



Internal Displacement: Responsibility and Action



Inter-Parliamentary Union



Handbook for Parliamentarians

Internal Displacement: Responsibility and Action



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Acknowledgements

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Foreword

More people than ever before are now displaced within their country. Armed conflict, generalized violence and human rights violations increased the number of internally displaced people (IDPs) by 2.4 million in 2012, reaching an estimated total of 28.8 million¹. Combine this with an estimated 32.4 million people newly displaced by natural disasters in 82 countries in the same year and the staggering challenge faced by the world comes into sharp focus.

Chronic internal displacement has become the norm in far too many countries, often in places with some of the lowest development indicators and the highest levels of violence. In many places it is fuelled and perpetuated by unresolved inter-ethnic, religious or political tensions. Displacement also provides fertile ground for human rights abuses including torture, rape, killings, the forced recruitment of child soldiers as well as forced evictions and property loss.

Tackling such abuses and protecting citizens is a responsibility not often fully assumed by countries struggling with internal displacement. They are themselves often politically fragile, with limited presence and capacity of State institutions. They face issues that are fundamental to resolving displacement such as the rule of law, transitional justice, reform of the security sector, gender equality, livelihood restoration, environmental sustainability, housing, land and property ownership.

The recognition that internal displacement is not just a humanitarian problem, but an issue that strikes at the heart of human rights, peace-building and national stability represents a major step forward. Making that connection is especially critical for countries in post-conflict or in transition looking to build a democratic and peaceful future. Their development – human, economic and social – depends on it.

¹ IDMC, Global Overview 2012: *People internally displaced by conflict and violence*. [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/DB8A259305B071A8C1257B5C00268DDC/\\$file/global-overview-2012.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/DB8A259305B071A8C1257B5C00268DDC/$file/global-overview-2012.pdf).

Political progress on helping IDPs has been made in the past two decades. International standards, such as the Guiding Principles on Internal Displacement,² are gradually being accepted and incorporated into national laws and policies.

Africa, home to almost one third of the world's IDPs, has witnessed the most concrete political progress on internal displacement. The Great Lakes Protocol on IDPs, obliging Member States to implement the Guiding Principles and the African Union Convention for Protection and Assistance to IDPs (Kampala Convention),³ which sets out specific obligations on protecting IDPs such as adopting national legislation and enforcing it, are both in force. Nineteen African countries have so far ratified the Kampala Convention.

Although more than 25 countries and territories have so far adopted laws or policies on internal displacement, much more needs to be done.

This Handbook, produced by the United Nations High Commissioner for Refugees and the Inter-Parliamentary Union, is a practical tool to help you as parliamentarians to put the right legislation in place and ensure its implementation. In doing so, you will be able to deliver on your mandate to represent all citizens including those who are displaced. It will also help to address their concerns and to build peaceful, strong, democratic societies grounded in the respect for human rights.

Crucially, you will be able to ensure that parliament plays its unique role in helping fulfil the State's responsibility to prevent displacement and to protect and assist IDPs. Doing this, you will help resolve one of the world's most intractable humanitarian and developmental problems.



Anders B. Johnsson
Secretary General
Inter-Parliamentary Union



António Guterres
High Commissioner
Office of the United Nations
High Commissioner for Refugees

² E/CN.4/1998/53/Add.2, 11 February 1998, <http://www.idpguidingprinciples.org/>.

³ [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/0541BB5F1E5A133BC12576B900547976/\\$file/Convention\(En\).pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/0541BB5F1E5A133BC12576B900547976/$file/Convention(En).pdf).

Message

Millions of internally displaced persons worldwide live in dire conditions and often spend long years in protracted displacement. More often than not, they remain unprotected and are unable to assert their rights. National legislation often provides insufficient protection to the particular situation of the internally displaced. Specific legislation on internal displacement can thus be an essential cure. National parliaments therefore are crucial in protecting their internally displaced citizens through legislative action. For State parties to the Great Lakes Pact or the African Union Kampala Convention, legislation on internal displacement is an international obligation. The Guiding Principles on Internal Displacement provide the ultimate fundament for national legislative responses as they do enjoy global recognition by all States. Beyond addressing legislative needs to improve the situation of IDPs, members of parliament as political leaders are important supporters of displaced communities and can act as peacemakers within their constituency in times of displacement crisis and when durable solutions are sought.

This Handbook issued by the Inter-Parliamentary Union and UNHCR provides relevant guidance to members of parliament on how best to address internal displacement as legislators and as national leaders to make their contribution towards ending internal displacement in their countries.

Chaloka Beyani
Special Rapporteur on the Human Rights
of Internally Displaced Persons

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Introduction

Purpose of this Handbook

When people are forced to leave their homes because of conflict, human rights violations or disasters, even when they remain in their own country, their lives are uprooted in every sense. They leave behind their livelihoods, property and often their roots. In many cases they are separated from their families and communities.

Experience has shown that existing laws – which are generally not designed for situations of humanitarian crisis – are often unable to adequately meet the challenges caused by internal displacement.

This Handbook is designed to assist parliamentarians in developing national laws on internal displacement. Given the extremely vulnerable situation of internally displaced persons (IDPs), it is up to the State (and by extension, the legislature) to enact a legislative framework that guarantees their rights.

As lawmakers as well as national political leaders, parliamentarians are the individuals who can make this happen. This Handbook is therefore intended to assist parliamentarians:

- in preparing an IDP bill for consideration by the legislature (parliamentarians sponsoring a private member's bill who may be particularly involved in the drafting and policy development process);
- when serving as ministers or cabinet members, in directing officials, drafters or other staff in preparing IDP legislation, as well as in reviewing briefings or drafts;
- in reviewing, commenting on or supporting an IDP bill, either as members of a parliamentary committee or as proponents of national efforts to deal with internal displacement;

- contributing to legislative efforts as representatives of their constituencies which may include IDPs or affected communities;
- in empowering civil society, IDPs and affected communities as active participants in the legislative process.

Referring to this Handbook, as well as various additional materials indicated below, will equip MPs well for the challenge of crafting comprehensive and effective legislation to prevent displacement, protect and assist IDPs and facilitate durable solutions – in short, exercise the State’s function of protecting its population.

Using the Handbook

The Handbook is divided into three parts and five chapters:

Part One: Foundations of Legislative Action

Chapter One serves as an introduction to internal displacement and its causes, and describes the international and regional standards upon which a national law will be based.

Part Two: The Parliamentarian’s Role as Lawmaker

Chapters Two and Three provide concrete suggestions MPs should consider in developing legislation on internal displacement. Chapter Two outlines procedural tasks to be undertaken by parliaments, parliamentary committees and parliamentarians. Chapter Three describes the key elements and concepts that a typical IDP law should include.

Part Three: The Parliamentarian’s Role as Political Leader

Chapters Four and five focus on functions that parliamentarians perform outside their formal legislative role. Chapter Four examines how MPs interact with their constituencies and with civil society actors, who can play an important role in contributing to IDP legislation. Chapter Five looks at how MPs can continue to be involved in IDP protection and ensure effective oversight once the legislation has been passed.

Boxes throughout the Handbook provide examples, more focused information and important points for consideration. Each chapter concludes with a short summary and a list of action points.

Additional Materials

This Handbook can be complemented, particularly for the information of staff working under an MP's direction, by a number of relevant materials:

- ✚ The **Guiding Principles on Internal Displacement** (referred to as the “Guiding Principles”) are the internationally recognized framework on internal displacement. They are described in detail in Chapter Two.
- ✚ The **African Union Convention for the Protection of and Assistance of Internally Displaced Persons in Africa** (“Kampala Convention”) is an important regional treaty, setting out the obligations to be observed by States parties in dealing with internal displacement (described in Chapter Two). It may serve as an important source of inspiration for similar initiatives in other regions of the world.
- ✚ **Protecting Internally Displaced Persons: A Manual for Law and Policy Makers issued by the Brookings Institution in 2008** (“IDP Manual”) is a comprehensive document describing relevant aspects of IDP protection and assistance, drawing on extensive experience, research and best practice. It represents an indispensable reference document for legislative work in this area.
- ✚ **National Instruments on Internal Displacement: A Guide to their Development issued by the Brookings-LSE project on internal displacement, the Internal Displacement Monitoring Center (IDMC) and the Norwegian Refugee Council in 2013** (“Practitioners’ Guide”) guides authorities and other officials step-by-step through the process of developing a national instrument on internal displacement.
- ✚ The **Inter-Agency Standing Committee Framework on Durable Solutions for IDPs** (“IASC Framework”) describes how to organize processes resulting in durable solutions, providing benchmarks with which to gauge durability.



Part One

Foundations of Legislative Action



Chapter One

Understanding Internal Displacement

Owing to internal displacement, citizens and habitual residents of a country – internally displaced persons (IDPs) – find themselves in situations of extreme vulnerability. They flee conflict, disasters and violence, and while en route their safety and security are particularly at risk. Women are frequently subjected to abuse and sexual exploitation, particularly if travelling alone. Children may be kidnapped, trafficked, or forcibly enrolled as soldiers or, when unaccompanied, may not be able to find the necessities of life and thus survive.

IDP Testimony: Zamzam M. Deg Ahmed – Mogadishu, Somalia

“The last time that I saw my husband was 12 months ago. People with face masks broke into our house while we were sleeping, looking for him. They couldn’t find him. He was hiding under the bed. After they left, he walked out of the house. That was the last time I saw him.

We fled early in the morning, after prayers. On the road, masked men started to shoot at us, stopped the truck and took us into the bush. They told all of us to get out and drop everything. I was worried for my daughter. She was 14 and I was afraid she would be raped.

Now that we arrived in a peaceful place, I worry about the future of my children, how they will grow up, take care of themselves and support me.”

Wherever IDPs choose to settle, their basic needs are often severely neglected. Areas of refuge may simply lack the shelter, water and food they require. Even where such services do exist, the influx of IDPs into already populated areas may lead to discrimination and further abuse. An IDP’s lack of personal documentation – whether lost or left behind – can effectively bar his or her access to government services. Healthcare for the disabled, elderly and pregnant may be impossible to obtain. Education, if contingent upon local residence, can also be denied to IDP populations. Work, and therefore access to money, may be difficult to find – even for residents of their host communities, let alone the IDPs themselves. The physical and mental toll such conditions can take on affected individuals is immense.

Despite being a very personal experience, internal displacement occurs on a massive scale. Armed conflict and violence have led to internal displacement, to some degree, in over 50 countries. Flooding, windstorms, earthquakes and other natural disasters can also leave tens of millions of IDPs in need of government protection and assistance.

The impact of internal displacement can therefore be equally devastating for States, which may lack the capacity or institutional structures needed to protect and assist formerly self-sustaining populations. The areas to which IDPs relocate may very likely be ill-prepared and under-resourced to cope with a sudden influx of people. Large-scale displacements can destabilize entire regions, posing severe security and humanitarian challenges.

The Nature and Causes of Internal Displacement

Formal definitions identifying which groups require the most protection and assistance have helped governments confront these challenges. The Annotations to the Guiding Principles on Internal Displacement define internal displacement as “the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders”. So described, internal displacement consists of a three-phase *process*:

- **Pre-displacement**, when the State’s focus should be on *preventing* the causes leading to displacement from occurring;
- **During displacement**, when the focus should be on *protection and assistance* for IDPs and affected communities, as well as steps to resolve the circumstances originally leading to displacement;
- **Post-displacement**, after such circumstances have been resolved, when the focus should be on finding *durable solutions* for the affected IDPs, delivering development and humanitarian assistance and building sustainable livelihoods.

These phases are not discrete events; they are identified here to provide a useful but fluid framework for the establishment of priorities. In many cases the phases overlap: certain populations may be displaced for some time, well after others are ready to return home (or settle elsewhere, or even integrate locally).

Internally displaced persons are those who find themselves in the situation of displacement. As defined in many treaties and domestic laws, IDPs are characterized in Two ways:

- They are individuals who have been forced or obliged to leave their homes or places of habitual residence;
- They have not crossed an internationally recognized border, (i.e., they remain in their own countries).

Internally Displaced Persons: A Definition

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.

Introduction, Guiding Principles on Internal Displacement; Kampala Convention, Article 1(k).

Internally Displaced Persons: also means 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 large scale development projects, and who have not crossed an internationally recognized State border.

Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons, Article 1(5).

IDPs must therefore be distinguished from “refugees”, for whom protection is provided by existing international mechanisms. As defined in such mechanisms, refugees are persons who, unlike IDPs, *have* crossed international borders and have thus lost the protection of their home countries. IDPs, having remained in their home countries, are entitled to the protection of their home-country governments. It is therefore incumbent upon national governments to provide such protection.

The concept “internally displaced person” does not convey a particular legal status, as that of “refugee” does. The term is merely descriptive of the individual’s factual circumstances. It applies to any person who is forced to leave home, regardless of cause, but remains under the jurisdiction of his or her State. It therefore applies to:

- internally displaced *citizens* of the country; as well as
- internally displaced *non-citizens*, or stateless individuals, who habitually reside in the country (“habitual residents”).

Internal displacement typically results from the following causes:

- **Armed conflict**, as defined by international humanitarian law, when populations are or are likely to be attacked. Such conflicts may arise between States or between States and non-State actors or between non-State actors;
- **Generalized violence**, whose intensity or level may not rise to that associated with armed conflict according to the 1949 Geneva Conventions and their Additional Protocols I and II;
- **Natural and man-made disasters**, including both rapid and, under certain circumstances, slow-onset disasters, such as those provoked by the effects of climate change;



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Congolese civilians carry their belongings as they escape the recent fighting between Congolese government forces and the newly formed M23 rebel group close to Rutshuru in North Kivu province, east of the Democratic Republic of the Congo on 21 May 2012.

- **Human rights violations**, deliberately targeting specific populations, which may flee in hope of safety and respite;
- **Displacement caused by development or environmental protection activities**, where major infrastructure or other projects may require local residents to move.

Development-Induced Displacement

While recognizing the need for development-induced displacement in very limited cases, international standards call for specific procedural requirements where such displacements cannot be avoided.

Guiding Principle 6 asserts that displacements should be prohibited “in cases of large-scale development projects, which are not justified by compelling and overriding public interests.”

The Kampala Convention, Article 10, provides that States “as much as possible, shall prevent displacement caused by projects carried out by public or private actors” and requires that “the stakeholders concerned will explore feasible alternatives, with full information and consultation of persons likely to be displaced by projects.”

Likewise, the Great Lakes Protocol on Internal Displacement, Article 5(1), requires States to “ensure that displacement owing to large-scale development projects shall be justified by compelling and overriding interests of national development. Member States shall therefore ensure that all feasible alternatives of development are explored in order to avoid development induced displacement altogether.”

International Standards Related to Internal Displacement

However displacement may be caused, the specific challenges for IDPs are numerous and complex:

- Flight from homes creates an immediate need for temporary shelter and, depending on the duration of displacement, access to semi-permanent or even permanent housing away from home. In the aftermath of displacement when IDPs return, mechanisms to recover houses, land and other property and to peacefully settle disputes may be required.
- They may have lost or have had destroyed their personal documentation. This is a common problem among displaced populations. This may preclude access to a variety of public services, such as healthcare and education, or the exercise of civil rights, including judicial recourse,

political participation and the ability to vote. Mechanisms to replace lost or destroyed documents should be easily accessible for IDPs and should under no circumstances require return to one's home for replacement of IDs and similar documents.

- Their social and family networks may have been disrupted or even destroyed. If unaccompanied, elderly persons and children are particularly vulnerable to exploitation and discrimination. Their difficulty in coping with the trauma of displacement may be heightened by the absence of communal networks.
- Women are particularly vulnerable, especially when travelling alone or as head of a family group. They may not be recognized as such.
- IDPs may lack any access to employment or livelihood, leaving them unable to afford food or basic services.
- Their health needs are often significant, exacerbated by a lack of sanitation and access to medical services.

International and regional standards, mainly in the areas of human rights law, humanitarian law and criminal law, lay the foundation for fulfilling IDPs' rights and addressing the specific problems they encounter. The contextualization of these standards in national legislation on internal displacement is important to bring about positive change for IDPs. Most of these standards, as contained in international and regional treaties, are binding upon States and require domestication. For example, the Great Lakes IDP Protocol requires the domestication of the Guiding Principles on Internal Displacement into national legislation by all its Member States (Article 2). As such, these standards are a key source and need to be reflected or even domesticated in national IDP legislation.

The Guiding Principles on Internal Displacement

The Guiding Principles have come to represent the international normative standard for efforts to address internal displacement. First presented to the UN Human Rights Commission in 1998, the Guiding Principles were developed over a number of years by a former Representative of the United Nations Secretary-General on internally displaced persons with the support of a committee of legal experts. Since then, their importance as the international standard in

this area has been highlighted by a number of international bodies. In 2005, heads of state and government leaders at the World Summit unanimously recognized the Guiding Principles as an “important international framework for the protection of internally displaced persons”. The UN General Assembly and the UN Human Rights Council have repeatedly and unanimously reaffirmed this recognition (UNGA A/RES/66/165, para. 12 (2012); A/HRC/RES/23/8 (2013), para. 12). The Principles have furthermore been recognized by regional bodies, such as the Council of Europe, the Organization of American States and the African Union. In Africa, the Great Lakes IDP Protocol requires their domestication and the Kampala Convention builds on the Principles. Moreover, an increasing number of States are developing their national laws and policies on internal displacement based on the Guiding Principles. International and national courts sometimes also consider the Guiding Principles in their jurisprudence.

We recognize the Guiding Principles on Internal Displacement as an important international framework for the protection of internally displaced persons and resolve to take effective measures to increase the protection of internally displaced persons.

.....
2005 World Summit Outcome Document,
para. 132

The Principles are based on three fundamental tenets:

- They reflect international law;
- They recognize that primary responsibility for protecting and assisting IDPs rests with national authorities;
- They are non-discriminatory:
 - IDPs are entitled to the same rights and freedoms as non-IDPs but must be assisted and protected according to their specific needs; they shall not be discriminated against on the basis of their displacement;
 - The Principles apply to all IDPs without distinction on any grounds. Certain groups (for example, children, the elderly, women or persons with disabilities) may require special assistance and protection.

