



# ICRC

## ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW

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### Internally Displaced Persons and International Humanitarian Law



International humanitarian law (IHL) is a set of rules that, in times of armed conflict, seeks – for humanitarian reasons – to protect persons who are not, or are no longer, directly participating in hostilities, and to restrict means and methods of warfare. IHL thus establishes minimum standards of humane conduct that must be complied with in any situation of armed conflict. These standards aim, *inter alia*, to protect civilian populations and their means of survival. IHL violations – such as direct attacks on and all forms of ill-treatment of civilians, destruction of property not required by imperative military necessity, rape or other forms of sexual violence, and unlawful restrictions on access to health care and other essential services – are one of the main causes triggering displacement in today's armed conflicts. As a consequence of being displaced, civilians often struggle to meet essential needs amid exacerbated hardship, and they may face particular threats, such as tensions between them and host communities, settlement in unsafe or unfit locations, and forced return to unsafe areas. Also, the lack of access to official documents, often left behind or lost during flight, is one of the major concerns affecting internally displaced persons and one that can prevent them from gaining access to essential services such as health care and education.

IHL contains important provisions to prevent the displacement of civilians and the suffering it causes from occurring in the first place. It also aims to ensure that, when displacement does take place, internally displaced persons are protected and provided with assistance at all stages of their displacement. Without greater respect for IHL and more vigorous efforts to protect the civilian population during armed conflict, global displacement figures will continue to grow.

## Who are internally displaced persons?

The definition of internally displaced persons most commonly used comes from the United Nations (UN) *Guiding Principles on Internal Displacement*. The *Guiding Principles* describe internally displaced persons as "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border."<sup>1</sup>

## Are internally displaced persons protected under international law?

There is no universal legally binding instrument specifically addressing the plight of internally displaced persons. However, in 1998 the UN Commission on Human Rights adopted a resolution taking note of the *Guiding Principles on Internal Displacement*. While these *Guiding Principles* are not in themselves legally binding, they contain numerous rules that are part of existing international human rights law (IHRL) and IHL. Furthermore, the *Guiding Principles* have enjoyed wide support from the international community, and many States have incorporated them into their domestic legal systems. A key notion affirmed in the *Guiding Principles* is that States have the primary responsibility to prevent displacement, to protect and assist internally displaced persons under their jurisdiction and to provide durable solutions to their situation. In order to fulfil this responsibility, States need to have in place domestic normative and policy frameworks, with the necessary implementing structures and processes, so that they can respond effectively to the specific needs and vulnerabilities of internally displaced persons.

At the regional level, the African Union in 2009 adopted the Kampala Convention on internally displaced persons.<sup>2</sup> Inspired by the *Guiding Principles*, it is the first legally binding regional instrument addressing internal displacement. Given the scale of the problem in Africa, the Kampala Convention is a significant and necessary reaffirmation of existing rules of IHRL and IHL, as well as a contribution to further development of the protections afforded to internally displaced persons.<sup>3</sup> It details the obligations of States, non-State armed groups and international organizations in preventing displacement and protecting and assisting internally displaced persons. The Kampala Convention provides a comprehensive framework that can guide African States in adopting domestic normative, policy and practical measures to deal with internal displacement in an effective manner. In order for the Convention to realize its full potential, it is crucial that it be ratified across the continent and its provisions translated into concrete practice.<sup>4</sup>

<sup>1</sup> United Nations, *Guiding Principles on Internal Displacement*, 2nd ed., OCHA/IDP/2004/01, United Nations, New York, 2004: <https://docs.unocha.org/sites/dms/Documents/GuidingPrinciplesDispl.pdf>, all web addresses accessed October 2017.

<sup>2</sup> African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). Adopted by the Special Summit of the Union held in Kampala on 23 October 2009: <https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa>

<sup>3</sup> Notably, the Kampala Convention goes beyond IHL rules in some respects, for example, in its provisions on safe and voluntary return and on access to compensation or other forms of reparation.

