never be left without identity papers, and... if they do not possess any identity documents, the detaining authorities must issue them special documents which will serve as their identity papers for the duration of their internment."

population. Such risks may become life-threatening in armed conflict settings or other situations of violence if the IDP card provides information on the ethnic or religious background of the individual concerned. Finally, documentation issues can complicate durable solutions to displacement, particularly when IDPs are unable to document qualifications, entitlements, and claims to assets they left behind.

B. CHECKLIST: ISSUES TO BE ADDRESSED BY DOMESTIC LAWS AND POLICIES

Minimum essential elements of state regulation:

At a minimum, competent authorities should do the following:

1. Establish institutional mechanisms and facilitated procedures for issuing or reissuing essential documentation to IDPs through facilitated procedures, including use of official records and alternative forms of evidence available to IDPs.
2. Ensure that, when appropriate and necessary, the issuance of IDP cards for purposes of identification and access to specific assistance is carried out in a rapid and accessible process.

In order to ensure that IDPs can exercise their right to recognition as a person and to other rights and entitlements contingent on documentation, domestic laws, and policies should

- identify and, when necessary, modify documentation requirements in domestic legislation relevant to the exercise of IDPs' rights;
- ensure the issuance or reissuance of documentation to IDPs through facilitated procedures, including use of official records and recognition of alternative forms of evidence available to IDPs;
- ensure that administrative procedures for facilitated document issuance are accessible, affordable, rapid, and transparent, and subject to complaints;
- set out steps to ensure that the integrity of IDPs' personal data is protected;
- guarantee access to documentation and issuance processes in the context of durable solutions.

C. NECESSARY ELEMENTS OF STATE REGULATION

How should competent authorities ascertain what documentation is available to IDPs?

IDPs are often forced to leave behind most or all of their personal documents in cases of rushed evacuations or flight in the midst of armed conflict. Except in cases of planned evacuations with advance notice and careful preparation, authorities should assume that IDPs will have little more documentation on their person than what they were able to grab on their way out of their home. Sometimes, IDPs lose their documents during their flight, or they are forcibly taken from them, for example, at official or unofficial check-points.

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When seeking to establish the identity of IDPs or their eligibility for assistance programs, competent authorities may ask them to produce any documentation they have managed to bring with them, including informal evidence (for example, electricity bills) that establish relevant information about them (such as their address prior to displacement). They may also request them to provide other relevant information known to them or to testify regarding the identity or legal status of other IDPs. However, IDPs may not be asked or required to go back to areas where return in safety and dignity is not yet possible, or where the travel involved would incur significant cost or effort, simply in order to retrieve documentation.

Nevertheless, there may be means for IDPs to effectively access some or all of their documentation. In some cases, information on IDPs' legal status and entitlement to various forms of documentation may be available in databases or registries other than those located in their place of origin, which may be available to the competent authorities where they are displaced. Even when such information is not *formally* relevant to the issuance of specific types of documentation for IDPs, it should be identified and compiled if it can help to establish or confirm IDPs' identities or legal circumstances, as this may be of use in future facilitated issuance or re-issuance programs (see below). Finally, in cases of armed conflict, the authorities should try to negotiate access to documentation records or databases held by hostile parties.

Competent authorities should seek to identify any groups that had little or no access to formal documentation even prior to their displacement. For instance, some minority groups may, for various reasons, have had less interaction with the public authorities than other displaced populations. A special case is presented by indigenous and tribal groups, who often have their own customary institutions and rules and may have actively avoided contact with state bureaucracy. Whatever the reasons for such groups' prior lack of documentation, steps must be taken to ensure that they are not doubly disadvantaged during displacement as a result. In the case of indigenous and tribal groups, such measures should be carefully crafted so as to complement rather than replace customary rules and institutions whenever possible.

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CASE STUDY

Facilitating civil registration for IDP groups that had little access to documentation prior to displacement

For the Roma community in Kosovo, internal displacement since the 1999 NATO bombing has been exacerbated by lack of access to personal documentation that was widespread even before displacement. In May 2006 the Provisional Institutions of Self-Government sought to address the problem through a prime ministerial policy document facilitating civil registration and document issuance for Roma groups present in Kosovo:

"3.c Recognizing there is a backlog of requests for civil registration documentation, municipalities are instructed to ensure that pending registration requests for Roma, Ashkali, and Egyptians are completed in the next six months. No late fees for these administrative services shall apply to these groups."³⁵⁵

355 "Recommendations to Updating Return Policies and Procedures" (PISG, 21 April 2006), in "Revised Manual for Sustainable Return," UNMIK/PISG (July 2006), annex I, p. 45

Facilitating civil registration for IDP groups that had little access to documentation prior to displacement (Cont.)

This recommendation has created a general policy framework and direction within which authorities could act.³⁵⁶ Officials have also been requested to demonstrate flexibility with regard to the proof of identity and civil status provided. At the same time, UNHCR initiated a civil registration campaign targeting the Roma community through the production and dissemination of public information material and media announcements. Legal assistance was also provided as part of the campaign through mobile teams to better access marginalized communities.

Similar problems are likely to arise in legal systems in which women are not automatically issued identity documentation in their own names but may instead be registered as dependents of their husbands or other male relatives. In the event of the deaths of male relatives or the family separation that often occurs in situations of displacement, such women risk losing their legal identity and may be denied the right to inherit land held in common with their spouses.³⁵⁷ In any case in which women or other groups liable to displacement have not traditionally received identity documentation in their own name, whether by law or practice, measures should urgently be taken to ensure any legal or practical barriers to doing so are removed.

In all cases—but particularly where IDPs had little formal documentation prior to displacement—another important source of information is local knowledge. As discussed below, witness statements regarding the

CASE STUDY

Use of a standard form to record property left behind by IDPs

An “Information Form for Property of the Internally Displaced” developed by the Ministry of Displacement and Migration in Iraq captures the following information:³⁵⁸

- name, present address and telephone number, and copies of all official documentation related to the owner or his or her heirs
- address of the abandoned property
- description of the abandoned property (based on a checklist including houses, apartments and various types of commercial and agricultural property)
- statement as to whether the property was taken by threat or violence
- copies of all available documentation related to the abandoned property

The person filling out the form is required to provide their name, identity card number, and legal address in attesting to the truthfulness of the information submitted and committing to bear the legal consequences for any information that does not turn out to be true.

356 OSCE/UNMIK, “Civil Registration of Persons Belonging to the Roma, Ashkali and Egyptian Communities: Finding of a Monitoring Exercise” (26 June 2007), p. 15

357 UN Office of the Special Adviser on Gender Issues and Advancement of Women, “Enhancing Women’s Participation in Electoral Processes in Post-Conflict Countries, Expert Group Meeting Report,” UN Doc. EGN/ELEC/2004 (20 February 2004).

358 Republic of Iraq, Ministry of Displacement and Migration, “Information Form for Property of the Internally Displaced” (www.brookings.edu/projects/idp/Laws-and-Policies/~//media/Files/Projects/IDP/Laws%20and%20Policies/Iraq_PropertyForm.pdf).

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identity, age, and legal status of documentation claimants can be important alternative forms of evidence in facilitated (re)issuance programs or even systematic registration of IDPs. Likewise, encouraging individuals to describe the property they left behind or requesting communities to map out commonly held lands can substitute or complement formal documentation of ownership or tenure rights, which will greatly assist the chance of successful future claims for such properties. Where it is possible to anticipate what information would be useful, it should be recorded in the form of sworn testimony as early as possible, prior to the dispersal or death of those present at the time of displacement.

How should competent authorities ascertain what are the documentation needs of IDPs?

In cases where legislative review appears to be necessary and the resources exist to carry it out, competent authorities should consider reviewing specific domestic legislation relevant to the exercise of key rights and entitlements of IDPs and identifying documentation formally required for each. This process should be undertaken in consultation with IDP and particularly with vulnerable and marginalized subgroups. Note should be taken not only of the requirements for re-issuance of lost documents but also for first-time issuance, in cases of either groups of IDPs who did not previously enjoy full access to documentation or individuals who may come of age to apply for such documentation while displaced.

Such legal requirements may include those necessary

- to register local residence;
- to have an identity document issued or re-issued;
- to travel inside the country or abroad;
- to confirm marital status and establish parenthood or custody of children;
- to register for social welfare support, housing assistance, or other benefits;
- to receive health insurance and medical treatment;
- to work and to have skills or professional qualifications recognized;
- to receive pensions or other acquired rights;
- to register to vote and to stand for election;
- to enroll in primary and secondary educational institutions;
- to confirm existing rights to property and assets, including usage or access rights to homes or land.

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Competent authorities must in all cases ensure the registration of births, marriages, and deaths and issue certificates accordingly (see chapter 6).

How should documentation be issued or reissued to IDPs who lack access to it?

When IDPs do not have access to documentation that is necessary for the exercise of their rights, competent authorities should consider facilitated issuance programs. In principle, IDPs have the right to have their documents issued or replaced like any other citizens. In order to give effect to this right, IDP laws and policies should take into account the specific circumstances of those displaced, including their loss of previous documentation and lack of access to records in their place of origin.

Facilitated documentation programs rely on specific techniques for obtaining and recognizing unconventional forms of proof of IDP applicants' identity and legal status. They should also be based on procedures that

do not impose arbitrary costs, delays, or administrative burdens on IDP applicants. In most cases, such procedures will be used to allow the issuance of specific types of standard documentation needed by IDPs to exercise their rights (ID cards, passports, and voter registration forms).

Documents issued in the course of such facilitated processing may be of a temporary nature, to be replaced with permanent documents when the applicants are in a position to provide all the evidence that is legally required under normal circumstances. In some situations, this might take the form of IDP cards issued as a temporary stand-in for other, less provisional documents, or to meet urgent needs. However, care should be taken to avoid creating a new legal status of IDPs by such means (see chapter 1, section B). IDPs should be able to enjoy full access to their rights and entitlements while using these temporary documents for as long as they are displaced. Any regulations allowing for temporary documents should include specific procedures for transforming temporary documents into permanent ones once the conditions have been created.

Can competent authorities access and use official records and data to verify the identity and legal status of IDPs who lack documents?

An important means of protecting the rights of IDPs lacking documentation is for competent authorities to actively assist them in searching for available pre-displacement data supporting their assertions regarding citizenship, age, marital status, and previous residency. Relevant sources may include census information or civil registration records. Additionally, post-displacement data from social welfare ministries and camp management agencies can be utilized to validate claims to identity and citizenship. However, when such data are not sufficiently reliable on their own or are unavailable to competent authorities, further measures may be necessary.

CASE STUDY

Case study: International facilitation of IDP documentation requests in Bosnia

During the 1996 and 1997 Bosnian elections, the Organization for Security and Cooperation in Europe (OSCE) established procedures allowing persons lacking documents to petition authorities in their home municipality for documentary proof of their voter eligibility. A Citizenship Verification Sub-Commission was set up to assist those who were not listed on the 1991 census and were unable to procure documentation such as citizenship certificates or receipts from municipal authorities. Because security concerns prevented many IDPs from physically returning to their former municipalities to request replacement documents, the procedures included a formal role for international facilitation of documentation requests:

“In those cases where an individual has difficulty obtaining a receipt from a municipality, a representative of the OSCE is given the authority to make a written request for a receipt to the municipality on the individual’s behalf. In those cases, the municipality shall, within five days of the request, produce either the receipt or full written reasons why the receipt cannot be produced.”³⁵⁹

In practice, a higher number of IDPs than expected made requests for assistance under this rule. OSCE’s experience thus demonstrates the importance of ensuring that adequate funding, personnel, and resources are made available in support of new or temporary measures to assist displaced voters.

359 Article 17.1 of the Rules and Regulations.

Can alternative types of evidence be used to verify the identity and legal status of IDPs who lack documents?

In cases where competent authorities are unable to access data verifying the identity and voter eligibility of IDPs, another approach is to use alternative evidence of identity or former residence, such as rental contracts, utility bills, extracts from telephone directories, student ID cards, among others. A balance should be found between the need for legal certainty, the risk of abuse and the right of IDPs to obtain necessary documentation. IDP laws and policies should set guidelines regarding elements deemed sufficiently reliable to substitute for formal proof and be accepted by institutions in charge of processing claims for documentation.

CASE STUDY

Authorization to accept alternative evidence establishing IDPs' compensation claims

Turkey's 2004 Law No. 5233 on Compensation of Losses Resulting from Terrorist Acts and Measures Taken against Terrorism provides compensation to IDPs for the denial of access to their properties while displaced, among other losses. In implementing this law, the government of Turkey issued a regulation in 2005 authorizing the commissions implementing the law to seek and accept any type of evidence related to claims that could be relevant:

"The applicant shall present any information and documents, which explain how the incident happened, and which can be considered in determining and measuring the loss to the Commission together with his/her petition. Also, the Commission may request from judicial, administrative, and military authorities any information and document, which may be considered in determining and measuring the loss, if it deems necessary."³⁶⁰

One important form of alternative evidence is the use of "social documentation," a procedure in which applicants for documentation (and their witnesses) are allowed to attest to their identity, residence, and citizenship in front of a recognized legal authority or a village or tribal leader.³⁶¹ Recognition of this kind of evidence usually requires the adoption of rules creating a limited exception to the ordinary application procedures. Reliance on alternative evidence, and particularly witness statements, may be an absolute necessity in order to protect the voting rights of groups of IDPs, such as indigenous or tribal people, who may not have had any formal documentation prior to their displacement.

Examples of such practices include

- confirmation of a village chief, a relative, or a set number of witnesses as an informal means of verifying identity;
- recognition of the location where relatives are buried as evidence of the applicant's right to land;
- issuance of age certificates by doctors in camps in order to establish eligibility for work permits.

360 "Regulation Amending the Regulation on Compensation of Losses Resulting from Terrorist Acts and Measures Taken against Terrorism," Decision No. 2005/9329 (2005), Article 1 (www3.brookings.edu/fp/projects/idp/Turkey_2005Regulation9329.pdf).

361 Jeremy Grace and Jeff Fischer, "Enfranchising Conflict-Forced Migrants: Issues, Standards, and Best Practices," Participatory Elections Project Discussion Paper 2, International Organization for Migration (September 29, 2003), p. 34 (www.geneseo.edu/~iompress/Archive/Outputs/Standards_Final.pdf).

CASE STUDY

Use of witness statements to establish the identity of IDPs without documentation for voting and civil registration purposes

During the 1999 Popular Consultation on Autonomy, the Chief Electoral Officer in the United Nations Assistance Mission in East Timor (UNAMET) responded to the widespread lack of documents (affecting both IDPs and the non-displaced) by issuing an administrative decree on procedures for these populations to prove their eligibility and register, according to which:

“Where a person is not in possession of sufficient documentation to support his or her application to register, the District Electoral Officer shall require such an individual to: Produce an affidavit sworn before a religious leader or Kepala Desa (Village Chief) and witnessed by a person who knows the applicant. In addition, the application for registration must be witnessed by a fully documented registered voter. Where the District Electoral Officer is satisfied that the applicant has met these conditions, he or she shall register the applicant.”³⁶²

The decree includes further rules, including procedures for undocumented applications to be challenged by other registered voters.

In Côte d'Ivoire the government undertook a civil registration exercise during the period 2007–08 aimed at providing everyone with a birth certificate and identity card. To be registered by the local magistrate acting in the presence of traditional authorities, it was sufficient to have oral statements of two witnesses.

In the course of a civil registration exercise, the UN Mission in Kosovo (UNMIK) mandated to administer Kosovo in the wake of the 1999 NATO bombing sought to address the lack of documentation of Roma groups who had suffered from both general lack of documentation and internal displacement. In doing so, UNMIK set out rules allowing alternative forms of evidence to be submitted and supplemented with witness statements:

“Pursuant to sections 4.1 and 4.2 of UNMIK Regulation No. 2000/13, persons applying for inclusion in the register shall establish their identity and their eligibility for registration to the satisfaction of the Civil Registrar, through one of the following methods:

‘(a) an official document issued by any State or organ thereof, including an identification card, passport or any other travel document containing the photograph or fingerprint of the applicant;

(b) Other documents issued by a State or organ thereof, or by an agency or organ of the United Nations, supported when necessary by independent corroborative evidence, either written or oral; or

(c) Other documents issued prior to 10 June 1999 by other entities including, but not limited to, educational, health, political and religious institutions, public utilities and other quasi-official bodies, supported by independent corroborative evidence whether written or oral³⁶³

[...]

Applicable Kosovo legislation on habitual residency registration and administrative procedure foresees the possibility of using witness statements as a supplementary way to collect evidence about relevant facts.

362 UNAMET, “Notification I: Guidelines on Assessments of Documents,” Section D1 (1999) (www.geneseo.edu/~iompress/LeftNav/PRESSElectionArchive.htm).

363 OSCE/UNMIK, p. 27.

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Use of witness statements to establish the identity of IDPs without documentation... (Cont.)

In the case of civil status and habitual residency registration these statements constitute a supplementary source of evidence concerning the applicant's identity and eligibility for registration.

Section 5.4 of UNMIK Administrative Direction No. 2001/12102 stipulates that in case the applicant is unable to provide specified written documentation on his/her identity the "registration centre staff may consider other documents, and statements of witnesses, as evidence of identity in accordance with Civil Registry procedures, consistent with section 4 of UNMIK regulation No.2000/13." Equally, section 6.4 provides the possibility to use a witness procedure in the process of establishing the applicant's eligibility for habitual residency registration: "In addition to the evaluation and review of documents presented by applicants at the registration centre, registration centre staff may consider the statements of witnesses."³⁶⁴

In evaluating evidence for facilitated document issuance or re-issuance, competent authorities should give due consideration to documents issued by non-state actors. Documents should also be recognized across administrative boundaries in decentralized states for such purposes.

What type of administrative procedures should apply in facilitated documentation programs?

Facilitated issuance of documentation to IDPs should be subsidized or even free. Given that IDPs have typically lost their livelihood and most of their assets, even charging standard *processing fees* for necessary documents such as birth certificates may risk denying the most vulnerable IDPs effective access to their rights.

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CASE STUDY

Discounted administrative taxes for IDPs

The Law on Administrative Fees of the Republic of Serbia provides for specific discounts to be available to IDPs for the issuance of certain decisions and documents.³⁶⁵ For instance,

"Heading Number 36

For a decision on:

- 1) subsequent registration of birth, marriage and death to registry books
- 2) change of personal name
- 3) conclusion of marriage through a proxy

NOTE:

Refugees and displaced persons from the territory of the former Socialist Federative Republic of Yugoslavia (hereinafter referred to as: SFRJ) and internally displaced persons from Autonomous Province of Kosovo and Metohija (hereinafter referred to as: APKM), will pay the fee from Paragraph 1) of this Heading Number reduced by 70%, on the grounds of appropriate documents proving their status."

³⁶⁴ OSCE/UNMIK, p. 31.

³⁶⁵ Law on Administrative Fees of the Republic of Serbia, Official Gazette No. 43/2003, 51/2003, 61/2005, and 101/2005.

As a general matter, IDPs should not be subject to *deadlines to apply* for issuance of necessary documentation. Facilitated issuance should in principle be available to IDPs whenever the need arises. Likewise requirements that applicants establish *registered residency* should be modified to reflect IDPs' de facto circumstances. In particular, means should be found to allow residents of official and unofficial collective accommodation as well as rented private accommodation and informal settlements to be deemed to reside officially in the area where they are displaced to the extent necessary to be able to issue them documentation.

To whom and where should IDPs be able to apply for facilitated documentation issuance?

In displacement settings, the authorities that issue specific types of documentation under normal circumstances should retain ultimate responsibility for doing so with regard to IDPs. However, depending on the nature of displacement and the institutional response to it in any given country, public bodies created or mandated to deal with internal displacement may come to play important roles such as

- providing public information to IDPs on facilitated issuance procedures available to them;
- collecting claims for documentation and accompanying evidence;
- evaluating such claims according to provisional rules on facilitated issuance to IDPs;
- distributing documentation issued under facilitated procedures to IDP claimants.

IDPs may be dispersed throughout a country's territory or concentrated in inaccessible areas far from the agencies that normally issue documentation. In light of their vulnerability, IDPs should not be expected to travel long distances in order to apply for or receive necessary documentation. Options for making facilitated documentation issuance accessible to IDPs include

- allowing applications to be submitted by post;
- placing offices that can receive and process documentation requests close to IDP concentrations;
- when IDPs are widely dispersed, sending mobile teams to register and process requests for vital documentation at the sites where IDPs can be found.

However facilitated claims for documentation are received and processed, it is vital that such procedures be made accessible through public information campaigns that clearly set out IDPs' rights with regard to documentation, the nature of the evidence they should seek to submit with their claims, and the procedures that will be followed. The impact of such an information campaign can be significantly increased if it is accompanied by the provision of legal advice accessible to IDPs who are socially marginalized or living in remote areas. The competent authorities should consider cooperation with qualified civil society groups who might play this role. Also, as discussed in chapter 1, section B, it is crucial that local officials giving effect to facilitated document issuance programs are given clear and binding guidance and sufficient resources to carry out their new tasks.

How can the confidentiality of personal data submitted by IDPs be achieved?

It is imperative that the authorities responsible for handling personal information on IDPs protect their integrity through good data protection practices. Personal information in the form of paper files should always be kept locked up, while any electronic data should be password-protected and encrypted. Laws and

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policies on internal displacement should include guidelines on the use of personal data collected from IDPs that set out

- the specific purpose for which the information has been collected, along with clear instructions that the data should not be used for any unauthorized purpose nor shared in any manner that would jeopardize the security of the individual concerned;
- the specific staff authorized to collect, access, and use the information;
- the procedures for sharing of personal data and persons with whom data can be shared;
- the secure location where the information will be stored (including the presence of a guard);
- the requirement that the data be destroyed once the purpose for its collection has been served.³⁶⁶

How can access to documentation be facilitated in the context of durable solutions?

In cases of conflict-related displacement, documentation issues should be included in peace negotiations and the implementation of peace agreements. In particular, all parties should undertake to freely make available all official information and records that might have been divided between them previously. The parties should also undertake to recognize and give effect to personal documentation issued to IDPs in facilitated processes, at least until they can be substituted with permanent documentation based on agreed procedures and to the extent to which they do not impinge on the rights of others. For instance, title deeds to disputed properties issued in the course of displacement may be persuasive evidence but should not be dispositive in post-displacement adjudications. In cases in which temporary documents have initially been issued to allow IDPs to exercise legal rights or entitlements despite missing personal documentation, these documents should be replaced with permanent documentation as soon as conditions allow.

³⁶⁶ Further guidelines on confidentiality can be found in UNHFCR, “Procedural Standards for RSD under UNHCR’s Mandate” (1 September 2005) and IASC, “Guidelines on Profiling Internally Displaced Persons (IDPs),” draft (May 2006), pp. 51–53.

Chapter 12

Property and Possessions

A. INTRODUCTION

Purpose: The purpose of Principles 21 and 29 is to ensure that property and possessions left behind by IDPs, such as homes and lands, are protected from destruction and appropriation during displacement and restored to their owners or lawful possessors in the context of durable solutions.

Principle 21

1. No one shall be arbitrarily deprived of property and possessions.
2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:
 - (a) Pillage;
 - (b) Direct or indiscriminate attacks or other acts of violence;
 - (c) Being used to shield military operations or objectives;
 - (d) Being made the object of reprisal; and
 - (e) Being destroyed or appropriated as a form of collective punishment.
3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

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Principle 29

[...]

2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Other relevant principles: 6, 9, 28, and 29(1).

Legal foundations:³⁶⁷ All persons have the right to ownership and peaceful enjoyment of property and possessions, alone as well as in association with others.³⁶⁸ Any deprivation of property and possessions and rights related to them by the state or authorized by it must be in the public interest and subject to the

³⁶⁷ For more details see Kálin Walter, *Guiding Principles on Internal Displacement: Annotations*, 2nd ed., Studies in Transnational Legal Policy 38 (2008), pp. 95–100 and 132–40.

³⁶⁸ UDHR, Article 17 (1); Protocol 1 to the ECHR, Article 1; ACHR, Article 21(1).

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conditions provided for by law and by the general principles of international law, including the payment of just compensation.³⁶⁹

In armed conflict situations, civilian property and possessions shall not be subject to pillage or direct or indiscriminate attacks; use as a shield for military operations or objectives; or destruction or appropriation as reprisal or collective punishment.³⁷⁰ In all situations, property and possessions shall be protected from destruction or arbitrary and illegal appropriation, occupation, or use. The obligation to transfer persons evacuated in or from occupied territories back to their homes as soon as hostilities have ceased there implies the right to recovery of their property.³⁷¹ More particularly, the property rights of displaced persons must be respected.³⁷²

All persons have the right to adequate housing and to freedom from arbitrary or unlawful interference with the home, including the right to legal security of tenure.³⁷³ Indigenous and tribal groups' rights to ownership, possession, and access to lands they have traditionally occupied or used should be recognized and given effect.³⁷⁴

Rights in property, possessions, homes, and lands should be respected and ensured to all individuals without discrimination of any kind, including on the basis of displacement. In the case of women, ethnic or racial minority groups, or other disadvantaged groups, special measures may be necessary to ensure equal access to housing and land and protection of property rights. In all cases in which state obligations with regard to respect for or protection of rights to homes, land, property, and possessions have been violated, the victims are entitled to remedies, including reparations, proportional to the harm that they suffered.³⁷⁵ Reparations should take the form of the restitution of full rights to affected homes, lands, and properties. Where restitution is impossible, just compensation should be provided.

Regulatory framework: Many national constitutions protect established rights of property and set out rules on the conditions under which property and possessions may be expropriated. Procedures for expropriation typically are set out in law. Further legislation related to rights in property may include laws that govern the transfer of property through sale, exchange, and inheritance and that regulate various types of land tenure and land use in general as well as rules defining landlord-tenant relationships. Certain broad principles

369 UDHR, Article 17 (2); Protocol 1 to the ECHR, Article 1; ACHR, Article 21(2).

370 See, for example, Fourth Geneva Convention, Articles 28, 33 (2) and (3), and 53; First Additional Protocol to the Geneva Conventions, Articles 51 (4) and (7) and 52; Second Additional Protocol to the Geneva Conventions, Article 4 (2)(g); Rome Statute for the ICC, Article 8, paragraph 2 (b)(xvi); ICRC, *Customary International Humanitarian Law*, vol. 1: "Rules," Rules 52, 133; see also Rules 7, 8, 9, 11, 12.

371 Fourth Geneva Convention, Article 49 (2).

372 ICRC, *Customary International Humanitarian Law*, vol. 1: "Rules," Rule 133.

373 UDHR, Articles 12 and 25; ICCPR, Article 17; ICESCR, Article 11; Committee on ESC Rights, General Comments 4 and 7.

374 ILO Convention No. 169, Article 14.

375 UDHR, Article 8; ICCPR, Article 2 (3); ACHR, Article 25; ECHR, Article 13, UN General Assembly, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law," U.N. Doc. A/RES/60/147 (2006); Sub-Commission on Human Rights, "Housing and Property Restitution in the Context of the Return of Refugees and Displaced Persons"; Paulo Sergio Pinheiro, "Principles on Housing and Property Restitution for Refugees and Displaced Persons," U.N. Doc. E/CN.4/Sub.2/2005/17 (2005) (hereinafter the Pinheiro Principles).

of property law that are given similar effect across a broad spectrum of legal systems include rules such as those (1) ascribing title to persons who openly and continuously possess property belonging to others for a prescribed time period; (2) nullifying contracts on sale or exchange of property made under duress; and (3) protecting the purchase and possession of property that was wrongfully acquired by the seller as long as the buyer had no reason to know of the wrongful acquisition.

Many domestic legal systems include safeguards for tenants against summary eviction by landlords and require property owners to go through legal proceedings to eject wrongful occupants of their property rather than resort to self-help. Broadly speaking, safeguards and remedies exist in virtually all domestic systems against wrongful occupation, confiscation, or transfer of property. However, in some cases, women are accorded fewer formal rights with regard to property than men, particularly with regard to inheritance. Rights to homes as such are generally protected as well, albeit more conditionally. A significant problem across legal systems involves informal or customary rights to homes, lands, and property. Such rights are of enormous significance to their holders, but they tend to be incompletely or ambiguously regulated in domestic statutory law and therefore not protected through effective domestic safeguards and remedies.