The Principles address each of the three phases of internal displacement. To prevent the causes of displacement, they affirm that:

- States must prevent and avoid conditions that might lead to displacement (**Principle 5**);

- IDPs have a right to be protected against arbitrary displacement (**Principle 6**); Where displacement is unavoidable, guarantees should be put in place to minimize its effects (**Principle 7**);
- Displacement should never occur in a manner that violates the rights to life, dignity, liberty and security (**Principle 8**);
- States have a particular obligation to protect against the displacement of groups that have a special dependency on, or attachment to, the land (**Principle 9**).

During displacement, the Guiding Principles reiterate that IDPs are entitled to enjoy the full range of rights protected under international law, as listed below. National authorities have the primary responsibility for protecting and assisting IDPs in the areas where they are most vulnerable.

Key IDP Rights Identified by the Guiding Principles	
Right	Relevant Principles
Right to life, liberty and security of person, protection against violence	Principles 10, 11 and 12
Right to food	Principle 18
Right to water and sanitation	Principle 18
Right to adequate housing	Principle 18
Right to medical assistance and healthcare	Principles 18 and 19
Right to property; protection against attacks on property	Principles 21 and 29
Freedom of movement	Principles 14, 15 and 28
Right to be recognized as a person before the law	Principle 20
Right to family life and unity	Principles 16 and 17
Right to education	Principle 23
Right to work and an adequate standard of living	Principles 18 and 22
Right to freedom of expression, freedom of thought, conscience, religion or belief	Principle 22
Right to participate in the public affairs of the nation	Principles 22 and 29
Right to humanitarian assistance	Principles 3 and 25

Details on what these rights mean and how to address them in legislation are discussed in Chapter Three.

The Principles provide finally that in the wake of displacement, IDPs should have access to durable solutions. The primary responsibility of States to provide for durable solutions has a number of important components:

- IDPs have the right to choose between returning to their homes or settling in another part of the country (including integration within their new communities) (**Principle 28**);
- Authorities should make special efforts to ensure that IDPs can participate in the planning and management of durable solutions to their difficulties (**Principle 28**);
- There should be no discrimination against IDPs who have returned home or settled elsewhere; they should be entitled in particular to take part in public affairs and enjoy access to public services (**Principle 29**);
- Authorities should assist IDPs in recovering lost property or, where such recovery is not possible, provide mechanisms for compensation (**Principle 29**);
- Authorities should grant humanitarian and development organizations rapid and unimpeded access where needed to assist IDPs in returning home, resettling elsewhere or (re)integrating within their former or new local communities (**Principle 30**).

IDP Testimony: Doris Berrio – Cartagena, Colombia

“An armed group came to the neighborhood, gathered the neighbors and told us that they were taking control of the area. Those who were not ‘with them’ had to leave. We went to Cartagena to start over. We started organizing workshops for women on human rights. In Colombia, anyone who defends human rights is persecuted. Since the project began, there were many threats against us.

Last year, my youngest son returned to Cartagena to check on our house. On 31 October 2009, my son, Jair, was lured out of the house and murdered. Since the armed group couldn’t stop my work, they murdered my son with impunity just to get at me.

My dream is to have a house. My dream is to find justice: to find reparation and truth, and a conviction for the murderers of my son.”

International obligations underpinning the Guiding Principles

The purpose of the Guiding Principles is to describe international legal standards as they apply to the internally displaced. Their force derives from the near universal acceptance of the treaties that underpin them. Three main bodies of law inform the Guiding Principles: international human rights law, international humanitarian law and international criminal law.

International human rights law is an integrated collection of rights and obligations associated with the responsibility of States toward individuals living under their jurisdictions. The most important rights with respect to displacement are outlined in the two main human rights treaties:

- The International Covenant on Civil and Political Rights (ICCPR), which relates to life, liberty and security of the person, as well as the rights associated with participation in national public life;
- The International Covenant on Economic, Social and Cultural Rights (ICESCR), concerned with rights in respect of family, education, work, adequate shelter, food and clothing and healthcare.

Other international human rights treaties relevant to IDP protection and assistance include the Convention on Elimination of Discrimination against Women (CEDAW) and the UN Convention on the Rights of the Child (UNCRC).

States have duties under these treaties to **protect** and **respect** individual rights, and to **provide** for the enjoyment of such rights by IDPs.

Bringing Human Rights Home in Kenya

A key aspect of implementing human rights treaties is reporting to and responding to the reports of treaty monitoring bodies. These bodies are staffed by international experts qualified to review a country's current domestic framework against international standards and issue recommendations as appropriate.

In 2005 and 2012, the Human Rights Committee responsible for monitoring compliance with the ICCPR requested that Kenya adopt an IDP policy and enact legislation on internally displaced persons "as a matter of priority". A draft policy was prepared, and in December 2012, Kenya's parliament enacted a comprehensive IDP law covering all aspects of internal displacement.

In situations of armed conflict, international humanitarian law (IHL) will also apply. IDPs are considered civilians, and the protections afforded to civilians are therefore available to them. The main sources of IHL are the Four Geneva Conventions of 1949 and their two Additional Protocols of 1977, which provide wide protections for civilians (including IDPs) and their property or “objects”. IHL obligations include:

- Prohibition of attacks against civilians and their objects;
- Prohibition of forced displacement except where imperative military reasons or the civilians’ own security may require it;
- A requirement to allow free, rapid and unimpeded access of relief consignments.

Customary International Humanitarian Law Rules Applicable to Displaced Populations

In addition to the general protections applicable to civilians, the ICRC has identified the following customary international law rules, specifically applicable to displaced populations:

Rule 129

A. Parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand. (Applies in international armed conflicts.)

B. Parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand. (Applies in non-international armed conflicts.)

Rule 130

States may not deport or transfer parts of their own civilian population into a territory they occupy. (Applies in international armed conflicts.)

Rule 131

In case of displacement, all possible measures must be taken in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated. (Applies in all conflicts.)

Rule 132

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. (Applies in all conflicts.)

Rule 133

The property rights of displaced persons must be respected. (Applies in all conflicts.)

ICRC, Study on Customary International Humanitarian Law (2005).

International criminal law involves the assignment of criminal responsibility to individuals who engage in acts prohibited under international law – so-called international crimes. The Rome Statute of the International Criminal Court (ICC) defines the international crimes of genocide (art. 6), crimes against humanity (art. 7), and war crimes (art. 8). States parties to the Statute are obliged to penalize these acts in their national legislation and to actively prosecute them wherever they occur. The ICC steps in to investigate and prosecute individuals for such crimes where States are unable or unwilling to do so.

Forced Displacement May Amount to a Crime

“The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.”

Art. 17, Additional Protocol II to the Geneva Conventions.

Crime against humanity means:

“...Deportation or forcible transfer of population”, i.e., “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”.

Art. 7(d)(2), Rome Statute of the International Criminal Court.

War crimes means:

“...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”.

Art. 8(2)(e)(viii), Rome Statute of the International Criminal Court.

Regional Conventions and Standards

Regional conventions and standards provide additional guidance in formulating legislation, as they reflect regional approaches and needs. For this reason, it is important for MPs developing national laws to consider both the international and regional standards that apply to their country.

Africa

The 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) entered into force in 2012. The Convention draws heavily from the Guiding Principles and

reinforces those pertaining to primary State responsibility and non-discrimination in addressing internal displacement. The Kampala Convention covers all phases of displacement:

- Arts. 4 and 10 provide for the *prevention* of displacement;
- Arts. 5-9 provide for *protection and assistance* during displacement;
- Arts. 11-13 provide for *durable solutions*.

The Pact on Security, Stability and Development in the Great Lakes Region, adopted in 2006 and entered into force in 2008, has two protocols that relate to internal displacement matters: the Protocol on the Protection and Assistance to Internally Displaced Persons and the Protocol on the Property Rights of Returning Persons.

The IDP Protocol requires its States parties “to adopt and implement the Guiding Principles as a regional framework for providing protection and assistance to internally displaced persons in the Great Lakes Region”. The purpose of the Protocol is to “provide the legal basis for the domestication of the Guiding Principles into national legislation”. States are required to prevent arbitrary displacement, address root causes of displacement and mitigate its



Irise Alyu, her husband Noor and their seven children outside their shelter at the Al Adala IDP settlement camp in Mogadishu, Somalia on 13 August 2011.

consequences; extend protection and assistance to host communities; provide for the safety of IDPs and ensure the provision to them of water, food, shelter and hygienic conditions. The IDP Protocol provides for the general protection of IDP rights and for the establishment of a regional mechanism to monitor IDP protection.

The Property Protocol seeks to ensure that property is protected for all groups, including returning spouses and children. It provides for obligations to compensate where loss has occurred and outlines mechanisms for recovering property.

Europe

In its Recommendation 1631 on Internal Displacement in Europe, in 2003, and Recommendation 6 to Member States on internally displaced persons, in 2006, the Council of Europe recommended that its members be guided by the Guiding Principles when formulating legislation and practice relating to internal displacement. In addition, the Council emphasized that:

- IDPs should not be discriminated against because of their displacement;
- National minorities and vulnerable groups should receive particular attention;
- States should not arbitrarily refuse offers of assistance from other States and humanitarian organizations;
- IDPs should be treated in accordance with the European Convention on Human Rights, and specifically, efforts for reunification should be undertaken;
- Rights to property should not be breached, and where they are, adequate compensation should be paid;
- Legal and practical measures should be taken to ensure that IDPs are able to exercise their right to vote in national, regional and local elections;
- IDPs have a right to return to their homes or places of habitual residence in safety and dignity, or to resettle in another part of the country.

The Americas

Annual resolutions adopted by the Organization of American States have similarly urged its Member States to incorporate the Guiding Principles into their domestic laws. The resolutions (for instance Resolution AG/RES.2055 (2004)):

- remind States of their “responsibility to internally displaced persons”, and that they should take a human rights-based approach to protecting, assisting and providing lasting solutions to IDPs;
- urge States to cooperate in exchanging good practices and improving the implementation of public policy so as to prevent displacement;
- request States to allow free and unimpeded passage and directly appeal to humanitarian organizations and the United Nations for assistance in addressing the various causes that may lead to displacement.

In addition, in 2010, 18 South and Central American countries issued the Brasilia Declaration on the Protection of Refugees and Stateless Persons in the Americas. The Declaration underscored the humanitarian importance of such protection, noting the “non-political and humanitarian nature of the protection of refugees, internally displaced persons and stateless persons, and recognizing their rights and obligations as well as their positive contributions to society”.

Implementing the International and Regional Standards Through an IDP Law

An MP’s role in implementing international obligations and standards is to:

- lobby the government (or executive) to sign the relevant treaties;
- incorporate the standards into a specific IDP law.

There is plenty of support for MPs in performing such a role. In Africa, for example, the Pan-African Parliament and more localized bodies, such as the Network of Parliamentarians of the Economic Community of Central African States (REPAC) and the SADC-Parliamentary Forum (SADC-PF), form an



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The Diko family fled insecurity in their hometown of Douentza in June 2012 and found refuge in a former hotel in Mopti (Mali).

extensive regional and sub-regional support network for parliamentarians in this regard. Other regions have similar inter-parliamentary bodies, including the Arab Inter-Parliamentary Union, the ASEAN Inter-Parliamentary Assembly, the Parliamentary Union of the OIC, the Parliamentary Confederation of the Americas and the Parliamentary Assembly of the Council of Europe. By actively taking part in these fora, MPs can engage with colleagues and learn from best practices and experiences in like-minded nations.

The Inter-Parliamentary Union (IPU) also has a number of support mechanisms available to parliamentarians. IPU assists parliaments at national and regional levels with their responsibility to ensure implementation of international and regional human rights. One important pillar of these efforts consists in enabling parliaments to contribute directly to the work of UN human rights mechanisms, in particular the UN Human Rights Council and UN treaty bodies. In doing so, IPU promotes strong and long-term cooperation between parliamentarians and other human rights actors, in particular national human rights institutions and civil society. IPU also offers expertise in the operation and establishment of parliamentary human rights committees – key national

institutions for the implementation of human rights obligations. Regular annual meetings of MPs serving on human rights committees provide useful opportunities for them to learn and share their experiences in this regard.

In the field of disaster response and management, UNISDR has identified a number of individuals as “Parliamentary Champions” for successful approaches to legislative reform. Representing all regions of the world, these individuals have been recognized for their instrumental role in national legislative efforts to improve disaster risk management. The overlay with internal displacement – which in many cases is a product of natural disasters – provides opportunities for MPs to engage with these Champions and follow their examples. The Champions have shown that lessons learned from good practice at home are transferable abroad. MPs should be encouraged to look to these individuals for creative solutions.

A Regional Action Plan for Domestic Reform in West Africa

For IDPs affected by natural disasters, the most effective responses are often achieved through region-wide action plans. Senegalese MP Abdou Sane, for example, has worked hard to raise the profile of climate change in West Africa, and in 2010, was recognized by UNISDR as a Parliamentary Champion for Disaster Risk Reduction in that region. Alongside other MPs from Burkina Faso, Cape Verde, the Gambia, Côte d’Ivoire, Mali, Togo and Kenya, Sane worked hard to create a region-wide action plan to that end. Adopted in 2010, that plan recognized how slow onset disasters such as climate change could result in forced displacement and ultimately impede achievement of the Millennium Development Goals. These parliamentarians undertook to promote regional partnerships and to review their national laws to ensure that health and water facilities are provided for affected populations, and IDPs in particular.

Chapter One: Summary and Action Points

The term “internal displacement” refers to individuals being forced to leave their places of habitual residence while remaining within the borders of their home country.

- ✓ Parliamentarians should be aware of any internally displaced populations that may exist in their country.

Internal displacement may be caused by armed conflict, situations of generalized violence, violations of human rights, or natural or human-made disasters – or as a consequence of development projects.

Regardless of the cause of displacement, the State has the primary responsibility for protecting and assisting IDPs.

The Guiding Principles have become the international normative standard for IDP protection and assistance.

- ✓ Parliamentarians should read and be familiar with the Guiding Principles on Internal Displacement.

International humanitarian, human rights and criminal law underpin the Guiding Principles. Regional treaties and standards provide an important supplement to the international standards.

- ✓ Parliamentarians should be aware of international humanitarian law, human rights law and international criminal law treaties to which their State is a party.
- ✓ Parliamentarians should enquire about and actively support the ratification of relevant international humanitarian law, human rights law and international criminal law treaties to which their State is not yet party.
- ✓ Parliamentarians should ensure that their respective parliaments take part in the treaty body reporting mechanisms.
- ✓ Parliamentarians should be familiar with their obligations under these treaties.
- ✓ Parliamentarians should be aware of the regional treaties to which their State is a party.
- ✓ Parliamentarians should consider acceding to regional treaties that may apply to their country and reach out to their government or executive branch in this regard.

General laws are usually inadequate to meet the specific needs and vulnerabilities of IDPs. National IDP-specific laws are the best way to ensure that IDPs are protected and assisted.

- ✓ Parliamentarians should consider how general laws may pose challenges or impediments for IDPs in their country.

Many international and regional bodies exist to help countries understand and implement their international obligations with respect to internal displacement.

- ✓ Parliamentarians should be familiar with, and actively involved in, their country's participation in inter-parliamentary bodies.

Part Two

The Parliamentarian's Role as Lawmaker



Chapter Two

Using the Legislative Process

Experience has shown that existing laws – which are generally not designed for situations of humanitarian crisis – are often unable to adequately meet the challenges caused by internal displacement:

- Existing laws usually have gaps and do not address the specific needs and vulnerabilities of IDPs (some laws, for instance, do not provide for the distribution of food or accommodation or for mechanisms to ensure coordination on IDP issues at the national level).
- Some laws, while otherwise appropriate, create obstacles for IDPs to enjoy their rights in the context of displacement (for example, where documentation is required for access to public services or to recover property).

The development of a national IDP law should therefore be a national priority. It can ensure not only that IDPs are better protected and assisted, but also that the country complies with its international obligations to provide such protection and assistance.

Incorporating the Kampala Convention into Domestic Law

The Kampala Convention emphasizes the importance of incorporating protections for IDPs into a national law, and makes it an obligation for Member States to do so.

Article 3(2)

States Parties shall:

a. Incorporate their obligations under this Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons in conformity with their obligations under international law.

Article 12(2)

States Parties shall establish an effective legal framework to provide just and fair compensation and other forms of reparations, where appropriate, to internally displaced persons for damage incurred as a result of displacement, in accordance with international standards.

In developing and passing an IDP law, parliamentarians play a role in their personal as well as institutional capacities. They are at once representatives of particular constituencies and members of parliament as a law-making body. They may also be members of parliamentary committees or ministers. MPs should be clear on how their roles may differ as they act in these different capacities. The table below provides an overview of the roles that parliamentarians and parliamentary bodies typically play.

Overview of the Roles of Parliamentarians, Parliamentary Committees and Parliament throughout the Legislative Process			
Stage	Parliamentarians	Parliamentary Committees	Parliament
Preparation of legislation/policy development	<ul style="list-style-type: none"> • Preparing or reviewing draft bills • Directing staff to prepare drafts • Liaising with civil society and stakeholders • Securing political support for reform 	<ul style="list-style-type: none"> • Identifying gaps in existing laws • Liaising with civil society 	<ul style="list-style-type: none"> • Generally none
Passage of legislation	<ul style="list-style-type: none"> • Introducing bills • Reviewing bills • Preparing and suggesting amendments to bills 	<ul style="list-style-type: none"> • Reviewing and amending bills already introduced • Assessing bills against existing laws/international standards 	<ul style="list-style-type: none"> • Debating and approving bills into law
Consultation and awareness raising	<ul style="list-style-type: none"> • Meeting with and receiving correspondence from constituents/civil society • Reporting on consultations 	<ul style="list-style-type: none"> • Hearing oral submissions • Receiving written submissions • Reporting on consultations 	<ul style="list-style-type: none"> • Generally none
Implementation	<ul style="list-style-type: none"> • Discussing outcomes with constituents • Directing or monitoring ministries for which the MP may be responsible 	<ul style="list-style-type: none"> • Conducting formal inquiries when so directed by Parliament 	<ul style="list-style-type: none"> • Initiating inquiries • Approving action plans, policies or strategies
Monitoring and oversight	<ul style="list-style-type: none"> • Preparing or reviewing budgets • Liaising with constituents • Receiving and reviewing relevant reports 	<ul style="list-style-type: none"> • Preparing or discussing budgets and reports 	<ul style="list-style-type: none"> • Approving and reviewing budgetary allocations • Receiving and debating reports

As noted below (in the section *Key actors in the development of an IDP law*) MPs may not be directly involved in drafting the law or devising policy themselves (except in the case of a private members’ bill). In all cases, however, parliamentarians will be very much involved in reviewing the outputs of these processes: policy documents and draft bills. The aim of this chapter is to familiarize MPs with how these processes work and what these documents should include.

