



Part IV

PROTECTION RISKS: PREVENTION, MITIGATION AND RESPONSE

Photo Katharina Rohl courtesy of Prof. Walter Kälin, Representative of the UN Secretary General on the Human Rights of IDPs / OHCHR Azerbaijan - IDP collective centre Sumgayit

Overview

Part IV of the Handbook provides guidance to humanitarian and human rights staff working in complex emergencies on ways to prevent and respond to specific protection risks and concerns that often arise in situations of internal displacement.

Part IV is composed of 19 chapters, each of which addresses a specific risk or problem that is commonly encountered by internally displaced persons (IDPs) and affected populations. Each chapter:

- describes the risk in question, analyses its impact upon the lives and well-being of IDPs, and identifies the individuals and groups most at risk;
- contains a table with suggested activities that can be undertaken by humanitarian, human rights and development actors to prevent and/or respond to the risk in question (while many of the generic activities are described in greater detail in the chapters in Part V of the Handbook);
- provides an overview of relevant legal principles and standards contained in international (and regional) human rights, international humanitarian law, and international criminal law, where applicable, and emphasizes the responsibility of the State to respect and ensure respect of these principles (obligations which, as highlighted in Part I.2, non-State actors also have in conflict situations);
- identifies key national, regional and international actors that can play a role in the response; and
- provides a list of useful references, tools and websites where further information can be found.

The chapters provide general guidance to be adapted by teams in the field to suit the context and the day-to-day reality of operations, including with regard to the roles and responsibilities of the different protection actors.

Part IV.1

Forced displacement

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Key message


Forced displacement has serious consequences for the lives, health and well-being of individuals and communities. It can occur in a wide range of circumstances and as a result of a variety of factors. Forced displacement is often, but not always, unlawful. While international law provides numerous safeguards against forced displacement, there may be circumstances in which it can serve a legitimate purpose. Even in such cases, however, it must meet certain minimum safeguards and take place in conditions of safety and dignity.

It must be underlined that all persons have a right to move freely and in safety. This right entails freedom from coercion to move or to stay in a particular place, unless provided by law, and also freedom to seek safety in another place within their country or to seek asylum in another country at any time. On their side, duty bearers and particularly State authorities have the obligation to refrain from causing arbitrary displacement and to prevent unlawful displacement from taking place while protecting the right of individuals to move freely. When displacement does occur, relevant authorities should make efforts to minimize and mitigate its adverse impact on individuals and communities and ensure a durable solution for all those affected.

Humanitarian and human rights actors can have a role in preventing or minimizing the occurrence of forced displacement. Usually these efforts will be inscribed within wider protective strategies including those targeting internally displaced persons (IDPs), communities at risk of displacement and the whole of the affected population in a given situation or region.

Note! Efforts to prevent and/or minimize forced displacement and mitigate its adverse effects must not in any way restrict or limit freedom of movement, impede people's ability to move, or influence their decision to do so.

1. What is forced displacement?

Forced displacement is a complex phenomenon. It can be understood as a protection risk in itself and also as a source of further protection risks. In some cases, forced displacement is also a coping mechanism of populations affected by armed conflict. This chapter deals mostly with displacement understood as a protection risk that needs in itself to be addressed. How to mitigate its consequences is the object of parts IV-VI of this Handbook. However, this chapter offers also some concise notes on this particular aspect (see part IV.2). 

According to the *Guiding Principles on Internal Displacement*, forced displacement occurs when individuals and communities 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.


Forced displacement is caused in many cases by a mix of factors. In some cases, the line between “choice” to flee and coercion to do so is difficult to determine. Displacement includes situations where people flee pre-emptively or as a coping mechanism, whether or not in the direct presence of threats. It also includes situations where people have been forcibly removed from their homes, evicted or relocated to another place not of their choosing, whether by State or non-State actors. Also, forced displacement can include situations where displaced persons have been forced to return to their place of origin or to settle elsewhere against their will. In all cases, the defining factor is the absence of will or consent.

2. What does the law say about forced displacement?

International law generally prohibits authorities and armed groups from ordering or purposefully causing any form of forced displacement, except in a few rare situations.

2.1 International (and regional) human rights law

International (and regional) human rights law guarantees several rights which provide safeguards against forced displacement. While there is no specific right to protection against forced displacement as such, it is inherent in a number of human rights, including the rights to freedom of movement and choice of residence,¹ the right to respect for the home and for privacy,² the right to an adequate standard of living, including food and housing,³ and the right to respect for the family.⁴

*See also Principles 5, 6, 7 and 9 of the **Guiding Principles on Internal Displacement**. See Annex 1 of the Handbook.* 

When is forced displacement unlawful?

Forced displacement is only permissible on an exceptional basis and for a limited number of reasons. **It is always unlawful:**

- 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;
- in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
- in cases of large-scale development projects which are not justified by compelling and overriding public interests;
- in cases of disasters, unless the safety and health of those affected requires their evacuation; and
- when it is used as collective punishment.

In addition, forced displacement **can be unlawful if:**

- minimum procedural guarantees are not respected;
- the manner in which it is carried out violates other rights and/or obligations that apply to the State or a party to the conflict, such as the rights to liberty and security, and the prohibition against torture, inhuman and degrading treatment; and
- it negatively impacts the enjoyment of human rights for the long term.


It is important to underline that, when discussing the legality of forced displacement, it is always the act of ordering or forcing displacement (usually by an authority or an armed group) that is called into question and not the act of fleeing by those being displaced which itself is never unlawful.

¹ See, at the international level, Art. 13 of UDHR; Art. 12 of ICCPR; Art. 5(d)(i) and (f) of ICERD; Art. 15 of CEDAW; and Art. 16 of ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries; and, at the regional level, Art. 12 of AfCHPR; Art. 22 of AmCHR; Arts. 20 and 21 of ArCHR; and Art. 2 of Protocol 4 to the ECHR. See also Principle 14 of the Guiding Principles on Internal Displacement.

² See, at the international level, Art. 12 of UDHR; Art. 17 of ICCPR; Art. 8(16) of CRC; and, at the regional level, Art. 10 of AfCRWC; Art. 11 of AmCHR; and Art 8 of ECHR.

³ See, for example, Art. 25 of UDHR; Art. 11 of ICESCR; Art. 5(e)(iii) of ICERD; and Art. 14(2)(h) of CEDAW; and Art. 27 of CRC; and, at the regional level, Arts. 15 and 16 of the Protocol to the AfCHPR on the Rights of Women in Africa. See also General Comments of the Committee on Economic, Social and Cultural Rights No. 4 (1991) on the right to adequate housing and No. 7 (1997) on forced evictions; and Principle 18 of the Guiding Principles on Internal Displacement.

⁴ See Art. 16 of UDHR; Art. 10 of ICESCR; Arts. 17 and 23 of ICCPR, Arts. 16 and 18 of CRC and at the regional level, Art. 18 of AfCHPR; Art. 17 of AmCHR; Art. 38 of ArCHR; Art. 5 of the Cairo Declaration on Human Rights in Islam; Arts. 8 and 12 of ECHR; and Art. 16 of the revised ESC. See also Principle 17 of the Guiding Principles on Internal Displacement.


Forced displacement of people by the authorities can only be justified on an exceptional basis under human rights law and subject to strict conditions. **It must be provided for by law** and be necessary and proportionate to achieve a legitimate aim, such as to protect national security or public order, public health or morals, or the rights and freedoms of others (*as outlined in Part V.12* ). It must be non-discriminatory and consistent with other human rights and international legal obligations of the State.