Problems often encountered by IDPs: Homes and lands left behind by IDPs often are their most valuable assets and may be central to their livelihoods and identities. Restitution of such assets or compensation when that is not possible is both crucial to the achievement of durable solutions and often necessary as a legal remedy. However, the inherent value of such abandoned properties tends to result in their occupation and use by others. In some cases, such occupation takes the form of unregulated squatting, which, while typically illegal under domestic law, may nevertheless be sanctioned or encouraged by local authorities; in any case, it constitutes a clear physical obstacle to restitution or return. More problematic situations arise when the property rights of displaced persons are contested. Such scenarios can take several forms, including allegations that properties were voluntarily transferred through private contracts (often under duress); strict application of prescription rules and use requirements without regard to the circumstances that prevailed at the time of displacement; and official reallocation of properties under color of law. Further obstacles to restitution and return in both armed conflict and natural disaster settings can include³⁷⁶

- unlawful occupation or looting of properties, including destruction of homes, and damage to cultivated land by others;
- attempts to permanently confiscate abandoned lands by powerful local interests, particularly when the rights of those displaced to abandoned properties were not formally registered or recognized;
- disputes over property among members of the displaced community that may be exacerbated by loss of documents and the destruction of property registries or landmarks that served to demarcate land plots.

In cases in which restitution rights are accepted in principle, complicated questions arise about the extent and nature of those rights and the procedures for giving them effect. In cases in which restitution does go forward, issues such as insufficient public information about claims deadlines, non-transparent claims processing, and inadequate enforcement mechanisms can still present obstacles. Moreover, when restitution

³⁷⁶ See, generally, IASC, “Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster,” Section C.2.

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efforts focus heavily on formally recognized rights, they risk excluding marginalized groups that were denied access to property and formal title prior to displacement. Particular risks exist in situations in which women's and orphaned children's rights to inherit, acquire, and possess land are limited by legal or factual barriers, as well as situations in which minority groups—or poor communities—either did not have access to land and property or were unable to acquire formal rights to the land and property that they habitually used. Particular problems arise in the context of customary land administration by displaced indigenous and tribal groups, given the practical complications inherent in attempts to give formal recognition to forms of traditional collective ownership that often are based on unwritten rules.

B. CHECKLIST: ISSUES TO BE ADDRESSED BY DOMESTIC LAWS AND POLICIES

Minimum essential elements of state regulation:

At a minimum, competent authorities should do the following:

1. Recognize of the property rights of IDPs to their abandoned homes, property, and land, including the right to protection and restitution of such property.
2. Take basic measures to secure homes, lands, and property left behind by IDPs against destruction, unlawful use or occupation, and appropriation.
3. Develop facilitated procedures to restore or compensate IDPs' rights in housing, land, and property; where this is not possible, provide support to informal dispute resolution bodies to take into account human rights law in negotiating solutions to local property claims.

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In order to ensure that IDPs rights to property, possessions, homes, and lands are preserved during displacement and upheld in the context of durable solutions, domestic laws and policies should

- protect property abandoned in situations of armed conflict from destruction and unlawful occupation and appropriation and permit temporary allocation of such property only as long as necessary on humanitarian grounds;
- protect abandoned properties and IDPs' rights to them in natural disaster situations from the moment of displacement and provide compensation and resettlement assistance in cases in which return is not possible;
- provide adequate compensation and resettlement assistance in the context of development projects that require the resettlement of affected populations in order to remedy the resulting loss of properties and homes;
- provide for facilitated procedures to efficiently address large numbers of property-related claims in the context of durable solutions; assign responsibility for applying those procedures to an existing adjudicatory body or an ad hoc property commission; when insufficient state capacity exists, encourage informal dispute resolution bodies to take into account human rights law in negotiating solutions to local property claims;
- ensure that facilitated procedures for property claims are based on and compatible with existing domestic law but interpret and apply the law in a manner that takes into account the involuntary displacement of the claimants;

- ensure that facilitated procedures for property claims include procedural devices such as presumption and lowered evidentiary standards in cases in which doing so is appropriate in light of common patterns of displacement suffered by claimants;
- subject decisions in facilitated procedures to review in a form that does not undermine the efficiency of administrative processing;
- accompany any use of deadlines for filing claims with public information and legal assistance measures that ensure that all potential claimants have an effective opportunity to participate;
- set out rules on admissibility in facilitated processes that clearly regulate who has standing to claim as well as the temporal, geographic, and substantive scope of the process, in accordance with both the local context and international human rights obligations;
- set out rules on examining the merits of claims in facilitated processes that clearly regulate what types of remedies are provided under which circumstances and what rights any subsequent occupants of property may have, in accordance with both the local context and international human rights obligations;
- ensure that pre-displacement domestic law is not applied in situations in which it had the effect of discriminating against women or other groups and would prevent the achievement of remedies and durable solutions for such groups;
- prioritize the full restoration of prior rights over homes, lands, and property as the preferred remedy in cases of wrongful displacement but provide for other remedies when restitution is impossible;
- provide post-displacement occupants of claimed properties with information on their rights, including alternative accommodations, the harvest of any crops that they had planted, and compensation, including for necessary improvements and so forth;
- assign domestic law enforcement and other officials a clear legal obligation to participate in the execution of judgments.

C. NECESSARY ELEMENTS OF STATE REGULATION

What steps can be taken to safeguard property rights in the immediate aftermath of displacement?

The assumption in both armed conflict and natural disaster settings generally should be that displaced communities are to be assisted to return to their homes and lands as soon as possible after the immediate danger has passed. Steps must be taken to protect homes and property from the first moments of displacement until IDPs can recover their property, including the following:

- All available records of property ownership and tenure in affected areas should be secured and legal transfers of property in the affected areas should be suspended, as a rule, until all affected persons have had an opportunity to return voluntarily.
- Any military or police presence remaining in the affected area should be instructed to take all reasonable steps to maintain civil order; protect abandoned properties from destruction, looting, and unlawful occupation or appropriation; and to refrain from damaging or arbitrarily appropriating such property themselves.

What steps can be taken to safeguard property rights throughout the period of displacement?

The obligation to protect property abandoned by IDPs from destruction and unlawful occupation and appropriation extends throughout their displacement. In addition to continuous measures to monitor abandoned property and protect it from looting and trespassing, competent authorities should undertake measures to document and preserve the property claims of the displaced in order to facilitate assertion of those rights when the conditions for durable solutions are achieved. Beyond securing and registering documentary evidence of title and tenure rights, such measures may include the following:

- Displaced communities should be consulted to ensure that disputes over property do not complicate return. When such disputes exist within communities and cannot be mediated through traditional means within the community, dispute resolution mechanisms should be set up as soon as possible after displacement has occurred. Such mechanisms should be mandated to consider both formal proof of ownership and less formal forms of evidence such as sworn witness testimony.
- In some cases, it may be appropriate to assist displaced communities in collectively mapping their lands in order to preempt conflicts or in order to preserve evidence to support their claims at an early point in displacement when individual claimants have not yet become dispersed. When neighboring or nomadic groups have traditionally enjoyed rights of periodic use or access to the lands and properties of such communities, those groups also should be included in the process.

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Competent authorities should publicly affirm the rights of all displaced persons to voluntary return, restitution, and other remedies for lack of access to their homes and lands and should not undertake any actions that would unnecessarily prejudice the exercise of those rights. IDPs must be allowed to return to and freely dispose of their properties as soon as conditions of basic safety have been achieved. When properties have been destroyed or damaged while their owners or occupants were absent, competent authorities should be prepared to provide assistance in reconstructing both individuals' homes and properties and all damaged infrastructure and public utilities necessary to make return viable.

CASE STUDY

Cooperation with international agencies to protect IDPs' property rights

In April 2008, the Colombian government signed an agreement with the UN Refugee Agency (UNHCR) to promote protection of land and restitution of property rights. The agreement provides a framework for coordination of various programs already in place to legally protect abandoned lands and sets out new initiatives to restore the property rights of people who have lost lands through forced displacement, providing them with a greater chance at socioeconomic stability. According to official statistics, over three-quarters of the 2.4 million registered IDPs in Colombia previously made their living from the land and up to 6 million hectares have been abandoned in the course of the country's ongoing displacement crisis. The agreement with UNHCR is meant to address the lack of remedies for loss of land and impoverishment experienced by many Colombian IDPs:

Cooperation with international agencies to protect IDPs' property rights (Cont.)

"This new agreement promotes an integral approach to land issues, starting from prevention with land registration in communities at risk of displacement—a crucial step since many Colombian farmers do not have legal titles to the lands they own, making it far more difficult to claim them back after displacement. Other steps include the legal protection of abandoned lands so that they cannot be sold or otherwise disposed of and... mechanisms to facilitate the distribution of lands to displaced people who have lost properties.

UNHCR has been working in Colombia for the past ten years to support the government's efforts on behalf of one of the largest internally displaced populations in the world. Among other initiatives, it supports the Tierras (Land) project, which in the past four years has already registered and legally protected more than 2 million hectares of land belonging to displaced people or communities at high risk of forced displacement."³⁷⁷

In armed conflict situations in which there is a pressing need for shelter and land—particularly for persons displaced from other parts of the country—authorities may best be able to protect abandoned property by affirmatively regulating its allocation on humanitarian grounds rather than either penalizing or turning a blind eye to informal and unregulated squatting. When abandoned housing and land are temporarily allocated on such grounds, the guidelines set out in chapter 9 should be strictly adhered to. In all cases of occupation of abandoned property, authorities are responsible for ensuring that such properties are not damaged or destroyed and that their occupation in the absence of their owners or lawful users does not result in the unlawful transfer of title or other rights.

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Disaster-displaced populations should be consulted to identify priority assistance measures that can be undertaken by the competent authorities as well as domestic and international aid agencies to lay the ground for reconstruction and recovery. In cases in which individual displaced persons and families had private insurance coverage against the type of disaster in question, authorities should support their efforts to pursue their claims and may discount public assistance to such households in light of resulting payouts. However, in all cases of disaster-based displacement, authorities retain the primary duty and responsibility to provide assistance.

In some cases, the nature of the natural disaster in question may justify permanent restrictions on remaining in or returning to certain areas or resuming certain activities (including rebuilding homes) in those areas. For instance, the land may no longer exist or may be too prone to repeat disasters (in some cases, exacerbated by human activities). However, even when return is impossible, it remains vital to reconstruct the ownership and tenure structure of affected areas in order to provide appropriate resettlement assistance and compensation that leave communities at least as well off as they were prior to their displacement. Under such circumstances, the competent authorities should

- base restrictions on law, on compelling grounds of safety, health, disaster prevention, or implementation of reconstruction or development schemes;
- provide affected communities with judicial recourse to appeal both the determination that return is impossible and the terms of any proposed resettlement scheme;

377 UNHCR, "UNHCR and Colombia Sign Accord to Protect Land Rights of Displaced," press release, April 2008.

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- arrive at resettlement schemes in full consultation with affected communities; and
- assist individuals and families in pursuing any relevant private insurance claims while retaining overall responsibility for compensation and assisted resettlement.

How should rights to housing, land, and property be taken into account in designing and implementing development-induced resettlement programs?

As set out in chapter 3, large development projects requiring the resettlement of affected populations must incorporate all possible steps to mitigate the resulting interference with affected persons' rights. Resettlement plans should, inter alia, provide compensation that recognizes not only the loss of formally owned property but also rights in homes and housing generally (whether formally owned or not) and traditional and customary rights to own, use, and access land and natural resources.

In the context of durable solutions, how can high numbers of property-related claims be handled efficiently?

In all displacement settings but particularly those related to armed conflict, the dispossession of IDPs' homes, lands, and properties is usually part of a larger pattern of violations of their human rights. In providing remedies for the destruction or loss of access to properties, competent authorities should focus not only on the substance of IDPs' claims (see below) but also on procedures for resolving them fairly and efficiently. Most countries already have laws banning the wrongful destruction or appropriation of property and courts or other dispute resolution bodies that are competent to hear such cases.

However, procedures before ordinary courts and adjudicatory bodies tend to place the primary burden of proof on the initiator of a case (whether an aggrieved individual or a representative of the state), who must bring evidence and establish the facts in that particular case. Such procedures normally involve elaborate and time-consuming fact-finding and may be subject to multiple appeals. In situations of mass displacement in which patterns of dispossession are similar across cases and generally can be documented, such elaborate fact-finding procedures not only are unnecessary but also impose a high burden in terms of production of formal evidence, expense, time, and uncertainty on claimants who often are already impoverished and traumatized by their experience. Moreover, caseloads in such situations can impose significant additional burdens on ordinary adjudicatory bodies that already may be weakened or in need of reform in the wake of armed conflicts or crises. Such factors need to be taken into account in determining both the adjudicatory body for property claims and the procedures to be applied.

In most situations of mass displacement, the existence of generalized patterns of dispossession and the need for rapid adjudication of large numbers of claims justify the introduction of facilitated procedures—based on expedited proceedings and reduced evidentiary burdens—in favor of IDP claimants (see below for more details; similar recommendations are made regarding issuance of documentation for IDPs in chapter 11).³⁷⁸ Such facilitated procedures may be applied by the ordinary courts or existing administrative or customary adjudicatory bodies. However, in situations in which the caseload of claims brought by IDPs is so large that it risks overwhelming existing bodies or leading to unacceptable delays—or where such bodies are not functioning effectively—consideration should be given to alternative models.

³⁷⁸ See Pinheiro Principles, Principle 12.5.

In several recent post-conflict settings, ad hoc property commissions have employed facilitated procedures for the restoration of rights to housing, land, and property for IDPs and refugees. Such commissions typically are mandated under peace agreements or domestic legislation to remove the caseload of property claims relating to specific past displacement events from the jurisdiction of ordinary adjudicatory bodies and to decide them on the basis of facilitated administrative procedures. Property commissions typically are composed of commissioners selected on the basis of expertise who are responsible for taking decisions in individual cases and secretariats that receive and investigate claims, prepare legal memoranda, and draft decisions. Property commissions may have regional offices staffed by the secretariat or may be centralized, depending on the context.

When local capacity exists, property commissions and other adjudicatory bodies engaged in facilitated processing of property claims should seek to develop a claims database early on. Such a database can assist with the processing of claims by allowing them to be grouped according to various features (so as to allow identification of especially urgent categories of cases for prioritized processing) and allowing overall progress to be tracked and reported. While personal data should never be disclosed, publication of aggregate data on claims processing can demonstrate concrete progress and provide individual claimants with an approximate sense of how long they have to wait for a decision.

In cases in which there is no capacity for setting up a centralized adjudicatory body in the wake of armed conflict and displacement, competent authorities should recognize both the utility and the limitations of initial reliance on existing local dispute resolution processes in seeking to ensure some type of a remedy for claimants. Often such bodies are informal and more likely to apply customary rules than statutory ones. In some cases, those rules may lead to discriminatory or arbitrary outcomes. In addition, such bodies often rely on a negotiated approach to property claims, in which occupiers of abandoned property are allowed to retain possession of some land in exchange for ceding the rest back to displaced owners or lawful users. While such outcomes do not necessarily constitute legal remedies, they may provide the only feasible basis for durable, locally accepted solutions in situations in which the state itself temporarily lacks the capacity to provide better terms to IDPs.

How should facilitated procedures for restoration of IDPs' property rights relate to existing national law?

Facilitated claims procedures should be based on and compatible with existing domestic law, but they should interpret and apply those laws in a manner that takes into account the fact of involuntary displacement and its implications in terms of human rights. In other words, substantive domestic law on property relations should be applied in light of the fact that IDPs (and refugees) were involuntarily displaced from their homes and presumptively were unable to return to use them or to seek local remedies during the entire time that they were displaced.

Examples of the concrete implications of that understanding in terms of the application of domestic substantive law might include the following:

- Statutes of limitation for the initiation of claims to have unlawful occupants ejected and title or tenure rights upheld should be suspended during the period of displacement in light of the fact that no effective remedies existed.

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- Holders of tenure rights over homes or land that are legally conditioned on continuous occupation or use should be recognized as having justified grounds for having been absent from such properties during the period between their original displacement and the point at which return in safety and dignity became possible.
- Persons who were working toward eligibility for stronger rights through continuous occupation and use of properties for a set statutory time period should, in principle, be eligible to resume such occupation again on return at the point that they left off when they were displaced.
- Contracts made by IDPs to sell or exchange their homes or lands at or after the time they were displaced should be presumed invalid due to duress, particularly when they received manifestly inadequate value.

The substantive legal norms that facilitated procedures proceed from should not be limited to the formal statutory law but also should include less formal rules and customs when in the past they had been consistently applied at the local level (see below). It is especially important that customary rules and institutions related to land be given effect in the case of indigenous and tribal peoples or others with a special attachment to or dependence on their lands.

In some situations, domestic substantive law governing property relations may be inherently incompatible with the norms of international human rights. In those situations, the goal of restitution programs should be not only to restore rights that existed prior to displacement but also, in some cases, to create such rights. For instance, in situations in which pre-displacement law did not afford women equal rights to acquire and administer property, the application of such a law could effectively prevent entire categories of displaced persons, such as widows, from having access to a remedy.

Facilitated claims procedures also should proceed from the principles of domestic procedural law (including administrative procedures, civil procedures, and laws governing appeals when relevant). However, as set out below, such procedures should be simplified considerably in favor of claimants in situations in which broad patterns of displacement and dispossession common to a large number of claims can be established.

CASE STUDY

“Gap-filling” through reliance on ordinary law in facilitated procedures

The process of property restitution in Bosnia was based on the passage of special laws setting out facilitated procedures to be applied by local property commissions in each municipality. The laws were explicitly *lex specialis* and any unregulated issues were to be handled in accordance with ordinarily applicable rules of administrative procedure:

“The procedure for the return of apartments to the possession of the occupancy right holders determined by this Law shall be carried out in accordance with the Law on Administrative Procedures, unless otherwise stipulated by this Law.”³⁷⁹

379 Law on the Cessation of the Application of the Law on Abandoned Apartments, *Official Gazette of the Federation of Bosnia and Herzegovina*, No. 11/98, Article 18.

What procedural techniques can help restore IDPs' property rights quickly and efficiently?

Facilitated procedures provide faster (and therefore more effective) remedies because, unlike judicial procedures, they do not require specific proof of all the relevant facts in each case. Part of the reason that ad hoc procedures can be set up at all is that they are designed to process a caseload of claims about which certain factual generalizations can accurately be made. In the context of property-related claims in displacement settings, it generally can be assumed that persons who left areas in the context of mass displacement events did so involuntarily and should be entitled to return and exercise their property rights.

Factors that might reflect such generalizations in settling claims include the following:

- Reduced burden of evidence required for IDPs' claims to be admissible: For instance, restitution claims in mass displacement settings might simply be based on evidence of prior residence in an area affected by displacement and subsequent displacement.
- Admission of alternative forms of evidence—for example, of pre-displacement residence: Witness testimony or utility bills linking claimants to the address in question might be considered sufficient.
- Use of presumptions: For instance, in cases in which rights to property are based on continuous use, it may be presumed that persons who abandoned such properties did so because of events causing displacement and therefore had justified grounds for being away.
- Burden shifting: When IDPs claim rights to properties that they sold in the course of displacement, the burden may be shifted to the person seeking to uphold the sales contract to demonstrate that no duress was involved.
- Standardized compensation: In cases in which remedies consist wholly or partly of financial compensation, average values (ranging from the value of different types of buildings to the value of average annual cash flows per hectare from certain types of crops) can be generalized in order to allow awards to be calculated quickly, consistently, and without disputes over conflicting valuations.

CASE STUDY

Expediting procedures in reparations and restitution processes

In addressing some 2.6 million claims by individuals, corporations, governments, and international organizations harmed by Iraq's actions during and after its 1990 invasion of Kuwait, the UN Compensation Commission was aided by an advance determination by the UN Security Council that Iraq had violated basic norms of international law and therefore was liable for all resulting damages.³⁸⁰ That parties damaged by Iraq's actions could avoid having to prove liability in each individual case provided the basis for expedited proceedings that focused on verification of the validity of claims and evaluation of losses and harms.³⁸¹

Restitution of housing and residential property in UN-administered Kosovo since 1999 was facilitated by the determination that rules and practices set up during the prior decade to disown Kosovo Albanians

380 See UN Security Council, Resolution S/RES/687 (1991), paragraph 16.

381 See Hans van Houtte, Hans Das, and Bart Delmartino, "The United Nations Claims Commission," in *The Handbook of Reparations*, edited by P. DeGreiff (Oxford University Press, 2006).

Expediting procedures in reparations and restitution processes (Cont.)

and prevent them from buying homes from Kosovo Serbs were discriminatory. As a result, the regulation on property restitution adopted by the UN Mission in Kosovo (UNMiK) included conclusive presumptions that homes lost during that period as a result of discrimination should be subject to restitution and that informal transfers of property concluded in violation of the prior rules should be treated as lawful.³⁸² The same regulation also allows for relaxed evidentiary standards, allowing the commission's rulings on property claims to "be guided but... not bound by the rules of evidence applied in local courts in Kosovo" and to "consider any reliable evidence which it considers relevant to the claim..."³⁸³

In Turkey, the valuation of damages resulting from conflict and displacement in the 1990s has been simplified by the adoption of a "matrix" allowing the calculation of standardized compensation awards.³⁸⁴

Such strong procedural devices do give rise to the risk of fraudulent claims, but it is important to remember that evidence can be brought to rebut such claims. The key point in mass-claims proceedings is that given the circumstances (in which large numbers of people were injured by broadly similar patterns of wrongful displacement and dispossession), the burden must be on interested parties (including the competent authorities) to rebut false claims rather than on each individual displaced claimant to show that his or her claim is not false. Giving claims commissions an explicit mandate to make such assumptions also recognizes the vulnerability of IDPs, who often lack access to formal documentary evidence and may be too impoverished by their experience to be able to afford legal representation. Finally, remedies that give procedural forms of recognition to the harm done to IDPs represent a degree of acknowledgment of their wrongful suffering and may contribute to reconciliation.

How can appeals against decisions taken in facilitated proceedings be allowed without undermining the efficiency of the process?

In restitution settings, in particular, it is important that both claimants and other interested parties have some means of appealing administrative decisions taken in facilitated procedures to bodies with a general competence to ensure that the adjudicator in the first instance applied the law properly. In order to facilitate an efficient appeals process, it is important that decisions made in the first instance be motivated (for example, that they include information on the legal rules and the facts that were relied on by the adjudicator) and that deadlines and procedures for appeal be included on the decision itself. Decisions also must be communicated to all interested parties in a manner that allows timely appeals to be made.

However, as mentioned, when the generally known circumstances of displacement weigh heavily in favor of claimants, persons currently occupying properties should not be encouraged to engage in frivolous appeals simply to slow the process down. In some cases, it may be possible to limit the grounds for appeal of positive decisions in order to exclude arguments that have no chance of success (such as reliance on earlier decisions on

382 UN Mission in Kosovo (UNMiK), Regulation No. 2000/60 on Residential Property Claims and the Rules of Procedure and Evidence of the Housing and Property Directorate and the Housing and Property Claims Commission (31 October 2000), Articles 2.1– 2.4.

383 Ibid., Article 21.1.

384 Compensation Matrix and Methodology for Compensation Matrix, Ministry of the Interior of Turkey (March 2007).

temporary allocations that later were cancelled). Under such circumstances it also may be justified to provide that appeals against positive decisions should not have suspensive effect (do not delay the enforcement of such decisions) unless suspension is specifically ordered by a higher body in accordance with law.

How can caseloads for facilitated processes be defined through claims deadlines in a manner that allows all potential claimants an effective opportunity to participate?

Facilitated procedures usually are provisional, meaning that they are set up to address a particular caseload of claims and that they give way to ordinary adjudication proceedings once that caseload is completely processed. As a practical matter, the most efficient way to identify such a caseload is to impose a deadline after which further claims no longer are admissible for consideration in facilitated proceedings even if they meet all other criteria. In order for such deadlines to be equitable, all potential claimants must have had an effective opportunity to make a claim. In addition, claimants who miss the deadline for facilitated processing of their claim should, in principle, still have access to ordinary adjudication procedures in seeking an appropriate remedy.

All potential claimants should have access to information about the process and the criteria and procedures for actually laying a claim. Public information campaigns in languages that IDPs understand can be crucial to ensuring that they are aware of their rights, particularly in cases in which they are dispersed broadly or located in remote areas. Civil society organizations including bar associations should be encouraged to assist in disseminating information on claims processing and even in collecting claims and providing advice and representation to individual claimants when they have relevant legal expertise.

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Public information campaigns should make use of appropriate media in reaching out to IDPs:

- Printed pamphlets can provide detailed summaries of the rules governing facilitated property proceedings, such as how and where to file a claim, what types of evidence are useful and admissible, the existence of any deadlines, and so forth. Pamphlets can be distributed to IDP leaders and community centers; they also should be made available in public offices and on the Internet as well as distributed as inserts in newspapers commonly read by IDPs.
- Announcements made in newspapers and over the radio can include basic information on the process.
- Public information materials may be distributed by civil society actors, but they should include the seal of the ministry competent for overseeing the process in order to symbolize the commitment of the authorities to providing a remedy.
- Meetings with groups of displaced people facilitate the distribution and discussion of informational materials and may allow outreach to marginalized groups that do not have access to the media.

A more practical point related to claims deadlines is that some IDPs may not feel that filing a claim is worthwhile until it is clear that the process of providing remedies is actually credible. Therefore, in order to maximize the number of claims handled through facilitated procedures, it may be necessary to set deadlines to apply after implementation of early claims has already begun. Finally, it should not be difficult or expensive to file a claim. Mechanisms to bring claims procedures within reach of potential claimants include the following:

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- travel to sites where IDPs are living by official claims collections teams or NGOs authorized to collect claims and forward them to commissions;
- submission of claims by mail;
- submission of claims by proxy, including through legal representatives;
- submission of claims to any public authority, including at the site of displacement, and establishment of a mandatory referral system to ensure that the claims are forwarded to the correct office; and
- submission of claims after the end of the deadline upon presentation of evidence that the claimant had specific reasons not to have been aware of the deadline.

CASE STUDY

Mandatory referral of claims submitted to the wrong authorities

In Turkey, legal claims for compensation for damages suffered in the course of conflict in the early 1990s should be filed with the governorship of the province where the alleged losses were incurred or the incident giving rise to the loss took place. However, many applicants are IDPs who are now located in distant provinces and who, due to their social marginalization, may not have access to detailed information on how to file a claim. As a result, mandatory referral of misaddressed claims is a key protective element in instructions setting out procedures for implementation of the Compensation Law:

“Applications filed with other governorships, deputy governorships, representations of the Republic of Turkey abroad, other ministries, and other public agencies and institutions than the concerned governorship shall be referred to the concerned governorship forthwith and the applicant shall be informed of the same. In such cases, [the] initial application date shall be the date on which [the] related authority received the application.”³⁸⁵

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What key rules of decision-making must be defined in law for adjudicatory bodies conducting facilitated property proceedings?

In order to avoid arbitrariness, special laws setting up facilitated processes for IDP claims related to property must give clear instructions to adjudicators on how they should proceed in light of both local contextual factors and the relevant rules of international human rights law. Such rules apply to both the admissibility of claims and their substance. An overview of some of the most important categories of rules is given below, and each is discussed in more detail in subsequent sections of the chapter.

Rules on admissibility of claims

- Claimants: What categories of individuals or groups have standing to participate in the process?
- Temporal scope: What are the dates within which alleged property violations must have occurred in order to be eligible for remedies through the process?
- Geographical scope: In which locations must the alleged property violations have occurred for claims to be admissible?

³⁸⁵ Regulation No. 7955 on Compensation of Losses Resulting from Terrorist Acts and Measures Taken against Terrorism (October 2004), Article 8.

- Substantive scope: What types of rights to properties, homes, and lands are sufficiently significant to give rise to a claim for remedies when those rights were denied?

Rules on the merits of claims

- Substantive remedy: Restitution of homes, lands, and properties through the restoration of full pre-displacement rights generally should be the preferred remedy. However, the law should state any circumstances under which restitution should be regarded as impossible, requiring reliance on compensation instead. The law also should set out what types of compensation are available.
- Application of domestic substantive law in light of international rights obligations: In what cases should commissions recognize rights that claimants did not formally have at the time that they were displaced?
- Rights of any subsequent occupants: What rights, if any, should post-displacement occupants of claimed homes, lands, and properties have, and under what circumstances?

Admissibility: What categories of individuals or groups have standing to participate in the process?