Frameworks, Laws, Policies, Strategies and Action Plans: What’s The Difference?

A **national framework** is the totality of laws, policies, strategies and action plans that form a State’s response to internal displacement.

Laws (acts, decrees, ordinances, etc.) should form the backbone of a national framework and are the most appropriate means of addressing:

- institutional structure
- the recognition of rights
- property-related remedies
- allocation of legal or decision-making authority
- funding mechanisms
- criminal offences

Because of the length of time they take to promulgate, laws are not generally useful in urgent, emergency situations of internal displacement. Laws are enacted by **parliament**.

Policies can either precede legislation or serve to implement laws once they are enacted. They are often concerned with:

- decision-making processes and the indicators and factors to be considered;
- coordination mechanisms, i.e., which channels should be used to resolve specific problems;
- operational guidelines or procedures.

Policies are usually prepared by the **executive** and often approved by **parliament**.

Strategies set out the underlying purposes, objectives and expected outcomes that will guide the development of appropriate instruments (laws, policies and plans). Strategies form an “anchor” for a country’s ongoing response to internal displacement. Strategies are usually prepared by the **executive** and in some cases approved by **parliament**.

Action plans are concerned with implementation. They are particularly well suited to urgent, emergency situations but are also used to implement IDP laws. They outline the specific responsibilities and tasks to be entrusted in a given situation to different actors at national and local levels. Action plans are usually prepared by **government departments**.

The Role of Legislation in a National Response to Internal Displacement

Developing a national framework for internal displacement is complex, and not all of it belongs in law. Experience has shown that the most effective domestic frameworks have been an amalgam of different instrument types: laws, policies, strategies and action plans. MPs should therefore be aware of how legislation can be most appropriately used in the IDP context.

In preparing or reviewing legislation, MPs should therefore keep in mind the underlying purposes of an IDP law:

- To provide a clear basis for the rights of IDPs.
- To allocate institutional authority and overall responsibility to ensure an effective division of labour, coordination and accountability among actors.
- To provide clarity and certainty for the actors responsible for implementing the national framework (government departments, local authorities, humanitarian and development organizations). Actors engaging with the State need to know what to expect from the government so they can effectively perform their protection and assistance activities.
- To provide for and ensure certainty of funding.

For MPs developing an IDP law it is also important to consider whether to have one comprehensive law or incorporate reforms through a number of amendments to existing law. This issue is better resolved at the policy development and drafting stage, but parliaments in many countries have the authority to combine or divide bills as appropriate. MPs should therefore be aware of the pros and cons of each approach.

- One comprehensive document will reduce the potential for gaps and make policy development easier, as all issues are addressed centrally. Extra work may be required to engage national actors who may not be leading the policy process.
- Decentralizing the reforms across many laws allows for better use of expertise across departments and can make it easier to secure political buy-in. But it can also result in coordination challenges and divert the focus of implementation away from outcomes for IDPs.

A mixed approach is usually best, with core principles and institutional structures outlined centrally and targeted legislation used where necessary to effect the best outcomes for IDPs. For example, allocation of responsibility for provision of housing may be specified in the IDP law, but specific housing legislation may be drafted (or amended) which provides more detail on the specific role of the ministry responsible. Likewise, in some countries, for instance, offences may be defined in criminal legislation that also provides for criminal procedure. More information on selecting a legislative approach can be found in the Practitioners' Guide.⁴

Underlining Parliamentary Commitment

In countries where internal displacement has occurred, an important step in the legislative process is official acknowledgment of the problem and the nation's responsibility to respond to it. Such acknowledgement may be a precursor to or an integral part of an IDP law. It can take a variety of forms but may be most effective as a declaration or statement by the parliament. Where constitutional arrangements allow, ministers or MPs whose constituencies are particularly affected may also issue such statements. The statement should be unambiguous and reflect the non-partisan nature of internal displacement. It should recognize:

- the existence, as the case may be, of internally displaced populations in the country;
- the rights of IDPs, specifically describing each;
- the importance, as a national priority, of addressing internal displacement.

Parliamentary approval of national policies or strategies prepared by the executive

The executive (or government) may prepare a national strategy or policy to address the issue of internal displacement. This may be done as a substitute, precursor or complement to a national IDP law. MPs will be involved to the extent that such a national strategy or policy requires parliamentary approval, which can serve as an important parliamentary commitment to addressing

⁴ www.internal-displacement.org/idmc/website/resources.nsf

internal displacement. In reviewing the government's policy or strategy, MPs should ensure that it:

- refers to, and draws upon the Guiding Principles;
- recognizes (and preferably lists) the human rights of IDPs;
- clearly allocates responsibilities amongst relevant actors;
- envisages, in cases where internal displacement is already on-going, immediate measures to address the needs and vulnerabilities of IDPs;
- includes measures to:
 - prevent the causes leading to displacement;
 - protect and assist IDPs once displacement has occurred;
 - ensure durable solutions.

Chapter Four, which describes the elements of an IDP law, will also be relevant to the content of a national policy or strategy.

Consultation During the Legislative Process

Genuine and extensive consultation makes for better laws, contributing to a more thorough, operationally effective framework and to subsequent “buy-in” by all relevant stakeholders. **Parliamentarians should engage in public consultations both informally and formally:**

- **Informal consultation** should continue throughout the legislative process, and the earlier it starts the more effective it will be. Ideally, it should take place prior to the bill's introduction in parliament. Approaches to such informal consultation are described in Chapter Five.
- **Formal consultations**, as part of the parliamentary process, are usually conducted by parliamentary committees subject to committee procedures, which tend to limit the process. Formal consultations should therefore not be a substitute for informal consultation. Parliamentarians serving on such committees can play a number of specific roles:
 - Fully familiarizing themselves with the draft bill and the policy development process to date;

- Ensuring that all consulted parties, including both men and women IDPs equally, have received enough information (including the bill itself) to contribute actively to the discussion;
- Reading written submissions and understanding how they relate to the draft bill;
- Where procedures allow, inviting key stakeholders (such as national human rights institutes (NHRIs), affected communities, etc.) to submit oral statements or testimony;
- Questioning such witnesses during oral hearings to:
 - clarify their positions and interests for all committee members;
 - provide ample opportunity for witnesses to explain their views.
- In all cases, MPs should treat the views expressed and suggestions received with respect, giving them genuine and fair consideration.

Policy Development and Drafting

Policy development refers to the research, analysis and consultation that will ultimately be reflected in legislation and therefore necessarily precedes the drafting process. As discussed above, policy development should not be confused with parliamentary approval of a “national policy”, i.e., an official statement by the government describing its approach to internal displacement.

Policy development in the preparation of legislation is typically the task of relevant ministries, and in the case of IDP legislation often led or coordinated by the ministry of justice or the ministry of home affairs.

An important component of such policy development is the review of existing laws in order to identify gaps in the national legislation that affect the protection of and assistance to IDPs as well as to review how existing laws comply with international and regional standards on internal displacement.

As a minimum, the following laws should be reviewed:

- any constitutional documents or bill of rights/human rights legislation;
- legislation dealing with disaster management and/or humanitarian crises;
- legislation governing land law, property rights (real, personal, movable or immovable) and the provision of housing;

- births, deaths, marriages and citizenship legislation and policies;
- court procedures or regulations;
- social security legislation;
- laws regulating the police, as well as the military code or any operational policies which relate to the use of force by the military and police;
- legislation or policies relating to key social services such as health and education;
- the criminal code, legislation dealing with criminal law or, where relevant, criminal cases and precedents.

While the bulk of policy development work will generally be done by government departments, MPs have an important role to play in the following cases:

- MPs introducing private members' bills may need to engage in related policy development;
- As members of relevant parliamentary committees, MPs will need to critically evaluate the policy development done by government departments/ministries (and other MPs);
- MPs taking part in a parliamentary debate on a bill will need to understand how policy development is reflected in the text;
- In reviewing drafts, MPs need to ensure that the policy development process has been appropriate and has taken account of all stakeholders' interests;
- MPs may be approached by stakeholders, civil society and affected populations and asked to explain the draft bill.

Drafting legislation based on the policy is a task usually assigned to government drafters. MPs will not likely be involved in the drafting process.

While MPs need not undertake this review themselves, it is important that they feel comfortable with how existing laws reflect the special vulnerabilities



Students have returned to classes in Al-Mitaq school in the Bader neighbourhood in Al-Kawd. Returnees to Abyan (Yemen).

and needs of IDPs. In particular, they should be able to answer the following questions:

- Do existing laws specifically address IDP issues?
- Do they adequately protect IDP rights?
- If not, where are the deficiencies or gaps?
- Do existing laws or policies create onerous administrative procedures or other impediments to:
 - the ability of IDPs to exercise their rights, or
 - the effective protection and assistance for IDPs during displacement?
- Where legislation or policies supportive of IDPs are already in place, are they being *implemented effectively*?
- If not, what are the administrative, legal or operational hurdles to implementation?

Parliamentarians should ensure that the development of IDP law takes into consideration other pieces of legislation with a view to avoiding contradictions and making sure that they complement each other. For example, parliamentarians need to make sure that any law on IDP should also take account of the important connection between disaster management and IDP protection and assistance. While the development of disaster management law represents a discrete and important legislative process, it is important to keep this connection in mind, to ensure that the legislation in both areas is mutually complementary.

Key actors in the development of an IDP law

A number of actors will be involved in policy development, and MPs should be familiar with their respective roles. Such actors are in a position to assist MPs in carrying out their policy development roles and in most cases will also be involved in implementing IDP legislation. More specifically, it is important for MPs to know who is doing what under what mandates or authority, and where capacity and efficiency can be improved. This knowledge will form the basis for developing roles and responsibilities, and coordination as part of the IDP law under consideration.

NHRIs, with their extensive human rights expertise and contacts with civil society, are particularly well placed to contribute to work in this area and can underscore the country's commitment to addressing IDP issues. Specifically, they can:

- Assist in the development of legislation or amendments, commenting on proposed drafts, suggesting mechanisms for protection and assistance, identifying specific vulnerabilities and needs, gathering data or providing their assessment of a situation;
- Assess and comment on operational issues, including prioritization, funding and access, and identify ineffective protection and assistance mechanisms;
- Advise parliament as to the status of international and regional human rights treaties and declarations (in terms of ratification, reservations, etc.). NHRIs are also well placed to assist in complying with the recommendations of treaty bodies and of the Human Rights Council, as part of the Universal Periodic Review.

Key National Actors

A number of national actors will be involved in implementing an IDP law and will need to be included during the policy development process. These actors include:

- Government departments, including ministries of:
 - justice;
 - health;
 - labour;
 - humanitarian assistance/refugee issues;
 - social affairs;
 - home affairs;
 - education;
- Local/state authorities;
- National and local/state police;
- The armed forces;
- The judiciary;
- The office of the prime minister/president/head of state;
- Humanitarian, human rights and development organizations operating within the country;
- The national human rights institution(s) or ombudspersons;
- National committees on international humanitarian law.

Where internal displacement is ongoing, MPs should also be aware that affected populations should be included in policy development. These groups include:

- IDPs themselves, including both men and women;
- Representatives of IDPs, both individuals and groups, whether they are specifically identified as IDP-related, or represent/support particular parts of an IDP population (such as women's groups, etc.);
- Host communities and their representatives.

MPs should encourage the close involvement of NHRIs in the legislative process, making themselves personally available to them, inviting them to contribute to the work of parliamentary committees, and carefully reviewing their recommendations and advice.

Humanitarian and development organizations operating in the country may also be able to provide insight, dealing as they often do with administrative and legal processes in delivering their services. Such organizations may include:

- The Office of the United Nations High Commissioner for Refugees (UNHCR);
- The United Nations Children's Fund (UNICEF);
- The United Nations Office of the High Commissioner for Human Rights (OHCHR);
- The United Nations Office for the Coordination of Humanitarian Affairs (OCHA);
- The United Nations Development Programme (UNDP);
- The United Nations Office for Disaster Risk Reduction (UNISDR);
- The World Food Programme (WFP);
- The World Bank and the regional development banks;
- The International Committee of the Red Cross (ICRC), and/or the International Federation of Red Cross and Red Crescent Societies (IFRC);
- Any peacekeeping or political missions that may be deployed in the country;
- National and international NGOs that work with affected communities may be particularly central to the reform effort.

The Office of the United Nations High Commissioner for Refugees (UNHCR) has played a central role in supporting States to develop their national frameworks on internal displacement. The Office, with its numerous IDP operations worldwide and its legal expertise, is particularly well equipped to advise States on national IDP legislation and support such processes, as well as offer examples of good practice from other countries. Moreover, in its role as lead of the Protection Cluster, UNHCR can provide its expertise and that of other cluster members in the development of IDP legislation. The Protection Cluster can also provide an important forum for consultation on policy development and draft bills. In Kenya, for example, the Protection Working Group (an adapted version of the Cluster) and UNHCR as a member were instrumental in the process that led to the adoption of Kenya's IDP Act in



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Displaced Rohingyas waiting in line for health assistance near the small refugee camp of Rwaside in Myanmar's Rakhine State.

2012. More information on UNHCR and other relevant international actors is provided in the “Useful Resources” section at the end of the Handbook.

The Office of the Special Rapporteur on the human rights of internally displaced persons also contributes its considerable expertise to the development of national frameworks on internal displacement. Since eliciting input from the Special Rapporteur is usually the prerogative of the government or executive, MPs who serve as ministers or otherwise have access to government should consider inviting the Special Rapporteur’s Office to meet with or provide its technical expertise to the government in developing IDP legislation. More information on the Special Rapporteur and other relevant international actors is provided in the “Useful Resources” section at the end of this Handbook.

Chapter Two: Summary and Action Points

MPs can play a number of roles in the development of IDP legislation, in their personal capacity and as members of parliament and relevant parliamentary committees.

National IDP frameworks should include a variety of instruments underpinned by a strong IDP law.

- ✓ Parliamentarians should be familiar with the different functions served by laws, policies, strategies and action plans, and decide which of these instruments is most appropriate in their national context.
- ✓ Parliamentarians should ensure that their IDP law includes, at the very least, provisions for the recognition of IDP rights as well as a related institutional structure and funding arrangements.

Parliamentary commitment to addressing and resolving displacement is essential to ensuring the successful development of an IDP law.

- ✓ Parliamentarians should prepare a public statement or acknowledgement of State responsibility for internal displacement.
- ✓ Parliamentarians should thoroughly review any IDP policies and strategies produced by the executive for parliamentary approval.

Consultation as part of the legislative process is very important but is no substitute for informal consultation.

- ✓ Parliamentarians should be engaged in informal consultation as early as possible (see Chapter Four).
- ✓ As members of parliamentary committees, parliamentarians should carefully review all submissions received, and take them into serious consideration in their deliberations.

Policy development is the process of researching ideas and solutions for an IDP law. MPs might not engage in policy development themselves, but they must be well aware of the policy work that underpins their national IDP law.

For laws to be effective, they should include a number of international and domestic actors in the policy development process.

- ✓ Parliamentarians should be aware of who, in their national context, has a stake in the development of an IDP law.
- ✓ Parliamentarians should call on, and make themselves available to these groups during the legislative process.

Chapter Three

Elements of a Law on Internal Displacement

The core responsibility of parliamentarians is preparing and reviewing draft legislation. As noted in Chapter Two, parliamentarians do not tend to engage in the detailed work of policy development and drafting. Their role with respect to draft legislation instead consists of:

- ensuring that drafts prepared by staff, departments, private members or civil society contain all the essential features of an IDP law;
- identifying any gaps in the legislation and proposing amendments or solutions to fill them;
- speaking to the bill in parliamentary debate;
- describing the bill to constituents or civil society actors and receiving any comments or submissions they may have.

In all cases, MPs must have an understanding of the key features appropriate for an IDP law. This chapter provides an overview of these features, so that, at a glance, MPs can determine whether they are addressed in a bill submitted for their consideration. For parliamentarians intending to prepare such a bill themselves, the guidance provided in this chapter should be supplemented by other materials giving more comprehensive treatment to policy development, including the IDP Manual, Practitioners' Guide and IASC Framework for Durable Solutions.

General Considerations

As with any law, MPs should ensure that the bill has the appropriate level of detail and the kinds of provisions necessary for it to function as a law:

- **Level of detail.** It should include enough detail to provide legal certainty for actors dealing with internal displacement as to the authorities and

responsibilities engaged. Too much detail may stall the process and generate inflexible outcomes. Operational issues can be addressed through policies or action plans (see Chapter Two);

- **Enforcement provisions.** All laws need some form of enforcement mechanism. If not spelled out elsewhere (in criminal legislation, for instance) provisions will be needed in the IDP law itself specifying how it will be enforced and how accountability will be assured. Laws or decrees are generally enforced by the executive branch (including government departments and the police) and the courts; and
- **Flexibility.** A degree of flexibility can be built in with appropriate governance arrangements and decision-making discretion. The bill should not, however, contain provisions that may change or require amendment in the near future.

Appointment of a National Authority (or Focal Point) for Internal Displacement

To be most effective, protection and assistance for IDPs should be coordinated through a single national focal point. The focal point's authority should be based in legislation, to give a sense of institutional permanence and reflect the government's commitment to addressing IDP issues.