## How does IHL protect internally displaced persons?

IHL contains many provisions relevant to preventing displacement and protecting internally displaced persons as part of the civilian population. They are to be found mainly in the 1949 Fourth Geneva Convention (GC IV) and the 1977 Additional Protocols I and II (AP I and AP II), as well as in customary international humanitarian law (CIHL).<sup>5</sup> States have the responsibility to implement IHL, including the obligation to incorporate the rules of international law into their national legal frameworks. In particular, the following provisions should be considered when enacting national legislation:

### Prohibition of forced displacement and the right to voluntary return in safety

IHL expressly prohibits parties to an armed conflict from forcibly displacing civilians in both international and non-international armed conflicts, unless the security of the civilians involved or imperative military reasons so demand (GC IV Arts 49 and 147; AP I Art. 85(4)(a); AP II Art. 17; CIHL Rule 129. See also AP I Arts 51(7) and 78(1) and AP II Art. 4(3)(e)). Like other rules of IHL that can prevent displacement from occurring in the first place, this prohibition also protects civilians against the risk of secondary displacement. Furthermore, internally displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist (GC IV Art. 49 and CIHL Rule 132).

### Non-discrimination

As a consequence of their displacement, internally displaced persons often have particular needs and vulnerabilities that may require a tailored response on the part of the authorities. At the same time, internally displaced persons must be treated humanely and shall not be discriminated against on the grounds of their displacement or for other reasons. It is important for domestic normative and policy frameworks not to single out internally displaced persons for less favourable treatment than that afforded to the general population. Civilians shall be treated without any adverse distinction (GC IV Arts 3, 13 and 27; AP I Art. 75; AP II Arts 2(1) and 4(1); CIHL Rules 87 and 88).

### Protection as part of the civilian population

Internally displaced persons are part of the civilian population and therefore are entitled to the protections afforded to all persons who are not, or are no longer, taking a direct part in hostilities (GC IV, in particular Arts 4 and 27. Other important provisions are AP I Arts 51 and 75; AP II Arts 4 and 5; CIHL Rules 1 and 7). As with all civilians, internally displaced persons shall not be the object of direct attack unless and for such time as they take a direct part in hostilities. Similarly, places where internally displaced persons are sheltered, which constitute civilian objects, must be protected so long

<sup>4</sup> In 2016, the ICRC carried out a stocktaking exercise in around 25 African countries to identify lessons learned, good practices and key challenges in States' efforts to effectively implement their obligations concerning internally displaced persons, as provided in the Kampala Convention. See ICRC, *Translating the Kampala Convention into Practice: A Stocktaking Exercise*, ICRC, Geneva, 2016: <https://www.icrc.org/en/publication/4287-translating-kampala-convention-practice>

<sup>5</sup> J.M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law*, Vol. I: Rules, 3rd ed., ICRC/Cambridge University Press, Cambridge, 2009: <https://www.icrc.org/eng/resources/documents/publication/pcustom.htm>

as they are not used for military purposes (AP I Art. 51; AP II Art. 13; CIHL Rules 1, 7, 14, 15 and 22).

### **Respect for life, dignity and humane treatment**

The life and dignity of internally displaced persons shall be respected. They shall be protected and treated humanely (GC IV Arts 3, 27 and 32; AP I Art. 75; AP II Art. 4; CIHL, notably Rules 87 and 89).

They shall not:

- be subjected to collective punishments (GC IV Art. 33; AP I Art. 75(2)(d); AP II Art. 4(2)(b); CIHL Rule 103), used as human shields (GC IV Art. 28; AP I Art. 51(7); AP II Art. 13(1); CIHL Rule 97);
- taken hostage (GC IV Arts 3, 34 and 147; AP I Art. 75(2)(c); AP II Art. 4(2)(c); CIHL Rule 96); or,
- subjected to rape and other forms of sexual violence (GC IV Arts 3 and 27(2); AP I Arts 75(2), 76 and 77; AP II Art. 4(2); and CIHL Rule 93).<sup>6</sup>

Furthermore, their physical and mental well-being shall be protected (AP I Art. 75(2)(a); AP II Art. 4(2)(a) and (c); CIHL Rules 90–93).