In all situations, the titular holders of recognized ownership or tenure rights in property should be able to file a claim. However, in principle, the claims of subsidiary holders of such rights, such as spouses and family household members, also should be explicitly admissible, particularly when the primary rights holder is dead or missing. In cases in which remedial programs cover property disputes that arose over a long period of time, claims by heirs entitled to inherit the property rights in question also should be admitted. Finally, in light of the equal rights of married women and their husbands with respect to the ownership and disposition of property, any incompatible domestic rules should be set aside for the purpose of both the admissibility of claims by women, particularly widows, and the award of remedies (see below).³⁸⁶

In cases involving informal or customary rights or systems in which registration requirements were not universally respected, the focus should be on the restoration of de facto rights, recognized through common practice and attribution at the local level, rather than on insistence on strict de jure compliance with statutory law. Overly formalistic approaches to such questions serve only to exclude significant numbers of IDPs from remedies and durable solutions. In cases in which communities of people—particularly indigenous and tribal groups—experienced the deprivation of their property rights as a collective injury, competent authorities should consider allowing their collective claims to traditionally held lands to be admitted and considered.

Claims procedures should include mechanisms for addressing multiple and competing claims. For instance, when separated members of the same pre-displacement household have claimed the same property, such claims generally should be joined into a single claim if none of the parties objects. When several pre-displacement parties have put forward competing claims to the same property, mechanisms for determining the rightful claimant may be introduced at the admissibility stage whenever possible or later in the process when appropriate in light of domestic legal rules (for example, when the titular rights holder died during

³⁸⁶ See CEDAW, Article 16 (1)(h); Pinheiro Principles, Principle 13.2.

displacement, the legal division of the property in question among his or her successors might take place after it has been formally restituted to the family).

CASE STUDY

Admissibility of restitution claims by lawful possessors as well as owners

Before the 1992–95 war in Bosnia, many owners of private property failed to register their rights in the cadastral records in order to avoid tax payments. The post-war restitution laws in Bosnia recognized that widespread practice by providing that private property could be claimed not only by registered owners but also by lawful possessors:

“Owner of the real property declared abandoned shall have the right to file a claim for the return of the real property at any time. Exceptionally, claims for repossession of real property may also be made by persons who were in unconditional possession of the real property at the time it was declared abandoned.”³⁸⁷

Admissibility: What are the dates during which alleged property violations must have occurred in order to be eligible for remedies through facilitated processes?

One of the key parameters used to define the scope of facilitated procedures is the definition of a specific time period during which the events giving rise to claims must have occurred. As a rule, claims related to deprivation or lack of access to property should be admitted when the alleged wrongful acts took place within a time period characterized by widespread or systematic displacement. The temporal scope of facilitated procedures should not be limited in an overly formalistic way—for example, through reference to declared states of emergency or war—but should cover the entire time period during which the alleged wrongful acts took place systematically or according to a common pattern.

While facilitated programs should address property grievances arising from displacement, they cannot always address property-related root causes of displacement. When property relations prior to displacement were characterized by inequitable or discriminatory patterns of access to or ownership of land and property, the competent authorities (including the parties to peace agreements) should commit themselves to addressing such injustices through prospective reforms aimed at ensuring equitable access to adequate land, housing, and property for all members of society. That is especially urgent in situations in which significant numbers of IDPs were poor, under-housed, or landless prior to displacement and therefore have little to gain from restitution or even compensation. In cases in which violent and overlapping disputes over property have occurred continuously for generations, the conditions for a restitution program may not exist, leaving claims and grievances to be dealt with strictly through prospective reform.

Admissibility: In which locations must the alleged property violations have occurred for claims to be admissible?

The geographic scope of remedial programs should take in the entire area where wrongful displacement and dispossession occurred according to a broadly similar pattern. As with temporal scope, geographic scope

³⁸⁷ Law on the Cessation of the Application of the Law on Temporary Abandoned Real Property, *Official Gazette of the Federation of Bosnia and Herzegovina*, No. 11/98, Article 4.

should not be formalistically limited to, for example, the administrative boundaries of territories where a state of emergency was declared. In many cases, geographic scope may simply be left undefined, allowing claims from persons alleging wrongful deprivation of property rights anywhere in the country.

Admissibility: What types of rights to properties, homes, and lands are sufficiently significant to give rise to a claim for remedies when those rights were denied?

One of the most important rules in remedial programs is identification of the types of property rights that are to be recognized and affirmed. The starting point always is legally recognized ownership rights. However, international human rights law protects rights to peaceful enjoyment of “possessions” as well as property and calls more broadly for secure tenure rights and privacy in homes, even where they are not formally owned by their residents (see “Legal Foundations,” above). From that perspective, established rights of tenancy, possession, access, and use also should be upheld through some type of remedy for their deprivation (see below, “merits”), particularly when they were vital to the residential and subsistence needs of large groups of IDPs.³⁸⁸

The customary rights of indigenous and tribal groups or others with a special attachment to or dependence on their lands always should be upheld. Finally, de facto rights not recognized in domestic law, such as rights to inhabit informal or unregistered urban settlements, should be included in remedial programs, particularly when such unrecognized rights were predominantly held by groups that were marginalized or suffered from discrimination prior to displacement. Such rights should be recognized with regard to housing and land as well as other significant real estate property, such as business properties.

Merits: What type of remedy should be provided?

Restitution in the sense of restoration of all pre-displacement rights to claimed properties should be the preferred remedy for IDPs. That is not only because restitution comes closest, as a legal remedy, to meeting the criteria of providing redress that is proportional to harm suffered, but also because restitution is the only legal remedy that supports full choice among durable solutions. Restituted properties can be returned to and lived in or sold, leased, or exchanged to finance durable resettlement elsewhere. By contrast, remedies involving compensation support only resettlement; they rule out return.

In situations in which rights that recognize less than full ownership are restituted, IDPs may in some circumstances be required to return in order to retain them. Rights of access or occupation of homes and lands may in some cases be contingent on continuous use, meaning that when such rights are restored, the obligation to possess and use such properties may resume again. However, when that obligation arises in post-displacement situations, it should not apply to IDPs whose properties have been restored to them until such time as it is possible for them to return in safety and dignity. In addition, when members of the general population become eligible to upgrade their rights to such properties to encompass full ownership—for instance, in privatization or titling programs—IDPs should be able to participate in such programs on no less favorable a basis than those who were not displaced.

388 Pinheiro Principles, Principle 16.1.

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Remedies should, in principle, extend to all land and property-related rights that IDPs were dependent on for their residential and livelihood needs. For instance, when pastoralists have lost traditional rights of seasonal access to grazing land settled by others, those rights should be restored whenever possible. In such cases of multiple rights to land, it is important to seek to involve all stakeholders in negotiations aimed at restoring the balance of overlapping land uses that had been achieved prior to displacement.

Compensation should, in principle, be substituted for restitution in cases in which the latter is not possible. Such impossibility of restitution might take a number of forms:

- physical destruction of property of such magnitude that it is impossible or infeasible to return it to its former use;
- legal impossibility in cases in which the property has been sold (in some cases, multiple times) to buyers who had no reason to know of the displacement of the original owners or lawful occupants and whose continued possession may therefore be protected;
- permanent restrictions on entry or return to areas subject to natural disasters or other severe threats.

Compensation may take several forms. *Financial compensation* involves payment of cash in an amount equivalent to the value of the lost property. *In-kind compensation* involves provision of property that is, in principle, functionally equivalent to the property that was lost. Several other types of compensation should be considered as important remedies on their own as well as in addition to restitution. They include compensation for wrongful damage to or destruction of reclaimed properties, rental payments for use of such properties (for example, in cases in which properties were temporarily allocated to others on a humanitarian basis), and compensation for loss of income derived from the properties during the period that access was denied (particularly in the case of business properties, orchards, and agricultural or grazing land).

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In cases in which IDPs were completely homeless and/or landless prior to displacement (for example, they had neither *de jure*/recognized rights nor *de facto*/unrecognized rights to any property), efforts should be made to assist them in enjoying non-discriminatory access to homes and lands on a prospective basis in the place where they choose to settle after displacement (see chapters 9 and 5).

IDPs should, in principle, be able to seek restitution or compensation for significant movable property as well, particularly when it was central to the exercise of their livelihoods (see chapter 13).

Merits: What property rights should be given effect even if they did not formally exist at the time of displacement?

As set out above, international human rights law requires that all citizens be treated equally before the law and in particular that men and women have equal rights to acquire and administer property. When such guarantees were not fully incorporated in domestic law at the time that IDPs were displaced, that should not prevent particular categories of IDPs from having access to remedies for loss or denial of access to homes, lands, and properties on the same basis as all others displaced.

Merits: What rights should be accorded to subsequent occupants?

In facilitated restitution programs, the main obstacle to repossession of homes and lands often is the presence of subsequent occupants, ranging from squatters to persons who were allocated such properties under color of law. Recognition of the right to restitution for IDPs implies that such occupants do not enjoy the right to continued possession of claimed properties and must vacate them.³⁸⁹

In such contexts, special laws on restitution should set out what rights subsequent occupants enjoy. Those rights include the following:

- The right to alternative accommodation: Subsequent occupants must vacate claimed property according to legal deadlines, but they may not be rendered homeless as a result. The competent authorities are obliged to provide alternative accommodation to those who have no possibility of housing themselves.
- The right to be free from forced evictions: Subsequent occupants should not be subjected to evictions that are arbitrary under international law (see Legal Foundations, above)—for example, they should be evicted only according to a lawful decision and in the presence of public officials; evictions should not be carried out in the middle of the night, in unsafe circumstances, or with any unnecessary use of force; and so forth.
- The right to due process: Subsequent occupants should have a chance to participate in remedial proceedings and present any evidence of rightful possession of claimed properties or entitlement to alternative accommodation or compensation. There also should be at least a limited opportunity to appeal decisions favoring claimants.
- Compensation: Under limited circumstances, subsequent occupants may be entitled to compensation, including when they have made *necessary* improvements to claimed properties—that is, repairs that had to be made for the property to continue to be habitable or usable. In cases in which coerced sales contracts are annulled in the course of restitution programs, subsequent occupants who concluded such sales should, in principle, recover whatever price they paid or property they exchanged for the claimed property.
- Crops planted on agricultural properties: Subsequent occupants should be allowed to harvest any crops that they have planted on agricultural properties in the course of vacating them.
- Assistance in claiming their own properties: Subsequent occupants may have properties elsewhere and should be provided with updated information on how long it should take for their claims to be processed in cases in which it is necessary for them to vacate occupied properties before repossessing their own.
- Information: Providing occupants with full information on restitution procedures can help to counter any sense of entitlement to remain in other people’s property that occupants may feel while simultaneously informing them of existing protections, such as the right to alternative accommodation if they cannot house themselves otherwise. In some cases, such information may give occupants an incentive to vacate claimed properties voluntarily, avoiding the necessity of eviction proceedings.

389 See Pinheiro Principles, Section 17.

How can facilitated property proceedings be integrated with existing enforcement procedures?

Laws on facilitated property claims proceedings may set out special provisions on enforcement of any decisions in favor of claimants. However, to the extent possible, those decisions should be generally compatible with and integrated into existing domestic procedures for enforcement of administrative decisions.³⁹⁰ In particular, law enforcement officials should have the same obligations to protect restitution officials carrying out their duties and to prevent and prosecute the obstruction of legal enforcement proceedings as they would in any other situation. In restitution situations, a number of different options may be made available to claimants, including the following:

- request for immediate enforcement—for example, vacation of the property;
- request for the property to be publicly administered for an indefinite time, with any subsequent occupant required to pay rent to the claimant;
- request for compensation without repossession.

390 See Pinheiro Principles, Section 20.

Employment, Economic Activities, and Social Protection

A. INTRODUCTION

Purpose: Principle 18 recognizes the right of IDPs to an adequate standard of living, under which IDPs are guaranteed safe access to certain essential rights. Among the rights that make possible an adequate standard of living are the right to work and the right to social security, including a minimum set of social security guarantees for all, whether working or not. Principle 22 (b) of the Guiding Principles is meant to ensure that IDPs are able to participate in economic activities without discrimination relative to the rest of the population. The ability of individuals to independently pursue livelihoods and economic activities, as well as to access social security programs, is inevitably affected by displacement. However, steps can be taken to ensure that IDPs do not fall into long-term dependency on outside aid during displacement and to facilitate their economic integration or reintegration into society.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.
[...]

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:
[...]
(b) The right to seek freely opportunities for employment and to participate in economic activities;
[...]

Other relevant Principles: 19, 23, and 29.

Legal foundations:³⁹¹ Rights that enable the achievement of an adequate standard of living include the right to work and the right of everyone, whether working or not, to minimum social security guarantees. The right to work includes the right to gain one's living by work that is freely chosen or accepted and

391 For more details, see Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, 2nd ed., Studies in Transnational Legal Policy 38 (American Society of International Law and Brookings Institution, 2008), pp. 83 and 102–03.

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to have access, without discrimination, to the opportunities ensured by the state to realize that right.³⁹² These include technical and vocational guidance and training programs as well as opportunities arising from state policies to achieve full and productive employment.³⁹³ Securing non-discrimination in access to or maintenance of employment includes the obligation to adopt a national policy to ensure equality of opportunity and treatment in respect of employment and adopt targeted programs to protect the right to work for disadvantaged or marginalized individuals and groups.³⁹⁴ States should also guarantee just and favorable conditions of work, including fair wages and equal remuneration for work of equal value without distinction of any kind, the right to freedom of association and effective recognition of collective bargaining, a decent living for workers and their families, safe and healthy working conditions, equal opportunities for promotion, adequate rest and leisure, and reasonable limitation of working hours.³⁹⁵ Children, in particular, must be protected from exploitation and work that interferes with their physical and mental development.³⁹⁶ The right to work also encompasses both the right to be free from forced labor³⁹⁷ and the right not to be unfairly deprived of employment or dismissed from work.³⁹⁸ The rights to equal opportunity and treatment in employment and occupation, just and favorable remuneration, and equal and adequate conditions and remuneration extend to all persons, without distinction of any kind, including on the grounds of being displaced.³⁹⁹

In all situations, women, ethnic and other minority groups and indigenous and tribal peoples are entitled to equal opportunity and treatment in respect of employment and occupation, including participation in vocational training and economic activity. In some cases, achieving this equality may require special or promotional measures to meet the particular challenges facing vulnerable or marginalized groups.⁴⁰⁰ The same must be ensured for IDPs. Core obligations of states to ensure non-discrimination and equal protection of employment include taking the following steps in favor of disadvantaged and marginalized individuals and groups including the displaced:

392 UDHR, Article 23(1); ICESCR, Article 6; ILO Convention No. 122; UNCESCR, General Comment 18 (2006), paragraph 6: The right to work involves

- Availability: States must have specialized services to assist and support individuals in order to enable them to identify and find available employment.
- Physical accessibility: Employment opportunities and vocational training programs must be in safe physical reach, including for persons with disabilities.
- Information accessibility: including through the establishment of data networks on means of gaining access to employment markets at the local, regional, national, and international levels.
- Acceptability and quality: including just, favorable, and safe work conditions and the right to form trade unions.

UNCESCR, General Comment 18, paragraph 12; ILO Convention No. 159.

393 UDHR, Article 23(1); ICESCR, Article 6; ILO Convention No. 122.

394 ICESCR, Articles 2(2) and 3; ILO Convention 111, Article 2; UNCESCR, General Comment 18, paragraph 12(b)(i).

395 UDHR, Article 23(1)–(3); ICESCR, Article 7; ILO Convention No. 14; ILO Convention No. 100; ILO Convention No. 106; ILO Convention No. 111; ILO Convention No. 120; ILO Convention No. 131; ILO Convention No. 148; ILO Convention No. 155; ILO Convention No. 156; ILO Convention No. 161; ILO Convention No. 183; ILO Convention No. 187.

396 CRC, Article 32; ILO Convention No. 182.

397 ILO Convention No. 29; ILO Convention No. 105; UNCESCR General Comment 18, paragraph 9.

398 ILO Convention No. 158; UNCESCR, General Comment 18, paragraphs 6 and 11.

399 ICESCR, Articles 2, 6, and 7. See also ILO Convention No. 111, Article 1.

400 ICESCR, Article 6(2); CEDAW, Article 11; CERD, Article 5(e)(i); ILO Convention No. 169, Parts III and IV; ILO Convention No. 111; ILO Recommendation 169.

- Ensure the right of access to employment.
- Avoid measures resulting in private or public sector discrimination or unequal treatment.
- Adopt a national employment strategy that targets such individuals and groups.⁴⁰¹

Everyone, whether working or not, has the right to social security, at a minimum in the form of access to essential health care and income security to all in need, including children, the elderly, the poor, and unemployed.⁴⁰² Social security may also cover specific branches of protection, including medical care, sickness, unemployment, old age, invalidity, employment injury, family (dependents), maternity, and loss of an income-earning spouse (survivors' benefit).⁴⁰³ In general, social security benefits usually consist of benefits in kind, such as health care, and cash benefits, such as pensions. While states do retain some discretion in deciding what model of social security coverage best suits the national conditions, they must provide such security in a non-discriminatory manner.⁴⁰⁴ Thus IDPs are to be granted the same social security rights recognized as available to all under national law and policy, including ensuring the maintenance of acquired social security rights and rights in the course of acquisition and accessibility to receive the benefits involved. In addition, because IDPs often face increased vulnerability due to loss of income and income-producing opportunities and other means to meet their essential needs, non-discrimination in access to social security requires that public authorities undertake all efforts to compensate the special deficits faced by IDPs through a set of positive measures set up in a very short period.

The general non-discrimination clauses of international humanitarian law⁴⁰⁵ applicable during armed conflicts also apply to the areas of employment, economic activities, and social security. Certain minimum standards of working conditions must be respected for certain categories or persons who are made to work during situations of armed conflict.⁴⁰⁶ Customary international humanitarian law prohibits uncompensated or abusive forced labor.⁴⁰⁷

Regulatory framework: At the domestic level, many countries have adopted constitutional as well as legislative frameworks, including labor, employment, and social security laws, to regulate the rights of workers, terms and conditions of employment, and labor relations.⁴⁰⁸ Given the diversity of livelihoods pursued by different groups of IDPs—from hunting and gathering or subsistence agriculture to wage labor or salaried professional work—a broad variety of domestic laws and labor- or development-oriented policies is likely to be relevant to the question of IDPs' economic self-sufficiency in each specific case. Within the existing legal framework, a

401 See UNCESCR, General Comment 18, paragraph 9. See also ILO Recommendation 169, Section III.

402 UDHR, Article 25; ICESCR, Article 9; Annex to ILO Constitution: Declaration of Philadelphia, Article III(f); ILO Convention No. 102; ILO Recommendation No. 67; ILO Declaration on Social Justice for a Fair Globalization, paragraph IA(ii). See also ICESCR, Article 11. The criteria of availability, physical accessibility, information accessibility, acceptability, and quality as well as non-discrimination discussed in footnote 1 above are relevant to ensuring the right to social security as well as the right to work.

403 ILO Convention No. 102, Parts II–X.

404 ICESCR, Articles 2(2) and 3; ILO Convention No. 102. See also ILO, "Setting Social Security Standards in a Global Society," Social Security Policy Briefings Paper 2 (2008).

405 Fourth Geneva Convention, Article 27; First Additional Protocol to the Geneva Conventions, Article 75(1).

406 Fourth Geneva Convention Article 40; Second Additional Protocol to the Geneva Conventions, Article 5(1)(e).

407 ICRC, Customary International Humanitarian Law, Volume I: Rules, Rule 95.

408 ILO, "Labour Legislation Guidelines," chapter II (www.ilo.org/public/english/dialogue/ifpdial/llg/main.htm).

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state may be able to implement a number of practical measures through policies, bylaws, or decrees, including the development of training or employment programs targeting the needs of IDPs and the continuation of social security benefits that were in effect before displacement. Various types of social security programs may be covered in a single act or in different pieces of legislation and a comprehensive review to ensure maintenance of social security rights already acquired as well as those in the course of acquisition. Legislation enacted specifically to address the situations of IDPs should include general provisions addressing the freedom of IDPs to take up economic activities during displacement and the duty of the state to provide opportunities and capabilities to make use of this freedom in conditions of decency. It also might prove necessary to amend pre-existing laws, should their application result in discrimination against IDPs in the area of employment, access to social security program and benefits, or other economic activities (such as provisions on limitations of access to property or jobs for non-resident persons).

Problems often encountered by IDPs: In almost all cases, displacement leads to the loss of jobs and livelihoods for people from all social classes—whether subsistence farmers or skilled professionals—and tends to separate them from the assets, resources and social networks they need to provide for themselves and their families. Combined with the dislocating psychological effects of displacement, this inherently gives rise to an “impoverishment risk” for IDPs.⁴⁰⁹ The displaced often find themselves in places where no work is available, or they live in locations too far away from jobs. Even where jobs would be available, they often face discriminatory barriers to training, education, and employment while displaced, whether based on ethnic prejudice, or pragmatic grounds, such as the protection of jobs in host communities or concerns that allowing IDPs to work will encourage them to permanently resettle. In addition, IDPs often face similar barriers in accessing existing social security benefits or joining social security programs; for those dependent on old-age pensions, unemployment allowances, and child benefits, their lack of access to such benefits in many cases has left these extremely vulnerable categories destitute. Sometimes, governments pursue active policies aimed at keeping IDPs away from the labor market and other economic activities with a view to maintaining their readiness to return to places of origin once this becomes possible (for example, after the end of an insurgency or occupation).

As a result, IDPs tend to remain unnecessarily reliant on unsustainable and unpredictable assistance and vulnerable to unprotected work in the informal economy, as well as forced labor, forced prostitution, and underage recruitment. Displaced women are particularly vulnerable to economic dependency and exploitation, both because of traditional child-raising and domestic roles and because they typically have less access to education than men.⁴¹⁰ Meanwhile, displaced children are vulnerable to both exploitative forms of labor and recruitment, placing their physical and mental development in jeopardy and interfering with their right to education (see chapter 15).⁴¹¹

Over the long-term, IDPs who are not able to provide for themselves may lose skills, opportunities and the will to regain self-sufficiency, complicating their prospects for productive integration in the economy. They may also face ongoing labor market discrimination in the process of resettlement or return. Women IDPs are particularly likely to suffer as a result of lack of access to land or credit, while displaced children are

409 World Bank, “Operational Manual,” OP 4.12, paragraph 1.

410 UNCESCR, General Comment 18, paragraph 13.

411 UNCESCR, General Comment 18, paragraph 14.

often forced to work under dangerous or exploitative circumstances, disrupting their education. Obstacles to accessing social security benefits may also persist in the course of durable solutions. In many cases, IDP populations or subgroups (such as women or ethnic minorities) were economically marginalized prior to displacement and may have been unemployed or had inadequate access to voluntary, decent work. In such cases, the emphasis both during displacement and in durable solutions should be on economic integration (rather than reintegration) into society through vocational training and other measures to meet their particular requirements.

B. CHECKLIST: ISSUES TO BE ADDRESSED BY DOMESTIC LAWS AND POLICIES

Minimum essential elements of state regulation:

At a minimum, competent authorities should do the following:

1. Recognize the right to work and the right to social security for IDPs.
2. Take specific measures to protect IDPs against discrimination in the labor market and access to social security benefits.
3. Direct existing governmental agencies responsible for labor and social security related issues to specifically evaluate and take responsive action to unique problems faced by IDPs (for example, through provisional work programs, access to livelihoods inputs, micro-credit and other support, skills transfers and vocational training, and access to labor market and social security programs).
4. Provide for measures (such as micro-credit systems; vocational training; and distribution of farming implements, seeds, or animals) that help former IDPs to regain their livelihoods or engage in new economic activities at the locations where they find durable solutions.

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In order to ensure that IDPs can exercise their right to employment and to social security during and after displacement, domestic laws and policies should

- identify and take into account IDPs' pre-displacement and current livelihood practices and needs, including in relation to social security benefits;
- build on consultations with IDPs on their employment and other livelihood needs and encourage IDP participation in the design of vocational training and services;
- assist IDPs in attaining economic self-sufficiency during displacement through provisional work programs, skills transfer and vocational training, non-discriminatory access to labor markets and social security programs, and the provision of necessary economic inputs, credit, and support;
- ensure that provision of humanitarian aid is time-limited, sustainable, targeted to the most vulnerable and that the effect of such programs in terms of income transfer to IDPs complements broader efforts to help IDPs achieve or recover self-reliance;
- ensure entitlement and accessibility to social security benefits, including social assistance benefits, despite the fact that the stay of IDPs is, in most cases, provisional and that they often cannot prove their entitlements due, for example, to loss of relevant documents;

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- allow IDPs to recover their pre-displacement assets, including property, bank accounts, and accrued social security benefits;
- improve the provision of employment training and services to IDPs continually through monitoring and evaluation, complaints procedures, and consultation and the participation of recipient IDPs in its planning;
- provide continued assistance to IDPs in attaining economic self-sufficiency in support of voluntary durable solutions.

C. NECESSARY ELEMENTS OF STATE REGULATION

What information regarding IDP populations is useful in assessing how best to secure their rights to work and to social security?

In the context of efforts to count, locate, and assess the needs of IDP populations (see section C of chapter 2), competent authorities should actively seek and compile information related to the economic basis for IDPs' livelihoods prior to their displacement, the extent to which they participated in social security schemes, as well as their current entitlements to benefits, and the skills and qualifications they carry with them during displacement.⁴¹² This information can be used to ensure that assistance and vocational training during displacement will maximize IDPs' economic self-sufficiency. It can also ensure that reintegration assistance in support of durable solutions builds on IDPs' existing strengths and needs.

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How can IDPs who have no income be assured of receiving social assistance benefits?

In the context of efforts to provide social security benefits to all including IDPs, the authorities should take measures to safeguard the smooth functioning of social services that provide benefits in kind and in cash in order to ensure continuity in delivery of social benefits to IDPs. The influx of IDPs may overload the institutional capacity to deliver social benefits and services resulting in long delays that may be perilous and even fatal for IDPs who have no work or other means of survival. Furthermore, the competencies of the social institutions responsible for delivering such services may also change in relation to the IDPs because of their change in location and loss of work, with the consequence that no particular institutional authority feels responsible for providing any social security benefits to IDPs. Thus the competencies between institutions should be clarified and, if necessary, extended to other entities for IDPs, along with the transfer of information necessary to making decisions on requests for social benefits. Increasing the number of staff in the administrations responsible for social benefits for IDPs may also be necessary, at least provisionally.

In addition, policymakers and competent authorities should ensure that IDPs in need are entitled by law to social assistance benefits and will actually receive them in practice. Criteria to be applied must take care to ensure that residency requirements for social assistance do not bar IDPs from needed access since the IDPs are often not considered residents in either their region of origin nor in the region of displacement. In assessing whether IDPs are in reality entitled to social assistance benefits, it may not be possible to verify the economic situation of IDPs since, as a result of displacement, IDPs may have lost the documents necessary

412 See, for example, Sphere Standards, chapter 3, appendix 2: Food Security Assessment Checklist, p. 174.

to establish their need for social assistance or the economic means that are still reflected in the record on file. In such case, an appropriate alternative method should be established taking into account the temporary unavailability of such documents or means.

Who should be involved from the outset in coordinating assistance for economic activities by IDPs and the provision of social security benefits?

At the national level, economic activities should be explicitly integrated among the issues dealt with by an institutional coordination mechanism (see chapter 2, section G). In the early stages of displacement, interventions to support IDPs' right to work should be closely coordinated with humanitarian assistance efforts, and particularly with the provision and phasing out of any necessary food aid (see chapter 7), both at the central and local levels. A key objective of such coordination should be the identification of legislative and administrative obstacles and gaps, in particular in regard to mobility of labor, access to economic inputs and credit, and access to social security programs and benefits.

Coordination with international humanitarian and development actors is also important with regard to the right to work. International actors can provide both direct aid, such as food, cash transfers, and food- or cash-for-work programs as interim measures when necessary (see chapter 7) as well as technical expertise and direct assistance in planning and implementing programs for vocational training and income generation, in advising on the development of regulations, and in fostering administrative capacities. Furthermore, technical expertise and direct assistance should be provided to enhance coordination between social security administration at the local level to ensure the timely treatment of requests by IDPs for social insurance and social assistance benefits. Coordination between social security administration at the national as well as at the local level is also of utmost importance to ensure the maintenance of acquired social security rights and rights in course of acquisition.

Processes for designing such programs are particularly conducive to the participation of IDPs. Consultations with the affected communities are necessary to identify both prior livelihood skills and qualifications that can be built on in securing economic self-sufficiency and to judge the implications of IDPs evolving attitudes and perceptions regarding durable solutions. For instance, where communities primarily interested in eventual return may be most interested in retaining pre-displacement livelihood skills and recovering assets such as land or business properties left behind, IDPs interested in resettlement may be much more concerned about non-discriminatory access to vocational training and employment programs and opportunities available to surrounding populations at the site of displacement. In situations in which IDP populations have physical access to existing training and work opportunities, consultations should extend to host communities and other communities in the area of displacement in order to identify measures that can be taken to minimize any negative impact of IDP access on local livelihoods and labor markets.