Even when such displacement can be justified, it must meet certain substantive and procedural safeguards and take place in conditions of safety and dignity. For example, any decision to displace individuals or communities must be taken by competent authorities. The authorities must assure the basic conditions for security and well-being at the place of destination before people are moved (including in the case of returns). Those affected must be informed of the reasons and procedures for displacement and given an opportunity to challenge the decision, including through independent judicial review. Wherever possible, their informed consent should be sought, their participation in planning and implementing the decision ensured and fair compensation given.⁵ Displacement should never be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

Particular care must be taken to protect indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on, and attachment to, their lands from displacement.

Certain human rights, such as freedom of movement, can be temporarily suspended by the national authorities in times of a public emergency, such as during armed conflict.⁶ Situations of armed conflict are governed by international humanitarian law.

2.2 International humanitarian law

International humanitarian law requires parties to a conflict to spare the civilian population as much as possible from the effects of hostilities and to treat all individuals in their power humanely. (*See Part I.2.2* ). The law specifically prohibits parties to a conflict to order the displacement of the civilian population, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand, and it requires that displaced persons be allowed to voluntarily return in safety as soon as those reasons cease to exist.


The law also requires that all possible measures be taken to protect any property left behind, to ensure satisfactory conditions, including shelter, hygiene, health, safety and nutrition, while in displacement and to ensure that members of the same family are not separated.⁷

Depending on the context, the forced displacement of civilians can constitute a war crime and/or crime against humanity.⁸

2.3 National legislation

Many national Constitutions affirm rights relevant to arbitrary displacement, such as the right to freedom of movement and choice of residence. In addition, an increasing number of

⁵ Regarding the issue of fair reparation, see the Basic principles and Guidelines on Development-based evictions and displacement, http://www2.ohchr.org/english/issues/housing/docs/guidelines_en.pdf. Compensation should be provided for any assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case. See also the Basic Principles and Guidelines on the Right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law.

⁶ See, for example, Art. 4 of ICCPR. Derogations are exceptional measures that are subject to strict requirements. *See Part I.2.1* .

⁷ See, for example, ICRC, Rules 129-132 of Customary International Humanitarian Law – Volume I: Rules, 2005. See also Arts. 49 and 147 of the Fourth Geneva Convention; Art. 85(4)(a) and Art. 4(3)(b) of Additional Protocol I; and Art. 17 of Additional Protocol II.

⁸ See Art. 147 of the Fourth Geneva Convention and Art. 85(4)(a) of Additional Protocol I. See also Art. 7(1)(d); Art. 8(2)(e)(viii) and Art. 8(2)(e)(viii) of the Statute of the ICC.

governments have strengthened their legislation regarding internal displacement to bring it in line with the *Guiding Principles on Internal Displacement*,⁹ in particular establishing as crimes under domestic law those acts of displacement that amount to crimes against humanity or war crimes.¹⁰ Other State regulations may also refer to arbitrary displacement and could be found for instance in military manuals and laws relating to civilian crisis management.

3. The responsibility of the State

The State and its institutions have a responsibility to respect and ensure respect for their human rights obligations at all times. In times of conflict, the parties to the conflict are similarly obliged to respect and ensure respect for the rules of international humanitarian law. The most effective way to minimize the risk of displacement is to avoid conditions that might compel people to leave their homes against their will. In most cases, forced displacement could be avoided or greatly reduced if the rules of international law were respected. National authorities should ensure that the specific measures indicated below are taken.

- Take all possible measures to prevent and avoid conditions that might cause or contribute to forced displacement. This could include, for instance, ensuring respect for the rule of law, combating impunity and otherwise creating an environment conducive to the realization of rights.
- Refrain from forcing individuals and communities to leave their homes or places of habitual residence and protect them from being arbitrarily displaced by others. The authorities should seek all possible alternatives before resorting to displacement.
- When displacement is necessary and justifiable, the authorities must take action to minimize the scale of displacement and mitigate its adverse effects. In particular, the authorities should ensure to the greatest extent possible that it takes place in satisfactory conditions of safety, shelter, nutrition, health and hygiene, and that members of the same family are not separated.
- Ensure that displacement lasts no longer than required by the circumstances and that a durable solution is found for all those affected. The authorities should aim to create conditions for voluntary return and reintegration and/or settlement elsewhere in the country and facilitate them. IDPs should not be discriminated against as a result of having been displaced and should be entitled to restitution and/or compensation for property of which they may have been arbitrarily deprived.
- Provide protection and assistance to IDPs. Where the national authorities are unable or unwilling to do so, they should ensure rapid and unimpeded access by humanitarian actors to populations in need and facilitate the free passage of humanitarian assistance.
- Advocate with parties to armed conflicts and take all relevant measures, regardless of the country or countries concerned, to ensure that forced displacement of civilians does not occur unless necessary for their own protection or justified by imperative military reasons.¹¹

⁹ For instance, Angola, Burundi, Colombia, Georgia and Peru. In 1997, Colombia adopted Law 387 on “measures to prevent forced displacement and to provide care, protection, support and socio-economic stability for persons displaced internally by violence in the Republic of Colombia.” Although the law is consistent with the UN Guiding Principles on Internal Displacement, its implementation is problematic.

¹⁰ See, for instance, the Penal Code of Colombia, article 284A.


¹¹ Under the Geneva Conventions of 1949 and their First Additional Protocol of 1977, States have undertaken a distinct legal obligation to ensure respect of international humanitarian law in any existing international conflict or situations of occupation. This obligation is of customary nature and is also applicable in non-international armed conflict. This obligation to “ensure respect” is not limited to behaviour by parties to a conflict but includes the requirement that States do all in their power to ensure that international humanitarian law is respected universally.

4. The role of humanitarian and human rights actors

Humanitarian and human rights actors can play an important role in preventing and/or minimizing forced displacement and mitigating its adverse effects when it occurs. Such efforts should be based on an understanding of the applicable national and international legal framework and should be undertaken in close coordination with other relevant human rights, humanitarian, development and political actors. Humanitarian action must never undermine the right of every person to move freely within and out of his/her country as well as to seek asylum in another country.

4.1 Addressing the causes of displacement


Forced displacement is often caused by violations of human rights or, in cases of conflict, of international humanitarian law. Therefore, preventing these violations is often necessary to address displacement. However, it may be difficult for field practitioners to distinguish the violations of rights that are specifically at the root of displacement from the broader violations of rights occurring at a particular place. Selecting communities at risk of displacement for specific protective action, as opposed to developing protection strategies for the whole of an affected population, may overlook the situation of communities who suffer serious violations of rights without being at a particular risk of displacement. Thus, it is typically most essential that general protective strategies target identified threats and risks to affected populations according to their magnitude and severity rather than according to whether or not the threats/risks underlie the displacement. Nevertheless, these strategies may contain some elements that are displacement-specific, such as contingency planning. In any case, actions must be coordinated with agencies having specific mandates with regard to human rights or international humanitarian law.

Efforts to prevent or minimize unlawful displacement generally include a set of strategies or activities that seek to strengthen the rule of law as well as to prevent and respond to violations of human rights and humanitarian law. This can include building the capacities of the authorities to maintain law and order, combat impunity, ensure access to justice and promote the peaceful resolution of conflict and disputes. In times of armed conflict, special efforts must be made to ensure respect for humanitarian law by all parties to a conflict, including in particular provisions relating to the protection of civilians (*as elaborated in Part I.2.2* ).