Internally displaced persons should have the right to choose their residence and to move freely in and out of camps or other settlements. Internment or assignment to residence of internally displaced persons may be carried out only if the security of the Detaining Power makes it absolutely necessary or, in occupied territory, if justified by imperative reasons of security in international armed conflicts (GC IV Arts 42 and 78 and CIHL Rule 99). In non-international armed conflicts, arbitrary arrest or detention is prohibited in all situations (CIHL Rule 99).

### **Adequate standards of living and humanitarian assistance**

Should displacement occur, all possible measures shall be taken in order for internally displaced persons to enjoy satisfactory conditions of shelter, hygiene, health, safety and nutrition (GC IV Art. 49(3); AP II Art. 17(1); CIHL Rule 131). Internally displaced persons also benefit from the numerous rules of IHL aimed at ensuring that the civilian population affected by armed conflict is able to meet basic needs and obtain essential services.

In armed conflicts, attacking, destroying or removing objects indispensable to the survival of the civilian population, such as foodstuffs, crops, livestock, drinking water supplies or irrigation works is prohibited (AP I Art. 54(2); AP II Art. 14; CIHL Rule 54). The use of starvation of the civilian population as a method of warfare is also prohibited (AP I Art. 54(1); AP II Art. 14; ICC Statute Art. 8(2)(b)(xxv); CIHL Rule 53).

During armed conflicts, parties to the conflict shall provide and ensure access by internally displaced persons to essential medical services without adverse distinction. The wounded and sick must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition, without distinction except on medical grounds. Whenever circumstances permit, and without delay, all possible measures must be taken to search for, collect and evacuate the wounded and sick, without adverse distinction. To this end, medical personnel, facilities and transports must also be respected and protected (GCs common Art. 3; GC IV Arts

16, 17, 18, 20, 21, 23, 55 and 56; AP I Arts 10–21; AP II Arts 7(2), 8, 9, 10 and 11; CIHL Rules 25–29 and 109–110).

Each party to an armed conflict bears the primary obligation to meet the basic needs of the population under its control (GCs common Art. 3; GC IV Art. 55; AP I Art. 69). In addition, impartial humanitarian organizations such as the ICRC have the right to offer their services in order to carry out humanitarian activities (including those benefiting internally displaced persons), in particular when the needs of those affected by the armed conflict are not fulfilled (GCs common Art. 3 and common Art. 9/9/9/10). These impartial humanitarian activities undertaken in situations of armed conflict are subject to the consent of the parties to the conflict concerned (GCs common Art. 3; AP II Art. 18; GCs common Art. 9/9/9/10; and GC IV Art. 59). However, this consent must not be unlawfully denied. Once impartial humanitarian relief schemes have been agreed to, the parties to the armed conflict must allow and facilitate the rapid and unimpeded passage of the relief schemes, subject to their right of control (AP I Art. 70 and CIHL Rule 55).

In situations of large influxes of internally displaced persons, where States often lack the necessary human and financial resources to fulfil their primary role and duty of responding to internal displacement, or are unwilling to do so, effective and repeated access to internally displaced persons by impartial humanitarian organizations is a key factor in meeting the basic needs of the displaced and the host communities.

### **Respect for family life and family unity**

Family life must be respected as far as possible, and the unity of families should be protected (GC IV Art. 27 and CIHL Rule 105). In situations of internment or detention during armed conflict, family members must be accommodated together (GC IV Arts 82(2) and (3); AP I Art. 75(5); AP II Art. 5(2)(a)). All possible measures must be taken to ensure that those displaced are not separated from their family members (GC IV Art. 49(3) and CIHL Rule 131). If family members become separated because of displacement for reasons related to the conflict, all appropriate steps must be taken to facilitate their reunification (GC IV Art. 26; AP I Art. 74; AP II Art. 4(3)(b); CIHL Rule 105). If family members go missing, parties to the conflict must take all feasible measures to account for those reported missing and must provide any information they have on what happened to them (GC III Art. 122; GC IV Arts 136 and 26; AP I Arts 32 and 33; CIHL Rule 117).