Ideally, participation mechanisms should not only facilitate the flow of information on economic needs and opportunities but also the formation of groups or committees to actively follow up on particular livelihood issues and pool their resources in order to collectively pursue particular economic activities. Encouragement of group production or cooperatives may be particularly appropriate for facilitating economic self-sufficiency on the part of marginalized and vulnerable groups within IDP populations, such as female heads of households.

What types of assistance can help IDPs attain or recover self-sufficiency?

This chapter describes four broad types of assistance that may be helpful in allowing IDPs to attain economic self-sufficiency:

1. provisional work programs
2. skills transfer and vocational training
3. access to labor market and social security programs
4. access to land, other economic inputs, credit, and other support

None of these forms of assistance are mutually exclusive and all four should, in principle, be provided in order to fulfill IDPs' right to work. The availability and phasing of different forms of support should be based on the needs and aspirations of IDPs, assessed through their participation in ongoing consultative processes. Programming should generally be phased to proceed from training to support in accessing markets (either for labor, or in the case of self-employed IDPs, markets for credit, materials, and other economic inputs).

However, provision should be made in planning such programming for several factors that will affect IDPs' needs and opportunities:

- **Location:** Where IDPs are located near population centers, integration into existing vocational training programs and markets for labor, credit, and economic inputs becomes an option. Such integration may be delayed by cultural or language differences between the IDP community and host communities, administrative or legal obstacles, or concerns about the effect of IDPs on the local economy. However, fulfillment of IDPs' rights to work may require steps to facilitate such integration in situations of protracted displacement.
- **Geographic distribution and cohesiveness:** In situations where IDPs are concentrated in particular urban or rural areas, in collective shelter facilities, or in camps, their numbers may allow them to function, at least to a limited extent, as their own market. In other words, IDPs may be able to achieve a degree of self-sufficiency simply by providing labor, goods, and services primarily to other IDPs, at least initially. While this is not likely to be a long-term solution, it may encourage the initiation of economic activities at a time when obstacles remain to return or accessing job opportunities in the surrounding community.
- **Durable solutions:** IDPs may suddenly experience new needs and opportunities when durable solutions become achievable. For instance, the conditions may initially not exist for returning IDPs to make use of livelihood skills acquired or maintained during displacement. Under such circumstances, provisional work programs (for example, cash or food for reconstruction of destroyed infrastructure) may be necessary in the interim.

In all situations, programs to help IDPs attain or recover self-sufficiency should be designed so as to anticipate and address the obstacles faced by particularly vulnerable or marginalized groups within IDP communities. For instance, women's participation in work and training programs should be encouraged wherever possible through measures such as flexibility in working hours with adequate security and the provision of daycare and daytime schooling for children (see chapter 15).

How can provisional work programs help IDPs attain or recover self-sufficiency?

In the initial stages of both displacement and return, it may be possible to encourage productive economic activity in addition to, or instead of, the transitional safety net provided by humanitarian aid, including through provisional or temporary programs or activities providing food or cash for work.⁴¹³ Such activities may involve work that is accessible for internally displaced people with low skill levels and can focus on the immediate needs of the IDP community, avoiding competition or tensions with surrounding labor markets. Organized food- or cash-for-work programs might focus on, for instance, the construction of shelter or facilities such as school buildings and latrines, in the context of IDP camps. In return settings, cash- or food-for-work programs might focus on the reconstruction of damaged homes and infrastructure, including roads, utilities, public buildings, irrigation systems, and wells. Such programs can improve physical assets that, in turn, improve livelihood opportunities after displacement.

In the context of provisional work programs, the competent authorities often employ IDPs directly. In all such cases, the relevant laws and regulations should set out terms for such employment that correspond to generally applicable national rules on minimum wages, conditions of employment such as hours of work, and safety. In situations where employment generation programs are sub-contracted to private enterprises, these arrangements should be based on labor clauses ensuring terms and conditions for IDPs no less favorable than those generally applicable to the population at large.⁴¹⁴

In some situations, it may be possible to simply support and facilitate spontaneous activities on the part of IDPs to provide goods and services to other IDPs. Humanitarian assistance can contribute to such efforts when it serves as an income transfer, freeing up family resources to invest in productive economic activities, to repay loans, to offset school or medical fees, or to borrow for other needs. In such situations, policies seeking to promote economic activities on the part of IDPs should build on the realities of life in settlements or camps. Collection and distribution of necessities such as firewood; personal grooming services; production of clothing or blankets; repair of clothing, shoes, or watches; food preparation; small-scale construction; and similar services can all be bought and sold within camps, provided that the requisite skills and means for payment or barter are present. IDP policies should encourage such activities, for instance through providing security to IDPs engaged in economic activities such as small-scale agriculture, grazing or firewood collection that require them to regularly spend time outside the confines of settlements or camps.

How can skills transfer and vocational training programs help IDPs attain or recover self-sufficiency?

Livelihood skills are inherently transportable assets that are not automatically lost as a result of displacement. However, where IDPs are not able to actively engage in their traditional livelihoods or professions during displacement, these skills may suffer as a result. In many cases, such as rural-to-urban displacement, arriving IDPs may come from different socioeconomic backgrounds than their host communities and may not be

413 Sphere Standards, Food Security Standard 3: Income and Employment, p. 128.

414 See ILO Convention No. 94. Labor clauses in public contracts oblige private contractors—or government agencies—to employ persons under terms and conditions that are not less favorable than those established for work of the same character in the same area by either collective agreement, arbitration award, or national laws or regulations. When collective agreements, arbitration awards, or national laws or regulations do set local terms and conditions, they are typically better than minimums

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able to make use of their traditional livelihood skills as a result. In long-term displacement settings, such skills may not be passed on to younger generations at all, underscoring the importance of helping IDPs acquire alternative livelihood skills. In cases when IDPs were largely unskilled prior to displacement, are not interested in returning, or are interested in developing new livelihood possibilities, emphasis should also be placed on acquisition of new or alternative livelihood skills.

In displacement contexts, vocational training is particularly important, both to preserve and pass on existing livelihood abilities and to develop new skills that can support economic self-sufficiency during both displacement and re-integration. Skills such as languages and computer proficiency, or commonly sought after trades such as carpentry are valuable in almost any setting. However, where voluntary return is unlikely to be an option during the foreseeable future, training should provide IDPs with relevant skills in their new environment, and particularly those needed to fill available jobs. Over the short term, vocational training should be provided specifically for IDPs based on the needs, capabilities, and interests identified through consultation with them. Over the longer term, IDPs should be provided with any assistance necessary to ensure them equal access to vocational training programs available to the broader community.

How can access to labor markets and social security programs help IDPs attain or recover self-sufficiency?

In accordance with the right to work, as well as the right to freedom of movement and choice of residence (see chapter 5), IDPs should be able to seek employment under just and favorable conditions in the area where they find themselves displaced. However, IDPs often face barriers to participating in local labor markets. Some of the most basic problems include safe physical access, for example, when IDPs' movements are restricted or they are kept in camps located far from population centers, as well as other restrictions based on concerns that IDP participation will drive down wages or threaten jobs in host communities. It is important to ensure that host communities are able to participate meaningfully in the development of policies related to internal displacement in order to ensure that any adverse effects of IDP participation in labor markets is minimized. However, in situations of protracted displacement, the failure to allow IDPs to seek economic self-sufficiency on the same terms as locally resident citizens will amount to infringement of IDPs' rights. As a result, policies on internal displacement should avoid long term isolation or exclusion of IDPs from labor markets in favor of measures that allow IDPs access to gainful employment.

Removing barriers to IDP self-sufficiency may require the examination of a broad range of locally applicable laws and practices that may present unanticipated obstacles in the context of displacement. Examples include:

- restrictions on access to local labor markets that have the effect of complicating IDP participation, such as arbitrary exclusion from local cooperatives or labor unions;
- restrictions on movement or residence that prevent IDPs from living within a reasonable distance of job or livelihood opportunities;

otherwise set in national laws. Special provisions could be established with a view to maximizing employment or income generation from employment in the context of special employment programs for IDPs so long as similar opportunities are also offered in local communities.

- legal or de facto barriers (for example, language, documentation, or residency requirements) to IDP participation in local vocational training or job creation schemes;
- rules on competence certification that result in arbitrary non-recognition of IDPs' professional qualifications or training;
- restrictive requirements for the use, renting, or purchase of land, property, and other productive assets;
- arbitrary denial of access to local resource rights related to, for example, fisheries or grazing land.

For skilled IDPs, one of the greatest obstacles to economic self-sufficiency may be lack of access to documents and particularly to certificates establishing previously acquired professional qualifications or licenses for the purpose of their recognition when they are displaced. As discussed in chapter 11 of this manual, IDPs lacking documentation crucial to the exercise of their rights should be assisted through facilitated re-issuance programs or other measures, whenever this is feasible. In the case of professional qualifications, skills testing or re-certification based on testimonial evidence may provide swift and effective ways of providing recognition. For those who are self-employed, lack of access to affordable credits might be another obstacle.

For unskilled IDPs, participation in local labor markets may be possible but will often be accompanied by the risk of working under unsafe or unfavorable conditions or outright exploitation. These risks are exacerbated in cases when IDPs are denied formal permissions needed to work in the formal economy. IDPs should under any circumstances be protected against being engaged in any forced or coerced labor, or work they have not freely chosen or accepted.

IDPs should also be protected from pressure to engage in illegal economic activities, such as the production or distribution of illegal drugs. However, while participation in formal labor markets should be encouraged, IDPs should not be prevented from or punished for participating in the informal economy, in which legal goods and services are produced and sold in a manner that may not fully comply with procedural requirements such as registration or taxation rules. In practice, the informal economy may not only absorb displaced workers who would otherwise be without independent income but can also cheaply meet the needs of displaced consumers through accessible and affordable goods and services.

The disadvantages of the informal economy include the fact that it does not automatically provide recognition, social protection, or guarantees of decent work⁴¹⁵ to IDP participants. In addition, participants at all levels in the informal economy tend to avoid paying taxes. IDP policies should generally support broader measures to integrate the informal economy into the economic mainstream activities, ensuring no less favorable workplace rights and conditions to displaced and other informal workers than to other workers in comparable jobs in the formal economy.⁴¹⁶ Policies and programs that aim to transfer economic activities to the formal economy also help IDPs to maintain and acquire further social security rights.

415 “Decent work” is generally understood to be productive and secure work with guarantees for respect for labor rights, an adequate income, social protection, and social dialogue, including union freedom, collective bargaining, and participation. See International Labour Conference, “Resolution on Strengthening the ILO’s Capacity to Assist its Members’ Efforts to Reach its Objectives in the Context of Globalization,” 97th Session (2008).

416 See, generally, ILO, “Conclusions Concerning Decent Work and the Informal Economy” (2002), paragraph 5 (www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/pr-25.pdf).

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One of the most important steps that can be taken is the amendment or interpretation of national legislation to provide recognition and protection to workers in the informal economy, including the extension of social security programs. In such situations, any administrative barriers specifically preventing IDPs from accessing social security programs should be identified and addressed in order to ensure equality of treatment. Where IDPs risk suffering labor exploitation because they do not speak the local majority language, IDP policies should provide them with information on worker's rights, minimum working conditions, and minimum wages in a language they understand.⁴¹⁷

CASE STUDY

Economic integration of IDPs during displacement

The Georgian State Strategy on IDPs sets out the following provisions:

“Chapter III

2.2.2. For IDPs' integration, implementation of additional activities which consider their specific problems are required; and, if needed, positive discrimination within the frameworks of the state programs, before the goals of the Strategy are achieved. The purpose of additional programs is to achieve social integration of IDPs through the gradual closure of collective centers, reducing IDPs' dependence on state assistance, and inclusion of vulnerable IDPs in general state programs. It is envisaged:

a) [...]

b) To provide vocational education and training to IDPs within the framework of state programs, activate their economic initiative and ensure advantageous conditions of economic activities;⁴¹⁸

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How can access to economic inputs, credit, and support help IDPs attain or recover self-sufficiency?

Training programs can provide IDPs with important occupational and livelihood skills. However, IDPs who wish to gain income through entrepreneurial efforts (rather than seeking regular employment) will not, on account of their displacement, have access to many forms of support that non-displaced entrepreneurs would take for granted.

- **Land:** IDPs who wish to engage in primary production often have adequate skills but may lack the most fundamental inputs. Access to land for planting crops or grazing livestock is likely to be a problem during displacement, when IDPs must compete with established agriculturalists or pastoralists from surrounding communities. Similar problems arise in return contexts for agriculturalists that did not have sufficiently strong rights to land in their place of return to be able to benefit from restitution or compensation programs (see chapter 12). In such situations, access to land, in particular government-owned land, on fair terms is crucial. It is not necessary to transfer ownership of land to IDPs, but it is necessary merely to ensure that existing laws and practices on

417 See Guiding Principle 22.1(e).

418 Decree No. 47 of the Government of Georgia on Approving of the State Strategy for Internally Displaced Persons—Persecuted (2007).

leasing land provide adequate security to all parties and that IDPs have access to both land and credit markets on terms not less favorable than those for non-displaced citizens. It is also important to ensure the additional strains placed on land by the activities of newly arrived or returning IDPs will not risk overburdening and degrading the local environment.

CASE STUDY

Agricultural land for IDPs

In Georgia, the Ministry of Refugees and Accommodation together with the relevant central and local authorities must ensure that IDPs are exempt “from paying land tax on agricultural land plots allocated to them for temporary use” during displacement.⁴¹⁹

- **Other economic inputs:** IDPs intending to take up or resume primary production livelihoods are likely to need significant and costly inputs in order to get started. In many cases, they will need assistance accessing such inputs, either in the form of preferential access to credit in order to buy them themselves or in the form of donations. Agriculturalists will, at a minimum, require tools, seeds, and fertilizers. Pastoralists may require stock to replace that lost in the course of displacement. Likewise, displaced fishermen are likely to have lost essential inputs such as boats and nets. IDPs seeking to engage in small-scale production of goods or provision of services may need access to tools and equipment, basic office supplies, and business premises. By extending cash grants or micro-loans to IDPs, competent authorities can provide them with the possibility to choose for themselves what inputs are most relevant for achieving self-sufficiency. In order to promote self-sufficiency, the quantity of such inputs should be sufficient to generate surplus income in excess of the minimum needed for food security. Continuation of food aid over a certain period of time and other forms of humanitarian assistance can also be as a form of income transfer that can free up IDPs’ resources and time, and encourage self-reliance (see chapters 4 and 7).
- **Credit:** As a result of their displacement, IDPs may be left with neither savings nor collateral for seeking loans. Even in cases where IDPs own significant property, it is likely to be inaccessible as long as displacement persists and may be occupied by others or destroyed. In addition, IDPs’ credit histories and other relevant financial documents are likely to be inaccessible (see Chapter 11). Under the circumstances, IDPs face significant disadvantages in accessing ordinary credit markets and may ultimately be unable to afford the costs of going into business for themselves. In such cases, special programs offering micro-credit or public guarantees for private loans should be created on the models developed for the poor and landless in general and those specifically for the IDP community in order to maximize their chances of economic self-sufficiency.
- **Support:** Training and other support should target the evolving needs and opportunities of IDPs who have begun working or gone into business. For instance, while agricultural extension programs

⁴¹⁹ Law No. 335-II-S of Georgia on Internally Displaced Persons—Persecuted (28 June 1996, updated 18 December 2001), Article 5(2)(h).

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and seed fairs may benefit displaced or returnee agriculturalists, training on business planning and simple forecasting of inventories, costs, and profits can be of assistance to entrepreneurs. Support might also take the form of facilitating linkages with relevant trade associations or potential partners or suppliers in the broader business community.

Finally, the subsidization of public services for IDPs can be targeted in ways that encourage their participation in livelihood activities. For instance, subsidized access to public transportation can allow IDPs to reach job markets, especially in situations where they are housed in relatively isolated collective accommodation. Likewise, subsidized child-care may be a precondition for women's participation in income-generating activities.

What type of assets might be recovered in order to help IDPs attain or recover economic self-sufficiency?

The most obvious asset affecting IDPs' livelihood prospects is property and particularly rights to homes, productive land, and business premises (see chapter 12). In order to ensure that restitution facilitates economic self-sufficiency, any accrued taxes and other liabilities should generally be forgiven with regard to newly repossessed but as yet unproductive property of IDPs.

Other important assets might include frozen bank accounts and significant movable property such as tractors and livestock. In addition, where displacement was accompanied by violations of the right to work such as discriminatory firings, remedies including the prioritized reinstatement of returnees (whenever possible) or financial compensation for resulting loss of income should be implemented. Finally, laws and policies on internal displacement should guarantee access to all social security benefits that accrued to IDPs or their survivors during the period of displacement. If it is impossible to pay out all back benefits at once, a plan should be adopted by which IDPs can be compensated for missed social security payments through prospective installments.

How can assistance to help IDPs attain or recover self-sufficiency be improved over time?

Vocational training programs should be evaluated shortly after their completion in order to assess outcomes such as levels of skills utilization and increase in individual and family incomes. In the case of training and employment-generation programs, as with other forms of assistance, IDP policies should encourage the establishment of complaints procedures that address individuals' concerns about eligibility criteria or the adequacy of services. Most important, IDPs should be continuously consulted on the adequacy of employment-related responses and should participate in planning these services throughout the process.

How should the right to work be fulfilled in the context of durable solutions?

The nature and level of skills transfer, vocational training, and income-generation support received during displacement will clearly have implications for IDPs' ability to reintegrate in the context of durable solutions. However, whether IDPs seek to return or to resettle elsewhere, the goal should be for state programs to assist IDPs in gaining their living by decent work that is freely chosen. The long-term prospects for IDPs'

economic re-integration depend on the availability of tools, seeds, or animals in the agricultural sectors as well as (micro-)credits for self-employed persons and non-discriminatory access to local livelihood opportunities and labor markets for those employed in the formal or non-formal sector, whether in the context of resettlement or return. However, IDPs are liable to face job discrimination in both settings based on their status as newcomers (or newly returned), and, in some cases, on ethnic, linguistic and other distinctions between them and the local population. In support of durable solutions for IDPs, competent authorities must take steps to ban and redress such discrimination. In concrete terms, this means that domestic laws must ban discrimination on the basis of displacement or on the basis of characteristics associated with displaced groups.

CASE STUDY

Promotion of stable socioeconomic conditions for IDPs in the context of choice of durable solutions

In Colombia, Law No. 387 on internal displacement sets out measures to promote the economic sustainability of durable solutions chosen by IDPs:

“Article 17. Socioeconomic Stabilization and Consolidation. The National Government shall promote medium- and long-term actions and measures with the purpose of creating conditions of social and economic sustainability for displaced populations within the framework of voluntary return or resettlement in other urban or rural areas.

These measures shall allow displaced populations direct access to the government's social programs, particularly the programs related to:

1. Profitable projects
2. National System of Agrarian Reform and Rural Development
3. Fostering small business
4. Social organization and training
5. Social assistance in the areas of health, education, urban and rural housing and education, children, women, and the elderly, and
6. Urban and rural employment plans of the Social Solidarity Network”⁴²⁰

⁴²⁰ Republic of Colombia, Law 387 (1997), Article 17.

Chapter 14

Electoral Rights

A. INTRODUCTION

Purpose: Principle 22(1)(d) of the Guiding Principles is meant to ensure that IDPs are able to participate in local and national politics, including elections and referenda, without discrimination relative to the rest of the population, even if they cannot return to their place of habitual residence where ballots usually have to be cast. Elections are often an important part of conflict resolution and peace-building. By moving from armed clashes to electoral competition, the parties to conflicts create the conditions for political normalization, facilitating the re-integration of IDPs into society. However, in order for elections to work as a tool for permanently ending conflict, their outcomes must be seen as legitimate by all sides, including displaced populations. In other cases, particularly where displacement becomes protracted, IDPs have a legitimate interest in electing those whose decisions shape their present situation. For these reasons, it is particularly important that all marginalized groups in society—and particularly IDPs—have sufficient access to electoral processes to ensure that their interests are represented.

Note: Elections and referenda tend to raise similar issues in internal displacement contexts; this chapter focuses primarily on elections as these tend to occur more frequently and are generally more universally accepted than are referenda. However, the recommendations in this chapter also apply by analogy to referenda unless otherwise noted.

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Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

[...]

(d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right;

[...]

Other relevant principles: 1(1); 20; 22(1)(a), (c), (e); and 29(1)

Legal foundations:⁴²¹ Everyone has the right to take part in the government of his country, directly or through freely chosen representatives, including through participation in periodic and genuine elections.⁴²² The most central form of political participation protected by this rule is the right to vote in an election or a referendum

421 For more details see Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, 2nd ed., Studies in Transnational Legal Policy 38 (American Society of International Law and Brookings Institution, 2008), pp. 103–05.

422 UDHR, Article 21; ICCPR, Article 25; AfCHPR, Article 13; ACHR, Article 23; First Protocol to the ECHR, Article 3.

(for example, about a new constitution or the future status of a territory). However, the ability to stand as a candidate, campaign, and be elected is another important electoral right that also requires respect for freedoms of opinion, expression, and assembly.⁴²³ In accordance with the principle of universal and equal suffrage, no citizen of a democratic state should lose their electoral rights as a result of being displaced. Political participation rights extend to all citizens, without distinction of any kind, including on the grounds of being displaced. In all situations, women, ethnic and other minority groups, and indigenous and tribal peoples are entitled to participate in the political life of their country without discrimination.⁴²⁴ States may reasonably condition voter registration and candidacy upon residency requirements, but states should ensure that any such measures are not formulated in such a way as to curtail the right of IDPs to political participation.⁴²⁵

Regulatory framework: At the domestic level, most countries have developed so called electoral frameworks, or systems of constitutional, legislative, and administrative rules for conducting elections and referenda that are often overseen by an independent and non-partisan “electoral management body” (EMB), such as an election commission.⁴²⁶ Electoral frameworks are not only important for guaranteeing the general legitimacy and integrity of elections, but they should also provide special mechanisms to ensure that IDPs remain able to participate. As a result, safeguarding the rights of IDPs to vote in elections and referenda, as well as to be elected, usually cannot be addressed in IDP-specific laws, and amendments to election laws and other elements of the electoral framework will usually be necessary.

Problems often encountered by IDPs: IDPs who are citizens of their own country, remain entitled to the same political rights as the rest of the population. However, the fact that they are displaced from areas where they may be registered or entitled to vote and often lack access to personal documentation may make it impossible for them to exercise their electoral rights in the context of electoral frameworks that do not anticipate these contingencies. Rules that would be reasonable and harmless under normal conditions can have the unexpected effect of denying IDPs the right to vote by virtue of technical complications that arise from the fact that they are no longer located at their places of habitual residence or origin. In the worst post-conflict cases, this can mean that elections or referenda meant to ensure that IDPs can voluntarily return to their homes are inaccessible to IDPs because they are not in their homes. Protection of IDPs’ political participation rights in the wake of natural disasters or development projects is also crucial and raises many of the same challenges. Nearly all situations in which displaced persons cannot return to their areas of origin in safety and dignity raise difficult questions about

- (a) where IDPs should be able to register or re-register as eligible voters *or* stand as candidates;

423 ICCPR, Articles 19, 21, and 25.

424 Convention on the Political Rights of Women (www1.umn.edu/humanrts/instree/e2cprw.htm); CEDAW, Article 7; Protocol to the AfCHPR on the Rights of Women in Africa, Article 9; CERD, Article 5(c); Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, General Assembly Resolution 47/135, U.N. Document A/47/49 (1993), Article 2; ILO Convention No. 169, Article 6(b) (www1.umn.edu/humanrts/instree/d5drm.htm).

425 See UN Human Rights Committee, General Comment 25 (1996), paragraphs 3 and 11; Council of Europe, Recommendation Rec(2006)6, paragraph 9; OSCE/Office for Democratic Institutions and Human Rights (ODIHR), *Existing Commitments for Democratic Elections in OSCE Participating States* (Warsaw, October 2003), p. 16; OSCE, *Final Report, Supplementary Human Dimension Meeting on Migration and Internal Displacement, Vienna, Austria, 25 September 2000*, p. 5; United Nations and IASC, *Operational Guidelines on Human Rights Protection in Situations of Natural Disasters, with Particular Reference to the Persons who are Internally Displaced (Guidelines on Human Rights and Natural Disasters)* (2006), Guideline D.5.1, p. 32.

426 Jesús Orozco and Yuri Zuckermann, “Legal Framework Overview,” ACE Electoral Knowledge Network (www.aceproject.org/ace-en/topics/vo/voa/voa02/voa02f [July 9, 2006]).

- (b) where IDPs should be able to cast their vote by filling in and “tendering” (handing in) a ballot;
- (c) in which constituency or constituencies IDPs’ votes should be counted.

B. CHECKLIST: ISSUES TO BE ADDRESSED BY DOMESTIC LAWS AND POLICIES

Minimum essential elements of state regulation:

At a minimum, competent authorities should do the following:

1. Provide mechanisms for IDPs to register as voters even during displacement, such as through facilitated procedures to maintain existing registration, to transfer registration, or to waive requirements that would prevent IDPs from registering at the site of displacement.
2. Allow IDPs to cast their votes at the location of displacement, for either the constituency of origin (absentee vote) or the constituency of displacement.

In order to ensure that IDPs can exercise their political rights during and after displacement, the electoral framework should

- ensure that election management issues are integrated into a coordinated response to internal displacement—and IDP issues are integrated into election management;
- ensure that IDPs are consulted on obstacles to the exercise of their electoral rights and that they participate in the design of special electoral rules and facilities in internal displacement contexts;
- permit IDPs to vote in elections (1) related to the constituency from which they were displaced or (2) in the constituency in which they found refuge without unreasonable restrictions and ensure that in the latter case they do not lose eligibility for humanitarian aid or other benefits if they do so;
- give due consideration, in situations where elections are planned at the same time that significant IDP return movements are anticipated, to the possibility of adopting a provisional electoral framework in order to provide guidance for dealing with the resulting technical and logistical complications;
- ensure that voter registration programs take into account the needs of IDPs considering return, including both their lack of access to documentation and the need for flexible options in transferring their registration to return districts;
- provide for the conduct of campaigns in a manner that does not jeopardize the security of IDPs or manipulate their dependency on aid;
- inform voters in a language they understand about the electoral process and facilitate adequate and safe access to information about the political platforms of the parties to the election;
- permit IDPs to participate as candidates for election without unreasonable restrictions and on terms as favorable as those available to non-displaced candidates;
- ensure the design, location, and administration of polling stations for IDPs in a manner that ensures access, safety, and privacy.

C. NECESSARY ELEMENTS OF STATE REGULATION

Who is institutionally responsible for ensuring IDP participation in elections and referenda?

In situations of displacement, election management bodies should establish an IDP unit or focal point. The unit should be chaired by a member of the election management body and include staff with expertise in the legal, logistical, training, and information technology aspects of elections and referenda. Representatives from other relevant public agencies should be included, and the relationship between an IDP electoral unit and any ministry or coordination body responsible for IDPs (see chapter 2, Section G) must be clearly defined. In some cases, representatives of domestic monitoring bodies such as national human rights institutions (NHRIs), international agencies, or regional intergovernmental organizations might also be invited to participate in the unit's work.

The mandate of such a focal point or unit should include

- reviewing national electoral legislation and procedures to identify potential obstacles to IDPs' ability to exercise their electoral rights and identification of areas requiring reform and necessary changes or amendments;
- consulting with IDPs, including vulnerable or marginalized subgroups in order to develop an informed understanding about specific obstacles they face to the exercise of their election rights and the solutions they would propose;
- ensuring that the implications of electoral rules and procedures for IDP electoral rights are understood at all levels in the electoral management body;
- developing operational plans for voter registration of IDPs, including contingencies for different movement scenarios and procedures for temporarily modifying residency requirements;
- ensuring, in cooperation with other relevant authorities, that procedures are developed to allow IDPs who are missing documentation to register to vote;
- developing and ensuring the dissemination of voter information and education materials for IDPs;
- working with political parties to ensure that candidates campaign responsibly in light of the specific situation and vulnerabilities of IDPs;
- training regional and local level staff and election workers on specific procedures and considerations relevant to IDP voters;
- working with the election complaints and appeals mechanisms to ensure that IDPs enjoy equal access to remedies should their voting rights be unduly restricted;
- ensuring that adequate preparations are made to accommodate the particular logistical issues raised by IDP voting, including preparation and distribution of sufficient absentee ballots and transportation and security measures for moving such ballots to the place they are to be counted;
- monitoring the ability of IDPs to exercise their voting rights and making further recommendations.