In our work, we can ...

Assessment


(See Part III. I )

- Ensure that protection assessments and analyses gather information about any factors or events that might result in forced displacement. Pay special attention to factors such as potential political or ethnic tensions within the country, disputes over land and other resources, incidents of violence and human rights violations, migratory movements which could result in clashes (e.g. between resident farming communities and nomadic herders), large-scale development projects and disaster-prone areas.
- Share such information with relevant actors in order to inform early warning mechanisms and/or contingency planning.




<p>Early-warning and contingency planning</p>	<ul style="list-style-type: none"> • Work with other humanitarian and human rights actors to establish early warning mechanisms and develop contingency plans to respond to incidents of forced displacement. Such plans should identify the key actors, their roles and responsibilities and the strategies and/or activities which should be undertaken in case displacement occurs. All staff and partners should be familiar with contingency plans and standard operating procedures. • Where appropriate, help build the capacity of the competent authorities to maintain early warning mechanisms and develop and implement contingency plans in case displacement is imminent or already occurring.
<p>Coordination</p>	<ul style="list-style-type: none"> • Ensure that all preventative efforts are coordinated with other relevant human rights, humanitarian, development, political and military actors, such as peacekeeping forces where present. This includes protection working groups at all levels, the broader country team and the Humanitarian Coordinator in the country.
<p>Presence (See Parts V.2 and 4 )</p>	<ul style="list-style-type: none"> • Maintain high visibility presence in areas at risk of displacement, if security conditions allow. Humanitarian presence can help to deter violations of human rights in some cases. Such presence, however, must be carefully evaluated. The presence of humanitarian actors can be perceived as condoning or endorsing serious human rights violations, including forced displacement.
<p>Advocacy (See Part V.3 )</p>	<ul style="list-style-type: none"> • Advocate with relevant authorities and, in times of armed conflict, with parties to a conflict, and encourage them to respect and ensure respect for human rights and humanitarian principles as outlined in the relevant bodies of international law. Emphasize their responsibility to avoid creating conditions that might lead to displacement, to refrain from forcibly displacing people and to protect them from being displaced by others, and to ensure that, if displacement occurs it takes place under satisfactory conditions of safety, health, shelter and nutrition and that members of the same family are not separated. • As needed, engage with influential stakeholders, such as regional or international organizations or relevant States, to encourage and support their involvement to minimize the risk of displacement.
<p>Mediation and dialogue</p>	<ul style="list-style-type: none"> • Encourage open dialogue and support conflict prevention, mediation and resolution efforts at the local, regional and national levels. • Help build the capacity of civil society, communities at risk of displacement, national authorities and other stakeholders to participate in such efforts. This may include training on mediation and negotiation skills towards the peaceful resolution of conflicts.
<p>Information (See Part V.7 )</p>	<ul style="list-style-type: none"> • Support public information campaigns that aim to inform and raise awareness of human rights and humanitarian principles. Inform the general public about forced displacement. • In cases where displacement is imminent, work with the community to ensure that people are informed of the right to move elsewhere within the country and to leave the country in order to seek, for instance, asylum abroad.



Capacity building and training(See Part V.9 )

- Work with human rights and humanitarian actors to build the capacity of the State, local authorities and non-State entities to respect and ensure respect for human rights and humanitarian principles. This could include, for instance, help to strengthen the rule of law and build the capacity of the legislative, judicial, and executive branches of the State.
- In coordination with ICRC and other relevant actors, support training for armed forces and armed groups at all levels, including non-State actors, on how to meet their obligations under international humanitarian law.
- Work with civil society and community groups to strengthen their capacity to raise their concerns and engage with national authorities in order to prevent displacement. This may include providing training, expertise or material support. Support their participation in relevant regional or international fora and take other action to strengthen their message and enhance the personal security of their membership.

Community mobilization(See Part V.10 )


- Ensure that individuals and communities are informed about and able to participate in public decision-making processes that affect their lives, including identifying alternatives to displacement.
- Support initiatives that promote self-reliance and access to basic services, such as education, health care and livelihoods, that can help reduce the need to seek such support elsewhere.

4.2 Mitigating any adverse impact of forced displacement

Detailed guidance on humanitarian involvement in *lawful* relocations or evacuations is provided in Part V.12 .






Efforts to prevent *unlawful* displacement should take place at all times. Where such efforts fail and unlawful displacement occurs, the humanitarian imperative may require that life-saving assistance and services be provided on an emergency basis. Such situations, however, may present a dilemma for humanitarian and human rights actors as their involvement may be interpreted or perceived as condoning or endorsing unlawful displacement. As a result, the neutrality and impartiality of humanitarian action may be placed at serious risk. In light of the complexity of such events and the potential political, legal and security implications, any such involvement **must be cleared at the most senior level and in consultation with the Humanitarian Coordinator**.

Central to such dilemmas is the issue of perception. The fact that humanitarian action is driven by impartiality may not necessarily be evident to a wide range of other stakeholders concerned. Thus, in addition to making carefully considered decisions, risks stemming from perceptions of humanitarian actors as not being neutral or impartial must be proactively managed through communication and similar strategies.

**In our work, we can ...****Assessment**(See Part III.I )

- Support a rapid assessment of urgent humanitarian needs arising as a result of displacement. Such an assessment can take place prior to, or during, the movement.
- Identify problems requiring specialist expertise, and advocate for the timely deployment of technical experts.



<p>Humanitarian assistance (See Part V.5 )</p>	<ul style="list-style-type: none"> • Provide life-saving assistance and services, such as shelter, food, water and medical care. As soon as conditions allow, ensure that thorough assessments, planning and programming are undertaken in areas of settlement to facilitate a more sustainable humanitarian response. • As soon as possible, reorient assistance activities to enable the displaced population to resume normal economic and social activities and limit dependency on aid. This may require the facilitation of access to essential resources (e.g. land, water, etc), or equal opportunity employment, etc. Risks of exploitation, exclusion and marginalization are high and must be avoided since IDPs are nationals or habitual residents with the same rights as other nationals and habitual residents in the country.
<p>Presence and monitoring (See Parts V.2 and 4 )</p>	<ul style="list-style-type: none"> • Negotiate for humanitarian access to communities undergoing displacement. If a generic protection presence, such as human rights monitors, is not accepted, try to agree at least on access for humanitarian assistance purposes. • To the extent possible and if security conditions allow, monitor the forced movement of individuals and communities and ensure that accurate information is channelled to relevant actors (e.g. the protection working group, the country team and the Humanitarian Coordinator).
<p>Advocacy (See Part V.3 )</p>	<ul style="list-style-type: none"> • Undertake continuous advocacy with all relevant stakeholders to minimize and mitigate the impact of the displacement. Those responsible for displacement should be encouraged at all times to treat the displaced population humanely and meet their needs for safety, shelter, food, water and sanitation. Special measures should be taken to meet the needs of persons with specific needs. • Repeatedly remind the authorities of their obligations to restore the conditions that would allow IDPs to consider return and the resolution of their displacement crisis while keeping in mind that, although conditions may allow for return, options for durable solutions should include on an equal basis return, relocation, and/or local integration.
<p>Family unity (See Part IV.7 )</p>	<ul style="list-style-type: none"> • Support and implement measures to avoid family separation, particularly targeting children, older persons and persons with disabilities, and ensure that family tracing and reunification activities are undertaken at the earliest opportunity.
<p>Access to justice (See Part IV.18 and V.8 )</p>	<ul style="list-style-type: none"> • Build the capacity of displaced individuals and communities to access justice and seek an effective remedy for any rights violated as a result of unlawful displacement. This can include providing legal counselling or other assistance to access the justice system, including traditional justice systems.
<p>Land and property</p>	<ul style="list-style-type: none"> • To help reduce the impact of loss of land and property, to the extent possible, inform affected individuals and communities of the importance of safeguarding personal and other documentation, including those relating to ownership or use of land and property. Encourage local communities to report on any loss of documents and property and inform them of procedures to follow to reclaim lost documents and property. • At the time of flight or as close to the time of flight as possible, assist the community in gathering and safeguarding information about ownership or use of land and property. Such information can include: copies of official records or registries; documents relating to mortgages; property or income taxes; telephone or utility bills; rental slips and photographs.