A country's national authority for internal displacement can be established in an IDP law in various ways, according to the specific national political landscape:

- A government department or ministerial portfolio could be created to deal with IDP issues;
- An authority, committee, steering group or task force could be set up outside existing departments and tasked with implementation of the national IDP framework;
- A national focal point could be situated within an existing department or committee (perhaps as a specific IDP unit or subcommittee). Such unit could be established, for instance, within the office of a prime minister or president, within ministries of social welfare, development or disaster management, or within a department responsible for migration or refugee



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A child looks on at the Al Adala IDP settlement in Mogadishu, Somalia on 13 August 2011.

issues. For example, Uganda took this latter approach in assigning national focal point responsibilities to the Department of Disaster Preparedness and Refugees, within the Office of the Prime Minister.

Regardless of where the national authority is situated, MPs should ensure that the IDP law provides it with:

- Legally established decision-making authority for all matters relevant to internal displacement, and in particular:
 - developing and promulgating guidelines and best practices, as well as policies, strategies and action plans;
 - convening meetings, committees or working groups;
 - requesting that departments and organizations comply with the national framework and supporting them in their compliance efforts.
- Sufficient capacity, in terms of adequate resourcing and staff training to perform its role (whether it consists of coordination or operational activities);

- Appropriate access to political actors as well as donors to ensure buy-in and engagement at the highest possible level;
- A clearly defined structure for coordinating with relevant ministries, local authorities or organizations tasked with implementing the national framework, by means of established reporting lines, committee memberships or regular consultation;
- Monitoring and evaluation functions.

Definition of “Internally Displaced Persons” in Legislation

The concept of internally displaced persons needs to be clearly defined, so that the law’s scope is clear to those responsible for implementing it. The internationally accepted definition described in Chapter One is based on two criteria, which should be clearly reflected in the legislation:

Internally displaced persons are individuals who:

- have been forced or obliged to move from their homes or places of habitual residence;
- remain within the borders of their home country.

While any definition must include these elements, countries have adopted a wide variety of approaches in their own contexts. The definition should also reference the causes of displacement described in Chapter One, to ensure that the law covers displacement irrespective of origin. The Guiding Principles list such causes in a non-exhaustive manner:

- armed conflict or situations of generalized violence;
- natural or human-made disasters;
- violations of human rights.

Development and environmental projects are also a widespread cause of displacement as is reflected implicitly in the Guiding Principles and explicitly in the Great Lakes IDP Protocol and the Kampala Convention. Displacement

resulting from such projects usually occurs outside an emergency context and requires certain conditions and adherence to procedural standards in order to be lawful. The Guiding Principles reflect these in Principle 6 (2) (c) and Principles 7-9. Conditions and procedures for such displacement outside an emergency context could be set out in a national IDP legislation.

The definition used should not result in unequal treatment and discrimination between different groups of IDPs within the same country.

Importantly, defining individuals as displaced does not necessarily mean that their displacement has been unlawful (i.e., “arbitrary”). See the section “*The prohibition of arbitrary displacement and criminal responsibility*” below for information on how an IDP law should address groups that cause displacement.

Non-Discrimination

Non-discrimination against particular IDPs or groups of IDPs should be the rule in providing them with protection and assistance and in implementing a national framework for that purpose. An IDP law should explicitly prohibit such discrimination or differential treatment of particular IDP groups.

Non-Discrimination in the Republika Srpska

Parliamentarians of the National Assembly of the Republika Srpska addressed the principle of non-discrimination in a 2005 law on internal displacement:

“Displaced persons and returnees shall enjoy, in full equality, the same rights and freedoms under international and national law as do other citizens of RS.

They may not be discriminated against in the enjoyment of any rights and freedoms on any grounds whatsoever, and particularly not on the ground that they are or were displaced.”

Article 13, Law on Displaced Persons, Returnees and Refugees in the Republika Srpska (2005).

More specifically, the law should:

- contain a specific statement that all IDPs enjoy the same rights and freedoms as all other citizens and habitual residents of the country and that there should be no discrimination against IDPs on the grounds of their displacement;



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Musahimama Ndikuze, 24 with two children, is collecting wood, Democratic Republic of the Congo (DRC).

- affirm that different IDP groups are to be treated equally, without distinction based on ethnicity, religion, age, gender or any other grounds;
- The law itself should not contain any discriminatory language.

In addition, discriminatory laws already in place should be amended or revoked as part of the development of an IDP law.

Some particularly vulnerable groups will require special treatment to ensure they can enjoy their rights alongside the rest of the IDP and non-IDP population. These groups are often the victims of structural discrimination in such areas as the issuance of documentation or property ownership, or simply because their needs are overlooked by instruments intended for general application. An IDP law should specifically identify these groups and recognize their particular vulnerabilities. Examples include:

- Women, particularly pregnant women and single female parents;
- Children, including unaccompanied minors;
- Elderly persons;
- Disabled persons, or persons suffering from illness or HIV/AIDS;
- Minority groups and indigenous populations;
- The rural poor;
- Any other group that requires special assistance in the context of a particular country.

Protection of Displaced Indigenous Populations

Mexico set up, in May 2003, a National Commission for the Development of Indigenous Peoples (CDI) for the purpose of counselling the federal authorities, evaluating their programmes and building capacity to assist indigenous peoples at the federal, state and municipal levels.

In June 2006, the Commission set up a programme to assist indigenous peoples who had been displaced principally in the states of Chiapas, Guerrero, Hidalgo, Jalisco and Oaxaca as a result of violence including armed conflict and religious, political and cultural intolerance. The assistance consists mainly of support to acquire land and building material for housing, land for cultivation and tools and materials for production.

In February 2012, Chiapas adopted a state law for the prevention of and attention to internal displacement. The law provides a definition of an internally displaced person and establishes his or her rights. It creates a programme and sets up a state council to attend to all matters relevant to internal displacement including prevention, humanitarian assistance and the provision of durable solutions. The state Council is also responsible for elaborating a State registry of displaced populations.

The law places special emphasis on the prevention of displacement and those who may be especially vulnerable within the displaced population. It recognizes as vulnerable groups children, in particular non-accompanied minors, pregnant women, mothers with young children, single women heads of family, disabled persons and elderly people and provides for special assistance to them.

In December 2012, a proposal was submitted to Congress to adopt a federal law that takes its inspiration from the state law adopted in Chiapas.

Protection from Displacement

Mechanisms for preventing displacement or reducing its effects

The law should include a provision that gives national authorities full responsibility for preventing and avoiding any conditions that might lead to internal displacement.

Key Resource: A Model Act on Disaster Relief and Assistance

The International Federation of Red Cross and Red Crescent Societies, in partnership with the Inter-Parliamentary Union and the Office for the Coordination of Humanitarian Affairs, has developed a Model Act for the Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance. The Model Act, released in 2013, is a comprehensive document, touching on all aspects of disaster relief and assistance and will be useful to MPs when developing a national framework for internal displacement. It includes provisions on:

- the roles and responsibilities of actors;
- procedures for initiating, coordinating and terminating international disaster assistance;
- mechanisms for identifying and registering actors involved in disaster assistance;
- the obligations incumbent on the State to ensure that assistance can be provided effectively.

The Model Act is available at: www.ipu.org/PDF/publications/act-en.pdf.

For example, in the case of natural disasters, displacement can often be prevented or substantially mitigated through the use of early warning systems. These warning systems should ideally form part of a disaster response framework but are also useful in the context of internal displacement, and an IDP law should reflect this. The United Nations Office for Disaster Risk Reduction has identified a number of measures that can help in disaster management, many of which are applicable to internal displacement (and appropriate for other causes of displacement, such as conflict).

Ensuring that an IDP law or relevant natural disaster legislation includes these mechanisms can ultimately reduce the impact of displacement on local populations. An early warning system for internal displacement should include:

- knowledge of the risk of displacement, and of the hazards that may arise during displacement;

- monitoring, analysis and forecasting of such hazards by the government, and with the assistance of humanitarian and international organizations;
- communication or dissemination of alerts and warnings to the at-risk population, as well as relevant government departments and humanitarian agencies, host communities and other stakeholders;
- boosting local capacity to respond to the warnings received, as well as sufficient national government resourcing to address displacement should it occur. Resourcing is discussed in greater detail in Chapter Six.

Cases where displacement is unavoidable

Displacement cannot always be avoided. Development-induced displacement, for example, may be justified in certain cases. Likewise, populations may need to be moved in the cases of impending conflict or natural disasters. An IDP law should outline specific requirements for cases where displacement is unavoidable. Such circumstances should meet international standards, including the following elements:

- All other feasible alternatives to displacement must have been thoroughly explored. There is a particular obligation to protect against the displacement of groups with a special attachment to the land, such as indigenous groups, minorities or pastoralists;
- The population to be displaced must be informed and consulted, and their free and informed consent sought;
- Displacement must be ordered only where there is legal authority to do so (the sources of such authority could be listed in the IDP law itself) and must be executed by properly authorized government departments;
- The displacement must be managed and planned with the active involvement of the population being displaced. Consultation and participation requirements and principles could also be identified in the IDP law;
- During displacement, protection and assistance for the displaced must be provided in accordance with international standards (described in Chapter Two);

- Adequate remedial provisions must be made for those affected by displacement (including host communities).

The prohibition of arbitrary displacement and criminal responsibility

“Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence” (Guiding Principle 6 (1)). Such prohibition, preferably accompanied by criminal sanctions, should be clearly and unambiguously spelled out in an IDP law. The Guiding Principles further specify the situations in which internal displacement is arbitrary and therefore prohibited under international law.

The Criminalization of Arbitrary Displacement and Other Acts Related to Internal Displacement in Kenya

Kenya’s IDP law, the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act of 2012, Section 23(2) and (3), criminalizes a number of offences relating to internal displacement, with punishment for persons who:

- (2) ... intentionally:
 - (a) cause the arbitrary displacement of other persons as provided for in section 6 of this Act;
 - (b) impede access to internally displaced persons;
 - (c) cause harm to internally displaced persons;
 - (d) cause harm to humanitarian personnel;
 - (e) impede the work of humanitarian personnel;
 - (f) obstruct the provision of humanitarian assistance to internally displaced persons;
 - (g) steal, or loot, or destroy humanitarian supplies for internally displaced persons;
 - (h) misuse or abuse the use of humanitarian assistance for internally displaced persons;
 - (i) aid or abet the commission of any of the acts or omissions specified in paragraphs (a) to (h).

Indeed, displacement should be prohibited in the following specific cases:

- When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at or resulting in changes to the ethnic, religious or racial composition of the affected population;
- In situations of armed conflict, unless required for the security of the civilians involved or for imperative military reasons;



Children are pouring water in the IDP camp Kiwanje, Democratic Republic of the Congo.

- In the case of large-scale development projects where displacement is not justified by compelling and overriding public interest;
- In the case of disasters, unless evacuation is required to ensure the safety and health of those affected;
- When the displacement is used as a form of collective punishment.

Criminal liability for acts of arbitrary displacement should be entirely non-discriminatory and based on principles of justice and equality, extending to the following groups:

- the State and officers of the State;
- members of armed groups;

- other non-State actors, including those responsible for committing prohibited acts on behalf of multinational corporations, development companies or private security companies (or the companies themselves in some cases).

Depending on the context, States may wish to establish criminal liability under their IDP laws for additional offences, such as impeding humanitarian access or targeting internally displaced persons or their property.

Protection and assistance during displacement

An IDP law should address how protection and assistance measures will be taken during displacement. It should as a minimum address the rights set forth in the Guiding Principles and, where applicable, relevant regional instruments and treaties. MPs should ensure that the bill contains:

- Explicit recognition that IDPs have these rights.
- The protection and assistance measures needed to ensure respect for the right to humanitarian goods and services (food, education, shelter, etc.). An IDP law should ensure that such assistance is:
 - **available** in sufficient quantity and quality to meet the needs and address the vulnerabilities of all IDPs;
 - **accessible** for all internally displaced persons – those living in camps as well as those having chosen to move to host communities – and regardless of where those communities and camps are located (information should be disseminated in particular about where and how the assistance is to be provided);
 - **acceptable** to the displaced population and its culture, regardless of gender or age, addressing any specific vulnerabilities;
 - **adaptable** to changing needs during the various phases of displacement.
- Provisions to ensure that the assistance and protection measures taken are in accordance with humanitarian principles, and in particular eliminating any administrative impediments or obstacles to such assistance. This may require amendments to other laws (such as customs or immigration legislation).

For reference by MPs in developing their national IDP laws, the table below provides an overview of key IDP rights and the types of mechanisms that could be established to protect them. More detailed information in this regard can be found in the referenced chapters of the IDP Manual.

Mechanisms for Assisting and Protecting IDPs during Displacement		
Right (as identified in the Guiding Principles)	Possible protective measures	Reference in IDP Manual
Right to life, security of person, protection against violence (Principles 10 and 11)	<ul style="list-style-type: none"> • Criminalize and effectively prosecute acts that breach these rights • Train national security forces in international humanitarian law (IHL) and effective protection • Conduct demining and landmine demarcation activities 	Chapter 16
Right to food (Principle 18)	<ul style="list-style-type: none"> • Identify the specific food needs of the IDP population, including vulnerable groups • Identify (and adequately resource) an agency or agencies to be tasked with procuring sufficient foodstuffs to meet those needs • Engage in open and regular dialogue with humanitarian agencies to assist in food aid where required 	Chapter 7
Right to water and sanitation (Principle 18)	<ul style="list-style-type: none"> • Identify the water and sanitation needs of the IDP population, including vulnerable groups and culture-specific practices • Ensure secure access to potable water and hygienic sanitation facilities • Liaise with humanitarian organizations to ensure adequate sanitation and water supply where required 	Chapter 8
Right to adequate housing (Principle 18)	<ul style="list-style-type: none"> • Identify specific housing needs based on pre-displacement housing • Assist IDPs in moving from their normal residence to transitional housing • Provide appropriate and adequate transitional shelter for IDPs during displacement • Ensure that transitional housing is safe and permits access for humanitarian services 	Chapter 9
Right to medical assistance and healthcare (Principles 18 and 19)	<ul style="list-style-type: none"> • Designate a department or humanitarian organization to be responsible for healthcare during displacement • Provide safe physical access to health clinics and services • Ensure healthcare consistent with that provided prior to displacement and no less favourable than that available to the non-displaced 	Chapter 10
Right to property, protection against attacks on property (Principles 21 and 29)	<ul style="list-style-type: none"> • Protect abandoned property from destruction and occupation • Provide flexible and accessible measures for redressing property claims, with resulting restitution or compensation where appropriate 	Chapter 12

Mechanisms for Assisting and Protecting IDPs during Displacement		
Right (as identified in the Guiding Principles)	Possible protective measures	Reference in IDP Manual
Freedom of movement (Principles 14, 15 and 28)	<ul style="list-style-type: none"> Remove legal impediments that prevent IDPs from moving to safety, such as documentation requirements Do not confine or intern IDPs in camps Empower IDPs to take their own decisions, by consulting them and informing them of their options, so that they can move or settle wherever they choose voluntarily 	Chapter 5
Right to be recognized as a person before the law (Principle 20)	<ul style="list-style-type: none"> Remove documentation requirements that may limit IDP access to the legal system and State services Reduce the administrative burden on IDPs obtaining documentation Ensure that the procedures for issuance of documentation are accessible and made known 	Chapter 11
Right to family life (Principles 16 and 17)	<ul style="list-style-type: none"> Establish systems to identify and record family units and members, in order to facilitate the provision of humanitarian assistance and preserve family unity Establish a birth registration system Institute a centralized database for missing persons and reunification requests Provide resources to national authorities for the investigation of missing persons and the location and return of mortal remains to family members 	Chapter 6
Right to education (Principle 23)	<ul style="list-style-type: none"> Ensure that education solutions form part of a national response to internal displacement Provide access to education for the displaced through host community educational facilities or other alternatives where this is not feasible Reduce administrative or financial impediments for IDP access to education in host communities Ensure that the particular educational requirements of vulnerable groups are met, including instruction in their own language 	Chapter 15
Right to work and an adequate standard of living (Principles 18 and 22)	<ul style="list-style-type: none"> Provide points of entry into the local labour market through work programmes, skills transfer and vocational training Reduce impediments for access to social assistance, particularly in documentation requirements Provide targeted humanitarian assistance that encourages ultimate self-sustainability 	Chapter 13

Mechanisms for Assisting and Protecting IDPs during Displacement		
Right (as identified in the Guiding Principles)	Possible protective measures	Reference in IDP Manual
Right to participate in public affairs (Principle 22)	<ul style="list-style-type: none"> • Ensure that IDPs are legally entitled to vote in either their home or host community's constituency • Reduce administrative requirements for voter registration, particularly with respect to documentation • Where required, provide protection for IDP communities during rallies, campaigns and voting • Allow IDPs to stand as candidates without preference over non-displaced persons 	Chapter 14
Right to humanitarian assistance (Principles 3 and 25)	<ul style="list-style-type: none"> • Create or empower a national body to liaise with humanitarian organizations • Criminalize acts that impede humanitarian assistance • Modify immigration and customs laws to ensure access by humanitarian workers and the expedited delivery of aid 	Chapter 4

In addition, the UN Inter-Agency Standing Committee (IASC) has prepared **Operational Guidelines on the Protection of Persons in Situations of Natural Disasters (2010)** to assist humanitarian and development organizations and States in responding to natural disasters. MPS can direct officials preparing or reviewing drafts to this document for more detail. The Guidelines relevant to internal displacement include:

- Protection of life, physical integrity and health of persons (**Guidelines A.1, A.3**);
- Protection and respect for family unity (**Guidelines A.2, A.6, D.3**);
- Protection against violence and, in particular, gender-based violence (**Guideline A.4**);
- Provision of housing and security in host families, communities and collective shelters (**Guidelines A.5, B.2 and C.2**);
- Access to humanitarian goods and services (**Guideline B.1**);
- Provision of goods and services (food, water, sanitation, shelter, clothing, health services and education) (**Guideline B.2**);

- Protection of housing land and property (**Guideline C.1**);
- Access to livelihoods and work (**Guideline C.3**);
- Provision of education (**Guidelines B.2 and C.4**);
- Access and rights to documentation (**Guideline D.1**);
- Freedom of movement and durable solutions (**Guideline D.2**);
- The right to participate in public affairs and to practise religion (**Guidelines D.4 and D.5**).