Another crucial element of any institutional response to the problems of IDPs in elections is the appointment of bodies to provide independent monitoring, oversight, and review of electoral processes. National human rights institutions, in particular, should be encouraged to support and monitor the work of electoral

management bodies and other relevant actors. However, IDPs should also have unhindered and equal access to individual and collective appeals procedures before electoral appellate bodies or the courts. This principle should be clearly set out in the electoral framework as well as any national IDP policy.

How do the rules for voter registration affect IDPs?

Most national electoral frameworks include a general rule requiring individuals to register as voters at their place of residence and to re-register in order to retain their eligibility to vote when they move to a new place. Because this rule effectively requires citizens to both register and cast their votes in the constituency where they live, it presents a problem to IDPs, who are unable to return to their places of residence in order to meet these requirements. Therefore, one of the first questions to be considered is what legal possibilities exist in order to ensure that IDPs are effectively able to register to vote or remain registered while displaced. Administrative requirements that would be reasonable under ordinary circumstances can interfere with IDPs' ability to register to vote. Residency requirements that stipulate that individuals must live in an electoral constituency for a minimum time period (often six months, but in some cases several years) before registering to vote can be particularly problematic in displacement settings.⁴²⁷

Such rules are of less concern in nationwide processes, such as national referenda, direct presidential elections, or legislative elections that are based on proportional representation in which the entire country is treated as a single electoral district. In such cases, the key concern is only *whether* individual citizens are registered to vote rather than *where* they are registered to vote. However, national elections based on sub-national districts, as well as regional and municipal elections, are based on ballots that are unique for each constituency. Elections based on specific electoral districts raise questions regarding

- where the votes of citizens displaced from their regular electoral constituency should be counted;
- where such IDPs should be able to cast their vote;
- where and under what conditions they should be able to register or re-register as voters.

To answer these questions, it is helpful to distinguish between three typical displacement scenarios:

- Scenario A: Countries in which displacement has occurred and return remains impossible for the time being but the government controls the entire territory;
- Scenario B: Countries in which the government does not control territories that IDPs originated from (for example, territories controlled by insurgencies or occupied by foreign troops);
- Scenario C: IDP voting in the context of durable solutions, taking into account the principles that
 - IDPs should never be forced to return to their places of origin to either register or vote;
 - IDPs should be able to vote at their place of origin if they so wish;
 - IDPs should be able to have their vote count at their place of origin without necessarily going there (for example, through absentee balloting);
 - any restrictions on IDPs voting in their constituency of displacement should be reasonable and temporary.

427 Initiatives on election standards point to a six-month residence requirement as a reasonable rule. See Venice Commission of the Council of Europe, "Guidelines on Elections," CDL-AD (2002), Section I, 1 (5–6 July 2002): p. 14-15, (www.venice.coe.int/site/interface/english.htm); UN Human Rights Committee, General Comment 25(57), "International Covenant on Civil and Political Rights," UN Document CCPR/C/21/Rev.1/Add.7 (1996), Article 40, paragraph 4.

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If scenarios A or B last for prolonged periods of times, IDPs are unlikely to have any realistic opportunity to participate in elections held in their place of origin and may lose their registration because they do not live there and no longer fulfill any relevant residency requirements. Under such circumstances, IDPs may be doubly penalized when the conditions exist for them to return (scenario C) but elections are held before they have been able to either establish residence in their former homes or to meet residency requirements.

Can IDPs register to vote where they are displaced?

One possible solution in long-term displacement situations is to allow IDPs to re-register and have their votes count in the constituency where they are displaced. IDPs are entitled to the right of freedom of movement and choice of residence, meaning that the exercise of rights such as voting should not be strictly tied to a particular location (see chapter 5). In principle, it should be possible for IDPs to register to vote where they are displaced on the same basis as anyone who had moved there voluntarily and then to re-register to vote again in their place of origin, should they later choose to return. Moreover, for those who choose to resettle permanently, registration to vote can be a crucial element of integration into the local community. In either case, however, local registration can raise a number of problems.

One important practical issue is the possibility that the sudden introduction of large numbers of IDP voters may become a source of tension with the surrounding non-displaced population. IDPs may also want to maintain the possibility to influence politics at their place of origin and not just leave political power to those who displaced them. Such reasons may justify the restriction of local registration for IDPs for a limited time, if necessary, to maintain public order, while allowing them to continue to vote for their constituency of origin. In scenario A situations, political rights of the displaced can be safeguarded by providing for the possibility of absentee voting in the constituency of origin (see below). In scenario B, governments might provide IDPs the ability to vote for authorities “in exile” (for example, local authorities who have relocated to parts of the country under the authority of the government or representatives of their original constituency elected in government-controlled areas). However, where such situations become protracted or where IDPs cannot vote at all for prolonged period of times, the failure to allow them to participate in electoral politics on the same terms as locally resident citizens may amount to excluding them from participating in the political life. Even in cases where IDPs are able to vote for representatives or governments “in exile” representing districts where return and government control are not currently possible, this cannot substitute over the long term for full local participation if IDPs so choose.

A frequent concern related to local voting registration of IDPs is that local registration may arbitrarily reduce the amount of assistance they are entitled to. As discussed above (see chapter 1, section B), states are encouraged to avoid making assistance contingent on legally defined IDP status. In the context of elections, the risk presented by such a system is that registering to vote locally may be taken as a sign of intent to resettle permanently, leading to the denial of IDP status and the loss of all associated benefits. The exercise of political rights by IDPs where they are displaced does not preclude their eventual voluntary return when the conditions permit, and it should not be linked to their entitlement to protection and assistance.

CASE STUDY

Legislative amendments to allow IDPs to register to vote in local constituencies

In Georgia, IDPs displaced by armed conflict in the regions of Abkhazia and South Ossetia during the early 1990s were entitled to assistance subject to their recognition as “forcefully displaced persons” under a special 1996 law on IDPs. However, IDPs recognized under the law were not entitled to participate in local elections in the municipalities where they were displaced.⁴²⁸ Similarly, although IDPs were allowed to vote for national parliamentarians elected by proportional representation as well as representatives “in exile” for constituencies in their areas of origin, they were excluded from majoritarian elections of parliamentarians for the constituency in which they found themselves displaced.⁴²⁹ Although IDPs were permitted to re-register to vote where they were displaced, doing so meant relinquishing their IDP status and all associated benefits under the law on IDPs.⁴³⁰

As in other situations of protracted internal displacement, this situation initially reflected “genuine concerns among some of the internally displaced that by voting for the local candidate they would be accepting the de facto territorial situation and would thereby relinquish their right to return to their homes.”⁴³¹ However, by the late 1990s, serious questions arose regarding the compatibility of these rules with IDPs’ political rights. In August 2003, the Georgian parliament voted to remove restrictions on IDP participation in majoritarian parliamentary races and guaranteed their voting rights in local-level elections without placing the status or benefits of IDPs in jeopardy.⁴³²

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Is the existing electoral framework adequate to the needs of IDPs or is a provisional electoral framework needed?

Where an election follows soon after an armed conflict has ended and IDPs could return to their homes (scenario C), as is often foreseen in peace agreements, the actual return may happen later than anticipated or the application of residency requirements to returnees may hinder the re-registration of longer-term IDPs who wish to return and vote in their original constituencies. In almost any situation in which major elections follow closely upon displacement events (whatever their cause may be), election administrators should check the governing rules carefully for conditions that IDPs may be unable to comply with and adopt temporary exceptions to ensure that IDPs can register. Such processes should take into account the problems that may arise for IDPs who choose to remain and register to vote where they are displaced as

428 Parliament of the Republic of Georgia, Law of Georgia on the Elections of Bodies of Local Government—“Sakrebulo” (25 June 1998), Article 36 (2).

429 Parliament of the Republic of Georgia, Organic Law of Georgia on Parliamentary Elections (1995), Article 33(1): “Forcefully displaced persons shall be included in the voter’s lists according to their present places of residence. A separate list shall be compiled for displaced persons and they shall not participate in the majority elections held in single-mandate districts.”

430 Parliament of the Republic of Georgia, Law of Georgia on Forcibly Displaced Persons–Persecuted Persons (1996), Article 6.2c (www.unhcr.org/cgi-bin/texis/vtx/rsd?search=c&ISO=GEO&CATEGORY=RSDLEGAL&next=10).

431 Simon Bagshaw, *Internally Displaced Persons and Political Participation: The OSCE Region*, Occasional Paper (Brookings Institution Project on Internal Displacement, September 2000).

432 Erin Mooney and Balkees Jarrah, *The Voting Rights of Internally Displaced Persons: The OSCE Region*, Occasional Paper (Brookings Institution – John Hopkins SAIS Project on Internal Displacement, November 2004) pp. 32–38.

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well as for those who wish to return but cannot do so before the election takes place, because of continuing security concerns or lack of support for reintegration, for example. As a result, it is important to incorporate procedures that allow considerable flexibility in electoral frameworks in order to ensure that every eligible citizen is able to vote, even in situations where return movements take place either much faster or much slower than anticipated.

In many cases, procedures such as absentee balloting and tendered ballots (see below) may already be built into electoral frameworks and simply need to be adapted to the needs of IDPs. However, in situations where significant numbers of people have been displaced and have the option to return, provisional electoral frameworks may be necessary to anticipate and deal with all the potential problems that could prevent IDPs from registering to vote. In some cases, entirely new provisional electoral frameworks and electoral management bodies have been set up in the wake of armed conflict in order to ensure a smooth transition to normalized political conditions. Under such circumstances, electoral authorities can design temporary residency and other requirements in a manner designed to best protect IDPs' voting rights under the particular circumstances.

CASE STUDY

Provisional election rules in Bosnia and the design of residency requirements to facilitate IDP registration in their original constituencies

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Despite the displacement of about half of Bosnia's population during the 1992–95 conflict, the Dayton Peace Agreement laid the ground for elections to begin in the immediate post-war years in accordance with rules to be promulgated by a Provisional Election Commission appointed by the Organization for Security and Cooperation in Europe (OSCE). The Agreement foresaw the difficulties IDPs were likely to face in registering to vote at their original places of residence in the aftermath of conflict and set out the broad rule that

“a citizen who no longer lives in the municipality in which he or she resided in 1991 [the date of the last pre-war census, which served as the basis for voter registration] shall, as a general rule, be expected to vote, in person or by absentee ballot, in that municipality... Such a citizen may, however, apply to the Commission to cast his or her ballot elsewhere.”⁴³³

Concerns about local non-compliance with the terms of the Peace Agreement were justified in many instances, with some IDPs facing hostility from the authorities in their place of original residence and others facing pressure from the local authorities where they were displaced to not take steps that could lead to return. As a result, provisional elections rules came to focus on protecting the right of IDPs to vote in their original municipality.⁴³⁴ This concern was directly expressed through the rules on voter registration in the

433 General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 3, Article IV (December 14, 2005) (www.ohr.int/dpa/default.asp?content_id=371).

434 OSCE/ODIHR, “Rules and Regulations: As Amended and Recompiled from the 1996 Rules,” Provisional Election Commission Document (October 14, 1997): “Every effort will be made... to facilitate the return of citizens to the municipality where they were registered in 1991 to vote in person. Those who cannot do so will be provided, on application, with an absentee ballot.”

Provisional election rules in Bosnia and the design of residency requirements... (Cont.)

1997 municipal elections, which applied a relatively strict fourteen-month residency requirement to those who sought to register in the constituency where they were displaced:

“Displaced Persons who were citizens of Bosnia and Herzegovina on 6 April 1992 [at the outset of the conflict], but who have changed their place of residence...either forcibly as a result of war or voluntarily, may apply during the voter registration period to vote in person in the municipality in which they now live and intend to continue to live, only if they present documentary proof of continuous residence in the current municipality since 31 July 1996 or before.”⁴³⁵

Provisional rules are needed only as long as the crisis that gave rise to them persists. With political normalization and significant reduction of the IDP population in Bosnia, the residency requirements for voter registration were decreased to a more typical six-month period in subsequent elections.

How should a voter registration process be conducted in the wake of displacement?

In displacement settings, voter registration processes should record information on the current location of IDPs, their previous residence, and whether they intend to return to vote or wish to vote by absentee ballot (see below). Computerized voter registration is the best option, since the resulting database can be used to record updated information on the location and movements of displaced voters and identify duplicate registrations. However, creating and maintaining nationwide computerized registration databases requires considerable capacity-building and expense.

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Registered IDP voters should be issued a receipt or voter identification card that can be used to verify their registration on the voters list and allow them to change their assigned constituency and polling station in case they return (or otherwise change their place of residence) prior to Election Day. Local election commissions should have the capacity to verify returning IDPs as new registrants in their district and to communicate change of registration information to the national election body and the local commission where the IDP was previously registered.

As a general rule, election timelines should be formulated so as to allow enough time for all IDPs to have an effective opportunity to register. This requires that a fixed date for the end of registration of IDPs be established well in advance of Election Day. Election organizers must allow sufficient time to

- conduct a registration process, including verification of the identity and eligibility of IDPs lacking documentation (see below) and issuance of registration receipts or voter identification cards;
- produce a provisional voters register;
- check the register to remove duplicate registrations;
- allow public inspection of the register;
- adjudicate disputed claims for eligibility to register through challenges and appeals procedures;
- update the register based on the results of such adjudications;
- calculate the number and type of ballots needed at each polling station;
- ensure sufficient time to transport these ballots;

435 “Rules and Regulations: As Amended and Recompiled from the 1996 Rules,” Article 10, Section c1.

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- ensure sufficient time and adequate guidance and training for local election officials to administer special programs allowing IDPs to (a) transfer their registration upon return, (b) vote by tendered ballot upon return; or (c) vote by absentee ballot if they do not yet wish to physically return.

What technical issues are likely to arise in registering IDPs to vote?

Technical complications due both to IDPs' lack of access to documents and their decisions on return are inherently likely to arise in registration processes and should be anticipated wherever possible. Some key issues include

- **Lack of documentation:** Whether IDPs are registering to vote where they are currently displaced or re-registering to vote in their return destination, they will often face difficulties in producing documentation to establish their identity, citizenship, voter registration or residency. It is therefore crucial for national authorities to examine electoral frameworks for documentation requirements that could prevent IDPs from registering and exercising their right to vote. In cases where such difficulties arise, many of the strategies set out in chapter 11, from recognition of alternative forms of evidence to systematic re-registration, should be considered.
- **Absentee balloting:** IDPs who want their votes to count in their constituency of origin may be unable to travel there in order to register or cast their ballots for reasons ranging from ongoing security concerns to the costs of travel. In such cases, absentee balloting procedures should allow IDPs to register to vote or have their prior registration in their place of origin verified—and actually cast their ballots—without actually having to be physically present in their original constituency. Significant advance planning is required in order to ensure that all absentee voters are in fact registered at their place of origin and that the correct number of absentee ballots for each return destination are distributed to each of the remote locations where IDP absentee voters are temporarily residing (including camps and collective centers).
- **Extended registration deadlines:** Even in cases in which IDPs initially opt to cast their vote in their place of displacement, it is important to anticipate the possibility that they may spontaneously decide to return between the date of registration and the date of elections. Where such returnees had been planning to vote by absentee ballot, they should already be registered to vote at their return destination. However, where they had registered to vote in the area where they were displaced, it may be necessary to make exceptions to the regular registration deadlines in order to ensure that they are able to vote at their return destination. Such exceptions may take the form of either a general extension of the registration deadline automatically applicable to all returning displaced persons or exceptional extensions in response to individual petitions.
- **Provisional or “tendered” ballots:** Where return movements are likely to continue beyond even extended registration deadlines, the only way to preserve returnees' voting rights may be to allow them to cast provisional or tendered ballots. Tendered ballots allow persons who are not listed on the final voter register to cast their vote at the time they present themselves at the polling station, and these ballots should be subject to secondary verification procedures, in accordance with law, after polling closes.⁴³⁶

436 See Allan Wall and Louise Ollivier, “Provisional or Tendered Ballots,” ACE Electoral Knowledge Network, (www.aceproject.org/ace-en/topics/vo/voa/voa02/voa02f [July 9, 2006]).

CASE STUDY

Procedures for transferring the registration of returning IDP voters

The 2002 elections in Sierra Leone included a “transfer of the vote” program in which displaced voters who returned to their homes of origin between the date they registered elsewhere and the date of polling were able to apply to vote at the place of their return:

“Where any elector who is registered in one ward becomes ordinarily a resident in another ward... he may apply to the Registration Officer of the ward in which he is an ordinary resident, and the Registration Officer shall [provided they meet residency criteria and are a registered voter]... register the applicant in the register for the ward and issue to the applicant a voter registration card for that ward.”⁴³⁷

Because the system was not computerized, returning voters were required to fill in a two-part form, with the local election commission keeping one half of the form in order to process the transfer and the returnee keeping the other half as proof of registration. The deadline for vote transfers was fifteen days before Election Day, later reduced to only nine days before Election Day. The new and untested nature of this system meant that difficulties arose in processing transfer applications and coordinating transfers between relevant polling stations. As a result, some voters were unable to cast their votes on election day.⁴³⁸

In the 2005 Liberian elections, late transfer of registration was also possible for IDPs but on the basis of individual petitions rather than a general rule. Specifically, Section 7 of the Electoral Reform Law instructed the National Election Commission (NEC) to “adopt measures to facilitate the registration of [IDPs]... after the registration deadline where justifiable reasons for failure to register before the deadline are shown.”⁴³⁹

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What particular risks of insecurity and manipulation do IDPs face in election campaigns?

The security of IDP voters is often a key concern during election campaigns and the voting itself. Electoral authorities should take measures to ensure the physical safety of displaced voters and minimize the potential for electoral-related violence, but authorities should also think of security in broader terms. IDPs are a uniquely vulnerable societal group and are often dependent on assistance from officials whose positions may be dependent on the outcome of elections.⁴⁴⁰ For elections to be perceived as legitimate in the context of displacement, officials should take all necessary steps to avoid even appearing to use the dependence of

437 Sierra Leone, “The Laws of Sierra Leone on the Web; The Electoral Laws Act” (2002), Article 5(1). (www.sierra-leone.org/Laws/2002-2.pdf).

438 See European Union, Election Observation Mission, “Sierra Leone Presidential & Parliamentary Election, 14 May, 2002” (http://ec.europa.eu/comm/external_relations/human_rights/eu_election_ass_observ/sleone/rep02.pdf P.15); Carter Center, “Observing the 2002 Sierra Leone Elections” (www.cartercenter.org/documents/1349.pdf).

439 Republic of Liberia, Electoral Reform Law 6 (December 17, 2004), (www.necliberia.org/links/Legislatures.shtml). See also European Union, Election Observation Mission, “Liberia Presidential & Legislative Elections, 11 October, 8 November 2005,” p. 6. (http://ec.europa.eu/comm/external_relations/human_rights/eu_election_ass_observ/liberia/liberia_final_030206.pdf).

440 Jeremy Grace and Jeff Fischer, “Enfranchising Conflict-Forced Migrants: Issues, Standards, and Best Practices,” Participatory Elections Project Discussion Paper 2 (September 29, 2003) (www.geneseo.edu/~iompres/Archive/Outputs/Standards_Final.pdf).

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IDPs on humanitarian assistance to their advantage. The rules should be designed so that all actors believe they have a fair chance of contesting the election.

Key considerations include

- appointment of a balanced and non-partisan election commission to ensure that all groups are represented;
- impartial appeals authorities to handle complaints and, where necessary, provide judicial overview of the process;
- transparent procedures, with all interested political parties and civil society organizations able to monitor all phases of the elections process;
- presence of independent elections monitors at all stages of the process;
- reasonable time frames for registration, the movement of ballots, and counting procedures;
- effective public information in order to shape voter expectations, including explanations of how long after balloting final results will be available.⁴⁴¹

Finally, in order to prevent political actors from exploiting the vulnerabilities of IDPs, the electoral framework should prohibit candidates from providing relief materials and food to IDPs during campaign appearances. To supplement such rules, election management bodies should also consider negotiating political party “pacts” or “codes of conduct” in which candidates and parties pledge in advance not to engage in such activities.

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CASE STUDY

Explicit legislative guarantees of voter independence for IDPs

While election-related violence and political pressure is a potential threat to both displaced and non-displaced voters, electoral frameworks should make specific reference to the inherent rights of IDPs to participate in elections without risking their security or compromising their access to basic social services. For example, the 2002 Rules and Regulations on general elections in Bosnia stated that

“no citizen of Bosnia and Herzegovina shall forfeit any right or entitlement because he or she has registered as a voter, or because his or her registration to vote for a municipality is not the one in which he or she currently resides... No person shall be required to present any document issued to him or her by a competent municipal body relative to the registration or voting for any other purpose except as necessary for the purpose of voter registration, confirmation of registration or voting.”⁴⁴²

441 Jeremy Grace and Jeff Fischer, “Enfranchising Conflict-Forced Migrants: Issues, Standards, and Best Practices,” Participatory Elections Project Discussion Paper 2 (September 29, 2003) (www.geneseo.edu/~iompress/Archive/Outputs/Standards_Final.pdf).

442 2002 Rules and Regulations on general elections in Bosnia, Article 3.7.

Are IDP voters adequately informed about the electoral process?

Another important part of securing IDP voters' rights is ensuring that they benefit from targeted information regarding both the conduct of registration and voting and the positions of the parties running for office. This is necessary both (1) because IDPs typically have a harder time accessing public information or news and (2) because registration and voting procedures for displaced people tend to be particularly complex.

The first category of information relates to the election process itself, covering the basic questions of when, where, and how to register and to vote. Voter education campaigns on these topics should be developed in consultation with displaced people, in order to ensure that they anticipate the questions IDPs are likely to have. Once informational materials have been developed, they should be distributed as broadly as possible through media and the press (for instance, interviews or informational advertisements on the radio and TV), posters, and community meetings organized by civil society organizations and relief organizations that working directly with the displaced.

CASE STUDY

Encouraging IDPs to vote

The most effective voter education programs for IDPs cover not only the technical aspects of voting but also the importance of IDP electors' participation in the political process. In the aftermath of hurricanes that struck the southern United States in September 2005, state authorities in Louisiana requested financial support from the Federal Emergency Management Agency to fund a national media campaign to reach an estimated 400,000 registered voters scattered across the U.S. with information on absentee voting procedures for state and local elections. A spokesperson for the state agency explained that a central message of the campaign to displaced voters was that "you still have the right to vote, and we want you to."⁴⁴³ The Louisiana Elections Division also placed a comprehensive guide to participation in post-hurricane elections on the Internet.⁴⁴⁴ The guide included instructions on how to register and cast ballots, downloadable forms for different categories of voters, locations of polling stations outside Louisiana, and instructions for voting by mail.

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Where IDPs are located in camps or collective shelters, the existing leadership and communication structures that exist in such situations can facilitate voter education. Election authorities should engage with camp administrators, IDP leaders, and humanitarian agencies in order to spread voter information. Camps can often be good settings for training and informational meetings on election procedures, but particular efforts should be made to ensure that IDP women voters are included in situations where they are not adequately represented in camp leadership structures.

443 Jeff D. Opdyke and Corey Dade, "Louisiana Seeks Funds to Reach Displaced Voters," *Wall Street Journal*, October 8, 2005, p. A4.

444 State of Louisiana Elections Division, "Displaced Voter Information," (<http://sos.louisiana.gov/elections/DisplacedVoterFAQs.htm> [July 9, 2006]).

CASE STUDY

The role of domestic and international non-governmental organizations in IDP voter education

In Uganda, local civil society groups partnered with the National Democratic Institute (NDI) to provide voter education to marginalized populations within IDP camps. For the 2006 elections, these actors focused on ensuring the participation of the most marginalized groups in IDP camps, such as people with disabilities, former child soldiers, and women.⁴⁴⁵

All voter education materials, as well as all the registration forms and ballots, must be available in languages and alphabets that IDPs understand. Even in countries that have one or more official languages that many IDPs may reasonably be expected to have mastered, the failure to conduct voter education and polling procedures in languages that all IDPs are fluent in is likely to have the effect of excluding some or even many of them. More broadly, election authorities should review voter education programs regularly to ensure that they reach marginalized groups within the IDP community, and particularly displaced women.⁴⁴⁶

CASE STUDY

Mandating election materials in multiple languages

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In Kosovo, the law governing the 2000 and 2001 municipal elections required all election-related information to be printed in four languages: Serbian, Albanian, Romani, and Turkish. Implementation of this requirement required a great deal of planning and was complicated in practice, but failure to take this approach would have risked excluding vulnerable minority groups from the poll.

Are IDP voters adequately informed about the political platforms of the parties to elections?

Unlike voter education campaigns, information on the platforms and political priorities of the parties to elections are typically produced and distributed primarily by the candidates themselves in the form of paid advertisements, campaign materials, and rallies. In displacement settings, political party campaigning raises particular issues not relevant to elections under normal conditions. The vulnerability and dependency of IDPs makes it particularly important that the parties to elections are not perceived as seeking votes by promising (or threatening to withhold) humanitarian aid, as discussed above. In addition, the causes and consequences of displacement can themselves become politicized in election campaigns, exposing IDPs to security risks.

445 National Democratic Institute for International Affairs, “Civic Update, May 2006,” p. 2 (www.accessdemocracy.org/library/2008_citpart_civicupdate_050106.pdf).

446 Muna Ndulo, “Enhancing the Role of Women in Electoral Processes in Post Conflict Countries: Constitutional and Legislative Measures,” in *Security, Reconstruction, and Reconciliation: When the Wars End*, (ed) Muna Ndulo, University College London Press, London, 2007.

These concerns are particularly serious in camp settings, which are often typified by high population densities, difficult living conditions, weak security infrastructure, and dependency on humanitarian aid. As a general rule, political parties should be allowed to campaign in IDP camps during the official campaign season. However, camp administrators and electoral authorities should clarify that access to the camps is contingent upon responsible campaigning and they should monitor parties' statements and activities while parties are campaigning there. Actions such as distributing food or benefits in the camps should be prohibited.

In the context of political party pacts or codes of conduct (discussed above), candidates should pledge not to campaign irresponsibly or coercively within camps in exchange for guarantees that all parties will be provided equal access to camps. Local election authorities should ensure compliance with these agreed-to terms, and accredited domestic and international monitors should be given free access to camps and other IDP sites so that they can monitor campaign activities. Election authorities should also arrange to collect and distribute platform information for IDPs residing in the areas where candidates are not focusing their efforts. Finally, IDPs running as candidates for constituencies where they do not currently reside should be eligible for assistance in delivering their platforms to IDP voters in other areas, including their original constituency. All parties and candidates should be allowed—and encouraged—to conduct their campaigns in the languages understood by IDPs.

IDPs themselves should be entitled to freely participate in political campaigns, seeking, receiving, and imparting information without unnecessary restrictions.⁴⁴⁷ IDPs should also enjoy the right of peaceful assembly, including political rallies and manifestations, subject only to restrictions in conformity with law and necessary for national security, public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.⁴⁴⁸ Political rallies in IDP camps or collective centers may present particular security concerns but cannot be banned or ruled out altogether. IDP laws and policies should assume that political assemblies in IDP facilities are permissible with restrictions to be imposed only based on the above criteria and based on a case-by-case assessment of the situation.

Are IDPs able to participate on an equal basis as candidates in elections?

IDPs should not only enjoy the same voting rights as all other citizens, but in principle, they should be able to stand as candidates in elections as well. Most states impose both citizenship and residence requirements on persons who wish to be elected. Citizenship requirements for local or national offices generally should not cause problems for IDPs, but residence requirements for running in local elections may present an obstacle. While residence requirements to be able to vote in local constituencies are often less than one year, residence requirements to be elected can be longer and are often several years.

447 ICCPR, Article 19: Freedom of expression is subject to restrictions “as are provided by law and are necessary for respect of the rights or reputations of others [or] for the protection of national security or public order (ordre public), or of public health or morals.”

448 ICCPR, Article 21: This article subjects the right of peaceful assembly to restrictions “imposed in conformity with law and... necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.” For more detailed guidance on the scope and application of these restrictions, see UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, “Syracusa Principles on the Limitation and Derogation of Provisions in the [ICCPR],” Annex, UN Document E/CN.4/1984/4 (1984).