### **Documentation**

All children in occupied territories should be identified and registered; the occupying power shall take all necessary steps to facilitate this (GC IV Art. 50). Furthermore, when children are temporarily evacuated in international armed conflicts, authorities shall register them (AP I Art. 78(3)). States are specifically obliged to ensure that interned civilians are provided with basic documentation, if they have none (GC IV Art. 97(6)).

### **Civilian objects and property**

In armed conflict situations, civilian property shall not be subject to pillage (GC IV Art. 33(2), AP II Art. 4(2)(g); CIHL Rule 52), or, in international armed conflicts, to reprisals (GC IV Art. 33(3), AP I Art. 52(1) and CIHL Rule 147). Civilian objects shall not be the object of direct attacks, reprisals or indiscriminate

<sup>6</sup> For more information, see the ICRC Advisory Service legal factsheet entitled *Prevention and Criminal Repression of Rape and Other Forms of Sexual Violence during Armed Conflicts*, ICRC,

Geneva, 2015 : <https://www.icrc.org/en/document/prevention-and-criminal-repression-rape-and-other-forms-sexual-violence-during-armed>

attacks (AP I Arts 48, 51(4), 52(1) and 85; CIHL Rules 7 and 11). In all situations, the destruction or seizure of property of an adversary is prohibited, unless required by imperative military necessity (GC IV Art. 147 and CIHL Rule 50). This constitutes a war crime in both international and non-international armed conflicts under the Rome Statute of the International Criminal Court (ICC) (ICC Statute Arts 8(2)(b)(xiii) and 8(2)(e)(xii)).

The property rights of displaced persons must be respected (CIHL Rule 133). The right of internally displaced persons to voluntary return in safety to their homes or places of habitual residence, as soon as the reasons for their displacement cease to exist, further supports the requirement to respect property rights.

### Employment and social protection

The general non-discrimination clauses of IHL (GC IV Art. 27 and AP I Art. 75(1)) applicable during armed conflict also apply to employment, economic activities and social security. Minimum standards of working conditions must be complied with for certain categories of persons who are made to work during situations of international armed conflict (GC IV Art. 40). Uncompensated or abusive forced labour is also prohibited (GC IV Arts 51 and 95; AP II Art. 5(1); and CIHL Rule 95). Slavery and the slave trade are prohibited in all their forms (AP II Art. 4(2) and CIHL Rule 94).

### Education

In international and non-international armed conflicts, children are entitled to special respect and protection, including access to education (CIHL Rule 135). In international armed conflicts, parties to the conflict must take the necessary measures to ensure that children under 15 who are orphaned or separated from their families as a result of the armed conflict are not left to their own resources and that their education is facilitated in all circumstances (GC IV Art. 24(1)). Occupying powers must also facilitate the functioning of educational facilities in occupied territories (GC IV Art. 50(1)). Moreover, in the case of a justified evacuation<sup>7</sup>, education - including religious and moral education - shall be provided to the child while he or she is away, with the greatest possible continuity (AP I Art. 78(2)). In non-international armed conflicts, children must receive an education, including religious and moral education (AP II Art. 4(3)(a)). These provisions are applicable to displaced children as well.

### Prohibition of forcible recruitment of children and their use in hostilities

Internally displaced children may be particularly vulnerable to forcible recruitment into armed forces or groups.<sup>8</sup> Under IHL, children must not be recruited into armed forces or groups and must not be allowed to take part in hostilities (AP I Art. 77(2); AP II Art. 4(3); CIHL Rules 136 and 137). Using

<sup>7</sup> See AP I Art. 78(1)

<sup>8</sup> For more information on measures that States can take at the domestic level, see the ICRC legal factsheet entitled *Domestic implementation of a comprehensive system of protection for children associated with armed forces or armed groups – Guiding principles*, ICRC, Geneva, 2011: <https://www.icrc.org/en/document/domestic-implementation-comprehensive-system-protection-children-associated-armed-forces-or>

<sup>9</sup> See Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted by UN General Assembly resolution A/54/263 on 25 May 2000 and entered into force on 12 February 2002:

children under 15 to participate actively in hostilities is a war crime in international and non-international armed conflicts (ICC Statute Arts 8(2)(b)(xxvi) and 8(2)(e)(vii)).