5. Key actors

Efforts to prevent, minimize and mitigate the effects of forced displacement require a coordinated effort by a range of actors.

- At the **national level**, key actors include: displaced persons and communities; all levels of government, in particular ministries of the interior, defence, housing and social welfare, the judiciary, law enforcement authorities, and the armed forces; national human rights institutions or commissions; civil society and local NGOs. Even when they are part of the cause for forced displacement, State authorities do not lose their obligation to protect and assist people at risk in their territory. Thus, State structures at local, regional and national levels should be encouraged to meet these obligations. Where non-State actors are part of the risk of forced displacement, they should be included as key actors in efforts to prevent, minimize and mitigate the effects of forced displacement.
- At the **regional level**, key actors include: regional organizations, such as the African Union; regional human rights courts, commissions, and special rapporteurs; regional peacekeeping forces, where present; and influential donor or neighbouring States.
- At the **international level**, key actors include: various political, development, human rights and humanitarian actors, as well as peacekeeping forces where present. Relevant actors include the International Community of States, the Humanitarian/Resident Coordinator, OCHA, UNDP, OHCHR, UNHCR, UNICEF, UNIFEM, UNFPA, IOM, ICRC, and NGO partners.



Key references & useful websites



- *Addressing Internal Displacement: A Framework for National Responsibility*, Brookings-Bern Project on Internal Displacement, 2005.
- *Handbook for Applying the Guiding Principles on Internal Displacement*, OCHA/ Brookings-Bern Project on Internal Displacement, 1999.
- *Manual on Field Practice in Internal Displacement: Examples from UN Agencies and Partner Organizations of Field-based Initiatives Supporting Internally Displaced Persons*, IASC Policy Paper Series, No. 1, 1999.
- *Protection of Internally Displaced Persons*, IASC Policy Paper Series, No. 2, 2000.

Part IV.2

Threat to life, safety and security



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Key message

Internally displaced persons (IDPs) and communities can face a range of serious threats to their life, safety and security at every stage of the displacement cycle. Such threats can stem from a variety of sources and include diverse actors, depending on the context. It is primarily the role of the national authorities to provide protection against such threats and to ensure that acts of crime, violence and abuse do not take place in a climate of impunity.

Humanitarian and human rights actors rarely have the mandate, the capacity or the resources to physically protect displaced individuals and communities from such threats. However, we can contribute to their protection by helping to reduce their exposure to, and mitigate the devastating effects of, such violence whenever possible.

This chapter should be read together with *Part IV.4*  on gender-based violence and *Part IV.5*  on children associated with armed forces or armed groups. It offers guidance on ways to address three distinct but interrelated threats to life, safety and security:

- threats resulting from a **breakdown of law and order**, including individual or collective acts of crime, violence¹ and abuse;
- threats arising in the context of **armed conflict**, i.e. at the hands of, or as a result of, the activities of armed forces or armed groups that are parties to the conflict; and
- threats arising as a result of **communal or intra-group tension**, either within the displaced population or between the displaced and the host population as, for example, a result of competition for scarce resources, such as land, water or firewood.²

Key considerations

- Ensuring safety and security is **the responsibility of the State** and its institutions. It is important to engage with national and local authorities to the extent possible when seeking to identify, prevent and respond to security threats in order to ensure the sustainability and effectiveness of such actions.
- **IDPs and communities are themselves key protection actors.** They have an understanding of the local context and access to information and knowledge, which others may lack. They should be consulted, and any existing coping mechanisms and strategies supported.
- **Sometimes the best protection strategy available to people is for them to leave.** Even where measures are taken to enhance people's safety and security, they retain the right to move elsewhere within the country or to leave the country and seek asylum abroad.

1. Protection from crime, violence and abuse

Forced displacement often takes place in situations characterized by a breakdown in the rule of law, where national or local authorities may lack the capacity, or the willingness, to maintain law and order and to ensure the safety and security of displaced individuals and communities. Together with other factors – such as armed conflict, the collapse of institutions and infrastructure, poverty, lack of education and livelihood opportunities, and a breakdown of

¹ In general, an act of violence, whether it takes place during conflict or not, can be defined as any act that inflicts physical, mental, sexual or other harm or suffering upon an individual or group, including threats of such acts, and that either results in, or has the likelihood of, resulting in injury, death, physical or mental disability, or deprivation.

² This list is not exhaustive and various other threats might need to be identified and addressed. This includes, for example, threats arising in the context of natural or environmental disasters, such as fires, draught, floods, earthquakes, landslides and pollution.

social norms and values – this may lead to a marked increase in crime, exploitation and abuse in both the public and private spheres.

IDPs often bear the brunt of such violence. They have frequently lost the protective presence of their homes, families and communities and lack access to life-saving assistance and services, including food, shelter and basic health care. As a result, they may find themselves at greater risk of such violence at the same time as their ability to recover from its harmful effects is undermined.

While such threats are common in both urban and rural environments, they can be particularly pronounced in large and over-crowded camps or settlements. Population density, poverty and sub-standard living conditions, combined with a lack of effective law enforcement and access to justice can create fertile ground for crime, violence and abuse at the hands of internal and external actors. Such threats can range from minor offences, such as theft, robbery and vandalism, to serious violations of human rights, including rape, physical assault and killings.

The closed environment of camps and settlements coupled with anxiety and desperation stemming from trauma, marginalization and a lack of hope, can contribute to an increase in the frequency and seriousness of such acts and undermine the coping mechanisms of individuals and communities as well as their ability to protect themselves.

Table 1: Examples of common threats to life, safety and security

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|--|---|
| <ul style="list-style-type: none"> • Murder; killings; assassination; forced disappearance; summary or arbitrary executions; physical assault or battering. • Torture or cruel, inhuman and degrading treatment and other outrages upon personal dignity; mutilation or maiming; corporal punishment. • Sexual and gender-based violence, including rape and sexual assault, abuse or humiliation; sexual exploitation, including forced prostitution and sex in exchange for aid; harmful traditional practices, such as female genital mutilation, forced and early pregnancy; and honour killings. | <ul style="list-style-type: none"> • Abduction; kidnapping; enslavement: forced recruitment; forced labor; human trafficking; sexual slavery. • Forced displacement, forced return or relocation. • Harassment, intimidation and coercion. • Destruction of livelihoods and property, including land, fields, crops and livestock and other objects indispensable for people's survival; vandalism; and arson. • Theft; robbery; looting; cattle rustling; and fraudulent seizure/purchase of land or property. • Extortion; fraud; forgery; unlawful taxation; and paying of "protection" money. • Exploitation, obstruction or diversion of humanitarian assistance. |
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1.1 The international legal framework and the responsibility of the State

International (and regional) human rights law contains a number of provisions which are of particular relevance to IDPs, including the rights to life, liberty and security; to freedom from torture and cruel, inhuman or degrading treatment or punishment; to freedom from slavery; to equal recognition and protection of the law; and to access to justice.