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Candidate residency requirements serve the important purpose of ensuring that political representatives are familiar with local issues. However, they should be balanced against other considerations in times of displacement. First, it is important to remember that IDPs would have met residency requirements to stand in elections at their place of origin and that strict application of residency requirements in their host community may be perceived as punishing them for having been displaced. Second, local responses to IDP influxes may be better coordinated in cases where the displaced have their own representation in local government organs. These arguments may weigh in favor of temporarily reducing long residency requirements for IDPs to stand in local elections in the context of developing IDP policies and provisional electoral frameworks.

IDPs seeking election may share many of the same problems as IDP voters in terms of not being able to access personal documentation necessary for them to register as candidates. In such cases, the strategies set out in chapter 11 on documentation related to recognition of alternative forms of evidence should be considered. Once IDPs are recognized as candidates, they should be entitled to campaign under conditions no less favorable than other candidates. In other words, they should be eligible for any available publicly subsidized support, such as security or advertising time on public media, according to the same rules that apply to other candidates. In some cases, such as provision of security, displaced candidates may have particular needs that should be fully addressed.

Finally, displaced candidates must be afforded freedom of opinion and expression in the course of their campaigns. Although conflict-related displacement often results in sensitive and difficult political situations, all political candidates must be permitted to impart ideas and information without any restrictions, save those provided by law and necessary to secure respect for the rights or reputations of others, the protection of national security, public order, or public health and morals.⁴⁴⁹ Likewise, domestic law should prohibit propaganda for war or advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence on the part of any candidate, displaced or not.⁴⁵⁰

How can the design and placement of polling stations facilitate IDP voting?

In situations where large numbers of IDPs reside in camps and welfare centers, authorities should ensure that these camps have adequate election facilities that are staffed by personnel trained in absentee balloting. On the one hand, outside of camps, both IDPs and the broader voting population may be best served if separate IDP polling stations are created at sites where significant IDP populations are expected to cast their votes. Mixing regular voters with IDPs, who often have distinct identification and voting procedures, can lead to long lines and overcrowded, potentially insecure polling stations. On the other hand, separate stations should be avoided in situations where this might contribute to intimidation or discrimination against IDPs.

Separation can occur either through separate voting rooms in a single station or through dedicated IDP or absentee balloting stations. In either event, authorities will need to carefully plan the location of such stations in order to make them accessible to IDPs on the same basis as the rest of the population. In cases

449 ICCPR, Article 19.

450 ICCPR, Article 20.

where IDP populations are highly dispersed or are not particularly mobile, it may be necessary to consider providing not only mobile registration units but also mobile polling stations on the day of the vote in order to ensure that all IDPs have an effective opportunity to participate. All polling station personnel at sites of potential IDP return should be familiar with any existing procedures allowing late re-registration of IDPs or provisional or tendered ballots.

What particular security issues arise in the course of IDP voting?

Election-related violence is a potential threat to all voters, but problems may be particularly acute for the displaced. Absentee ballots (discussed above) are often a crucial way of allowing IDPs to vote in their home districts when the conditions still do not exist for them to safely return in person. However, in post-conflict situations, the creation of safe transit routes, protected by neutral security forces and facilitated with free transportation, can be another option.

The electoral framework should guarantee that the principle of the secret ballot is respected and that voters are able to cast their ballots without fear or intimidation. Properly constituted and legally recognized police forces should have exclusive responsibility for providing security during elections, but only under exceptional situations should such forces be allowed to be physically present inside polling stations in order to avoid any perception of intimidation or influence of voters. In the event of a disturbance, for instance, police forces should be allowed entry into election facilities, but only for as long as the disturbance persists.⁴⁵¹ The electoral framework should prohibit weapons in or near registration and polling facilities, as well as posters or political campaigning of any kind within a clearly defined area surrounding election facilities

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Election officials should guarantee that neutral monitors have access to all election facilities in order to reinforce both the transparency of the process and the safety of IDP voters. If tensions remain high, the presence of international peacekeepers and observers can enhance security in a manner likely to be perceived as independent and unthreatening by all sides. Electoral management bodies should be candid in their advance assessment of the level of security in elections in order to avoid putting voters at risk.

What particular concerns relating to the handling and counting of ballots arise in internal displacement contexts?

The use of absentee polling requires mechanisms to track the movement and issuance of ballots. The more constituencies that are involved in the election, the greater are the number of specific ballots that will need to be distributed to polling stations, placed in the correct ballot box or sorted after the close of polling, and assigned to the correct constituency during the vote count.

Counting absentee votes raises particular challenges, with electoral authorities required to decide whether such ballots will be:

⁴⁵¹ See, for example, the OSCE Mission in Kosovo, Central Election Commission, Electoral Rule No. 11/2001, Section 4(a): “No weapons or arms shall be allowed in a polling station unless the OSCE international supervisor or Chairperson of the Polling Station Committee asks for the assistance of security/police personnel.” Similar statements appear in almost all electoral codes.

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- counted on-site following the close of polling, with results reported via the electoral management body headquarters and added to the relevant constituency totals;
- moved to a centralized sorting and counting facility for all absentee ballots;
- moved to the relevant constituency and counted with regular ballots from within that constituency.

The use of centralized facilities to count ballots can reduce the delays often involved in counting ballots on-site in all the polling stations. In tense political situations, the use of centralized facilities also preserves the secrecy of votes cast in IDP camps or collective shelters—when such ballots are mixed in with all other ballots, it becomes impossible for outside actors to know how the residents of the camp voted, reducing their vulnerability to retribution. Uncounted ballots should be moved to counting facilities in sealed boxes, with security provided by polices and, where necessary, international election observers. Accredited domestic observers from both political parties and civil society should be allowed to monitor the movement of ballots, but should not be allowed to take physical possession of them.

Chapter 15

Education

A. INTRODUCTION

Purpose: Principle 23 of the Guiding Principles is meant to protect the right of IDPs to education during their displacement. This right is also to be secured in the context of durable solutions in accordance with the obligation to provide “equal access to public services” in Principle 29(1).

Principle 23

1. Every human being has the right to education.
2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.
3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

Other relevant principles: 1(1) and 29(1).

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Legal foundations:⁴⁵² Every human being has the right to (in principle) free and compulsory education at the primary level,⁴⁵³ as well as to access to secondary education, including general and vocational education that is free or subject to financial assistance in case of need.⁴⁵⁴ Educational services and facilities should be within safe physical reach.⁴⁵⁵ The general goal of educational curricula should be the preparation of children for responsible life in a free society, in the spirit of understanding; peace; tolerance; human rights; equality of the sexes; and friendship among ethnic, national, and religious groups.⁴⁵⁶ However, in pursuing this

452 For more details, see Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, 2nd ed., Studies in Transnational Legal Policy 38 (American Society of International Law and Brookings Institution, 2008), pp. 106–10.

453 UDHR, Article 26(1); ICESCR, Article 13(2)(a); see, however, Article 14 on developing countries that have not yet introduced free primary school services; CRC, Article 28(1)(a); ADHR, Article XII(4); Convention against Discrimination in Education, Article 4(a)

454 CRC, Article 28. The same article also sets out a state obligation to “make higher education accessible to all on the basis of capacity by every appropriate means.”

455 UNCESCR, General Comment 13 (1999), paragraph 6.

456 CRC, Article 29(1).

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goal, educational facilities must afford all children—and particularly those belonging to ethnic, linguistic, religious, or cultural minorities—the ability to develop their own cultural identity, language, and values.⁴⁵⁷

States must ensure access to education to all, without discrimination of any kind.⁴⁵⁸ In cases in which particular groups, such as women and girls or ethnic minorities, have suffered as a result of unequal access to education, temporary special measures to bring about *de facto* equality in access to education for such groups cannot be considered discrimination, so long as they do not lead to the maintenance of unequal or separate standards for different groups.⁴⁵⁹ The right to education continues to apply in emergencies and armed conflicts.⁴⁶⁰ Because of the particular challenges faced by IDPs in accessing education, special measures should be taken to ensure that all IDPs—and particularly displaced women and girls as well as former child soldiers—are able to exercise their right to education.⁴⁶¹

Regulatory framework: Many national constitutions set out a general right to education, and some go into more detail on how the right should be implemented, for instance, by guaranteeing free and compulsory primary education.⁴⁶² In many centralized states, more detailed provisions on educational standards, curricula

457 CRC, Article 29(1)(c); Fourth Geneva Convention, Article 24(1). Several international instruments also allow for parents or guardians to provide such education in accordance with their own convictions. Second Optional Protocol to the Geneva Conventions, Article 4(3)(a); UDHR, Article 26(2); ICCPR, Article 18(4); Convention against Discrimination in Education, Article 5(1)(b) Adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 14 December 1960, (http://www.unhchr.ch/html/menu3/b/d_c_educ.htm); ACHR, Article 12(4); ECHR, Protocol I, Article 2.

458 CEDAW, Article 10; Convention against Discrimination in Education, Article 2(a); CERD, Articles 5 and 7; “Declaration on the Rights of Disabled Persons,” UN Document A/RES/33447 (XXX) (1975), paragraph 6. See also the Inter-American Convention on the Elimination of All Forms of Discrimination against Persons with Disabilities, AG/RES 1608 (XXIX-O/99), Article III(1)(a); “Persons with Disabilities,” General Comment 5, Committee on Economic, Social and Cultural Rights (1994), UN Document E/1995/22; Declaration on the Rights of Mentally Retarded Persons, General Assembly Resolution 2856 (XXVI), 26 UN GAOR Supplement (No. 29) at 93; UN Document A/8429 (1971), paragraph 2.

459 UNCESCR, General Comment No. 13, paragraph 32; CRC General Comment No. 5, paragraph 12

460 In international armed conflict, parties to the conflict must “take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources . . . and [that] their education [is] facilitated in all circumstances.” Occupying powers must also facilitate the functioning of educational facilities in occupied territories. See Fourth Geneva Convention, Articles 24(1), Article 50(1). In situations of internal armed conflict, children must “receive an education, including religious and moral education.” See Second Additional Protocol to the Geneva Conventions, Articles 4(3)(a) and 28(2). A series of resolutions of the UN Security Council concerned with the “protection of children in armed conflict” have reiterated and reinforced the international norm prescribing continued education in the context of armed conflict. See, for example, Resolution 1314 (2000), adopted by the Security Council at its 4185th meeting, UN Document S/RES/1314 (August 11, 2000); Resolution 1539 (2004), adopted by the Security Council at its 4948th meeting, UN Document S/RES/1539 (April 22, 2004), paragraph 9; Resolution 1261 (1999), adopted by the Security Council at its 4037th meeting, UN Document S/RES/1261 (August 30, 1999), paragraph 2. See also “Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction,” Inter-Agency Network for Education in Emergencies (2004); Kacem Bensalah, ed., *Guidelines for Education in Situations of Emergency and Crisis: EFA Strategic Planning* (UNESCO, 2002); UNHCR, “Education: Field Guidelines” (Geneva, February 2003); United Nations Inter-Agency Standing Committee, “Protecting Persons Affected by Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters” (June 2006), Guideline C.1.

461 World Declaration on Education for All (1990), Article 3(4) (www.unesco.org/education/efa/ed_for_all/background/jomtien_declaration.shtml); “Beijing Declaration and Platform for Action,” Fourth World Conference on Women, A/CONF.177/20 (15 September 1995) and A/CONF.177/20/Add.1 (1995), paragraph 147(g).

462 For example, general rights to education are enshrined in the Constitution of the Democratic Republic of the Congo, Article 37(1); the Constitution of the Islamic Republic of Afghanistan, Article 43(1); and the Constitution of the Republic of Armenia, Article 39. An example of a more detailed constitutional protection of this right can be found in the Constitution of Colombia, Article 67.

and facilities may be set out in a dedicated piece of legislation, such as an education law. Such an act is often part of the portfolio of a dedicated ministry, sometimes in combination with other related issues such as culture and sport. In such cases, the ministry competent for education issues may have the competence to issue instructions when greater detail or specificity is needed than what is set out in legislation. In decentralized states, education is often a competence that may be delegated in whole or in part to the provincial or local level for regulation through sub-national legislation and regulations.

Problems often encountered by IDPs: As a result of displacement, IDPs lose access to educational facilities and services. Schools and training facilities in places of origin are no longer safely accessible and may be destroyed, while teachers and administrators are often dispersed. Arranging for education where IDPs find themselves displaced is often complicated. If IDPs are located in camps or grouped shelter that is remote or inaccessible to local population centers, then primary education facilities (at least) must be built up from scratch within the camp, an undertaking which is often complicated by lack of resources and expertise.

On the other hand, where IDPs do enjoy access to local school systems, a number of other problems typically arise:

- IDPs may suffer from discrimination because they do not belong to the local ethnic, linguistic or religious majority group, or may simply not understand the local language of instruction.
- IDPs may have no other shelter options than collective centers normally used by the local community as schools, presenting an obstacle to education for both displaced and non-displaced children.
- Where local schools are available, the arrival of large groups of displaced children can lead to overcrowded classrooms, straining the relationship with host communities.
- Where local schools are located at a distance from IDP settlements, traveling to school may be dangerous where the route goes via mined areas or security checkpoints where children may be subject to harassment, forced recruitment, or abduction.
- As discussed at more length in chapter 11, IDPs often lack personal documentation; lack of identification or records attesting to prior enrollment or the level of studies that displaced children have completed can prevent them from registering locally for education; such bureaucratic obstacles can also prevent displaced teachers without access to proof of their qualifications from providing badly needed instruction.
- In some cases, local residency requirements and other bureaucratic requirements can prevent enrollment of IDPs in local educational facilities.
- School fees, other costs such as books and uniforms, or in some cases the need to pay bribes to teachers and administrators can render education unaffordable for IDPs, in light of the impoverishment risk that typically accompanies displacement (see chapter 15).
- Displaced children may find themselves either required to abandon school in order to contribute to their family's economic survival, or to work so hard outside of school hours that their education suffers.
- Displacement is often accompanied by physical or psychological trauma in cases when children have been recruited as child soldiers, witnessed atrocities, or been separated from family members. Under such circumstances, displaced children's ability to learn may be limited in the absence of psycho-social care (see chapter 10).

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In the context of return, the education of internally displaced children may be further disrupted because they have to return to areas without schools or because return takes place in the middle of the school-year without the possibility to enroll at the place of return before the next new school year starts. Instruction may also take place in a language that IDPs do not understand, or it is based on curricula that are offensive or discriminatory, and it may take place in segregated facilities.

Loss of access to education may have long-term effects in terms of the livelihood and life prospects of those affected. Immediate risks associated with deprivation of education include the loss of a stable routine and structure in the daily lives of displaced children and increased vulnerability to economic and sexual exploitation or military recruitment. Education provides indispensable psycho-social support and protection to displaced children, as well as an opportunity to educate IDPs more broadly in relevant life skills and survival issues (such as mine awareness and HIV/AIDS prevention).

Obstacles to education during and after displacement fall particularly hard on women and girls. Girls face many security risks that boys may not. For instance, in camp settings where schools do not have separate lavatories for boys and girls, the latter may be at risk of sexual assault. In addition, faced with high educational costs and the economic strain of displacement, IDP families may prioritize boys over girls, limiting the latter's life chances. Former child soldiers also face particular challenges in catching up with the years of education they have missed.

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B. CHECKLIST: ISSUES TO BE ADDRESSED BY DOMESTIC LAWS AND POLICIES

Minimum essential elements of state regulation:

At a minimum, competent authorities should do the following:

1. Recognize the right of IDPs to receive primary school education that is either free or provided on at least as favorable a basis as it would be for poor members of the host community.
2. Abolish administrative obstacles that may unreasonably and discriminatorily limit access to schools because they do not sufficiently take into account the specific problems faced by IDPs (that is, requirements related to documentation, formal transfer from the previous school, or the pupil's ability to provide books and school uniforms).
3. Establish a clear obligation on the part of the competent authority to provide education to IDPs located in areas inaccessible to existing schools.

In order to ensure that IDPs can exercise their right to education during and after displacement, domestic laws and policies should

- guarantee IDP children free and compulsory primary education and non-discriminatory access to secondary education. Where free primary education has not yet been introduced, education should be provided on at least as favorable a basis as it would be for poor members of the host community.

- anchor the right of IDPs to education during displacement in the general legal framework for education as well as IDP laws and policies;
- integrate education issues into a coordinated response to internal displacement;
- encourage IDPs to participate in the design of education services and facilities;
- build on the understanding of IDPs' pre-displacement literacy rates and educational practices;
- permit IDPs, whenever possible, to enroll in local educational facilities in the communities where they are displaced;
- provide IDPs with dedicated educational facilities without delay in cases where local enrollment is not possible;
- provide IDPs with separate instruction in their own language if they do not understand the local language of education and if there is an immediate prospect that they may be able to return. Otherwise, the possibility of local integration should be facilitated through the availability of instruction in the local language.
- waive formal documentation and local registration requirements that constitute an obstacle to the education of internally displaced children or to the recognition and recruitment of internally displaced teachers;
- waive or subsidize fees and costs for equipment for IDPs on the basis of need on at least as favorable a basis as they would be for poor members of the host community;
- take all necessary measures to ensure equal access to education for disadvantaged groups, and particularly for women and girls as well as former child soldiers;
- adapt school curricula for IDPs to provide information relevant to both their safety security while displaced and their long-term reintegration;
- include into school curricula the teaching of the principles of international human rights and humanitarian law with a view to familiarize young people with the notion of human dignity as an inviolable quality that must be respected, both in times of peace and in times of armed conflict;
- take into account the effect of psychological trauma and interrupted education experienced in the course of displacement in the ways in which IDPs are placed in classes and evaluated; where necessary, provide "bridging programs" to allow displaced children to catch up with their peers;
- recruit qualified teachers from among the IDP community, and encourage women to become educators along with men;
- in the context of durable solutions, integrate IDPs into local school systems wherever they choose to reside, guarantee access to education in all situations, and take steps to prevent discrimination in relation to surrounding, non-displaced communities.

C. NECESSARY ELEMENTS OF STATE REGULATION

Who should be involved from the outset in coordinating access to education by IDPs?

At the national level, education should be explicitly integrated among the issues dealt with by an institutional coordination mechanism (see chapter 2, section G). States usually have authorities (for example, the Ministry of Education) that deal with education issues and provide or oversee the delivery of education

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services.⁴⁶³ Such bodies may have direct responsibility for the administration of educational programs for IDPs, including such matters as the provision of teachers and materials.⁴⁶⁴ In cases where provincial or local authorities have broad competences in education issues, the role of a central focal point should focus on providing appropriate technical and budgetary support to local authorities in responding to the needs of displaced populations. Special institutional arrangements may only be needed to ensure that education programs and facilities are provided in emergency situations or at locations that are too far away from existing services so that they are accessible for IDPs, by governmental agencies, domestic non-governmental organizations, or the international community. International actors can provide both technical expertise and direct assistance in planning and implementing programs for education programs.

Processes for designing such programs are particularly conducive to the participation of IDPs. Consultations with the affected communities are necessary to identify both prior education levels and groups that have suffered from lesser access to education. Ideally, participation mechanisms should not only facilitate the flow of information on educational needs and opportunities but also the identification of skilled educators from among the IDP population and the formation of groups or committees to actively plan and manage education facilities on an ongoing basis.

CASE STUDY

Establishing Community Education Committees to Consult with IDP communities on education issues

“Minimum Standards for Education in Emergencies” established by the Inter-Agency Network for Education in Emergencies (INEE) as well as the UNESCO “Guidelines for Education in Situations of Emergency and Crisis” recommend the creation of Community Education Committees (CEC).⁴⁶⁵ The role of CECs is to identify and address the educational needs of a community, with representatives drawn from parents and parent-teacher associations, local agencies, civil society organizations, community organizations, and youth and women’s groups, among others, as well as teachers and learners. As such, a CEC can act as a point of liaison between the IDP community and the Ministry of Education and other relevant institutions. Such committees should be established in IDP camps and settlements as well as in areas of IDP return or resettlement. The committee must be inclusive and balanced and should reflect the diversity of the affected population. The CEC should be statutorily recognized and legally registered to act as an official institution or organization. District-level trainers should be appointed to assist in the establishment and running of such committees. Where such guidelines do not exist they should be prepared and adapted for local use.

463 See, for example, Interim Agreement on Accommodation of Specific Needs and Rights of Returnee Children, Sarajevo (5 March 2002) and Implementation Plan for the Interim Agreement on Accommodation of Specific Needs and Rights of Returnee Children, Sarajevo (5 March 2002), Article V(5).

464 UNHCR Afghanistan, “Strategy for Support to Internally Displaced Persons in the Southern Region in 2005 and 2006” (July 2005) ([www.internal-displacement.org/8025708F004CE90B/httpDocuments/AA74BFD49ED7626FC12570C700513CB7/\\$file/IDPSTRATATKDH05.pdf](http://www.internal-displacement.org/8025708F004CE90B/httpDocuments/AA74BFD49ED7626FC12570C700513CB7/$file/IDPSTRATATKDH05.pdf)). See also Law of the Azerbaijan Republic on Social Protection of Forcibly Displaced Persons and Persons Equated to Them (21 May 1999), Article 11.

465 Inter-Agency Network for Education in Emergencies, “Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction” (2004), pp. 15–16; Bensalah, p. 26.

What information regarding IDP populations is useful in assessing how best to secure their right to education?

In the context of efforts to count, locate, and assess the needs of IDP populations (see chapter 2, section C), competent authorities should actively seek and compile information related to the IDPs' pre-displacement educational attainment levels (including the extent to which any subgroups of IDPs have suffered from inadequate access to education), socioeconomic backgrounds, and literacy rates, as well as their current location relative to educational institutions.⁴⁶⁶ Reports should indicate, for example, the number of oversized classes at the different levels of schooling in areas where IDPs have arrived.⁴⁶⁷ This information can be used to ensure that education provided during displacement and in support of durable solutions will build on IDPs' existing strengths and respond to their particular needs.

How can IDPs' right to education be secured in laws and policies?

At a minimum, the competent authorities should review the legislation and other rules governing access to education and change or abolish any formal requirements (such as those related to documentation or registration of residence) that present an obstacle to IDPs' access. When possible, education laws should specifically protect IDPs' rights to education and mandate any necessary measures to ensure that IDPs have access to education on terms at least as favorable as those available to the non-displaced population. Where appropriate, IDP laws and policies should not only clearly affirm IDPs' rights to education in general terms but should also include provisions guaranteeing the content of this right. It is particularly important that all laws and policies provide for free and compulsory primary education, ban discrimination in education against IDPs or any vulnerable subgroups within displaced populations, and provide for special measures to be taken to facilitate access to education for vulnerable groups and particularly for women and girls. The competent authorities' commitments to facilitating access to education should extend throughout IDPs' displacement and anticipate the need to provide similar support during the attainment of durable solutions.

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CASE STUDY

Affirmation of the right to education in IDP laws and policies

The Ugandan National Policy for Internally Displaced Persons specifically identifies the right of displaced children to "the same access to education as children elsewhere in Uganda".⁴⁶⁸ The Policy also provides for the adoption of "affirmative action" programs to assist and encourage the participation of IDPs in education. Further, the Ugandan Policy echoes the Guiding Principles by calling for "special efforts" to be undertaken

466 "Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction," p. 12. See also pp. 21–22.

467 "Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction," p. 67.

468 Office of the Prime Minister, Department of Disaster Preparedness and Refugees, Uganda, The National Policy for Internally Displaced Persons (November 2004), Section 3.1.1(1). See also Law of the Azerbaijan Republic on Social Protection of Forcibly Displaced Persons and Persons Equated to Them, Article 4. See also Law of the Republic of Azerbaijan on Status of Refugees and Forcibly Displaced (persons displaced within the country) Persons (21 May 1999), Chapter II, Article 6; Law on Displaced Persons, Returnees and Refugees in the Republika Srpska, (RS Official Gazette, No. 42/05 of 26 April 2005), Article 14; government of the Republic of Serbia, National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons (30 May 2002), Section 2, p. 6.

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Affirmation of the right to education in IDP laws and policies (Cont.)

to ensure full and equal participation in education by IDP women and girls.⁴⁶⁹

The IDP law in Bosnia affirms the right of IDPs to education and also to vocational training.⁴⁷⁰ The Law on Displaced Persons, Returnees and Refugees of the Republika Srpska, within Bosnia, elaborates on the general right to education, recognizing the entitlement of displaced persons and returnees to elementary education and suggesting that elementary education will be provided free of charge.⁴⁷¹

Any plan for return or resettlement must include the opportunity for continued education. The Law for the Internally Displaced in Peru expressly recognizes this.⁴⁷² In Angola, the Norms on Resettlement of Displaced Populations expressly affirm the right to education for IDPs, including those who have returned and resettled.⁴⁷³

Can existing educational facilities handle IDP population, or must new facilities be provided?

Whenever possible, IDPs should be permitted to enroll in local educational facilities in the communities where they are displaced. The arrival of IDP children in local schools can be expected to strain local capacities, both because of the sudden increase in overall numbers of students served and because of the particular needs and vulnerabilities of IDP children, who are often impoverished and may have suffered trauma or experienced considerable gaps in their education because of the experience of displacement. In light of these burdens, a central education objective in response to IDP crises should be to support the capacity of local school systems where IDPs are located. Such support may take a number of forms. Local schools may need to be expanded and provided with additional teaching staff and resources. Where waivers or subsidization of education-related fees and costs necessary to secure IDPs' attendance in schools have an impact on local education budgets, they should be made up for through funds allocated to the response to displacement from the central budget.

In some cases, IDPs may even be living in buildings normally used as schools, preventing their use by both the host community and IDP children simply because there is no other place to go. In such cases, a priority should be to identify or build alternative shelter in order to allow such facilities to be returned to service (see chapter 9).

Access to existing educational facilities may not be possible in cases when IDPs are located in places where existing schools are not within safe physical reach; where the local schools are already burdened beyond capacity; or where tensions between IDPs and the host community are too high for IDP children to be able to safely attend local schools. If there is no immediate prospect of providing safe access to existing schools, then new primary school facilities and educational programs must be provided to IDPs without delay.

469 Uganda, The National Policy for Internally Displaced Peoples, Section 3.1.1.

470 Law on Displaced Persons and Returnees in the Federation of Bosnia and Herzegovina and Refugees from Bosnia and Herzegovina (FBiH Official Gazette, no. 15/05 of 16 March 2005), Article 11(7).

471 Law on Displaced Persons, Returnees and Refugees in the Republika Srpska, Article 14.

472 Law for the Internally Displaced, Law 28223 (20 May 2004), Article 15(h).

473 See, for example, Angola, Norms on the Resettlement of Displaced Populations, Decree 1/01 (5 January 2001).

In some cases, IDPs may be within safe physical reach of existing facilities but may not understand the local language of education. Where there is an immediate prospect that such IDPs may be able to return, it may be appropriate to provide separate educational facilities for them and focus on language maintenance. However, in the context of protracted displacement, the possibility of local integration should be facilitated through the availability of instruction in the local language.

CASE STUDY

Support to host schools through reimbursement of the cost of enrolling IDPs

In the United States, the Hurricane Education Recovery Act assigns a lump sum amount to those states that have accepted IDP students. The amount provided by the federal government is intended as a reimbursement for accepting IDP students into their school systems. Specifically, the funds are to be spent to pay for personnel, including teacher aides; identifying and acquiring curricular material, including the costs of providing additional classroom supplies; basic instructional services for such students, including tutoring, mentoring, or academic counseling; reasonable transportation costs; health and counseling services; and education and support services.⁴⁷⁴

In all situations, both educational facilities and the access or travel routes used by displaced students and educators to get to them should be protected from risks. At a minimum, any nearby minefields must be demarcated and organized transportation, regular police presence, or other measures should be used to minimize the risk of abduction or forced recruitment.⁴⁷⁵

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CASE STUDY

Protection of educational institutions in Guatemala

The National Education Law of Guatemala provides for the protection of “educational communities,” stipulating that the Ministry of Education should ensure that educational institutions do not suffer any intervention from political parties or the military.⁴⁷⁶

Do formal documentation and registration requirements prevent the enrollment of IDP children and the recognition of IDP teachers?

Even in the absence of displacement, national law should ensure that lack of documentation alone never results in the denial of access to education. However, in light of the fact that IDPs often lack access to documentation (see, generally, chapter 11), formal requirements for IDP enrollment in educational facilities where they are displaced should be eased or waived altogether when possible. Although it is necessary to

474 United States of America, Title IV (commonly known as the Hurricane Education Recovery Act) of Division B of the Department of Defense, “Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico,” and Pandemic Influenza Act, 2006 (Public Law 109-148; 119 Statute 2680), Section 107(e)(1).