Durable Solutions

IDPs' needs and vulnerabilities continue after the circumstances leading to displacement have ended, and legislation is needed to provide a framework for ongoing protection and assistance. The IASC Framework for Durable Solutions provides guidance to governments in implementing durable solutions.

With respect to durable solutions, an IDP law should:

- Enable IDPs to choose between:
 - return to and reintegration within their place of origin, whether immediately or once the area has become secure;
 - local integration in the area where the IDP has settled or found safe haven;
 - settlement in another part of the country.
- Affirm the primary responsibility of authorities to establish conditions and provide means for IDPs to make their choice among these durable solutions.
- Outline the conditions for successfully achieving durable solutions, as indicated in the IASC Framework on Durable Solutions:
 - The long-term safety and security of IDPs based on effective protection by national and local authorities. This includes their physical protection as well as specific measures to address the causes of displacement (**IASC Framework pages 27-31**);

When Are Durable Solutions Achieved? A Legislative Framework

Benchmarks for the achievement of durable solutions need to be outlined in a national IDP law. Kenya's IDP Act borrows from the IASC Framework on Durable Solutions:

Durable solutions

9. (1) The Government shall create the conditions for and provide internally displaced persons with a durable and sustainable solution in safety and dignity and shall respect and ensure respect for the right of internally displaced persons to make an informed and voluntary decision on whether to return, locally integrate or resettle elsewhere in the country.

(2) Without limiting the generality of the sub-section (1), the following conditions for durable solutions shall apply:

- (a) long-term safety and security;
- (b) full restoration and enjoyment of the freedom of movement;
- (c) enjoyment of an adequate standard of living without discrimination;
- (d) access to employment and livelihoods;
- (e) access to effective mechanisms that restore housing, land and property;
- (f) access to documentation;
- (g) family reunification and the establishment of the fate and whereabouts of missing relatives;
- (h) equal participation in public affairs;
- (i) access to justice without discrimination.

- An adequate standard of living without discrimination. This includes non-discriminatory access to food, water, shelter, healthcare, primary education and other necessities of life in accordance with pre-displacement conditions (**IASC Framework pages 31-33**);
- Access to livelihoods and employment. This includes the provision of social services without discrimination on any grounds (**IASC Framework pages 33-35**);
- An effective, accessible mechanism to restore housing, land and property (see *Remedies and access to justice* below) (**IASC Framework pages 35-38**);
- Access to personal and other documentation without discrimination, including mechanisms to replace documents lost during the displacement (**IASC Framework pages 38-40**);
- Family reunification without placing separated families (particularly children) at risk, or discriminating on the basis of age or gender (**IASC Framework pages 40-41**);

- Participation in public affairs without discrimination, including employment in public service, running for office and voting (**IASC Framework pages 41-42**), and
- Access to effective remedies and justice (see *Remedies and access to justice* below) (**IASC Framework pages 42-46**).

IDP law needs to recognize the importance of involving actors other than national authorities in the process of achieving durable solutions. It should provide in particular for:

- ↘ The involvement of IDPs and other affected communities in planning and implementing the durable solutions. Aside from the empowering effect for IDPs, this will ensure that the solutions offered are truly durable: they will suit the needs and vulnerabilities of the population and so will have a greater and longer lasting effect;
- ↘ A specific provision governing on-going access by humanitarian and development actors. The discussion above on protection and assistance during displacement is equally applicable to the process of finding durable solutions. Humanitarian actors should continue to be allowed free and



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An extended family of 18 people from Buale, South Central Somalia, arrives in Galkayo fleeing from a drought in their region.

unimpeded access where their assistance is required, regardless of whether solutions have been found;

- The full engagement of development actors (national, international and civil society) in the search for durable solutions, as an integral part of development planning;
- Mechanisms to ensure continuous monitoring of IDPs and other affected populations. Monitoring allows for adaptable solutions and better responses to the changing needs of IDPs and other affected communities. Monitoring and implementation is discussed more fully in Chapter Five.

Remedies and access to justice

IDPs have the right to *effective remedies* for the harm suffered during the course of their displacement. Legislation is a particularly appropriate instrument for providing such remedies, which entail a number of formal government processes that should be sanctioned and enforced by the State. An IDP law should therefore provide for:

- reparation (compensation and satisfaction) of the physical and mental harm caused by arbitrary displacement and related human rights abuses;
- restitution where possible of lost housing, lands or other property, and, where not possible, compensation for the loss. Housing, land and property issues are particularly important to achieving successful durable solutions.

Remedy Requirements: The Guiding Principles, Principle 29

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.

If the displacement has occurred as part of widespread atrocities it may also be appropriate for an IDP law to relate to transitional justice mechanisms by providing for truth commissions, restitution, reparations and justice-focused security sector reform. NHRIs can contribute to these processes through their

inquiry and investigation functions. They may already be repositories of substantial information on the displacement, and their close relationship with affected communities allows them unique access to further information about possible violations. Where appropriate, mandates for NHRIs should therefore be included in an IDP law.

The law should also assure IDPs of a right to effective remedy (restitution or compensation) and establish the institutional structures needed to support this right. MPs should ensure that their national IDP law addresses the following issues:

- **What types of remedy are available?** Types of loss vary in individual cases, and it should not be assumed that all claimants will prefer restitution. Feasible remedies should be a matter of discussion between the State and the claimant to ensure the best outcome for both.
- **Which bodies are responsible for issuing remedies?** This may be left to the existing judiciary, or special tribunals or administrative bodies may be established in order to expedite claims. In the wake of widespread human rights violations or conflict, it may be appropriate to integrate accountability mechanisms and remedies into wider transitional justice processes.
- **How does the claims process work?** The administrative burden on affected individuals should be kept to a minimum and the hardship of displacement taken into account.
- **Who may claim the remedy?** Displacement impacts a number of individuals beyond those displaced, including host communities, return communities as well as non-State actors and others operating in areas of displacement. Where possible, such individuals should also be entitled to file claims for loss caused by displacement.
- **How is restitution of housing, land and property to be effected? In which cases?** Which authorities will take responsibility for the restitution process?
- **What factors are involved in deciding on compensation?** Depending on a country's legal tradition, the law may identify aggravating or mitigating factors.

Effective remedies for IDPs require *access to justice*. MPs should be aware of how an IDP law streamlines procedures for IDP access to the justice system. This may involve amending existing procedures where they are provided for in legislation. Examples of potential reforms include:

- Streamlining claims that are similar in nature or involve parties in the same area (in cases of mass dispossession, for example) by allowing group actions, or representation by NGOs who are better equipped to understand court process.
- Expediting procedures by reducing documentary requirements, improving case management procedures, shortening and where appropriate mandating timeframes for decisions and filings. This may require a review or amendment of regulations or legislation and if so, MPs should undertake to complete this as part of their work in developing a national IDP framework.
- Reducing or altering the evidentiary burden for IDPs, who in most cases will not have access or the ability to produce substantial evidence in support of their claims.
- Conducting special processes to encourage access to justice for women, who may be hesitant to speak out or seek justice, particularly in cases of sexual exploitation and violence.
- Developing special procedures for other groups that may require further assistance with access to justice, including indigenous groups, children, etc.

These measures should be undertaken in all judicial bodies; IDPs like all citizens need recourse to the justice system for any number of reasons. However, an IDP law should pay particular attention to procedures for awarding compensation or providing other durable solutions.

To deal with restitution or compensation claims many countries have established specific commissions with special powers to expedite claims, and take into account circumstances that the formal court system cannot. In any event, once these institutions are established, MPs should ensure that they can function as intended.

Chapter Three: Summary and Action Points

An IDP law should mandate a national authority with responsibility for IDP protection and assistance.

- ✓ Parliamentarians should review their draft bill to ensure that a national authority is specifically identified and its authority clearly outlined.

An IDP law should include a comprehensive definition of internally displaced persons.

- ✓ Parliamentarians should review their draft bill to ensure that the definition establishes two criteria: forced movement but within national borders.

An IDP law should be based on the principle of non-discrimination.

- ✓ Parliamentarians should review their draft bill to ensure it does not discriminate against non-displaced citizens, or between different members or groups within the displaced population.

An IDP law should provide for mechanisms to prevent displacement and for criminalization of acts of arbitrary displacement.

- ✓ Parliamentarians should review their draft bill to ensure that it assigns responsibility to the State for preventing displacement, and where displacement is unavoidable, includes provisions to minimize its effects.
- ✓ Parliamentarians should review their draft bill to ensure that it criminalizes arbitrary displacement and related activities where appropriate.

An IDP law should provide for protection and assistance mechanisms in connection with all the key IDP rights.

- ✓ Parliamentarians should review each of the key rights identified in this chapter and ensure that the draft bill includes provisions to address them.
- ✓ Parliamentarians should ensure that the IDP law complements any disaster management legislation.

An IDP law should provide for durable solutions.

- ✓ Parliamentarians should review their draft bill to ensure that it provides for effective remedies, including reparation for harm incurred as well as restitution of housing, land and property, or, where appropriate, compensation for their loss.
- ✓ Parliamentarians should review their draft bill to ensure that it addresses IDPs' access to justice.

Part Three
The Parliamentarian's Role
as Political Leader



Chapter Four

Engaging Civil Society

As a matter of domestic politics, MPs represent and are accountable to their constituents, some of whom may be IDPs or other members of affected populations. An important component of a parliamentarian's role in developing an IDP law is to engage civil society with the reform project. An MP's relationship with civil society serves two main purposes:

- To help the MP advocate and support the initiatives, ideas and interests of their constituents at the national level. In many cases, members of civil society may be more engaged or aware of the issues that arise from internal displacement. MPs are the interface to decision makers and must represent their constituents throughout the development of an IDP law.



A young boy and his younger brother in the remote river village of Inbargyi in Myanmar's Rakhine State.

- To raise awareness among their constituents about the work of parliament in developing an IDP law. This includes:
 - explaining the bill and its implications;
 - providing civil society with opportunities to take part in the development of the law and notifying them of parliament's consultation procedures.

In some electoral systems, parliamentarians may not represent a specific geographic area or constituency. Nonetheless, internal displacement has widespread impact across an entire country and its institutions. Minimizing its effects is a matter of concern for all MPs in their role as an access point for civil society to decision makers.

Advocating for Constituents: Facilitating a Bottom-Up Approach

"Our role is in developing capacities ... What can we do in our own constituencies? How can we get communities involved? We may have grand national plans, but it is at the local level that action is taken."

.....
Saber Chowdhury MP, Chair of Bangladesh's All-Party Parliamentary Group on Climate Change and Environment and UNISDR Parliamentary Champion, Chair of IPU's Standing Committee on Peace and Security (2013).

The impetus for reform may in fact come from civil society. The Refugee Consortium of Kenya, for example, played a major role in initiating and developing that country's IDP law. MPs should be ready to listen to and support such initiatives from their constituents.

This begins with MPs' willingness to speak to any groups that approach them and maintain an office atmosphere of openness toward their constituencies and availability to address their concerns. They can do this by:

- Making regular visits to their district offices as well as in and around their districts;
- Allocating specific times for drop-ins or meetings with civil society groups;
- Having clear contact information available so they and their office can be reached easily;
- Ensuring that their staffs are trained in dealing with constituents and their concerns;
- Being available to speak at events or meet with civil society leaders.

The next step is to take civil society concerns to the national level, for direct incorporation into an IDP law, or at the very least, discussion with colleagues involved in preparing it. Raising such concerns during parliamentary debate or question time can also help to keep the government attuned to the concerns of an MP's constituency.

Using Parliamentary Questions to Keep Internal Displacement on the Agenda in Kenya

An important way for MPs to advocate for civil society is to use existing parliamentary processes. The Refugee Consortium of Kenya organized a workshop in December 2011 that recognized the importance of accelerating Kenya's IDP response. The workshop prepared three parliamentary questions for the minister responsible, which MP Ekwe Ethuro delivered:

"(a) Can the Minister confirm that Kenya lacks a national policy on the prevention of internal displacement and the protection and assistance to Internally Displaced Persons, despite the presence of thousands of IDPs and the fast approaching General Elections?

(b) Could the Minister appraise the House on the status of approval of the said policy as well as the status of IDPs resettlement?

(c) What steps is the Minister taking to fast-track the formulation, approval and implementation of the policy?"

Keeping the issue firmly on the national agenda led to Kenya passing a comprehensive IDP law in 2012.

MPs also can and should proactively encourage civil society groups to take part in the development of an IDP law. Their access to government gives them a unique ability to support the initiative, by:

- Making resources available, identifying legislative priorities or incorporating grants as part of appropriations legislation;
- Establishing coordination mechanisms (see Chapter Six) that involve civil society groups in decision-making processes;
- Holding meetings, conferences or other events on issues that can facilitate exchanges between civil society groups;
- Contacting groups directly when their views may be relevant to the development of a particular proposal within the IDP law.

Direct involvement in civil society organizations through membership or chairpersonship is also an option. In Bangladesh, for example, the Chairman of the National Red Crescent Society is MP Mohammed Serajul Akbar. He helped to mobilize both Parliament and the Red Crescent Society in early 2013, when devastating storms left thousands displaced across the country's coastal regions.

Not all groups may feel comfortable speaking to MPs about their concerns. In such cases, national human rights institutions can provide an additional independent link for civil society to contribute to the development of an IDP law in two ways:

- by listening to complaints and comments about human rights in the country;
- by presenting these concerns to parliamentary committees, MPs and government.

MPs should encourage civil society groups in their constituencies to engage with the country's NHRI where possible, disseminating information to them that describes:

- what the NHRI is and how to contact it;
- its core functions;
- any procedures involved in working with the NHRI.

The monitoring and evaluation functions of NHRIs are discussed in Chapter Six.

Ensuring the participation of IDPs and affected populations

A fundamental feature of successful reform is the participation of affected populations. In the context of internal displacement, this means consulting with the following groups:

- IDPs themselves, including both men and women equally. The consultation with IDPs should reflect the representation of diverse groups of IDPs with specific needs, including children, the elderly, IDPs with disabilities, minority groups and pastoral or indigenous communities;

- NGOs, religious and traditional institutions and other groups that may represent IDP interests;
- Host communities and organizations representing their interests.

Taking a Bottom-Up Approach: A National Consultative Workshop in Afghanistan

In July 2012, Afghanistan initiated a bottom-up approach to its IDP reforms. The country's Refugee and Repatriation Minister, Dr. Jamaher Anwari, convened a National Consultative Workshop to support the development of a national IDP policy. IDP communities were well represented by both men and women in all plenary and working group sessions, enabling them to develop a close working relationship with the ministry responsible for ongoing reforms. Importantly, the Workshop was preceded by field missions to Jalalabad, Kabul and Herat and followed up with consultations in Kabul, Balk, Faryab, Kandahar, Herat, Paktya and Nangarhar provinces to inform the development of the IDP policy. This not only allowed the IDP Policy Working Group to get a better understanding of the issues, but to bring the project to the attention of IDPs and invite them to take part.

As noted in Chapter Three, consultation takes place as part of formal parliamentary procedure. In addition to such formal consultations, however, MPs should be engaged in regular and on-going dialogue with groups prior to and throughout all phases of displacement and reform: policy development, drafting, passage, as well as implementation, monitoring and evaluation. MPs should involve affected populations in the decision-making process because:

- IDPs are legally entitled to participate by virtue of their rights to free speech and political participation (see Chapter Two);
- The involvement of affected populations contributes to a better picture of the challenges faced in internal displacement:
 - The situation analyses and needs assessments taken into account in preparing the legislation will be more realistic, better reflecting the actual needs and vulnerabilities on the ground;
 - IDPs can provide tangible, practical information about how to provide for the welfare and security of families and individuals, including minorities and particularly vulnerable groups, such as those with reproductive health needs;

- Affected populations are well positioned to provide creative solutions to complex problems, drawing from their own networks and skills;
- Involving IDPs in the development of laws that affect them is empowering. It reduces dependency, facilitates reintegration and encourages self-coordination. Engaging affected populations in decision-making processes provides them with a better understanding of State processes and laws, fostering confidence in dealing with the State.

Consultation: Considerations and Suggestions

MPs can facilitate good consultation with their constituencies both formally, as part of the parliamentary process, and informally.

Taking it outside the capital

- To the extent possible, MPs should travel around their districts and throughout the country to disseminate information and receive comments, appointing liaisons as an alternative if necessary in remote areas. This is especially relevant in the case of IDPs, many of whom may not have access to consultation hearings in the capital.

Making it all understandable and accessible

- In order for consultation to be helpful, it should be focused and address the specific issues being canvassed.
- Summaries of the bill or guides can be prepared to help stakeholders understand the process. Information sessions could be held to address specific questions while allowing ample room for broader comment.
- Ideally, the bill and other consultation documents should be translated into local languages.

Allowing time for good ideas to surface

- Those being consulted should be given enough time to digest the information and formulate their ideas or concerns. This may be a matter of weeks in some cases. Groups wishing to organize meetings to discuss the proposals should be allowed time to do so to ensure that their submissions and comments better reflect actual needs.

Giving the widest opportunities for involvement

- Flexibility as to how submissions are received will allow for greater involvement. Oral as well as written consultations could be permitted, for example. The use of standard consultation forms or questionnaires may also be helpful.
- By formally acknowledging the contributions of participants in the consultations, the government can encourage them to become more actively involved in the ongoing reform process.

To engage with affected populations, who may be unable to visit an MP’s district office, or hesitant about speaking with government representatives, MPs should make specific efforts to:

- Visit camps and other locations where the displaced have settled. This includes identifying groups within the IDP population that might otherwise be underrepresented and meeting with them in an equitable fashion;
- Hold workshops or forums that affected populations can attend, in places where they feel comfortable speaking with other stakeholders and describing their experiences;
- Support sufficient resourcing for departments involved in the policy development process.