The State must ensure that all relevant authorities and agents of the State respect these rights, provide protection against any violation of these rights by third parties, and ensure that individuals are provided access to appropriate remedies when violations occur. To that effect, national authorities should take all appropriate legislative, administrative and executive measures to:

- maintain law and order and strengthen civilian law enforcement, including through the training and deployment of adequate numbers of civilian police, both female and male, including in and around camps and settlements and other areas inhabited by IDPs;





- improve access to justice and strengthen formal and informal justice institutions and mechanisms in order to combat impunity, including by ensuring the prompt and thorough investigation and prosecution of alleged offenders; and
- build the capacity of individuals and communities to protect themselves and recover from crime, violence and abuse, including by facilitating their access to life-saving assistance and services which can reduce exposure to such threats, such as adequate shelter, livelihoods, and health care.

It is worth noting that the use of force and firearms for law enforcement purposes is strictly regulated under human rights law. It must be necessary and proportionate to achieve a legitimate aim, such as to make an arrest or to protect the lives of civilians, and an official investigation must be conducted if it results in injury or loss of life. These and other rules are described in greater detail in the **UN Code of Conduct for Law Enforcement Officials** and the **UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**.³





1.2 The role of humanitarian and human rights actors

While humanitarian and human rights actors rarely have the mandate, the capacity or the resources to guarantee protection against crime, violence and abuse, they can assist national authorities and persons of concern to reduce exposure to, and limit the adverse effects of, such acts. Such efforts should seek to address the political and socio-economic causes and consequences of crime as well as crime itself. In order to ensure the sustainability of such efforts close coordination with national authorities and displaced and resident communities will be required.










In our work, we can ...	
Assessment and analysis (See Part III.1 )	<ul style="list-style-type: none"> • Ensure that protection assessments take into account the various threats to life, safety and security of IDPs stemming from crime, violence and abuse. Where possible such assessments should be conducted in cooperation with security and/or law enforcement experts. It could assess factors such as (i) the types of threat; (ii) those that are most at risk; (iii) the actors involved and their motives; (iv) any aggravating factors or conditions; (v) the capacity of the State to address the risks, any obstacles encountered and the kind of support needed; (vi) the impact on persons of concern, their coping strategies and the kind of support they need to counter the risks involved; and (vii) any possible negative unintended consequences that might result from our intervention.
Advocacy (See Part V.3 )	<ul style="list-style-type: none"> • Advocate with all relevant stakeholders, including law enforcement agencies and ministries of justice and the interior, for adequate numbers of trained and professional civilian police, including female officers, to be deployed in camps, settlements and other civilian areas.
Information and communication activities (See Part V.7 )	<ul style="list-style-type: none"> • Support information and education campaigns/networks, whether through radio, theatre or printed media (leaflets, posters, etc.) that provide neutral security-related information and advice. Such networks should ideally be run by the community, allow information from more than one source, take illiteracy and disabilities into account, and include safeguards pertaining to manipulation for political or military purposes. 

³ These are available at: www.ohchr.org/english/law/index.htm.

<p>Material, technical and financial support</p>	<ul style="list-style-type: none"> Consider providing material, technical or financial support to law enforcement agencies and relevant ministries, if appropriate. This can include material support (e.g. office space or equipment, telecommunications equipment, vehicles, or fuel), managerial support (e.g. planning, coordination), or financial support (e.g. staff incentives).
<p>Training</p>	<ul style="list-style-type: none"> Provide or support training relating to human rights, codes of conduct for law enforcement officials, and principles of effective policing to police and other security personnel. Consider whether other stakeholders could benefit from similar training initiatives.
<p>Reporting mechanisms</p>	<ul style="list-style-type: none"> Support the establishment of adequate reporting and referral mechanisms for incidents of crime, violence and human rights abuses. Such mechanisms should preferably be run by national law enforcement authorities. In some cases, however, such mechanisms may need to be established by humanitarian or human rights actors, for instance within camps and settlements. Such mechanisms must respect privacy and confidentiality and be adequately supervised and monitored. Ensure that the informed consent of victims/witnesses is sought prior to the sharing of information, that their safety is guaranteed, and that they are referred to appropriate actors for legal, medical or other assistance, as required.
<p>Access to justice (See Parts IV.18 and V.8 )</p>	<ul style="list-style-type: none"> Improve access to, and the fair administration of, justice by building the capacity of both formal and informal justice mechanisms and the capacity of individuals and communities to access and benefit from such mechanisms. This can include material support (e.g. office space or equipment, telecommunications, vehicles, fuel, staff incentives), managerial support (e.g. planning, coordination), or training (e.g. human rights, standards of professional conduct).
<p>Community mobilization (See Part V.10 )</p>	<ul style="list-style-type: none"> In cooperation with the community, identify various ways to strengthen the protection capacity of individuals, communities and civil society to prevent, respond to and recover from violence through, for instance, training, counselling and/or material support. This could include training on human rights and humanitarian principles and other topics, such as first aid, crime prevention, fire-fighting, mine-awareness, conflict resolution, and community relations. Pay particular attention to individuals and groups with specific needs, including single women and girls, older persons and minorities.
<p>Family unity (See Part IV.7 )</p>	<ul style="list-style-type: none"> Ensure that any separated family members are identified, that family tracing and reunification mechanisms are established, and that immediate needs for protection and/or assistance are addressed. In the case of separated and unaccompanied children, best interest determinations may need to be conducted and alternative care arrangements identified.
<p>IDP community or camp management (See Parts V.5 and V.6 )</p>	<ul style="list-style-type: none"> Ensure that community and camp-management committees, including relief-distribution committees, are non-discriminatory, participatory and representative. Adequate safeguards against manipulation, misuse and diversion of aid to political or military forces or groups must be put in place. Camp rules should be drafted and disseminated by the committees in cooperation with camp management authorities.