475 “Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction,” p. 45.

476 National Education Law, Legislative Decree No. 12-91 (12 January 1991), Article 100.

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establish the identity of students and confirm their prior level of studies, facilitated processes based on alternative types of evidence for verifying such information (as discussed in chapter 11) should be applied in favor of IDPs. In all situations, safeguards must be in place to ensure that identity documentation and enrollment information is kept confidential.⁴⁷⁷ In the case of enrollment in local schools, generally applicable residency requirements should be waived for IDPs. Unlike other children moving to the area under normal circumstances, IDPs have no access to education elsewhere, and any arbitrary delays in enrollment will amount to a denial of their rights.

CASE STUDY

Relaxation of formal enrolment requirements for IDPs

In Afghanistan, the Education Law specifies that the lack of an identification card will not prohibit a child from attending school.⁴⁷⁸ This provision applies under normal circumstances and not just in the context of displacement.

Most national education systems require teachers to be officially licensed in order to guarantee minimum standards of professionalism. However, in situations where displaced educators do not have access to documentation or where their accreditation is only formally valid in their area of origin, formal obstacles to recognition of their credentials may prevent them from providing badly needed educational services to displaced communities. As a result, IDP laws and policies should identify such obstacles as well as measures to address them, including provisional recognition of individual educators' qualifications based on alternative evidence or expedited testing of displaced educators in order to provide them with locally valid credentials.

CASE STUDY

Recognition of displaced educators' qualification to teach

In Bosnia and Herzegovina, for example, a mutual recognition system was established for students' school certificates and records, as well as the professional qualifications of teachers and teacher trainers.⁴⁷⁹ In the United States, the Hurricane Education Recovery Act exceptionally permits teachers previously qualified in one district to teach in the hurricane-affected districts in order to ensure sufficient teaching staff to meet student demand.⁴⁸⁰

In some situations, particularly in cases of mass displacement, the usual national standards may need to be adapted and relaxed in order to ensure the necessary resources are in place to enable IDPs' education. In Sri Lanka, the Ministry of Education permitted teacher applicants scoring just below the normal qualifying

477 "Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction," p. 43.

478 Education Law of Afghanistan (2001), Article 6.

479 Agreement, meeting of the Conference of the Ministers of Education of Bosnia and Herzegovina, Sarajevo (10 May 2000), Article 7.

480 United States of America, Title IV of Division B of the Department of Defense and Pandemic Influenza Act, Section 104(a) (1)(B).

Recognition of displaced educators' qualification to teach (Cont.)

scores for accreditation to take up positions, provided that they worked with IDP populations.⁴⁸¹ In order to ensure that displaced populations do not receive an inferior education, however, such flexible requirements must be temporary and be monitored carefully.

Do the direct and indirect costs of education constitute barriers to education for IDPs?

In principle, primary education should be free in all circumstances. In practice, however, both primary and secondary education often impose costs on parents ranging from fees to money spent on uniforms, books or other educational materials. Because of the impoverishment risk that IDPs face as a result of loss of access to their assets and livelihoods during displacement, such fees and costs can constitute a de facto obstacle to the exercise of their right to education. As a result, such fees and costs should be identified and waived or subsidized for IDPs on at least as favorable a basis as they would be for poor members of the host community. Primary education in particular should be completely free of charge and costs. IDPs should also be eligible for educational scholarships or other support available to students who might otherwise be forced to work to support their families, again on at least as favorable a basis as the rest of the population.

CASE STUDY**Waiver of fees and subsidization of educational expenses for IDPs**

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In Uganda, the government allocated funds specifically to offset the cost of school fees for IDP school children.⁴⁸² In Georgia, the laws on the state budget make provision for free education for IDPs.⁴⁸³ In Azerbaijan, IDPs studying in state-run secondary education institutions are exempt from paying tuition fees.⁴⁸⁴

In Azerbaijan the law on displacement stipulates that displaced persons who are attending secondary institutions are to be provided with textbooks and other educational materials free of charge.⁴⁸⁵ In Georgia and Afghanistan, similar provisions exist.⁴⁸⁶ In Uganda, the responsibility to provide scholastic materials for all IDP students rests with the Ministry of Education and Sports as well as with the local governments.⁴⁸⁷

481 James Kunder and Bo Viktor Nylund, "Mission to Sri Lanka with a View to Develop Best Practices in Response to Internal Displacement" (UNICEF, 1999) (www.icva.ch/cgi-bin/browse.pl?doc=doc00000774).

482 "Uganda: Govt Releases Sh1.3B for IDP Students," *New Vision*, 3 July 2004. See also "Uganda: MP Malinga Criticises IDP Scholarships," *Monitor*, 23 August 2004.

483 Law of Georgia on 1999 State Budget of Georgia (19 March 1999), Article 10; Law of Georgia on 2000 State Budget of Georgia (10 March 2000), Article 14 and so forth, cited in Roberta Cohen, Walter Kälin, and Erin Mooney, eds., *The Guiding Principles on Internal Displacement and the Law of the South Caucasus: Georgia, Armenia and Azerbaijan*, Studies in Transnational Legal Policy 34 (American Society of International Law and Brookings Institution, 2003), p. 87.

484 Law of the Azerbaijan Republic on Social Protection of Forcibly Displaced Persons and Persons Equated to Them, Article 11.

485 Law of the Azerbaijan Republic on Social Protection of Forcibly Displaced Persons and Persons Equated to Them, Article 11.

486 Decrees of the president of Georgia, No. 685 (24 October 1996), No. 614 (31 October 1998), No. 64 (4 June 1999), cited in Cohen, Kälin, and Mooney, p. 87. See also Afghanistan, the Norms on the Resettlement of the Internally Displaced Populations, Article 8.

487 Uganda, The National Policy for Internally Displaced Peoples, Section 3.1.1(3).

What special measures are necessary to ensure access to education for disadvantaged groups, and particularly for women and girls?

Institutionalized consultation with IDPs and host communities regarding education should be used to identify practical issues that prevent IDPs from accessing education and steps that could be taken to overcome them. For instance, when IDPs have outside responsibilities such as work or family care, measures such as flexible scheduling of classes in order to accommodate work schedules or outreach education programs should be considered.⁴⁸⁸ Positive steps should be taken to encourage the involvement of all girls and women in education. Where possible, for instance, child-care facilities should be provided adjacent to schools in order to facilitate young mothers' participation.⁴⁸⁹ Educational facilities should also take into account women and girls' particular safety needs through the provision of appropriate lighting, separate lavatories, and so on.

How should school curricula be adapted for IDPs to promote safety and long-term reconciliation?

In addition to covering core educational content, school curricula can be adapted to address specific needs of IDPs ranging from immediate security risks to longer-term promotion of reconciliation and toleration with a view to reintegration and durable solutions. In the short term, school curricula not only can provide a means to impart important practical safety advice but also can begin the process of integrating into society those displaced students and groups who may otherwise be marginalized, including traumatized IDPs, the disabled, and former child combatants.

In the immediate wake of displacement, primary school curricula should focus on providing structured activities, including recreation. Formal instruction should focus not only on basic literacy and numeracy skills but should also incorporate training on displacement-specific health and safety issues such as landmine awareness and HIV/AIDS prevention. Other important topics to incorporate include peace, human rights, humanitarian principles, citizenship, and environmental conservation.⁴⁹⁰ The curriculum and teaching methodology should be based to the extent possible on what the students were used to before displacement, drawing where possible on the memory of their teachers and any education materials that are available.

CASE STUDY**Use of alternative teaching methods to improve the concentration of displaced schoolchildren in Sierra Leone**

In Sierra Leone, the concentration of school children was found to improve by 70 percent after four weeks of a school-based program that integrated education and emotional needs, using storytelling, drawing, drama, writing, music, and games.⁴⁹¹

488 "Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction," p. 43.

489 UNHCR, "Education: Field Guidelines," paragraph 1.3.6.

490 UNHCR, "Education: Field Guidelines," paragraphs 2.1.1 and 2.1.4 and Section 7.1. See also "Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction," p. 58.

491 Angela Pirisi, "Healing the Minds of War Exposed Children," *Journal of Addiction and Mental Health* 4, no. 6 (2001), pp. 2–3,

Beyond the emergency phase, revision and adaptation of educational curricula can also help prepare both IDPs and host communities for durable solutions and reintegration. Particularly in armed conflict situations, an important component of overall reconciliation can take the form of unilateral or mutual omission of elements of the curriculum—including actual textbooks—that might cause unnecessary offense or be seen to promote hate or revenge. Addressing the root causes of conflict and the achievement of long-term reconciliation are likely to require curricula that reflect all of the traditions of a country’s ethnic, religious, and cultural groups.

CASE STUDY

Review of curricula and textbooks in the context of reintegration of IDPs

Just as the curriculum requires careful assessment for ethnic or other biases, so too do the textbooks from which that curriculum is taught. In Bosnia and Herzegovina an Agreement on the Review of Textbooks was adopted that would lead to the revision of all textbooks and removal of any material that was considered objectionable, offensive, or contrary to the principles set out in the peace agreement that brought an end to the conflict in the region.⁴⁹² The Sri Lankan Framework also called for a revision of textbooks that did not contain material that reflected the multi-ethnic reality of the country.⁴⁹³ In Sri Lanka, the National Framework for Relief, Rehabilitation and Reconciliation calls for training in all three major languages of the country to be made compulsory, thereby breaking down one of the barriers to inter-ethnic dialogue.⁴⁹⁴

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How should the effects of displacement on IDP students be taken into account in placement and assessment processes?

Standard, nationally recognized student assessment procedures are a broadly accepted means of judging students’ educational progress. For IDPs, such assessments are crucial to their prospect for further education or future employment. The resulting documentation, in the form of certificates, diplomas, and attendance records can make up for the loss of pre-displacement records of school attendance and contribute to reintegration. In reviewing assessment standards and procedures in times of crisis and displacement, competent authorities should ensure that they reflect the exigencies of the situation and are sufficiently flexible so as not to exclude, for example, students who were unable to enroll in existing educational facilities.

Prolonged displacement can cause significant disruptions to the education of affected children, who may as a result find themselves unable to resume school at the level of their peers. In such cases, the strict application of age limits would not be appropriate. Instead, the competent authorities should consider “bridging programs” and accelerated courses for displacement-affected children and youth that effectively compress a standard primary or secondary education into a shorter period. Such courses will allow students

cited in Marc Sommers, “Children, Education and War: Reaching Education for All (EFA) Objectives in Countries Affected by Conflict,” Working Paper 1 (Washington: World Bank, June 2002), p. 22.

492 Agreement Regarding Textbook Review and Removal of Offensive Material, Bosnia and Herzegovina (18 May 1998); Agreement on the Review of Textbooks, Sarajevo (14 December 2001).

493 National Framework for Relief, Rehabilitation and Reconciliation in Sri Lanka (June 2002), p. 12.

494 National Framework for Relief, Rehabilitation and Reconciliation in Sri Lanka, p. 12.

who are behind on their education to catch up with their peers. Children and youth who dropped out of school in displacement and emergency situations should be given the chance to re-enroll.⁴⁹⁵

CASE STUDY

Accelerated learning courses for IDPs

In Somaliland, the Ministry of Education, in collaboration with Save the Children U.K. and Save the Children Denmark, launched an Alternative Approach to Basic Education (AABE) program in IDP and refugee returnee settlements. This is a condensed lower primary education program, whereby the usual four years of primary education can be completed in three years, with the aim that pupils will then be channeled into the formal education system after the three-year program.⁴⁹⁶

Such flexibility in implementing national curricula should be reflected in the national education legislation that often will stipulate the age that children must be in order to undertake a certain level of schooling.⁴⁹⁷ Especially in the context of protracted displacement crises, there is a need for adult learning and vocational classes for individuals who did not have the opportunity to attend school as a result of their protracted displacement. In Guatemala, the national education legislation explicitly recognizes that in the case of some adults, in particular, accelerated learning courses may be necessary in order to provide them with the opportunity to begin or complete their education from the primary level.⁴⁹⁸

Flexibility can also be incorporated in national legislation to the extent that provision is made for formal as well as informal education, adult learning, and vocational training. Indonesian legislation governing the national education system, for example, recognizes, besides different forms of formal education, several different types of non-formal education including adult, women empowerment, and vocational training.⁴⁹⁹

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How can sufficient numbers of qualified educators be secured in internal displacement situations?

Ensuring adequate numbers of teaching staff is essential for the continuity of education for all students. Specific targets for the number of teachers or the maximum class size should be based on national law and standards.⁵⁰⁰ Where financing teaching payrolls is an issue, alternate remuneration schemes that are freely accepted by educators may be considered. For example, in IDP return or resettlement areas, compensation for teachers might initially be provided through non-cash goods such as access to plots of land, tools, seed, small livestock, and so on.⁵⁰¹ Remuneration for teachers' services should be at a level that ensures professionalism and continuity of service and discourages corruption. Hiring policies should also be aimed

495 "Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction," pp. 43–44.

496 See also Colombia, Law 387 of 1997, Diario Oficial, No. 43,091 (24 July 1997), Title I, Section 8, Article 19 (10): "By means of which measures are adopted for the prevention of forced displacement, and for assistance, protection, socioeconomic consolidation and stabilization of persons internally displaced by violence in the Republic of Colombia."

497 See, for example, An Act to Adopt the Education Law of A.D. 2001 (15 April 2002), Subsection 2.3.

498 Guatemala, National Education Law, Legislative Decree No. 12-91 (12 January 1991), Chapter VIII.

499 Act of the Republic of Indonesia on National Education System, Act No. 20 (8 July 2003), Article 26(3).

500 "Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction," p. 67.

501 UNHCR, "Education: Field Guidelines," paragraph 2.2.7.

at the prioritization of certain candidates, such as trained IDP teachers who are able to provide services corresponding to the needs, educational backgrounds, and experiences of displaced children,⁵⁰² as well as female teachers who provide role models for girls and can protect them from sexual harassment by male pupils and teachers.⁵⁰³

CASE STUDY

Prioritized hiring of ethnic minority teachers in displacement settings

In Bosnia and Herzegovina, the Ministry of Education agreed to gradually hire teachers from minority constituent peoples to teach all subjects in order to encourage voluntary durable solutions, including minority return.⁵⁰⁴ In Sri Lanka, the National Framework recommends the desegregation of teacher-training institutions.⁵⁰⁵

Teacher-training programs in displacement and crisis situations should incorporate life skills and peace education, as needed.⁵⁰⁶ All education personnel, formal and non-formal, should be trained to recognize signs of trauma or distress in learners and to take steps to appropriately respond to this behavior in the learning environment.⁵⁰⁷ In addition, a “code of conduct” for teachers and educational personnel should ensure that children are safe from sexual harassment and sexual exploitation in schools and that the teachers behave in a professional manner at all times.⁵⁰⁸

CASE STUDY

Supplementary teacher training in displacement settings

Teacher-training facilities may be damaged or strained as a result of a crisis causing displacement and may need to be substituted or supplemented. Teacher training can be carried out in a variety of flexible ways including in-service and full-time training, mobile trainers, in-school mentoring, school cluster arrangements, and teachers’ centers.⁵⁰⁹ Such programs should aim to reach all displaced teachers, including those in camps. In Chechnya, for example, the Chechen Ministry of Education established a Chechen Institute

502 This was a practice adopted by the Ministry of Education, Science and Technology of Sierra Leone. See Marc Sommers, “Co-ordinating Education during Emergencies and Reconstruction: Challenges and Responsibilities,” International Institute for Educational Planning (UNESCO, 2004), p. 76.

503 UNHCR, “Education: Field Guidelines,” paragraph 1.3.5. Under such circumstances, it may be appropriate to proactively recruit female teachers and to adjust the recruitment criteria or process to promote gender parity. See “Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction,” p. 66).

504 Agreement, meeting of the Conference of the Minister of Education of Bosnia and Herzegovina, paragraph 6 (www.unhcr.ba/protection/refugees&dp/10maya%7E1.PDF).

505 National Framework for Relief, Rehabilitation and Reconciliation in Sri Lanka, p. 12.

506 “Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction,” p. 60.

507 “Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction,” p. 58.

508 UNHCR, “Education: Field Guidelines,” paragraph 2.2.3.

509 Bensalah, p. 24.

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Supplementary teacher training in displacement settings (Cont.)

for Teacher Retraining and ran training programs for primary and secondary school teachers in camps in Ingushetia.⁵¹⁰

When large numbers of teachers are killed, missing, debilitated, or otherwise unable to resume their duties, rapid training programs are required. In Aceh, Indonesia, after the tsunami of December 2004, an emergency teacher training and certification program was initiated in collaboration with the Ministry of Education and with the support of UNICEF and Save the Children. Emergency training was needed on a large scale as a third of the 4,500 new teachers hired lacked formal training. These efforts made use of an earlier system in place in Indonesia of clustering schools, known as Gugus in Indonesia, whereby one main school served as a meeting and training place for teachers and administrators from surrounding schools. The program trained 100 teachers from the Gugus schools who could subsequently act as mentor teachers to new, untrained teachers.⁵¹¹

How can IDPs' access to education be maintained in the course of durable solutions?

In the case of IDPs who choose not to return, continued access to education should take the form of increased integration into local school systems where they choose to remain or resettle. In accordance with the general right of reintegrating IDPs to freedom of movement and choice of residence (see chapter 5), IDPs should not face any discrimination vis-à-vis locally resident non-displaced populations in accessing education wherever they choose to live throughout the country. In cases in which IDPs belong to an ethnic, religious, or linguistic minority in the areas where they choose to resettle or reintegrate, local educational programs should allow them to develop their own cultural identity, language, and values.

To the extent possible, return or resettlement operations should be undertaken at the end of the school-year in order to avoid disruption in the education of IDPs when changing schools during the year is not possible.

In return areas, schools that have been damaged in an armed conflict or disaster need to be repaired to a suitable standard to ensure the safety, hygiene, and general comfort of the students and should receive priority treatment in programs to repair, restore or upgrade water and sanitation systems.⁵¹² Administrative requirements such as those related to minimum class size necessary for the construction, reconstruction, or continued administration of schools should be suspended in order to ensure that education is available to IDPs immediately upon return. IDPs may also face similar issues enrolling their children in local schools upon return as they did in displacement. In some cases, the demands placed on local school systems by returning IDPs may require urgent support in order to increase their capacity. In the worst case, returning IDPs may face outright hostility from the surrounding community and discrimination in accessing educational facilities and programs. Returning IDPs should be given support to open their own schools, at

510 UN Office for the Coordination of Humanitarian Affairs, "Consolidated Inter-Agency Appeal 2004—Chechnya and Neighboring Republics" (November 2003).

511 Allison Anderson and Dean Brooks, "Implementing Minimum Standards for Education in Emergencies: Lessons from Aceh," *Humanitarian Exchange* 32 (December 2005), p. 22 (www.odihpn.org/report.asp?id=2764).

512 UNHCR, "Education: Field Guidelines," paragraph 2.3.5.

least as a temporary measure, in order to ensure safe access to education only where this is strictly necessary. Permanent institutionalization of separate schools for returnees and non-displaced communities might perpetuate hostilities between communities and further marginalize those who became victims of forced displacement.

CASE STUDY

Relaxed administrative requirements in returnee schools

In Bosnia, in order to encourage returns, the authorities acknowledged that it may be necessary to open a school in a return area despite there not being the minimum number of students as prescribed by the law.⁵¹³ In the United States, local communities wishing to reopen schools as students returned in the wake of Hurricane Katrina created charter schools.⁵¹⁴ These schools are governed by state laws but are exempt from many of the rules and regulations otherwise applicable to the education sector. In exchange for lower state funding and increased reporting requirements, charter schools enjoy greater autonomy on curriculum, staff hiring, and other issues.

513 Implementation Plan for the Interim Agreement on Accommodation of Specific Needs and Rights of Returnee Children, Sarajevo (5 March 2002), Article II(2).

514 Susan Saulny, "Students Return to Big Changes in New Orleans," *New York Times*, 4 January 2006.

Other Regulatory Issues

As set out above (see chapter 1, Section B), IDPs require specific measures of assistance and protection corresponding to the needs and vulnerabilities resulting from their displacement. In many cases, these issues cannot be addressed through the regular legal framework, and specific legislation or policies must be enacted. They are the primary subject of this manual and are covered in detail in the prior chapters of Part III of the manual.

However, in other cases, states should be able to address the particular displacement-related threats and risks faced by IDPs through the non-discriminatory application of existing domestic law, provided that their statutory rules are in conformity with accepted international law standards. Thus, although many of the protection topics covered in the Guiding Principles require review and possible IDP-specific changes to existing legal and policy frameworks, presumptively some do not. A non-exhaustive list of issues that are important for the protection of IDPs but normally do not need IDP-specific legislation or are already covered by other chapters is set out in this chapter.

A. LIFE AND PHYSICAL SECURITY

Principle 10

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:
 - (a) Genocide;
 - (b) Murder;
 - (c) Summary or arbitrary executions; and
 - (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:
 - (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
 - (b) Starvation as a method of combat;

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Principle 10 (Cont.)

- (c) Their use to shield military objectives from attack or to shield, favour or impede military operations;
- (d) Attacks against their camps or settlements; and
- (e) The use of anti-personnel landmines.

Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.
2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:
 - (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
 - (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and
 - (c) Acts of violence intended to spread terror among internally displaced persons.Threats and incitement to commit any of the foregoing acts shall be prohibited.

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IDPs are often displaced in situations in which their life and safety are at risk, and they remain vulnerable, particularly to physical attacks and threats against their security throughout displacement and while attempting to achieve durable solutions.

Protection of individuals from violent attacks on their life, safety, and physical security, as well as criminal prosecution of the perpetrators of such acts are some of the most basic functions of states. This responsibility is underscored by the proscription of all forms of wrongful killing, assault, and abuse in both international human rights law and international humanitarian law.⁵¹⁵

Threats to life and physical security in displacement contexts may arise as a result of a number of interrelated factors, including the general breakdown of law and order, that give rise to violent crime and abuse, the effects of armed conflict, and tensions between or within communities over issues ranging from ethnic or sectarian identity to competition over resources.⁵¹⁶

In order to ensure that IDPs can exercise their rights to life and physical security during and after displacement, the domestic legal framework should

- ensure that all forms of murder, physical assault, torture, rape and sexual assault, physical or mental

⁵¹⁵ Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, 2nd ed., Studies in Transnational Legal Policy 38 (American Society of International Law and Brookings Institution, 2008), pp. 45–58.

⁵¹⁶ Global Protection Cluster Working Group, “Handbook for the Protection of Internally Displaced Persons,” action sheet 3: Life, Safety and Security.

abuse, abduction, kidnapping, enslavement, forced prostitution, forced labor, harassment, coercion, arbitrary displacement, and theft or destruction of property are proscribed as criminal acts without discrimination, in particular on the basis of the age, gender, or displaced status of the victim. If such acts amount to war crimes or crimes against humanity, they must be defined and prosecuted as such.

- ensure that the above criminal acts are subject to effective investigation and prosecution and that the victims (including surviving relatives and dependents) are entitled to specific and adequate measures of compensation and rehabilitation. Competent authorities should build the capacity of formal judicial institutions to ensure that IDPs have access to justice in the case of serious crimes and encourage informal bodies to handle the resolution of disputes to address minor crimes and mediate disputes between individuals or local communities, thereby preventing the resort to violent self-help in the case of grievances.
- provide for the extension of legal deadlines to file complaints or formally initiate prosecutions in displacement settings in which armed conflict or the temporary breakdown of law and order hinder investigation and prosecution activities, as long as such conditions persist. Ensure that the competent authorities are obliged to undertake all possible measures to investigate crimes and to secure evidence of them from the moment they become aware of them.
- ensure that the laws governing national security forces are in conformity with international humanitarian law and, in particular, that they proscribe all attacks or other acts of violence against all persons (including IDPs) who do not or no longer participate in hostilities as well as direct or indiscriminate attacks against IDPs or their camps and settlements, starvation as a method of combat, use of IDPs as human shields, or use of anti-personnel landmines. Ensure that such acts by any party to an armed conflict are subject to effective investigation and prosecution and that the victims (including surviving relatives and dependents) are entitled to specific and adequate measures of compensation and rehabilitation.
- provide for the maintenance or restoration of law and order. National security forces should be trained on their responsibility under international human rights and humanitarian law and be deployed in an appropriate number, composition (including female as well as male personnel), and manner to prevent local tensions or lawlessness to escalate to violence or abuse of IDPs or other vulnerable groups. Deployment of security personnel is particularly important in and around camps and other areas where IDPs are concentrated. While the military should provide security outside such settlements, law enforcement within camps should be the responsibility of civilian police and ordinary courts.
- ensure that the use of force and firearms by law enforcement officials is in accordance with international law and guidelines;⁵¹⁷
- ensure the immediate demarcation and speedy clearance of all mined areas;
- build the capacity of displaced individuals and groups to protect themselves from violence and insecurity and to recover from its effects by providing humanitarian aid and training that promote the attainment or resumption of self-reliance in a manner based on the informed participation of all displacement-affected populations (see chapters 7 and 13).
- remove any arbitrary restrictions on freedom of movement, allowing IDPs and other affected

517 See the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (www.ohchr.org/english/law/index.htm).

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communities to leave areas where their life and physical safety are threatened and move to other parts of the country or seek asylum abroad (see chapter 5).

- provide full access to all IDP populations to recognized domestic and international humanitarian actors and cooperate with such actors on protection issues for IDPs within the framework of their mandates (see chapter 4).⁵¹⁸

B. CONFINEMENT AND INTERNMENT

Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
[...]
3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
4. In no case shall internally displaced persons be taken hostage.

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As set out in chapter 5, IDPs have by definition suffered from interferences with their rights to freedom of movement and choice of residence in the course of displacement, and they remain vulnerable to further restrictions on these rights during displacement and in the context of durable solutions. In their most extreme form, such restrictions can give rise to violations of the widely recognized right to liberty and security of person, as well as provisions of international humanitarian law, by constituting arbitrary arrest, arbitrary detention, or hostage taking.⁵¹⁹

IDPs are particularly subject to the risk of arbitrary deprivations of their right to liberty and security of person for a number of reasons. As set out in chapter 5, restrictions on movement and liberty may be explained on security grounds, either based on the assumption that it is too risky for IDPs to move or leave settlements or on generalized suspicions that IDPs might sympathize with armed insurgent groups. In cases where IDPs receive inadequate or inappropriate humanitarian aid, they may be forced to engage in coping strategies that may not only be harmful to themselves but also may be illegal, increasing the risk of their arrest or detention (see chapter 7).

In order to ensure that IDPs can exercise their rights to liberty and security of person during and after displacement, the domestic legal framework should

- remove all unnecessary restrictions on IDPs' freedom of movement and choice of residence within or outside the country (see chapter 5);

518 Guiding Principle 27 calls upon international humanitarian organizations and other appropriate actors to “give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard” in the course of providing assistance.

519 Kälin, pp. 58–61.

- guarantee that no one is deprived of their liberty except on grounds and in accordance with procedures set out in law; that anyone arrested is informed at the time of their arrest of the reasons for their arrest and the charges against them; that anyone arrested or detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or release, with detention in custody pending trial or at any other stage of the judicial proceedings on an exceptional basis only; that anyone deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful; and that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation;⁵²⁰
- guarantee that any instance of deprivation of liberty by any public official, regardless of the grounds, complies with the above standards and, in particular, that they are in accordance with law and subject to control by a court;⁵²¹
- ensure that under no circumstances will IDPs be taken hostage and to protect them against hostage-taking;
- ensure that no one is subjected to discriminatory arrest and detention, in particular on the basis of their displaced status.

C. RECRUITMENT

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Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.
2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

In armed conflict situations, IDPs may be at increased risk of recruitment practices that violate international human rights and humanitarian law, including recruitment of children or discriminatory or degrading recruitment practices applied to displaced adults.⁵²² Recruitment of children represents a particular risk, as it not only exploits the vulnerabilities of displaced children but also exposes them to extreme threats and hinders their long-term development.⁵²³

520 ICCPR, Article 9.

521 UN Human Rights Committee, General Comment 8 (1982).

522 Kälin, pp. 61–65.

523 “Handbook for the Protection of Internally Displaced Persons,” action sheet 5: Children Associated with Armed Forces or Armed Groups.