Awareness-Raising

The role of parliamentarians in raising awareness about internal displacement is important throughout all phases of displacement, but especially during development of an IDP law, for a number of purposes:

- To de-stigmatize internal displacement as a politically taboo issue. Promoting a feeling of national solidarity among and toward affected populations can create a political atmosphere conducive to reform, reminding the population that IDPs are citizens and that it is the nation’s responsibility to help protect and assist them through an IDP law;
- To sensitize relevant groups to the key issues and allow them to consider how the Guiding Principles and other international standards may be applicable in the national context. This process helps build capacity and transparency in preparation for developing a national IDP law;
- To minimize the impact of internal displacement by making IDPs and host communities aware of their rights. In addition, awareness campaigns mobilize national and international actors and foster the development of support networks under the government’s leadership;
- To increase opportunities for civil society groups to contribute to the development of an IDP law.

A key priority is getting the message out to civil society organizations and affected communities. However, awareness-raising campaigns are relevant to all national actors involved in developing or implementing a national IDP law. MPs should look for opportunities to engage, for example:

- Government officials involved in developing policy both at the national and local levels;
- Government officials involved in implementing policies in the field, including camp or local officials, as well as military and police;
- Staff of national human rights institutions, including those at the highest level (i.e., commissioners or ombudspersons where applicable);
- Other parliamentarians, who will be reviewing legislation and policies and can assist in further dissemination;
- Civil society organizations involved in IDP issues;
- IDPs, host communities and any other affected populations.

The role of parliamentarians in awareness-raising

MPs are in a unique position to provide leadership as the country navigates towards establishing a national IDP framework, and as government officials and civil society deepen their knowledge of internal displacement issues. In their personal capacity, MPs can lead awareness-raising campaigns on the development of an IDP law by:

- using parliamentary questions or procedures to raise the issue of internal displacement in parliament;
- preparing and attending training workshops;
- drafting or contributing to national statements for approval and dissemination;
- commissioning/organizing conferences and making public speeches on internal displacement;

- issuing press releases;
- making field visits to affected areas;
- in the case of MPs responsible for government departments, encouraging department officials to use the national media, websites, pamphlet distribution and formal training as part of their awareness-raising campaigns.

Free and Widespread Dissemination as Part of the Ugandan National Policy for IDPs

Ongoing awareness-raising efforts are also important after an IDP law has been enacted. MPs should ideally provide for such efforts in the IDP law itself. Adopted in 2004, the Ugandan National Policy for IDPs did just that, stating:

“An important aspect in the successful management of an IDP situation is the capacity to inform people of the situation and properly communicate with all relevant organizations. The press, radio and television have an important role to play in giving an insight of the magnitude of the IDP problem.

The Ministry of Information shall ensure free broadcast of information relating to IDPs in all mass media under its control.

[...]

The Office of the Prime Minister/Department of Disaster Preparedness and Refugees shall collaborate with Government institutions and humanitarian and development agencies in advocating on behalf of internally displaced people in order to alleviate their suffering and hasten their return or settlement. This shall be done by:

- i. Ensuring that the Guiding Principles on Internal Displacement and this Policy are translated into local languages and that they are disseminated as widely as possible via radio broadcasts and all available mass media
- ii. Sharing information on internal displacement situations in Uganda in national and international fora; and
- iii Making recommendations as necessary.”

National Policy for IDPs, Chapter Five: Advocacies and Public Information.

Parliamentary committees and parliament itself can also contribute to awareness by:

- initiating inquiries, holding committee hearings on internal displacement and publishing findings and reports;

- releasing public statements;
- providing funding for awareness-raising measures.

Familiarity with the issues is essential if MPs are to contribute to successful awareness-raising campaigns, both formal and informal. As legislators, a most useful role is to provide information about draft legislation. In this role, MPs should feel comfortable describing:

- The national legislative process;
- Opportunities for contributing to the development of a national IDP law;
- Relevant national law and draft legislation, including a description of the specific rights of IDPs;
- International and regional standards applicable to the country;
- The key agencies responsible for IDP-related issues in the country and their roles;
- Details with respect to implementation, including new and amended procedures and the reasons for them;
- The roles played by humanitarian organizations and other national bodies (such as NHRIs, NGOs or civil society groups).

Similar processes should also be used to raise awareness after the law has been enacted, but primarily, at this stage, by the national authority or government departments.

A country's NHRI is an important player in raising awareness, both before and after an IDP law has been passed. MPs should support the NHRI in disseminating information on the rights of IDPs and the obligations of the State to protect and assist them. As mentioned above, this information needs to be disseminated to the recipients of assistance as well as those responsible for delivering it. The NHRI can assist in training officials for the application of an IDP law, or in the absence of such a law, on the applicable international and regional standards. This serves not only to inform, but also to build relationships for the successful development and implementation of an IDP law.

Chapter Four: Summary and Action Points

MPs are ultimately responsible for representing and advocating on behalf of their constituents at the national level.

- ✓ Parliamentarians should be available for constituents who may wish to meet with them.
- ✓ Parliamentarians should seek out constituents, particularly IDPs and other affected communities, and consult with them in an equitable and genuine fashion.
- ✓ Parliamentarians should continue to be engaged with the issue throughout the legislative process.

Civil society is an important initiator of reform, and MPs have a responsibility to ensure that the ideas and interests of civil society groups are incorporated into an IDP law.

- ✓ Parliamentarians should understand thoroughly their constituents' interests, ideas and initiatives.
- ✓ Parliamentarians should actively look for opportunities to advocate on behalf of their constituents in parliament and in their interactions with the government and their colleagues.

Energy spent in raising awareness on the development of a national IDP law leads to better legislation.

- ✓ Parliamentarians should be familiar with the draft bill, the legislative process and international and regional standards, so that they can explain them to IDPs, affected communities and other constituents.
- ✓ Parliamentarians should actively disseminate information on their national legislative project, including through meetings, workshops, press releases and speeches.
- ✓ Parliamentarians should support other actors, particularly NHRIs, in their awareness-raising activities.

Chapter Five

Oversight and Monitoring

Laws are only effective to the extent that they are implemented. Parliament has an important oversight role in ensuring that the executive carries out its responsibilities as mandated under IDP law. From the MPs' perspective, oversight and monitoring has the following purposes:

- To ascertain whether the objectives are being met and expected outcomes are being achieved.
- To determine if the specific tasks mandated in the law are being completed, and if not, to ascertain why.
- To suggest changes in approach to address challenges that might arise in implementation.
- To assess how resources are being used as a basis for continued funding.

MPs will have a limited monitoring role; other actors such as the NHRI or the national focal point will perform most of the monitoring activities. Rather, an MP's role is primarily to:

- provide oversight through parliamentary processes and committees;
- ensure that there are sufficient resources allocated for the law to be effective;
- provide for and support other actors in their monitoring roles;
- perform limited monitoring activities in their own capacity.

The Use of Parliamentary Committees

The purpose of parliamentary oversight is to ensure that the executive branch is faithfully implementing the nation's laws. MPs usually perform this role as

members of a parliamentary committee, which are a particularly important avenue for efforts by non-government or opposition MPs to impact the legislation and hold the government accountable for its domestic and international obligations.

Some parliaments set up special committees, while others rely on permanent, policy or thematic committees to carry out this oversight work. Regardless of such formal considerations, the main roles played by such committees in the IDP context are essentially the same:

- to request information from the government on the implementation of its programmes;
- to initiate and conduct inquiries;
- to hear testimony from the public, experts, government, affected communities and any other interested parties;
- to request and receive reports on any aspect of the IDP law's implementation;
- to prepare recommendations and reports for parliament.

Reports and information should be solicited in particular from the government departments responsible for implementing the IDP law, but also from NHRIs, humanitarian and development organizations and locally operating NGOs familiar with internal displacement issues. IDPs themselves (including both men and women equally), as well as any particularly vulnerable groups (or their representatives) should also be included in oversight and monitoring hearings to the extent possible.

To effectively determine how and by whom the outcomes specified in the national law are being achieved, and to identify any administrative, legal, financial or other obstacles being encountered, the MPs that sit on these committees should be thoroughly familiar with the national IDP law and any operational indicators established to measure its effectiveness. MPs should be actively involved in the analysis and drafting of any committee reports and recommendations: it is incumbent upon them to confirm that all elements of the legislation (as described in Chapter Two) have been discussed and that the committee's recommendations fairly address the issues identified.

Resource Allocation and Budgetary Oversight

An MP's most important role in protecting, assisting and finding durable solutions for IDPs may well be in determining the budgets and allocating the funds for implementation of the national framework. This may be done as part of parliament's appropriations role or through membership of a parliamentary committee responsible for budgetary matters.

Funding has a direct impact on effectiveness: without adequate resources, the law is doomed to fail. An understanding of the country's budgetary process – including parliamentary appropriations as well as departmental spending – will certainly help MPs identify the best methods for channelling funds for IDP protection and assistance. A number of approaches can be taken depending on the national context, including two in particular:

- an earmarked budget line or fund established by the central government, which departments or local authorities may bid for as part of their own budgetary processes;
- direct allocation of additional resources to departments/local authorities, as part of the regular appropriations process.

Irrespective of the specific funding arrangements, resources need to be provided in a manner that is **adequate, predictable** and **non-discriminatory**. Some key features can help to meet these criteria:

- The assessments prepared to determine funding levels should be realistic, taking into account all the needs and vulnerabilities identified through information gathered about and from the IDP population. They should in particular be informed by the views of operational-level officials and the specific needs of vulnerable groups. In addition to domestic expertise, parliaments can draw from the extensive international expertise available on the cost of relief activities. Any funding allocated to humanitarian or development organizations should be taken into account in national assessments;
- Funds should be specifically earmarked for internal displacement issues to avoid the use of funds for other, unrelated projects and activities. There should be few constraints and maximum flexibility, especially for the purpose of relief assistance. As noted below, allowing for a flexible response

to issues that may arise does not preclude the use of robust accountability mechanisms;

- Provisions need to be made that allow for carrying excess funds to the next funding period where possible;
- With respect to compensation, it may be appropriate to establish specific mechanisms or funds outside the regular court system; such funding should be sufficient to redress the harm incurred.

IDP Compensation

Budgetary allocations for IDP compensation in Turkey

Providing for funding arrangements, even simple ones, in the legislation can give departments greater operational certainty. Turkey's 2004 Law on the Compensation of Damages that Occurred due to Terror and the Fight against Terror, for example, established a Damage Assessments Commission to award compensation for damages to property or persons.

The compensation formula and amounts – and importantly, the budgetary sources for compensation payments – are specifically outlined in the law:

- The Commission's expenses are to be met from the regular budget of the Ministry of the Interior (Art. 6);
- Compensation awarded shall be paid " – according to the type of payment – from an appropriation set aside from the Ministry's budget". (Art. 13)

Tax incentives for development-induced displacement compensation in Indonesia

Indonesia's 2012 Law on the Land Acquisition for Public Development introduces specific mechanisms that allow the IDPs to regain their rights in terms of development-induced displacement. The compensation mechanism starts from public consultation on the development project, appraisal consultation, and goes up to compensation consultation. The law provides several options of compensation (i.e., money, land replacement, resettlement, shared ownership and others) approved by both parties (Art. 36). There are, also, tax incentives on the compensation received by the IDPs (Art. 44).

When reviewing funding arrangements, MPs should prefer designs that avoid systemic reliance on relief aid, which may in the long run, impede the achievement of durable solutions. Mechanisms for moving from relief aid to the more durable solution of development assistance should therefore be built into the funding arrangements. Again, this can best be accomplished through flexibility within the IDP budget line.

As discussed in Chapter One, IDPs have a right to humanitarian assistance. As a precursor to assistance requests, the identification of funding needs – even where budget resources are unavailable – will help outside donors and humanitarian agencies in assessing the level of assistance required; the more specific and well defined these needs are the better. MPs should therefore give close attention to the financial needs analysis and documentation prepared for their bill. A robust budgeting process will also demonstrate to donor organizations that the issue of internal displacement constitutes a national priority, which can be important in securing financial commitments from them. As in the case of funding from national, regional or local governments, such international aid should be time-limited and sustainable, giving way to self-reliance as soon as practicable.

Oversight as part of Regular Parliamentary Business

Where parliamentary oversight is performed in plenary sessions it will usually involve:

- Reviewing or debating reports prepared by parliamentary committees;
- Conducting general parliamentary debate on motions introduced by MPs that may have a bearing on IDP-related issues;
- Questioning ministers or other government officials on policy and implementation issues (during question time, for example);
- Considering secondary or implementing legislation, regulations or decrees.

Where such sessions touch on issues directly relating to IDPs, MPs should thoroughly prepare by:

- familiarizing themselves with the text of the IDP law and the required elements discussed in Chapters Two and Three;
- meeting with IDPs (men and women equally), affected communities, NGOs, humanitarian and development actors and others (see **informal oversight and monitoring roles** below) to understand how the IDP law is being implemented;

- reviewing the internationally recognized obligations toward IDPs described in Chapter One;
- reviewing any reports or other documents to be discussed during the session;
- reinforcing their knowledge of parliamentary procedures for debate, introduction of motions, etc.

Providing for and Supporting Other Oversight and Monitoring Actors

Responsibility for monitoring IDP laws rests primarily with national actors concerned with the law's operationalization. They are well positioned and equipped to oversee its implementation. The role of MPs is to be well attuned to the monitoring functions and activities of these actors, so as to effectively support their work, which means:

- Ensuring they have the necessary legal authority to carry out their functions, which should be clearly specified in the IDP law. Primary responsibility will rest in most cases with the national authority, but other bodies with oversight roles (such as NHRIs) should also be identified;
- Ensuring where possible that they are adequately funded (see “**allocating resources for implementation**” above);
- Reviewing and considering the findings and recommendations of these oversight authorities and acting on them as appropriate.

Steering committees can provide a useful forum for oversight of the IDP legislation's operational aspects, ensuring that the strategic direction is coherent and has the political support of key stakeholders and actors. Steering committees, which can take the form of consultative committees, are essential for coordination: they bring relevant parties together to develop and ensure common approaches to implementation. In terms of seniority, the steering committee's members should be at the department head/senior management level, but as with all committees, they should have a thorough knowledge of the national framework and IDP issues in the country. Ideally, a steering committee's membership and structure should be provided for in IDP law.

A Legislative Response to Judicial Monitoring in Colombia

The judiciary itself can play an important monitoring role, and parliamentarians should feel comfortable assessing their national IDP law in light of judicial findings.

In Colombia, a limited statutory framework for internal displacement has been in place since 1997, but until recently, the government was unable to implement it. In particular, remedies were not being provided to those affected by displacement and their rights under this framework were not being protected.

By 2003, thousands of claims had been brought under an *acción de tutela* petition, an instrument designed for the protection of fundamental rights by Colombia's Constitutional Court. The petition proved to be an effective means of remedy for IDPs because of its flexibility and enforceability, in that:

- The Court can issue orders immediately, even prior to its final ruling, so that violations can be addressed as quickly as possible;
- The Court's ruling must be effective: orders can require that remedial programmatic measures be taken by the State;
- The ruling takes automatic precedence over any other matters (other than habeas corpus) and must be decided in 10 days, with no possibility for extension;
- Lower court rulings may be reviewed by the Court ex officio;
- Claims can be filed without legal representation.

The Constitutional Court's review of lower court rulings resulted in the landmark decision T-025 (2004), which found that IDPs rights were being widely disregarded. The Court's two main concerns related to:

- institutional capacity for implementation of the framework;
- the sufficiency of funding for IDP policies to achieve their stated goals.

Describing the situation as an "unconstitutional state of affairs", the Court ordered a number of remedial actions by the State including:

- steps to ensure cooperation amongst key actors;
- specific programmatic measures for the immediate protection of IDP rights;
- adequate funding, prioritization and distribution;
- the adoption of a plan of action to address the deficiencies identified in the judgment

This led to widespread changes in the Colombian IDP framework. Following the decision, the Court remained involved in its implementation, issuing a number of follow-up awards where breaches were continuing. Further decisions have also dealt with reparations and land rights issues. This has led to the promulgation of Law 1448, which provides for a reparations framework for all victims of the Colombian armed conflict since 1985.

NHRIs serve essential monitoring and oversight functions, which should be provided for as part of an IDP law by mandating them to monitor and regularly report on the implementation of the law. Their independence allows them greater access to information to understand the extent to which rights are actually being enjoyed by IDPs, and what they may face. Where properly mandated, funded and capacitated, NHRIs are versatile bodies that can support the intent of parliament by holding actors accountable for their responsibilities under the law and drawing the attention of duty bearers to violations of rights of IDPs, ineffective implementation of the IDP law or gaps in the response to internal displacement. In some situations, NHRIs as part of their monitoring activity may:

- undertake ex officio investigations of abuses;
- make alternative dispute resolution mechanisms available to IDPs to resolve property or other disputes;
- intervene in judicial proceedings as an *amicus curiae* or in other advisory capacities as appropriate;
- receive individual complaints and address them as appropriate;
- initiate inquiries at the request of parliament on any particular issue or concern.

Such functions can be explicitly included in an IDP law.

The Make-Up of a Steering Committee in Georgia

In 2007, Georgia approved a State Strategy on IDPs, which was supplemented in 2009 by an Action Plan on implementation. The Action Plan included provision for a Steering Committee “to coordinate joint efforts by the Government of Georgia and international organizations in operationalizing and implementing the State Strategy for IDPs and its Action Plan. The members of the Steering Committee included:

- Ministry of Refugees and Accommodations (as the national focal point)
- Ministry of Labor, Health and Social Affairs
- Ministry of Justice
- Ministry for Regional Development and Infrastructure
- Ministry of Agriculture, Municipal Development Fund

This monitoring and oversight function will generate substantial information and establish a variety of useful NHRI-connected networks. MPs should not be reticent about drawing on these when appropriate; they can request advice, proposals or recommendations from NHRIs regularly, for any issues that may be within their competence. NHRIs should also be mandated to issue unsolicited recommendations or comments, which is crucial for retaining its independence and drawing parliament's attention to matters not otherwise noted.