<p>Community-watch mechanisms (See Annex I to this chapter )</p>	<ul style="list-style-type: none"> Assist the community in organizing and managing, in cooperation with the police when feasible, community watch mechanisms, as described in Annex I of this chapter. These must be civilian in character, include both women and men, and should receive adequate training in basic principles of law enforcement. They should be adequately supervised, monitored and equipped.
<p>Presence (See Part V.4 )</p>	<ul style="list-style-type: none"> Maintain high visibility presence in and around IDP camps, settlements and hosting areas, if security conditions permit. Beware, however, that in some cases presence can instil a false sense of safety and security among persons of concern and/or attract unwanted attention to them.
<p>Protection-based physical planning (See Part IV.10 )</p>	<ul style="list-style-type: none"> Ensure that camps, settlements and IDP-hosting areas conform, to the extent possible, with the principles of protection-based physical planning as regards site selection, site layout, distribution of aid and service design. This includes, for example, ensuring adequate distance from armed conflict or other sources of violence; security lighting; community participation in the layout of family plots; allocation of adequate space per family; safe access to resources, such as food, water and firewood; safe access to services, such as police, camp management offices, sanitation facilities, schools, markets and community centres; and establishment of child-friendly spaces. Work together with partners to ensure that gender, age and disabilities are taken into consideration.
<p>Humanitarian assistance (See Part V.5 )</p>	<ul style="list-style-type: none"> Advocate for, or provide, assistance and services which can reduce exposure to, or mitigate the effects of, crime, violence and abuse. This can include food, firewood, fuel-efficient stoves, and various non-food items, particularly if IDPs are exposed to risks when acquiring such items by other means. Ensure that relief distribution does not create or expose IDPs to additional risks. It should take place in a safe environment, and relief items must be distributed equitably and in a non-discriminatory manner. It should also take into account and address the specific needs of women, children, older persons and those living with disabilities, as well as the needs of the surrounding communities.
<p>Education and socio-economic activities (See Parts IV.15 and IV.16 )</p>	<ul style="list-style-type: none"> Support socio-economic initiatives, such as education or vocational training and cultural, religious and sports activities. This can help to limit exposure to various threats, reduce violence within communities, help individuals recover from the effects of violence, and contribute to sustainable livelihoods.
<p>Evacuation or relocation (See Part V.12 )</p>	<ul style="list-style-type: none"> Where necessary, facilitate the evacuation or relocation of certain individuals or groups (e.g. victims, witnesses or others at risk) to a place where their physical safety can be guaranteed. Evacuation and relocation are usually measures of last resort, and minimum standards of safety, food, health, and shelter must be met both during and after they take place. Each of these security measures are typically temporary and should not delay the search for a sustainable solution.
<p>Health and psycho-social support (See Parts IV.14 and V.11 )</p>	<ul style="list-style-type: none"> Ensure that victims/survivors of crime, violence and abuse have access to adequate health care and other services. This should include physical, mental and reproductive health care and psychosocial support for people dealing with the effects of violence, including trauma and post-traumatic stress disorders.

2. Protection from the effects of armed conflict and activities of parties to a conflict


Forced displacement is not only a regrettable consequence of armed conflict. It is frequently the result of a deliberate strategy aimed at terrorizing, humiliating and destroying individuals and communities. As such, it has become both a method of warfare and, in some cases, the very objective of conflict itself. The impact upon individuals and communities is devastating. An estimated 25 million persons are currently internally displaced as a result of armed conflict, and civilian casualties of conflict in general outnumber those among military actors by almost four to one.

Violence against civilians at the hands of armed forces and armed groups is often widespread, systematic and conducted in a climate of impunity. Examples of such violence are noted below.


- **Direct or indiscriminate attacks against civilians or civilian property** and other unlawful means and methods of warfare, including forced displacement, mass rape, acts of terror, starvation and destruction of land, homes and other property, such as crops and livestock.
- **Ill-treatment of civilians or those placed *hors de combat*** in the power of parties to the conflict, including murder, torture and other ill-treatment, sexual assault, rape and sexual humiliation, arbitrary arrest and detention, extra-judicial killings and disappearances, extortion, harassment, the confiscation of documents, and the appropriation of land and property. Such acts might take place in areas of refuge or transit, including in and around camps and settlements, in detention or prison facilities, at checkpoints, or entry/exit points into towns and villages.
- **Presence of armed actors/groups in camps, settlements and IDP-hosting areas**, including their use for rest, recruitment and/or resources. Such presence negates the humanitarian character of these areas and poses a serious threat to their residents, host communities and humanitarian workers. The presence of armed actors frequently results in an increase in forced recruitment, sexual assault and exploitation, various forms of physical violence, murder, torture and ill-treatment, harassment, extortion, theft and the destruction of property, and the diversion of humanitarian aid. It might also expose the civilian population to attack and a range of punitive measures by other parties to the conflict, including restrictions on freedom of movement and access to humanitarian aid.
- **Forced recruitment into armed forces or armed groups**, particularly of children and adolescents who might be forced to participate in hostilities or to serve as sex slaves, spies, porters, cleaners or cooks. Such children are often compelled to witness or commit acts that might leave them traumatized and hinder their reintegration into society upon release (*further addressed in Part IV.5* .

2.1 The international legal framework and the responsibilities of parties to a conflict


International humanitarian and human rights law, together with national law, provide a comprehensive legal framework governing the conduct of hostilities and the treatment of civilians in times of armed conflict.

See **Principles 10 and 11 of the Guiding Principles on Internal Displacement**, which are available in Annex 1 of the Handbook. For further information, see also Part I.2. .

International humanitarian law, which applies to State and non-State actors equally, comes into effect in times of armed conflict. While different legal provisions may apply depending on whether the conflict is international (between States) or non-international (between a State and non-State actors, or between such actors), the basic principles regarding the protection of civilians remain similar.⁴ The law contains two sets of rules of particular importance to civilians, including IDPs:

- **rules limiting the means and methods of warfare** which prohibit direct or indiscriminate attacks against civilians and civilian objectives and require parties to a conflict to distinguish between combatants/fighters and civilians at all times⁵ (*further addressed in Part I.2* ); and
- **rules containing fundamental guarantees of humane treatment** which oblige parties to a conflict to treat all persons who do not take part in, or who have ceased to take part in, hostilities in a humane manner and to protect them against violence to life, health and physical or mental well-being.⁶

All parties to a conflict, both State and non-State actors, are obliged to distinguish between civilians and combatants/fighters at all times and to respect the humanitarian nature of camps, settlements and other IDP-hosting areas. This entails taking all feasible measures to protect such areas from direct attack and the indiscriminate effects of military operations and to treat individuals in their power humanely. The State, including its armed forces and armed groups, has an obligation to ensure that military activities and the activities of members of the armed forces, whether on active duty or not, respect humanitarian law and principles relating to the protection of civilians, including by:

- providing training on humanitarian law to the armed forces;
- criminalizing violations of the law and establishing adequate legal, administrative and disciplinary structures to prevent, monitor and punish violations; and
- prosecuting and punishing (which is further strengthened by **international criminal law** and covers acts such as war crimes, crimes against humanity and genocide), or extraditing, upon request, those responsible for serious violations of the law. (*See Part I.2.5* )

International (and regional) human rights law continues to apply in times of armed conflict, and the national authorities should continue to respect the rights outlined in section 1.2 above. While the State can lawfully derogate from some human rights during times of war or public emergency, such derogation is subject to strict conditions. Moreover, the rights mentioned above are non-derogable, meaning that they must be respected at all times, including during armed conflict. The obligation to respect human rights can also extend to armed groups in control of territory, particularly if they exercise State-like functions. In some cases, such groups have expressly agreed to respect human rights.

⁴ These are primarily based on customary law as well as the four Geneva Conventions and Additional Protocol I, which apply in international armed conflict, and Additional Protocol II, which together with Common Article 3 of the Conventions, applies in non-international conflict.

⁵ Prohibited acts include direct and indiscriminate attacks against civilians or their settlements; use of civilians to shield military objectives from attack or to shield, favor or impede military operations; displacement of civilian populations; acts of violence intended to spread terror; starvation of the civilian population as a method of warfare and attacking, destroying, removing or rendering useless objects indispensable for its survival; reprisals against civilians or their property and collective punishments which, in practice, often take the form of destruction of property, leading to displacement. The law also prohibits the use of means and methods of warfare that cause superfluous injury or unnecessary suffering or that cause widespread, long-term and severe damage to the natural environment or that jeopardize the health or survival of the population. This includes exploding bullets, chemical and biological weapons, blinding laser weapons and anti-personnel mines.

⁶ This includes: murder, mutilation, torture and cruel, humiliating or degrading treatment; rape, enforced prostitution and any form of indecent assault; and forced recruitment of children and slavery in all of its forms, including sexual slavery, exploitation and abuse.