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In order to ensure that recruitment practices do not violate the human rights of IDPs, the domestic legal framework should

- ensure an absolute prohibition of any recruitment or involvement in hostilities of children under the age of 15. With regard to persons between 15 and 18 years old, the competent authorities should take all feasible measures to ensure that they are not compulsorily recruited into the armed forces or armed groups and do not take a direct part in hostilities, including any gathering or transmission of military information, transporting of arms and munitions, or provision of supplies, as well as actual combat activities. States that have ratified ILO Convention No. 182 on Worst Forms of Child Labour or the African Charter on the Rights and Welfare of the Child (Article 22) must raise the relevant age for recruitment and participation in hostilities to 18 years.
- ensure the provision of adequate and appropriate humanitarian aid, as well as education and psycho-social support to displaced children, in order to decrease their vulnerability to recruitment. Competent authorities should also take all possible steps to prevent the separation of families as well as to protect unaccompanied children and reunite them with their families (see chapter 6).
- prohibit any practices of recruitment into any armed forces or groups that are discriminatory on the basis of displacement. IDPs should be subject to the same procedures for recruitment, compulsory or otherwise, that are set out in law for the non-displaced population and should have equal access to any available deferments of military service as well as any existing programs to recognize conscientious objection to military service or to provide for national service of a civilian nature.
- prohibit any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment.

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D. COMMUNICATION IN A KNOWN LANGUAGE

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

[...]

(e) The right to communicate in a language they understand.

In cases in which individuals or communities belonging to linguistic minority groups are displaced to areas where a different language is spoken, failure to allow such IDPs to communicate in a language they understand can heighten their vulnerability and lead to further violations of their human rights.⁵²⁴

In order to protect the right of IDPs to communicate in a language they understand, the domestic legal framework should

- ensure that IDPs are provided with information on their situation as well as their rights and obligations in a language they understand and that they are not excluded from complaint mechanisms

524 Kälén, pp. 105–06.

or participatory processes for developing a response to their displacement on the basis of language (see chapter 2, section I);

- ensure that language issues do not present an obstacle to the ability of linguistic minority IDPs to register for and receive humanitarian assistance as well as training and livelihood support (see chapters 4 and 13);
- allow for the recognition of documents or evidence confirming IDPs' identity, rights, entitlements, educational attainments, and professional qualifications, regardless of the language they were issued in (see chapter 11);
- ensure that IDPs are not excluded because of language issues from informed participation in electoral processes that they are eligible to take part in (see chapter 14);
- guarantee education to IDPs in a language they understand but provide opportunities for IDPs to seek and receive instruction in the local majority language when there is no immediate prospect of their return or when they choose local integration as a durable solution (see chapter 15).

Guiding Principles on Internal Displacement

INTRODUCTION - SCOPE AND PURPOSE

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.
2. 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 human-made disasters, and who have not crossed an internationally recognized State border.
3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:
 - (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
 - (b) States when faced with the phenomenon of internal displacement;
 - (c) All other authorities, groups and persons in their relations with internally displaced persons; and
 - (d) Intergovernmental and non-governmental organizations when addressing internal displacement.
4. These Guiding Principles should be disseminated and applied as widely as possible.

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SECTION I. GENERAL PRINCIPLES

Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.
2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

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Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.
2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.
2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

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SECTION II. PRINCIPLES RELATING TO PROTECTION FROM DISPLACEMENT***Principle 5***

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.
2. The prohibition of arbitrary displacement includes displacement:
 - (a) When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
 - (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
 - (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
 - (e) When it is used as a collective punishment.
3. Displacement shall last no longer than required by the circumstances.

Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.
2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.
3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:
 - (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
 - (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
 - (c) The free and informed consent of those to be displaced shall be sought;
 - (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;
 - (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
 - (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

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Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

SECTION III. PRINCIPLES RELATING TO PROTECTION DURING DISPLACEMENT***Principle 10***

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:
 - (a) Genocide;
 - (b) Murder;
 - (c) Summary or arbitrary executions; and
 - (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

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Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:
 - (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
 - (b) Starvation as a method of combat;
 - (c) Their use to shield military objectives from attack or to shield, favour or impede military operations;
 - (d) Attacks against their camps or settlements; and
 - (e) The use of anti-personnel landmines.

Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.
2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:

- (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
- (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and
- (c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.
3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
4. In no case shall internally displaced persons be taken hostage.

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Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.
2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Principle 15

Internally displaced persons have:

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- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.
3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.
4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

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Principle 17

1. Every human being has the right to respect of his or her family life.
2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.
3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.
4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - (a) Essential food and potable water;

- (b) Basic shelter and housing;
 - (c) Appropriate clothing; and
 - (d) Essential medical services and sanitation.
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.
2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.
3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

Principle 20

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1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.
3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

Principle 21

1. No one shall be arbitrarily deprived of property and possessions.
2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:
 - (a) Pillage;
 - (b) Direct or indiscriminate attacks or other acts of violence;

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- (c) Being used to shield military operations or objectives;
 - (d) Being made the object of reprisal; and
 - (e) Being destroyed or appropriated as a form of collective punishment.
3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:
- (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
 - (b) The right to seek freely opportunities for employment and to participate in economic activities;
 - (c) The right to associate freely and participate equally in community affairs;
 - (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
 - (e) The right to communicate in a language they understand.

Principle 23

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1. Every human being has the right to education.
2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.
3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

SECTION IV. PRINCIPLES RELATING TO HUMANITARIAN ASSISTANCE***Principle 24***

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.
2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.
2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.
3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Principle 26

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

Principle 27

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.
2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

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**SECTION V. PRINCIPLES RELATING TO RETURN,
RESETTLEMENT AND REINTEGRATION**

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow 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. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

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2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.
2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

Annex 2

Index of the Manual by Guiding Principles

The core chapters in Parts II and III of the Manual are organized roughly in the order that their subject matter arises in the text of the Guiding Principles themselves. In order to provide a more complete overview of how the Manual’s recommendations correspond to the Guiding Principles, the below index summarizes each provision of the Guiding Principles and identifies any corresponding recommendations in the Manual.

Guiding Principle	Manual Chapter
Section One: General Principles	
01.1 [non-discrimination vis-à-vis non-displaced]	▶ Chapter 1(C)
01.2 [no prejudice to individual criminal liability]	
02.1 [binding on all authorities]	▶ Introduction (B)
02.2 [GPs as minimum rights]	
03.1 [national authorities bear primary duty]	
03.2 [IDP right to request and receive help]	
04.1 [general non-discrimination]	▶ Chapter 1(D)
04.2 [special treatment for vulnerable groups]	
Section Two: Principles Relating to Protection from Displacement	
05.1 [general respect for international law]	▶ Chapter 3
06.1 [protection from arbitrary displacement]	
06.2 [examples of arbitrary displacement]	
06.3 [displacement to last no longer than necessary]	
07.1 [planned displacement only if no alternative]	
07.2 [conditions of planned displacement]	
07.3 [procedures for planned displacement]	
08.1 [protection of life, dignity, security and liberty]	
09.1 [protection of groups dependent on land]	

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Section Three: Principles Related to Protection during Displacement

10.1 [right to life]	▶	Chapter 16(A)
10.2 [examples of prohibited acts against IDPs]		
11.1 [right to dignity and integrity]		
11.2 [examples of prohibited acts against IDPs]		
12.1 [right to liberty and security of person]	▶	Chapter 16(B)
12.2 [internment only if absolutely necessary]		
12.3 [prohibition of discriminatory arrest of IDPs]		
12.4 [prohibition of IDP hostage-taking]		
13.1 [prohibition of IDP child recruitment]	▶	Chapter 16(C)
13.2 [no discriminatory recruitment of IDPs]		
14.1 [freedom of movement and choice of residence]	▶	Chapter 5
14.2 [free movement in and out of camps]		
15.1 (a) [right to seek safety within country]		
(b)-(c) [right to seek leave country/seek asylum]		
(d) [internal non-refoulement]		
16.1 [right to information on missing relatives]	▶	Chapter 6
16.2 [obligation of authorities to investigate]		
16.3 [obligation of authorities to return remains]		
16.4 [protection of and access to grave sites]		
17.1 [respect for family life]		
17.2 [right of IDP families to remain together]		
17.3 [reunion of separated families]		
17.4 [no separation of families during internment]		
18.1 [right to an adequate standard of living]		
18.2 (a) [essential food and water]	▶	Chapters 7 and 8
(b) [basic shelter and housing]	▶	Chapter 9
(c) [appropriate clothing]		
(d) essential medical services and sanitation]	▶	Chapter 10
18.3 [participation of women in distribution]	▶	Chapter 2 (I)
19.1 [access to medical care]	▶	Chapter 10
19.2 [special attention to women's' health needs]		
19.3 [special attention to contagious/infectious disease]		

20.1 [right to recognition as a person]	▶	Chapter 11
20.2 [issuance of documents necessary for legal rights]		
20.3 [women entitled to documents in own name]		
21.1 [no arbitrary deprivation of property]	▶	Chapter 12
21.2 [examples of prohibited acts against property]		
21.3 [protection of abandoned property from 3 rd parties]		
22.1 [no discrimination based on displacement re: ...]		
(a) [...freedom of thought, religion, expression]	▶	Chapter 1(D)
(b) [...employment and economic opportunities]	▶	Chapter 13
(c) [...free association and community affairs]	▶	Chapter 1(D)
(d) [...right to vote and political participation]	▶	Chapter 14
(e) [...communication in known language]	▶	Chapter 16(D)
23.1 [right to education]	▶	Chapter 15
23.2 [free and compulsory primary education]		
23.3 [full and equal participation of women and girls]		
23.4 [availability of education and training facilities]		

Section Four: Principles Relating to Humanitarian Assistance

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24.1 [principles of humanity and impartiality]	▶	Chapters 4, 7-10
24.2 [no diversion of assistance to IDPs]		
25.1 [national authorities' primary duty to provide]		
25.2 [right of international actors to offer services]		
25.3 [access and free passage of assistance]		
26.1 [protection of persons engaged in assistance]		
27.1 [international humanitarian actors and protection]		
27.2 [protection-mandated organizations' continued duty]		

Section Five: Principles Relating to Return, Resettlement, and Reintegration

28.1 [duty to facilitate voluntary return or resettlement]	▶	Chapters 2(K) and 5
28.2 [participation of IDPs in planning durable solutions]	▶	Chapter 2 (I)
29.1 [non-discrimination against reintegrating IDPs]		Chapter 2(K)
29.2 [duty to facilitate property restitution/compensation]	▶	Chapter 12
30.1 [int'l. humanitarian access to reintegrating IDPs]	▶	Chapter 4

Summary of Minimum Essential Elements of State Regulation

The following summarizes the minimum essential elements of state regulation as set out in the chapters. This summary is neither a draft structure for IDP laws and policies nor does it contain all elements that should constitute the content of such regulations. Rather, it serves as a check list to identify whether a specific text covers all essential issues.

Part I: General issues

- Adopt a concept of who is an internally displaced person that is consistent with and not narrower than that used in the Guiding Principles on Internal Displacement. The definition of IDP must not create a specific legal status that is granted, refused or ceased in individual cases; it should serve as a factual description of the circumstances of a person that is used to determine the applicability of IDP laws and policies.
- Recognize the right of any IDP to be protected against discrimination on the ground that he or she is internally displaced as well as against discrimination in relation to other IDPs or non-displaced individuals and communities on any ground such as race, color, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, or birth or any similar criteria, as well as.
- Provide for measures that cover all three phases of displacement: (1) to prevent or minimize displacement (e.g. disaster mitigation and preparedness plans, training of security forces); to respond to in the immediate displacement phase; and to establish conditions necessary for the achievement of durable solutions.
- Provide for measures to raise awareness of the existence and nature of internal displacement and provide targeted training on the rights of IDPs.
- Establish systems for the collection and protection of relevant data.
- Designate an institutional focal point for IDP issues at the national level and, where appropriate, sub-national level.
- Vest an institution such as the National Human Rights Commission or the Ombudsperson's Office with the authority and responsibility to monitor and report on the respect and protection of the rights of IDPs.
- Ensure the consultation and participation of IDPs in all matters affecting them during all phases of displacement, and provide sufficient information on such matters to enable them to make voluntary and informed decisions about their future.
- Provide for the allocation of necessary human and financial resources.
- Provide the necessary legal basis for cooperation with national and international humanitarian partners, including provisions to facilitate the immediate entry of humanitarian personnel and goods, such as the waiver of regular visa and customs requirements.

Part II: Protection from displacement:

- Recognize the right to be free from arbitrary displacement.
- Penalize arbitrary displacement in domestic law under circumstances in which it amounts to a crime against humanity or war crime in accord with the Rome Statute..
- Take penal and administrative measures to ensure compliance with relevant rules of international humanitarian law, including rules on the conduct of hostilities and the duty to distinguish between civilians and combatants and between civilian objects and military objectives.
- Adopt disaster policies that not only regulate response but also focus on disaster risks reduction and preparedness.
- Include in national development plans and resettlement policies a clear articulation that forced displacement or relocation induced by development projects must be authorized by law, justified by compelling and overriding public interests, necessary to protect these interests and carried out with full respect for the human rights of affected persons. Also include provisions on procedures by which any such displacement or relocation will be effectuated, available remedies including resettlement and compensation, and the right to administrative or judicial review.

Part III: Protection and assistance during and after displacement*Humanitarian assistance in general*

- Create a mechanism responsible for coordinating the provision of humanitarian assistance to IDPs.
- Assign to relevant authorities or organizations at the national and local levels clear and specific obligations in the area of humanitarian assistance to IDPs, and provide them with the necessary means to do so.
- Establish mechanisms and procedures to identify beneficiaries of humanitarian assistance on the basis of need and particular vulnerability.
- Determine criteria for the delivery of humanitarian goods and services in accordance with recognized international minimum standards.
- Set up criteria and mechanisms ensuring full humanitarian access to all persons in need.
- Eliminate any obstacles hindering the provision of humanitarian goods from domestic sources, such as subsidies or price regulations on domestic commodities that set their prices above global prices; and
- Facilitate the import and internal transport of humanitarian goods not sufficiently available domestically (e.g., by waiving or relaxing import restrictions and quotas; customs duties and other taxes) and the speedy entry of foreign humanitarian workers and organizations to the country (e.g. by streamlining visa requirements; expediting permits).
- Provide for the criminal penalization of attacks by state as well as non-state actors against humanitarian relief personnel and their material, transport and supplies where such attacks would amount to a war crime under the Rome Statute.
- Provide, in the aftermath of an armed conflict, other situation of violence or natural or man-made disasters for humanitarian assistance for a transitory period as well measures to reestablish food security, provision of water and sanitation, health services, and education at the locations where IDPs find durable solutions.

Movement related rights of IDPs

- Recognize IDPs' right to freedom of movement, including specifically the rights to seek safety in another part of the country and to be protected against forced return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.
- Abolish administrative obstacles that may exist, limiting the possibility of IDPs to reach safe areas or, when conditions allow, to return to their homes.
- Recognize the right of all IDPs to make a voluntary and informed choice between return, integration at the location of displacement or resettlement/relocation in another part of the country.
- Provide for specific measures (such as humanitarian demining, re-deployment of police forces, or demobilization drives in return areas) to ensure safety and security for returning IDPs.

Family life

- Recognize or reaffirm the right of IDPs to family unity.
- Assign responsibilities to governmental agencies to search for and reunite members of families who have become separated in the course of displacement; *and/or* to seek support from the international community for this task.
- If necessary, create national mechanisms responsible for investigate the fate of missing persons and to provide information and, wherever possible, mortal remains and personal effects to survivors; *and/or* to seek support from the international community for this task.

Food

- Recognize the right to adequate food for IDPs.
- Provide for the penalization, as a war crime, of the use of starvation as a method of war, in accordance with the Rome Statute of the International Criminal Court.
- Designate a governmental authority to be responsible for the procurement, storage and distribution of food to IDPs, and allocation of sufficient funds for that purpose;.
- Seek and accept support from the international community if needs cannot be sufficiently satisfied at the domestic level.
- Establish procedures to identify and prioritize beneficiaries of food and other nutritional aid on the basis of need and particular vulnerability.
- Eliminate any obstacles hindering the domestic sourcing of food, such as subsidies or price regulations on domestic commodities that set their prices above global levels.
- Facilitate the importation of food aid (e.g. by waiving import restrictions and quotas, customs duties and other taxes).

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Water and Sanitation

- Recognize the right to potable water for IDPs.
- Designate an agency at the local level responsible for the provision and maintenance of water and sanitation services for IDPs, whether or not in camps
- Seek and accept from the international community if needs cannot be sufficiently satisfied at the domestic level.
- Establish procedures to identify and prioritize beneficiaries of water and sanitation services on the basis of need and particular vulnerability.

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Basic shelter and adequate housing

- Recognize the right to basic shelter and adequate housing for IDPs;
- Designate a governmental agency responsible for addressing shelter and housing needs of displaced persons;
- Seek and accept support from the international community if needs cannot be sufficiently satisfied at the domestic level
- Establish procedures to identify and prioritize beneficiaries of basic shelter and adequate housing on the basis of need and particular vulnerability.
- Remove legal obstacles as contained, e.g. in building and similar codes, for the construction of transitional shelters or the rebuilding of houses in return or relocation areas.
- Create specific guarantees to protect IDPs against forced evictions where general guarantees are insufficient.

Health

- Recognize the right to health for IDPs;
- Designate of an agency or organization responsible for providing essential health services to IDPs in cases where IDPs cannot easily access regular services available to the general population;
- Seek and accept from the international community if needs cannot be sufficiently satisfied at the domestic level.
- Establish procedures to identify and prioritize beneficiaries of health services on the basis of need and particular vulnerability.
- Provide for the waiver of standard and universal requirements (e.g. specific documentation, residency requirements, health insurance coverage) that limit or exclude access of IDPs to health services, and for free access to such services on the basis of need and particular vulnerability.

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Recognition, Issuance and Replacement of Documents

- Establish institutional mechanisms and facilitated procedures for issuing or reissuing essential documentation to IDPs through facilitated procedures, including use of official records and alternative forms of evidence available to IDPs.
- Ensure that, where appropriate and necessary, the issuance of “IDP cards” for purposes of identification and access to specific assistance is carried out in a rapid and accessible process.

Property and Possessions

- Recognize of the property rights of IDPs to their abandoned homes, property and land, including the right to protection and restitution of such property;
- Take basic measures to secure homes, lands and property left behind by IDPs against destruction, unlawful use or occupation and appropriation; and
- Develop facilitated procedures to restore or compensate IDPs’ rights in housing, land and property; where this is not possible, provide support to informal dispute resolution bodies to take into account human rights law in negotiating solutions to local property claims.

Employment, Economic Activities and Social Protection

- Recognize the right to work and the right to social security for IDPs;
- Take specific measures to protect IDPs against discrimination in the labor market and access to social security benefits;
- Direct existing governmental agencies responsible for labor and social security related issues to specifically evaluate and take responsive action to unique problems faced by IDPs (e.g. through provisional work programs, access to livelihoods inputs, micro-credit and other support, skills transfers and vocational training, access to labor market and social security programs).
- Provide for measures (such as micro-credit systems; vocational training; distribution of farming implements, seeds or animals) that help former IDPs to regain their livelihoods or engage in new economic activities at the locations where they find durable solutions.

Electoral Rights

- Provide mechanisms for IDPs being registered as a voter even during displacement, such as through facilitated procedures to maintain existing registration, to transfer registration, and/or to waive requirements that would prevent IDPs from registering at the site of displacement.
- Allow IDPs to cast their vote at the location of displacement, for either the constituency of origin (absentee vote) or the constituency of displacement.

Education

- Recognize the right of IDPs to receive primary school education that is either free or provided on at least as favorable a basis as it would be for poor members of the host community.
- Abolish administrative obstacles that may unreasonably and discriminatorily limit access to schools because they do not sufficiently take into account the specific problems faced by IDPs (i.e., requirements related to documentation, formal transfer from the previous school, or the pupil's ability to provide books and school uniforms)..
- Establish a clear obligation on the part of the competent authority to provide education to IDPs located in areas inaccessible to existing schools.

Annex 4

List of Further Reading and Tools

Guidelines and Selected Publications

Brookings-Bern Project on Internal Displacement (2005) *Addressing Internal Displacement: a Framework for National Responsibility*, available at: http://www.brookings.edu/projects/idp/20050401_nrframework.aspx

Brookings-Bern Project on Internal Displacement (2007) *When Displacement Ends: a Framework for Durable Solutions*, available at: http://www.brookings.edu/reports/2007/~//media/Files/rc/reports/2007/09/displacementends/2007_durablesolutions.pdf

Brookings-Bern Project on Internal Displacement (2008) *Moving beyond Rhetoric: Consulting with IDPs*

Cohen, R., Kälin, W., Mooney, E. (2003) *The Guiding Principles on Internal Displacement and the Law of the South Caucasus: Georgia, Armenia, Azerbaijan*

COHRE (2005) *UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles)*, available at: <http://www.cohre.org/store/attachments/Pinheiro%20Principles.pdf>

Fisher, D. (2006) *Guide to International Human Rights Mechanisms for Internally Displaced Persons and their Advocates*, available at: http://www.brookings.edu/projects/idp/2006_guidebook.aspx

Global Protection Cluster Working Group (2007) *Handbook for the Protection of Internally Displaced Persons*, available at: <http://ocha.unog.ch/humanitarianreform/Default.aspx?tabid=294>

Habitat (2003) *Habitat Agenda Goals and Principles, Commitments and Global Plan of Action*, available at: http://www.unhabitat.org/downloads/docs/1176_6455_The_Habitat_Agenda.pdf

IASC (2003) *Guidelines on the Use of Civil and Military Assets in Complex Emergencies*, available at: <http://www.humanitarianinfo.org/iasc>

IASC, (2005) *Guidelines for Gender-based Violence Interventions in Humanitarian Settings Focusing on Prevention of and Response to Sexual Violence in Emergencies*, available at: http://www.humanitarianinfo.org/iasc/content/subsidi/tf_gender/gbv.asp

IASC (2006) *Operational Guidelines on Human Rights and Natural Disasters*, available at: http://www.humanitarianinfo.org/iasc/content/documents/working/OtherDocs/2006_IASC_NaturalDisasterGuidelines.pdf

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ICRC (2000), *Restoring Family Links: a Guide for National Red Cross and Red Crescent Societies*, available at: [http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/council-delegates-2007-family-links-151007/\\$File/CD07_R4Annex_RFL%20Strategy_ENG_FINAL_adopted.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/council-delegates-2007-family-links-151007/$File/CD07_R4Annex_RFL%20Strategy_ENG_FINAL_adopted.pdf)

ICRC (2004) *Inter-agency Guiding Principles on Unaccompanied and Separated Children*, available at: <http://www.icrc.org/web/eng/siteeng0.nsf/html/p1101>

ICRC (2006) *Management of Dead Bodies after Disasters: A Field Manual for First Responders*, available at: [http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0880/\\$File/ICRC_002_0880.PDF!Open](http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/p0880/$File/ICRC_002_0880.PDF!Open)

ICRC (2007) *Guiding Principles/Model Law on the Missing*, available at: <http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/missing-model-law-010907?open=document>

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ICRC (2007) *Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*, available at: <http://www.ifrc.org/docs/pubs/idrl/guidelines/guidelines.pdf>

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- UNESCO (2006) *Guidebook for Planning Education in Emergencies and Reconstruction*, available at: <http://www.unesco.org/iiep/eng/focus/emergency/guidebook.htm>
- UNHCR (2003) *Handbook on Registration*, available at: www.refworld.org
- UNHCR (2003), *Education: Field Guidelines*, available at: <http://www.womenwarpeace.org/docs/Education%20in%20the%20Field.pdf>
- UNHCR (2006) *The UNHCR Tool for Participatory Assessments in Operations*, available at: <http://www.unhcr.org/publ/PUBL/450e963f2.html>
- UNHCR (2006) *Operational Protection in Camps and Settlements: A Reference Guide to Good Practice in the Protection of Refugees and Other Persons of Concern*, available at: <http://reliefweb.int/rw/lib.nsf/db900SID/AMMF-6S3FYQ?OpenDocument>
- UNHCR (2008) *UNHCR Guidelines on Determining the Best Interests of the Child*, available at: <http://www.unhcr.org/protect/PROTECTION/4566b16b2.pdf>
- UNICEF/UNHCR (1992) *Evacuation of Children from Conflict Areas: Considerations and Guidelines*

PROTECTING INTERNALLY DISPLACED PERSONS:

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Useful websites

Brookings-Institution – University of Bern Project on Internal Displacement: <http://www.brookings.edu/projects/idp>

Compilation of International Human Rights Law: <http://www2.ohchr.org/english/law>

Database on National and Regional Laws and Policies on Internal Displacement:

http://www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx

Electoral Assistance Division (EAD) of the UN Department of Political Affairs: www.un.org/depts/dpa/ead

Forced Migration Review: <http://www.fmreview.org>

Global Database on the Guiding Principles on Internal Displacement: www.idpguidingprinciples.org

Internal Displacement Monitoring Centre: www.internal-displacement.org

International Committee of the Red Cross: http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/refugees_displaced_persons?OpenDocument

International Humanitarian Law Database: www.icrc.org/ihl

OCHA, United Nations Office for the Coordination of Humanitarian Affairs: www.ochaonline.un.org

Representative of the Secretary General on the Human Rights of Internally Displaced Persons: Country Mission and Working Visit Reports:

<http://www2.ohchr.org/english/issues/idp/index.htm>

http://www.brookings.edu/projects/idp/rsg_info.aspx

UNHCR, United Nations High Commissioner for Refugees: <http://www.unhcr.org/protect/47b417374.html>

Universal Human Rights Index of UN Documents: www.universalhumanrightsindex.org

List of Abbreviations

AfCHPR	African Charter on Human and Peoples' Rights
AU	African Union
BiH	Bosnia and Herzegovina
BPN	Aceh and Nias Rehabilitation and Reconstruction Agency
CAREM	Child Research Rehabilitation and Training Centre (Turkey)
CAT	Convention against Torture
CCHA	Consultative Committee on Humanitarian Affairs (Sri Lanka)
CEC	Community Education Committee
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CIAT	<i>Comité Interministerial para la Alerta Temprana</i> (Colombia)
CRC	Convention on the Rights of the Child
DRC	Democratic Republic of the Congo
ECHR	European Court of Human Rights
EMB	Electoral Management Body
FAO	Food and Agriculture Organization
GBV	Gender-based Violence
HIS	health information system
IASC	Inter-Agency Standing Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICRC	International Committee of the Red Cross
IDMC	Internal Displacement Monitoring Centre
IDP	internally displaced person
IDRL	International Disaster Response Laws, Rules and Principles
IFRC	International Federation of Red Cross and Red Crescent Societies
IGO	intergovernmental organization
ILO	International Labour Organization
INEE	Inter-Agency Network for Education in Emergencies
IOM	International Organization for Migration
ISDR	International Strategy for Disaster Reduction
JRT	Joint Registration Task-force
MDG	Millennium Development Goal
MONUC	UN Peace-keeping Mission in Congo (DRC)

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MWLE	Ministry for Water, Lands and Environment (Uganda)
NATO	North Atlantic Treaty Organization
NEC	National Election Commission
NGO	non-governmental organization
NHRI	National Human Rights Institution
NRC	Norwegian Refugee Council
OAU	Organization of African Unity
OCHA	Office for the Coordination of Humanitarian Affairs
ODIHR	Office for Democratic Institutions and Human Rights
OECD	Organization for Economic Cooperation and Development
OSCE	Organization for Security and Cooperation in Europe
RSD	Refugee Status Determination
RSG	Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons
SAT	<i>Sistema de Alerta Temprana</i> (Colombia)
SINAPRED	National System for the Prevention, Mitigation, and Response to Disasters (Nicaragua)
SLHRC	Sri Lanka Human Rights Commission
Sphere Standards	the Sphere Project, “Humanitarian Charter and Minimum Standards in Disaster Response,” 2004 ed. (Geneva 2004)
UDHR	Universal Declaration of Human Rights
UNAMET	UN Assistance Mission in East Timor
UNCCD	UN Convention to Combat Desertification
UNCESCR	UN Committee on Economic, Social and Cultural Rights
UNDAC	UN Disaster Assessment and Coordination
UNDP	UN Development Programme
UNDRO	UN Disaster Relief Organization
UNEAD	UN Electoral Assistance Division
UNESCO	UN Educational, Scientific and Cultural Organization
UNFPA	UN Population Fund
UNHCR	UN High Commissioner for Refugees
UNICEF	UN Children’s Fund
UNMIK	UN Mission in Kosovo
UNRC	UN Resident Coordinator
UPDF	Uganda People’s Defence Forces
WFP	World Food Programme
WHO	World Health Organization

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