Informal Oversight and Monitoring Roles

Sustained, open dialogue with interested parties and affected communities is by far the best way for MPs to remain engaged with implementation. MPs should always be on alert for opportunities to draw from the expertise and experience of civil society groups, including NGOs, universities, community or religious groups or others. Once again, an open-door policy and regular meetings with leaders of these groups is an important way for MPs to stay connected with unfolding developments. Directly interfacing with these groups will allow for fluid information sharing and anecdotal evidence as to the effectiveness of the law. This can be done through:

- Field visits, camp/settlement walkabouts and home visits;
- Consultation, interviews or meetings with affected parties or communities;
- Formal surveys or questionnaires in areas of displacement, return or settlement;
- The review of information provided by NGOs, or by the facilities being used by affected populations (such as legal aid clinics, health facilities, etc.);
- Regular meetings with humanitarian organizations, development actors and other local actors involved in implementation.

Chapter Five: Summary and Action Points

Parliament has an important oversight function in ensuring that the executive implements an IDP law faithfully and effectively.

- ✓ Parliamentarians should ensure that when sitting on parliamentary committees, they are familiar with relevant documents and reports, provide opportunities for all interested parties to be heard, and provide recommendations to parliament that achieve outcomes for IDPs.

Actors involved in implementing the IDP law need to be adequately resourced to fulfil their functions.

- ✓ Parliamentarians should review financial needs assessments and budgets carefully to ensure that organizations are able to achieve required outputs.
- ✓ Parliamentarians should provide sufficient resources out of the national budget to fund IDP protection and assistance efforts.
- ✓ Parliamentarians should ensure that the IDP law mandates efforts to seek the support of humanitarian and development organizations where national resources are limited or unavailable.

Parliamentarians have important monitoring roles to play by engaging with affected communities and interested actors and serving on parliamentary oversight committees.

- ✓ Parliamentarians should speak regularly with IDPs and directly with affected communities and other relevant actors engaged in implementing the law.
- ✓ Parliamentarians should review reports on implementation from the NHRI or other groups and request them to use the parliamentary process where appropriate.

Other national actors can contribute to monitoring and oversight, and parliamentarians can support and take advantage of their work.

- ✓ Parliamentarians should consider mandating steering committees and NHRIs to carry out monitoring functions.
- ✓ Parliamentarians should ensure that the monitoring functions of these bodies is funded adequately.
- ✓ Parliamentarians should thoroughly and genuinely consider the findings, reports and recommendations of national monitoring bodies.

Useful Resources

Guidance Materials

Addressing Internal Displacement: A Framework for National Responsibility (2005), available at www.brookings.edu/fp/projects/idp/20050401_nrframework.pdf.

National Instruments on Internal Displacement: A Guide to their development (2013), available at www.internal-displacement.org/idmc/website/resources.nsf.

Guiding Principles on Internal Displacement with Annotations (2nd Ed., 2008), available at www.idpguidingprinciples.org/.

Guidance on Profiling Internally Displaced Persons (2007), available at www.unhcr.org/refworld/docid/47b5ad3a2.html.

IASC Handbook for the Protection of Internally Displaced Persons (2010), available at www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4790cb02&page=search.

IASC Framework on Durable Solutions for Internally Displaced Persons (2010), available at www.brookings.edu/research/reports/2010/04/durable-solutions.

IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters (2011), available at ochanet.unocha.org/p/Documents/Operational%20Guidelines.pdf.

Protecting IDPs: A Manual for Policy and Law Makers (2008), available at www.brookings.edu/research/papers/2008/10/16-internal-displacement.

Treaties

African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2012), available at www.internal-displacement.org/kampala-convention.

Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (1949), available at www.icrc.org/ihl.nsf/full/380.

Great Lakes Protocol on the Property Rights of Returning Persons (2006), available at www.internal-displacement.org/greatlakes.

Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons (2006), available at www.internal-displacement.org/greatlakes.

International Covenant on Civil and Political Rights (1966), available at www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx.

International Covenant on Economic, Social and Cultural Rights (1966), available at www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I) (1977), available at www.icrc.org/ihl.nsf/full/470?opendocument.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II) (1977), available at www.icrc.org/ihl.nsf/full/475?opendocument.

Rome Statute of the International Criminal Court (1998), available at untreaty.un.org/cod/icc/statute/romefra.htm.

Relevant Organizations

Special Rapporteur on the human rights of internally displaced persons

The Special Rapporteur is appointed by the United Nations Human Rights Council, and can greatly assist States in preparing their IDP laws or national frameworks. In particular, the Special Rapporteur can:

- Assist in building political consensus by visiting the country and meeting with government officials and key stakeholders;
- Raise the profile of an internal displacement situation domestically, regionally and internationally;
- Build capacity and knowledge on law and policymaking;
- Provide legal advice and technical support to all branches of the State in preparing and implementing an IDP law.

Information on the Special Rapporteur, including contact details, can be found at: www.ohchr.org/EN/Issues/IDPersons/Pages/IDPersonsIndex.aspx.

Office of the United Nations High Commissioner for Refugees (UNHCR)

IDPs are persons of concern to UNHCR, which runs numerous IDP operations worldwide and plays an important role in the assistance and protection of IDPs. The agency has vast experience in protecting IDPs, relevant legal and policy expertise, and capacity to support the development of national IDP legislation. UNHCR may assist parliaments in the process of developing national legislation including by:

- Providing guidance and relevant materials and tools for MPs and government drafters to consider when developing a national IDP law;
- Providing training on relevant international and regional standards on internal displacement to MPs and government drafters;
- Supporting policy development on internal displacement with a view to preparing legislation;

- Participating in and supporting consultation processes, in particular by ensuring IDPs' inclusion;
- Participating in the review of draft bills by providing its particular expertise to ensure the realities of the operational context are well reflected;
- Supporting the implementation of a national IDP law within the remit of the IDP operation in a country.

UNHCR is also an important advocate for IDPs' rights with governments and well positioned to suggest the development of a legal framework in a country.

Information on UNHCR's work with internally displaced persons can be found at: www.unhcr.org/pages/49c3646c146.html.

Inter-Parliamentary Union (IPU)

The Inter-Parliamentary Union, established in 1889, is an international organization of parliaments. Its primary purpose is to promote inter-parliamentary dialogue in working toward peace, cooperation, and the establishment of representative democracy. IPU can assist countries in developing an IDP law by:

- fostering contacts, coordination, and the exchange of experiences with parliaments that have developed or are developing an IDP law or policy;
- facilitating connections with regional parliamentary bodies;
- providing information to and supporting countries, and parliamentary human rights committees in particular, in their efforts to comply with human rights/humanitarian law obligations.

Information on IPU can be found at: www.ipu.org.

The United Nations Office for Coordination of Humanitarian Affairs (OCHA)

OCHA is concerned with bringing together humanitarian actors to ensure a coherent response to emergencies. Even in the absence of an emergency however, OCHA can provide significant support and advice for the development of an IDP law by:

- providing information on the situation of internal displacement in a country's particular context, and more generally;
- organizing appeals for and monitoring humanitarian funding;
- identifying and accessing other potential humanitarian and development partners.

Information on OCHA's work on internal displacement can be found at: www.unocha.org/what-we-do/policy/thematic-areas/displacement.

The United Nations Office for Disaster Risk Reduction (UNISDR)

With the important connection between internal displacement and disasters, UNISDR's work is particularly relevant to the development of a national IDP law. UNISDR is the central focal point for the coordination of disaster risk reduction (DRR), which includes implementing the International Strategy for Disaster Reduction (adopted in 1999) and the Hyogo Framework for Action. UNISDR supports the efforts of parliamentarians to develop a political environment conducive to DRR. Its "Parliamentary Champions" programme has proven particularly effective in raising the profile of DRR regionally and internationally. UNISDR also fosters national participation in disaster risk reduction by supporting national platforms, and can provide substantial information for countries wishing to connect their IDP and disaster laws.

Information on UNISDR's work, including contact details can be found at: www.unisdr.org/partners/parliamentarians.

The International Committee of the Red Cross (ICRC)

The ICRC is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflicts and other situations of violence and to provide them with assistance.

The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and humanitarian principles.

The ICRC's overall objective is to ensure that authorities and other constituted groups comply with their obligations under IHL and IHRL, namely to

respect and protect the civilian population. The ICRC strives to alleviate the suffering of people who are caught up in armed conflict and other situations of violence. To that end, the organization provides effective and efficient assistance and protection for such persons, including internally displaced persons (IDPs) while taking into consideration the actions of other (humanitarian) organizations. The ICRC, together with the national societies, has developed a multidisciplinary approach to respond to the basic needs of communities affected by displacement.

Established in 1863, the ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent movement. It directs and coordinates the international activities conducted by the movement in armed conflicts and other situations of violence.

Information on the ICRC can be found at: www.icrc.org.

The Joint IDP Profiling Services (JIPS)

The JIPS can assist governments in obtaining accurate information about their IDP populations and support decisions based on that information. Its steering committee is comprised of organizations with substantial experience in IDP solutions, including the Danish Refugee Council, the Internal Displacement Monitoring Centre of the Norwegian Refugee Council, the International Organization for Migration (IOM), the Office of the Special Rapporteur on the Human Rights of IDPs, UNHCR, UNOCHA, and UNFPA. JIPS offers four main services:

- Field support and technical advice, including data collection and capacity building.
- Training and capacity building.
- Tools and guidance, including a number of profiling and data collection resources that will inform and facilitate information gathering, sharing and analysis.
- Advocacy in how profiling and data gathering can better serve IDP solutions.

Information on JIPS, including contact details can be found at: www.jips.org/.

Brookings-LSE Project on Internal Displacement

The Brookings-LSE Project was established to promote effective responses to internal displacement at the national, regional and international levels. It is a leading source of research, analysis and support for the Special Rapporteur (who serves as co-director of the project), and of information relevant to governments designing a national framework on internal displacement.

Jointly with UNHCR, the Brookings Institution-LSE Project on Internal Displacement maintains freely accessible databases on laws and policies and other important documents. MPs can benefit from lessons learned by drawing on these existing approaches (particularly from countries with similar legal and political systems). These databases are available at: www.unhcr.org/refworld/idps.html.

Information on the Project, and contact details can be found at: www.brookings.edu/about/projects/idp.

Internal Displacement Monitoring Centre (IDMC)

IDMC was established by the Norwegian Refugee Council (NRC) to monitor internal displacement worldwide and to contribute to capacity building for national responses to internal displacement. IDMC's work includes advocacy and information dissemination, but it also provides workshops for national authorities on IDP protection and assistance.

Information on IDMC can be found at: www.internal-displacement.org.

Annex I

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.

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.

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.

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.

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.

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.

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:

- (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.

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

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;
- (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

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

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.

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.

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 II

African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)

Preamble

We, the Heads of State and Government of the Member States of the African Union;

CONSCIOUS of the gravity of the situation of internally displaced persons as a source of continuing instability and tension for African states;

ALSO CONSCIOUS of the suffering and specific vulnerability of internally displaced persons;

REITERATING the inherent African custom and tradition of hospitality by local host communities for persons in distress and support for such communities;

COMMITTED to sharing our common vision of providing durable solutions to situations of internally displaced persons by establishing an appropriate legal framework for their protection and assistance;

DETERMINED to adopt measures aimed at preventing and putting an end to the phenomenon of internal displacement by eradicating the root causes, especially persistent and recurrent conflicts as well as addressing displacement caused by natural disasters, which have a devastating impact on human life, peace, stability, security, and development;

CONSIDERING the 2000 Constitutive Act of the African Union and the 1945 Charter of the United Nations;

REAFFIRMING the principle of the respect of the sovereign equality of States Parties, their territorial integrity and political independence as stipulated in the Constitutive Act of the African Union and the United Nations Charter;

RECALLING the 1948 Universal Declaration of Human Rights, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Four Geneva Conventions and the 1977 Additional Protocols to the Geneva Conventions, the 1951 United Nations Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, the 1981 African Charter on Human and Peoples' Rights and the 2003 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the 1990 African Charter on the Rights and Welfare of the Child, the 1994 Addis Ababa Document on Refugees and Forced Population Displacement in Africa, and other relevant United Nations and African Union human rights instruments, and relevant Security Council Resolutions;

MINDFUL that Member States of the African Union have adopted democratic practices and adhere to the principles of non-discrimination, equality and equal protection of the law under the 1981 African Charter on Human and Peoples' Rights, as well as under other regional and international human rights law instruments;

RECOGNISING the inherent rights of internally displaced persons as provided for and protected in international human rights and humanitarian law and as set out in the 1998 United Nations Guiding Principles on Internal Displacement, which are recognized as an important international framework for the protection of internally displaced persons;

AFFIRMING our primary responsibility and commitment to respect, protect and fulfill the rights to which internally displaced persons are entitled, without discrimination of any kind;

NOTING the specific roles of international Organizations and agencies within the framework of the United Nations inter-agency collaborative approach to internally displaced persons, especially the protection expertise of the Office of the United Nations High Commissioner for Refugees (UNHCR) and the invitation extended to it by the Executive Council of the African Union

in Decision EX/CL.413 (XIII) of July 2008 at Sharm El Sheikh, Egypt, to continue and reinforce its role in the protection of and assistance to internally displaced persons, within the United Nations coordination mechanism; and noting also the mandate of the International Committee of the Red Cross to protect and assist persons affected by armed conflict and other situations of violence, as well as the work of civil society organizations, in conformity with the laws of the country in which they exercise such roles and mandates;

RECALLING the lack of a binding African and international legal and institutional framework specifically, for the prevention of internal displacement and the protection of and assistance to internally displaced persons;

REAFFIRMING the historical commitment of the AU Member States to the protection of and assistance to refugees and displaced persons and, in particular, the implementation of Executive Council Decisions EX.CL/Dec.129 (V) and EX.CL/127 (V) of July 2004 in Addis Ababa, to the effect that the specific needs of internally displaced persons (IDPs) such as protection and assistance should be addressed through a separate legal instrument, and to collaborate with relevant cooperating partners and other stakeholders to ensure that internally displaced persons are provided with an appropriate legal framework to ensure their adequate protection and assistance as well as with durable solutions, respectively;

CONVINCED that the present Convention for the Protection and Assistance of Internally Displaced Persons presents such a legal framework;

HAVE AGREED AS FOLLOWS:

Article 1 – Definitions

For the purpose of the present Convention:

- a. “African Charter” means the African Charter on Human and Peoples’ Rights;
- b. “African Commission” means the African Commission on Human and Peoples’ Rights;
- c. “African Court of Justice and Human Rights” means the African Court of Justice and Human Rights;
- d. Arbitrary displacement means arbitrary displacement as referred to in Article 4 (4) (a) to (h);
- e. “Armed Groups” means dissident armed forces or other organized armed groups that are distinct from the armed forces of the state;

- f. “AU” means the African Union;
- g. “AU Commission” means the Secretariat of the African Union, which is the depository of the regional instruments;
- h. “Child” means every human being below the age of 18 years;
- i. “Constitutive Act” means the Constitutive Act of the African Union;
- j. “Harmful Practices” means all behaviour, attitudes and/or practices which negatively affect the fundamental rights of persons, such as but not limited to their right to life, health, dignity, education, mental and physical integrity and education;
- k. “Internally Displaced Persons” means 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;
- l. “Internal displacement” means the involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognized state borders;
- m. “Member State” means a Member State of the African Union;
- n. “Non-state actors” means private actors who are not public officials of the State, including other armed groups not referred to in article 1(d) above, and whose acts cannot be officially attributed to the State;
- o. “OAU” means the Organization of African Unity;
- p. “Women” mean persons of the female gender, including girls;
- q. “Sphere standards” mean standards for monitoring and evaluating the effectiveness and impact of humanitarian assistance; and
- r. “States Parties” means African States which have ratified or acceded to this Convention.

Article 2 – Objectives

The objectives of this Convention are to:

- a. Promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions;
- b. Establish a legal framework for preventing internal displacement, protecting and assisting internally displaced persons in Africa; and
- c. Establish a legal framework for solidarity, cooperation, promotion of durable solutions and mutual support between the States Parties in order to combat displacement and address its consequences;

- d. Provide for the obligations and responsibilities of States Parties, with respect to the prevention of internal displacement and protection of, and assistance, to internally displaced persons;
- e. Provide for the respective obligations, responsibilities and roles of armed groups, non-state actors and other relevant actors, including civil society organizations, with respect to the prevention of internal displacement and protection of, and assistance to, internally displaced persons;

Article 3 – General Obligations Relating to States Parties

1. States Parties undertake to respect and ensure respect for the present Convention. In particular, States Parties shall:
 - a. Refrain from, prohibit and prevent arbitrary displacement of populations;
 - b. Prevent political, social, cultural and economic exclusion and marginalisation, that are likely to cause displacement of populations or persons by virtue of their social identity, religion or political opinion;
 - c. Respect and ensure respect for the principles of humanity and human dignity of internally displaced persons;
 - d. Respect and ensure respect and protection of the human rights of internally displaced persons, including humane treatment, non-discrimination, equality and equal protection of law;
 - e. Respect and ensure respect for international humanitarian law regarding the protection of internally displaced persons,;
 - f. Respect and ensure respect for the humanitarian and civilian character of the protection of and assistance to internally displaced persons, including ensuring that such persons do not engage in subversive activities;
 - g. Ensure individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law;
 - h. Ensure the accountability of non-State actors concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts;
 - i. Ensure the accountability of non-State actors involved in the exploration and exploitation of economic and natural resources leading to displacement;
 - j. Ensure assistance to internally displaced persons by meeting their basic needs as well as allowing and facilitating rapid and unimpeded access by humanitarian organizations and personnel;
 - k. Promote self-reliance and sustainable livelihoods amongst internally displaced persons, provided that such measures shall not be used as a

basis for neglecting the protection of and assistance to internally displaced persons, without prejudice to other means of assistance;

2. States Parties shall:

- a. Incorporate their obligations under this Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons in conformity with their obligations under international law;
- b. Designate an authority or body, where needed, responsible for coordinating activities aimed at protecting and assisting internally displaced persons and assign responsibilities to appropriate organs for protection and assistance, and for cooperating with relevant international organizations or agencies, and civil society organizations, where no such authority or body exists;
- c. Adopt other measures as appropriate, including strategies and policies on internal displacement at national and local levels, taking into account the needs of host communities;
- d. Provide, to the extent possible, the necessary funds for protection and assistance without prejudice to receiving international support;
- e. Endeavour to incorporate the relevant principles contained in this Convention into peace negotiations and agreements for the purpose of finding sustainable solutions to the problem of internal displacement.