2.2 The role of humanitarian and human rights actors

Armed conflict poses a unique set of challenges to humanitarian operations. In most cases, an effective response will require a coordinated approach, involving not only human rights, humanitarian and development actors but also political and military actors at the national, regional, and international levels. In most cases, it is recommended that protection strategies and activities be coordinated with relevant security staff and with other stakeholders, including the United Nations Humanitarian Coordinator in the country as well as peacekeeping missions, where present.

In the initial stage, protection efforts often focus primarily on building the capacity of national authorities as well as that of displaced individuals and communities (*as outlined in the table below*). Where such efforts prove insufficient, other responses may need to be considered. In some cases, this may require advocacy and support for peace negotiations and agreements, the deployment of regional or international civilian or police monitors, or referral to relevant political bodies, such as the United Nations Security Council.⁷



In our work, we can ...

Early warning and contingency planning

- Work with security staff to establish early-warning and preparedness mechanisms aimed at identifying and responding to potential security threats, including military operations and the infiltration of armed elements into camps, settlements and other IDP-hosting areas.

Advocacy (See Parts II.2 and V.3)

- Work with civil-military liaison officers to establish direct lines of communication with armed forces and armed groups to advocate for respect of relevant humanitarian principles and to explain the humanitarian mandate and the need to maintain a clear distinction between civilian and humanitarian action and military operations. Insist that IDP camps and settlements are kept free of infiltration and are not used for recruitment or material and political support.

Preventing the militarization of civilian areas




- Work with the community and other partners to prevent the militarization of camps, settlements and other IDP-hosting areas. This may include (i) using information and communication campaigns or other activities to sensitize the community of the negative impact of militarization; (ii) discussing with the community what measures can help improve their security; and (iii) ensuring that IDP camps and settlements are located away from areas of conflict or areas known to be inherently unstable or suffering from endemic violence.

Access to justice (See Part IV.18)

- Advocate with the State and, where possible, non-State actors for measures to end impunity, including the prompt and effective investigation, prosecution and punishment of violations of humanitarian and human rights law and national military codes. Acts that amount to war crimes, crimes against humanity or genocide, and other serious violations of the law require special attention.



⁷ In the context of its work with refugees, UNHCR has developed a “ladder of options” composed of soft, medium and hard approaches. The soft approach involves preventive measures, where international organizations provide support to the State to maintain safety and security; the medium approach involves the use of the international civilian or police monitors who provide technical expertise and support to local authorities, through training, mentoring and monitoring; and the hard approach involves the direct use of international peacekeeping or peacebuilding forces, authorized by the United Nations Security Council, to maintain safety and security.

<p>Identification, neutralization and separation of armed elements</p>	<ul style="list-style-type: none"> • Where appropriate, advocate for the establishment of security mechanisms to prevent infiltration by armed forces or armed groups into civilian camps and settlements. Such mechanisms can include, depending on the circumstances (i) screening at the entry to and inside camps and settlements or when accessing assistance or services; (ii) encouraging the self-identification of combatants/fighters and their voluntary separation from the civilian population; and (iii) spot-checks, weapons searches, and, on an exceptional basis, the physical separation of such individuals from the civilian population. • The involvement of humanitarian and human rights actors in such activities must be carefully evaluated and cleared at the senior level.
<p>Forced recruitment</p>	<ul style="list-style-type: none"> • Advocate for, and take other measures to prevent, the forced recruitment and use of children by armed groups. • Where children have been or are being recruited, work with specialized partners to secure their release from armed forces and/or groups. Such efforts do not have to form part of a formal disarmament, demobilization and reintegration (DDR) process but should be pursued at all times.
<p>Demobilization, disarmament, reintegration (See Part IV.5 )</p>	<ul style="list-style-type: none"> • DDR programmes should be coordinated and implemented by specialized actors with the required expertise and resources. However, humanitarian and human rights actors can support such programmes by, for instance, (i) advocating for the establishment and adequate funding of DDR programmes where needed; (ii) advocating to ensure that such programmes are available and meet the needs of women and girls on an equal basis as those of men and boys; (iii) working with families and communities to encourage them to accept and prepare for the return and reintegration of former combatants, particularly children formerly associated with armed groups; (iv) assisting families of former combatants to reunite; and (v) ensuring that former combatants have equal access to programmes that provide psychosocial support, education, vocational training or micro-financing for small businesses.
<p>Mine action (See Part IV.3 )</p>	<ul style="list-style-type: none"> • Advocate for and support mine action activities in all mine affected areas. Mine action should be coordinated and implemented by specialized actors, such as UNMAS, that have the required expertise and resources. However, all humanitarian and human rights actors can support such activities by, for example, (i) working with specialized actors to identify mine-affected civilian areas, including IDP camps and settlements, public buildings or spaces, fields, water-points, schools, and pre-schools; (ii) providing financial or material support to mine action programmes/actors, for instance in the form of fuel, vehicles and other equipment; and (iii) including mine awareness and education in school curricula and other educational or training activities.
<p>Working with armed forces (See Part II.2.8 )</p>	<ul style="list-style-type: none"> • Peacekeeping forces and/or national armed forces can provide security to humanitarian operations, on an exceptional basis and as a last resort by, for instance, providing logistical or technical support or escorting relief convoys. Such support must be carefully evaluated and cleared at the senior level, as it may risk blurring the distinction between humanitarian and military action and undermine the actual or perceived independence, impartiality and neutrality of the former. The presence of military forces can also expose communities to attack or create other security risks, such as exposure to sexual abuse.



Safe days or routes, and humanitarian zones (See Part V.4)

- On an exceptional basis and as a last resort, consider the possibility of encouraging relevant actors to negotiate “safe routes” or “safe days” to facilitate the delivery of life-saving assistance or services to populations in need. In extreme cases, this can also include the establishment of humanitarian zones (through humanitarian negotiations with parties to a conflict or by an agreement among the latter) or security zones (secured by force). Such negotiations should only take place at the senior level following a careful assessment and clearance by experienced security staff and with the agreement of the Humanitarian Coordinator. In the past, such arrangements have failed to protect civilian populations and, instead, exposed them to serious threats. Therefore, extreme caution should be exercised when resorting to such options.

3. Key actors

- At the **national level**: internally displaced and host communities; ministries of justice, defence and the interior; law enforcement agencies; courts and other justice institutions; prison authorities; armed forces; human rights commissions and ombudsmen; parliamentary commissions and committees that legislate on, or maintain oversight over, armed forces or law enforcement agencies; civil society organizations and NGOs.
- At the **regional level**: any regional military and civilian peacekeeping forces; regional organizations, such as the African Union, the European Union, Economic Community of West African States, the Organization for Security and Cooperation in Europe; regional human rights commissions and courts; governments of neighbouring States, influential States in the region, and donor States.
- At the **international level**: any United Nations, military and civilian peacekeeping forces; staff of the United Nations security management system; security/protection staff of individual organizations and NGOs; United Nations Security Council; ICRC; UNICEF (particularly relating to the disarmament, demobilization and reintegration of child soldiers); United Nations Mine Action Service; International Criminal Court (ICC); United Nations treaty bodies and special procedures.