In addition, the UN Optional Protocol to the Convention on the Rights of the Child, adopted in 2000, refers to the involvement of children in armed conflict.<sup>9</sup>

### Penal repression

The High Contracting Parties to the Geneva Conventions of 1949 and Additional Protocol I of 1977 and parties to armed conflicts have the responsibility to respect and ensure respect for IHL (GCs common Art. 1; AP I Art. 1(1); CIHL Rule 139).

Under the Geneva Conventions and Additional Protocol I, States Parties are obliged to impose effective penal sanctions for “grave breaches” in international armed conflicts (GC I Arts 49 and 50; GC II Arts 50 and 51; GC III Arts 129 and 130; GC IV Arts 146 and 147; AP I Art. 85; and CIHL Rule 158). States Parties must also take measures necessary for the suppression of all acts contrary to the Conventions and Additional Protocols thereto other than grave breaches.<sup>10</sup>

Furthermore, in both international and non-international armed conflicts, a rule of customary IHL provides that States must investigate all war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects (CIHL Rule 158).<sup>11</sup>

These obligations require States to develop clear normative frameworks, strong judicial mechanisms and effective measures to ensure accountability in order to prevent war crimes and punish those found guilty of committing them.

The obligations mentioned above also cover war crimes relating to the protection of civilians. More specifically, deporting or forcibly transferring the civilian population of an occupied territory, unless the security of the civilians involved or imperative military reasons so demand, is a grave breach, according to the Fourth Geneva Convention and Additional Protocol I (GC IV Art. 49 and AP I Art. 85(4)(a)). In addition, the forced displacement of the civilian population is a war crime in both international and non-international armed conflicts under the ICC Statute ((ICC Statute Arts 8(2)(a)(vii) and 8(2)(e)(viii)).

### Implementing IHL at the national level

States have an obligation to adopt and apply domestic measures to implement IHL, including with respect to internally displaced persons. Such measures must be taken in both wartime and peacetime, and can include, for example, punishing violations of the IHL obligations listed

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.a.spx>

<sup>10</sup> For more information, see the ICRC Advisory Service legal factsheet entitled *Penal Repression: Punishing War Crimes*, ICRC, Geneva, 2014: <https://www.icrc.org/en/document/penal-repression-punishing-war-crimes>

<sup>11</sup> *Ibid.* See also the ICRC Advisory Service table entitled *War Crimes under the Rome Statute of the International Criminal Court and Their Source in International Humanitarian Law*, ICRC, Geneva, 2012: <https://www.icrc.org/en/document/war-crimes-under-rome-statute-international-criminal-court-and-their-source-international>

above, and ensuring that protected persons enjoy fundamental guarantees during armed conflict. Some of these measures will require new legislation or regulations to be adopted, while others will require the development of educational or assistance programmes, the recruitment or training of personnel or the introduction of planning and administrative procedures.

### **The role of the ICRC**

The ICRC, through its Advisory Service on IHL, provides States, upon their request, with assistance and advice on their obligations to implement IHL at the national level. For more information on turning IHL rules into action, please refer to the ICRC manual entitled *The Domestic Implementation of International Humanitarian Law*.<sup>12</sup>

The ICRC's assistance to internally displaced persons can also include distributing relief supplies (such as food, water and essential household items) and providing shelter, first aid, surgery, and hygiene and health-care programmes, as well as putting families back in contact. The ICRC also conducts livelihood-support programmes, such as microeconomic initiatives, and provides agricultural equipment and livestock to help internally displaced persons regain a measure of self-reliance.

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<sup>12</sup> See *The Domestic Implementation of International Law: A Manual*, ICRC, Geneva, 2015: <https://www.icrc.org/eng/assets/files/publications/icrc-002-4028.pdf>