Article 4 – Obligations of States Parties relating to Protection from Internal Displacement

1. States Parties shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, so as to prevent and avoid conditions that might lead to the arbitrary displacement of persons;

2. States Parties shall devise early warning systems, in the context of the continental early warning system, in areas of potential displacement, establish and implement disaster risk reduction strategies, emergency and disaster preparedness and management measures and, where necessary, provide immediate protection and assistance to internally displaced persons;

3. States Parties may seek the cooperation of international organizations or humanitarian agencies, civil society organizations and other relevant actors;

4. All persons have a right to be protected against arbitrary displacement. The prohibited categories of arbitrary displacement include but are not limited to:

- a. Displacement based on policies of racial discrimination or other similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the population;
 - b. Individual or mass displacement of civilians in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand, in accordance with international humanitarian law;
 - c. Displacement intentionally used as a method of warfare or due to other violations of international humanitarian law in situations of armed conflict;
 - d. Displacement caused by generalized violence or violations of human rights;
 - e. Displacement as a result of harmful practices;
 - f. Forced evacuations in cases of natural or human made disasters or other causes if the evacuations are not required by the safety and health of those affected;
 - g. Displacement used as a collective punishment;
 - h. Displacement caused by any act, event, factor, or phenomenon of comparable gravity to all of the above and which is not justified under international law, including human rights and international humanitarian law.
5. States Parties shall endeavour to protect communities with special attachment to, and dependency, on land due to their particular culture and spiritual values from being displaced from such lands, except for compelling and overriding public interests;
6. States Parties shall declare as offences punishable by law acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity.

Article 5 – Obligations of States Parties relating to Protection and Assistance

1. States Parties shall bear the primary duty and responsibility for providing protection of and humanitarian assistance to internally displaced persons within their territory or jurisdiction without discrimination of any kind.
2. States Parties shall cooperate with each other upon the request of the concerned State Party or the Conference of State Parties in protecting and assisting internally displaced persons.
3. States Parties shall respect the mandates of the African Union and the United Nations, as well as the roles of international humanitarian organizations in

providing protection and assistance to internally displaced persons, in accordance with international law.

4. States Parties shall take measures to protect and assist persons who have been internally displaced due to natural or human made disasters, including climate change.

5. States Parties shall assess or facilitate the assessment of the needs and vulnerabilities of internally displaced persons and of host communities, in cooperation with international organizations or agencies.

6. States Parties shall provide sufficient protection and assistance to internally displaced persons, and where available resources are inadequate to enable them to do so, they shall cooperate in seeking the assistance of international organizations and humanitarian agencies, civil society organizations and other relevant actors. Such organizations may offer their services to all those in need.

7. States Parties shall take necessary steps to effectively organize, relief action that is humanitarian, and impartial in character, and guarantee security. States Parties shall allow rapid and unimpeded passage of all relief consignments, equipment and personnel to internally displaced persons. States Parties shall also enable and facilitate the role of local and international organizations and humanitarian agencies, civil society organizations and other relevant actors, to provide protection and assistance to internally displaced persons. States Parties shall have the right to prescribe the technical arrangements under which such passage is permitted.

8. States Parties shall uphold and ensure respect for the humanitarian principles of humanity, neutrality, impartiality and independence of humanitarian actors.

9. States Parties shall respect the right of internally displaced persons to peacefully request or seek protection and assistance, in accordance with relevant national and international laws, a right for which they shall not be persecuted, prosecuted or punished.

10. States Parties shall respect, protect and not attack or otherwise harm humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons.

11. States Parties shall take measures aimed at ensuring that armed groups act in conformity with their obligations under Article 7.

12. Nothing in this Article shall prejudice the principles of sovereignty and territorial integrity of states.

Article 6 – Obligations Relating to International Organizations and Humanitarian Agencies

1. International organizations and humanitarian agencies shall discharge their obligations under this Convention in conformity with international law and the laws of the country in which they operate.

2. In providing protection and assistance to Internally Displaced Persons, international organizations and humanitarian agencies shall respect the rights of such persons in accordance with international law.

3. International organizations and humanitarian agencies shall be bound by the principles of humanity, neutrality, impartiality and independence of humanitarian actors, and ensure respect for relevant international standards and codes of conduct.

Article 7 – Protection and Assistance to Internally Displaced Persons in Situations of Armed Conflict

1. The provisions of this Article shall not, in any way whatsoever, be construed as affording legal status or legitimizing or recognizing armed groups and are without prejudice to the individual criminal responsibility of the members of such groups under domestic or international criminal law.

2. Nothing in this Convention shall be invoked for the purpose of affecting the sovereignty of a State or the responsibility of the Government, by all legitimate means, to maintain or re-establish law and order in the State or to defend the national unity and territorial integrity of the State.

3. The protection and assistance to internally displaced persons under this Article shall be governed by international law and in particular international humanitarian law.

4. Members of Armed groups shall be held criminally responsible for their acts which violate the rights of internally displaced persons under international law and national law.

5. Members of armed groups shall be prohibited from:
 - a. Carrying out arbitrary displacement;
 - b. Hampering the provision of protection and assistance to internally displaced persons under any circumstances;
 - c. Denying internally displaced persons the right to live in satisfactory conditions of dignity, security, sanitation, food, water, health and shelter; and separating members of the same family;
 - d. Restricting the freedom of movement of internally displaced persons within and outside their areas of residence;
 - e. Recruiting children or requiring or permitting them to take part in hostilities under any circumstances;
 - f. Forcibly recruiting persons, kidnapping, abduction or hostage taking, engaging in sexual slavery and trafficking in persons especially women and children;
 - g. Impeding humanitarian assistance and passage of all relief consignments, equipment and personnel to internally displaced persons
 - h. Attacking or otherwise harming humanitarian personnel and resources or other materials deployed for the assistance or benefit of internally displaced persons and shall not destroy, confiscate or divert such materials; and
 - i. Violating the civilian and humanitarian character of the places where internally displaced persons are sheltered and shall not infiltrate such places.

Article 8 – Obligations relating to the African Union

1. The African Union shall have the right to intervene in a Member State pursuant to a decision of the Assembly in accordance with Article 4(h) of the Constitutive Act in respect of grave circumstances, namely: war crimes, genocide, and crimes against humanity;
2. The African Union shall respect the right of States Parties to request intervention from the Union in order to restore peace and security in accordance with Article 4(j) of the Constitutive Act and thus contribute to the creation of favourable conditions for finding durable solutions to the problem of internal displacement;
3. The African Union shall support the efforts of the States Parties to protect and assist internally displaced persons under this Convention. In particular, the Union shall:

- a. Strengthen the institutional framework and capacity of the African Union with respect to protection and assistance to internally displaced persons;
- b. Coordinate the mobilisation of resources for protection and assistance to internally displaced persons;
- c. Collaborate with international organizations and humanitarian agencies, civil society organizations and other relevant actors in accordance with their mandates, to support measures taken by States Parties to protect and assist internally displaced persons.
- d. Cooperate directly with African States and international organizations and humanitarian agencies, civil society organizations and other relevant actors, with respect to appropriate measures to be taken in relation to the protection of and assistance to internally displaced persons;
- e. Share information with the African Commission on Human and Peoples' Rights on the situation of displacement, and the protection and assistance accorded to internally displaced persons in Africa; and,
- f. Cooperate with the Special Rapporteur of the African Commission on Human and Peoples' Rights for Refugees, Returnees, IDPs and Asylum Seekers in addressing issues of internally displaced persons.

Article 9 – Obligations of States Parties Relating to Protection and Assistance During Internal Displacement

1. States Parties shall protect the rights of internally displaced persons regardless of the cause of displacement by refraining from, and preventing, the following acts, amongst others:
 - a. Discrimination against such persons in the enjoyment of any rights or freedoms on the grounds that they are internally displaced persons;
 - b. Genocide, crimes against humanity, war crimes and other violations of international humanitarian law against internally displaced persons;
 - c. Arbitrary killing, summary execution, arbitrary detention, abduction, enforced disappearance or torture and other forms of cruel, inhuman or degrading treatment or punishment;
 - d. Sexual and gender based violence in all its forms, notably rape, enforced prostitution, sexual exploitation and harmful practices, slavery, recruitment of children and their use in hostilities, forced labour and human trafficking and smuggling; and
 - e. Starvation.

2. States Parties shall:

- a. Take necessary measures to ensure that internally displaced persons are received, without discrimination of any kind and live in satisfactory conditions of safety, dignity and security;
- b. Provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services, and where appropriate, extend such assistance to local and host communities;
- c. Provide special protection for and assistance to internally displaced persons with special needs, including separated and unaccompanied children, female heads of households, expectant mothers, mothers with young children, the elderly, and persons with disabilities or with communicable diseases;
- d. Take special measures to protect and provide for the reproductive and sexual health of internally displaced women as well as appropriate psycho-social support for victims of sexual and other related abuses;
- e. Respect and ensure the right to seek safety in another part of the State and to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk;
- f. Guarantee the freedom of movement and choice of residence of internally displaced persons, except where restrictions on such movement and residence are necessary, justified and proportionate to the requirements of ensuring security for internally displaced persons or maintaining public security, public order and public health;
- g. Respect and maintain the civilian and humanitarian character of the places where internally displaced persons are sheltered and safeguard such locations against infiltration by armed groups or elements and disarm and separate such groups or elements from internally displaced persons;
- h. Take necessary measures, including the establishment of specialized mechanisms, to trace and reunify families separated during displacement and otherwise facilitate the re-establishment of family ties;
- i. Take necessary measures to protect individual, collective and cultural property left behind by displaced persons as well as in areas where internally displaced persons are located, either within the jurisdiction of the State Parties, or in areas under their effective control;
- j. Take necessary measures to safeguard against environmental degradation in areas where internally displaced persons are located, either

within the jurisdiction of the State Parties, or in areas under their effective control;

- k. States Parties shall consult internally displaced persons and allow them to participate in decisions relating to their protection and assistance;
 - l. Take necessary measures to ensure that internally displaced persons who are citizens in their country of nationality can enjoy their civic and political rights, particularly public participation, the right to vote and to be elected to public office; and
 - m. Put in place measures for monitoring and evaluating the effectiveness and impact of the humanitarian assistance delivered to internally displaced persons in accordance with relevant practice, including the Sphere Standards.
3. States Parties shall discharge these obligations, where appropriate, with assistance from international organizations and humanitarian agencies, civil society organizations, and other relevant actors.

Article 10 – Displacement induced by Projects

1. States Parties, as much as possible, shall prevent displacement caused by projects carried out by public or private actors;
2. States Parties shall ensure that the stakeholders concerned will explore feasible alternatives, with full information and consultation of persons likely to be displaced by projects;
3. States parties shall carry out a socio-economic and environmental impact assessment of a proposed development project prior to undertaking such a project.

Article 11 – Obligations of States Parties relating to Sustainable Return, Local Integration or Relocation

1. States Parties shall seek lasting solutions to the problem of displacement by promoting and creating satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis and in circumstances of safety and dignity.
2. States Parties shall enable internally displaced persons to make a free and informed choice on whether to return, integrate locally or relocate by consulting them on these and other options and ensuring their participation in finding sustainable solutions.

3. States Parties shall cooperate, where appropriate, with the African Union and international organizations or humanitarian agencies and civil society organizations, in providing protection and assistance in the course of finding and implementing solutions for sustainable return, local integration or relocation and long-term reconstruction.

4. States Parties shall establish appropriate mechanisms providing for simplified procedures where necessary, for resolving disputes relating to the property of internally displaced persons.

5. States Parties shall take all appropriate measures, whenever possible, to restore the lands of communities with special dependency and attachment to such lands upon the communities' return, reintegration, and reinsertion.

Article 12 – Compensation

1. States Parties shall provide persons affected by displacement with effective remedies.

2. States Parties shall establish an effective legal framework to provide just and fair compensation and other forms of reparations, where appropriate, to internally displaced persons for damage incurred as a result of displacement, in accordance with international standards.

3. A State Party shall be liable to make reparation to internally displaced persons for damage when such a State Party refrains from protecting and assisting internally displaced persons in the event of natural disasters.

Article 13 – Registration and Personal Documentation

1. States Parties shall create and maintain an up-dated register of all internally displaced persons within their jurisdiction or effective control. In doing so, States Parties may collaborate with international organizations or humanitarian agencies or civil society organizations.

2. States Parties shall ensure that internally displaced persons shall be issued with relevant documents necessary for the enjoyment and exercise of their rights, such as passports, personal identification documents, civil certificates, birth certificates and marriage certificates.

3. States Parties shall facilitate the issuance of new documents or the replacement of documents lost or destroyed in the course of displacement, without

imposing unreasonable conditions, such as requiring return to one's area of habitual residence in order to obtain these or other required documents. The failure to issue internally displaced persons with such documents shall not in any way impair the exercise or enjoyment of their human rights.

4. Women and men as well as separated and unaccompanied children shall have equal rights to obtain such necessary identity documents and shall have the right to have such documentation issued in their own names.

Article 14 – Monitoring Compliance

1. States Parties agree to establish a Conference of States Parties to this Convention to monitor and review the implementation of the objectives of this Convention.

2. States Parties shall enhance their capacity for cooperation and mutual support under the auspices of the Conference of the States Parties.

3. States Parties agree that the Conference of the States Parties shall be convened regularly and facilitated by the African Union.

4. States Parties shall, when presenting their reports under Article 62 of the African Charter on Human and Peoples' Rights as well as, where applicable, under the African Peer Review Mechanism indicate the legislative and other measures that have been taken to give effect to this Convention.

Final Provisions

Article 15 – Application

1. States Parties agree that except where expressly stated in this Convention, its provisions apply to all situations of internal displacement regardless of its causes.

2. States Parties agree that nothing in this Convention shall be construed as affording legal status or legitimizing or recognizing armed groups and that its provisions are without prejudice to the individual criminal responsibility of their members under domestic or international criminal law.

Article 16 – Signature, ratification and membership

1. This Convention shall be open to signature, ratification or accession by Member States of the AU in accordance with their respective constitutional procedures.

2. The instruments of ratification or accession shall be deposited with the Chairperson of the African Union Commission.

Article 17 – Entry into force

1. This Convention shall enter into force thirty (30) days after the deposit of the instruments of ratification or accession by fifteen (15) Member States.

2. The Chairperson of the AU Commission shall notify Member States of the coming into force of this Convention.

Article 18 – Amendment and Revision

1. States Parties may submit proposals for the amendment or revision of this Convention.

2. Proposals for amendment or revision shall be submitted, in writing, to the Chairperson of the Commission of the AU who shall transmit the same to the States Parties within thirty (30) days of receipt thereof.

3. The Conference of States Parties, upon advice of the Executive Council, shall examine these proposals within a period of one (1) year following notification of States Parties, in accordance with the provisions of paragraph 2 of this Article.

4. Amendments or revision shall be adopted by the Conference of States Parties by a simple majority of the States Parties present and voting.

5. Amendments shall come into force thirty (30) days following the depositing of the fifteenth (15) instrument of ratification by the States Parties with the Chairperson of the AU Commission.

Article 19 – Denunciation

1. A State Party may denounce this Convention by sending a written notification addressed to the Chairperson of the AU Commission, while indicating the reasons for such a denunciation.

2. The denunciation shall take effect one (1) year from the date when the notification was received by the Chairperson of the AU Commission, unless a subsequent date has been specified.

Article 20 – Saving Clause

1. No provision in this Convention shall be interpreted as affecting or undermining the right of internally displaced persons to seek and be granted asylum within the framework of the African Charter on Human and Peoples' Rights, and to seek protection, as a refugee, within the purview of the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa or the 1951 U.N Convention Relating to the Status of Refugees as well as the 1967 Protocol Relating to the Status of Refugees.

2. This Convention shall be without prejudice to the human rights of internally displaced persons under the African Charter on Human and Peoples' Rights and other applicable instruments of international human rights law or international humanitarian law. Similarly, it shall in no way be understood, construed or interpreted as restricting, modifying or impeding existing protection under any of the instruments mentioned herein.

3. The right of internally displaced persons to lodge a complaint with the African Commission on Human and Peoples' Rights or the African Court of Justice and Human Rights, or any other competent international body shall in no way be affected by this Convention.

4. The provisions of this Convention shall be without prejudice to the individual criminal responsibility of internally displaced persons, within the framework of national or international criminal law and their duties by virtue of the African Charter on Human and Peoples' Rights.

Article 21 – Reservations

States Parties shall not make or enter reservations to this Convention that are incompatible with the object and purpose of this Convention.

Article 22 – Settlement of Disputes

1. Any dispute or differences arising between the States Parties with regard to the interpretation or application of this Convention shall be settled amicably through direct consultations between the States Parties concerned. In the event of failure to settle the dispute or differences, either State may refer the dispute to the African Court of Justice and Human Rights.

2. Until such time as and when the latter shall have been established, the dispute or differences shall be submitted to the Conference of the States Parties,

which will decide by consensus or, failing which, by a two-third (2/3) majority of the States Parties present and voting.

Article 23 – Depository

1. This Convention shall be deposited with the Chairperson of the AU Commission, who shall transmit a certified true copy of the Convention to the Government of each signatory State.

2. The Chairperson of the AU Commission shall register this Convention with the United-Nations Secretary-General as soon as it comes into force.

3. This Convention is drawn up in four (4) original texts; in the Arabic, English, French and Portuguese languages, all four (4) being equally authentic.

ADOPTED BY THE SPECIAL SUMMIT OF THE UNION HELD IN KAMPALA, UGANDA, 22ND OCTOBER 2009

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