Key references and useful websites



- *Camp Management Toolkit*, Norwegian Refugee Council 2nd edition, 2008.
- *Civil-Military Relationship in Complex Emergencies: An IASC Reference Paper*, IASC, 2004.
- *Field Security Handbook*, United Nations, 1995.
- *Guidelines on the Use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies*, Inter-agency Standing Committee, 2003.
- *Inter-organizational Security Measure: Framework for Accountability for the United Nations Security Management System*, 2002.
- *Use of Military or Armed Escorts for Humanitarian Convoys: Discussion Paper and Non-binding Guidelines*, Inter-agency Standing Committee, 2001.
- *Working with the Military*, UNHCR, 2007.

Annex I

Community watch mechanisms

Introduction	While primary responsibility rests with the State, individuals and communities can also play an important role in enhancing safety and security. Community watch mechanisms (CWM) can – if adequately trained, equipped and supervised – help reduce the levels of crime, violence and abuse within the community. This note summarizes some good practice relating to the establishment and running of CWM. It should be noted, however, that CWM should generally not be used in highly politicized or militarized settings owing to the risk that such mechanisms can pose to individuals and communities that participate in them.
Definition and overall aim	CWM can be defined as mechanisms that are organized and staffed by members of the community with the aim of supporting civilian law enforcement through a police-community partnership. Such mechanisms have particular value where police and security forces are absent, overwhelmed, or otherwise lack the capacity to maintain law and order. In addition, they can play an important role in identifying risk factors and addressing minor disputes, tensions, and conflict within the community, especially in camp settings.
Roles and responsibilities	CWM can be assigned different roles and responsibilities depending on the context and, while no one model will fit all, common functions have included: patrolling; providing protection through presence; monitoring and reporting; assisting victims and survivors to seek assistance and report crime; registering complaints and mediating minor disputes; protecting community property from theft, sabotage, or fire; assisting with crowd control, for instance during relief distribution; and liaising between the community and police or camp authorities.
Not police forces	It is important to note that CWM are neither part of, nor a substitute to, effective law enforcement, and their members should under no circumstances carry arms or be authorized to perform police related functions, such as arresting, detaining or interrogating suspects or interviewing victims and witnesses. They should be entirely civilian in character, have no established links with armed forces or armed actors, and be closely supervised by relevant authorities as well as the community.



<p>Key considerations and lessons learned</p> <p>Further information</p>	<p>Some of the lessons learned from previous experience with CWM projects are indicated below.</p> <ul style="list-style-type: none"> • Proper consultation and cooperation with local and other relevant authorities, including police, military and camp management authorities, must be ensured. CWM should be established with the consent of, and under the supervision of, relevant authorities, which retain primary responsibility for safety and security. • CWM should be participatory, representative and include men and women of different ages and ethnic or religious background, chosen by the community through a fair, open and transparent process. • Roles, responsibilities and reporting lines must be clearly delineated in a written memorandum of understanding between relevant stakeholders and a code of conduct should be agreed upon. • Adequate supervisory, monitoring and disciplinary systems must be put in place, including safeguards against corruption and abuse of power, such as diversion of aid and sexual exploitation and abuse. • Adequate equipment must be provided and may include the following: support in the form of identity documents; office space or equipment; communication equipment such as phones or radios; clothing and footwear, including uniforms, rain coats and patrol boots; flashlights; whistles; bicycles or vehicles/fuel; and in some cases, modest financial incentives. • Training on human rights and humanitarian law, as well as professional conduct and basic principles of community policing, must take place. • Although nominated by the community, participants may need to be vetted by relevant authorities. To minimize the risk of corruption and enable a greater number of individuals to benefit from the project, terms of service should be limited to 12-18 months and made subject to regular but not too frequent rotation. Particularly talented participants can be retained for training or supervisory functions. • CWM must be entirely civilian in character and prohibited from carrying arms. Every effort must be made to ensure that such mechanisms neither act nor present themselves as law enforcement agents and do not become militarized or establish links with military groups or militias. <p><i>A Comparative Review of Refugee Security Mechanisms, UNHCR, ESS/EPAU, December 2004; Preserving the Civilian Character of Refugee Camps: Lessons from the Kigoma Refugee Programme in Tanzania, Jean-François Durieux, Track Two, Vol. 9, No. 3, Nov. 2000.</i></p>
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Part IV.3

Landmines and explosive remnants of war

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Key message

As a result of many conflicts, landmines and explosive remnants of war kill and mangle more civilians than any other weapon. They frequently affect more civilians than military personnel and continue to do so long after the conflict has ended. Landmines and explosive remnants of war also pose a serious threat to internally displaced persons (IDPs), whether during flight, during displacement or when trying to return home or pursuing other solutions. It is imperative that mine action be fully integrated in the overall humanitarian response where landmines and explosive remnants of war are to be expected.

1. What are landmines and explosive remnants of war?

A **landmine** is an explosive device that is placed under, on or near the ground or other surface, and that is designed to explode with the presence, proximity or contact of a person or a vehicle.¹ Landmines can also be triggered by tripwires, command detonation and other methods, or can self-detonate with the passage of time. They are sometimes booby-trapped by anti-handling devices to make their removal more dangerous.

Landmines are usually camouflaged and can be difficult to detect and avoid. They are often laid in patterns to create security barriers along roads and around strategic military areas or installations. In many cases, however, they are laid randomly and without record in areas that are used mainly by civilians.

Explosive remnants of war refer to all explosive ordnance that have been used or fired but have failed to explode as intended (unexploded ordnance or UXO) or that have been abandoned (abandoned unexploded ordnance or AO).² They can be hard to detect, have no consistent shape, are often unstable, and can detonate if touched or disturbed or simply as a result of the passage of time. This includes, for example, cluster munitions which disperse or release multiple sub-munitions in mid-air, scattering them over a wide area and which, if they do not explode, can create effective “minefields.”

2. The effects of landmines and explosive remnants of war

Landmines are relatively inexpensive to make and simple to use, but their effects on civilians, and, in many cases, humanitarian workers, can be devastating. Landmines are inherently indiscriminate in the sense that they cannot be aimed, and they cannot distinguish between the footstep of a child and that of a soldier. In fact, most of the victims of landmines and explosive remnants of war are civilians, many of them living in countries that have long been at peace.

Landmines and explosive remnants of war not only kill; they also cause severe injury and long-term disability. A landmine blast can cause severe burns, blindness, loss of limbs, and shrapnel wounds. Those who survive the initial blast often require amputations, long hospitalization, extensive rehabilitation and socio-economic assistance to enable their reintegration into society. Survivors and their families often suffer from a lack of medical care, limited access to education and public services, unemployment, discrimination and stigma owing to disability or disfigurement as a result of mines or explosive remnants of war.

¹ More than 600 different types of landmines exist. They are grouped into two broad categories: anti-personnel (AP) mines and anti-vehicle (AV) mines, also referred to as anti-tank mines.

² Unexploded Ordnance (UXO) include munitions (bombs, shells, mortars, grenades and the like) that have been used but which have failed to detonate as intended. Failure rate can be as low as 1% or as high as 40% depending on a range of factors, such as age of the weapon, storage condition, method of use and environmental conditions. UXOs can be found in more than 80 countries and are often more common than landmines.

The presence of land mines and explosive remnants of war, or the mere threat of their presence, can also restrict freedom of movement and block access to fields, roads, water supplies, schools, health centres and other public services. Landmines, thus, can impede social and economic development and have a paralyzing effect on civilian life and humanitarian operations. Where the threat is *overestimated*, relief efforts may be slower and more tentative than they need to be and, where it is *underestimated*, significant casualties and delays can occur. It is, thus, critical that mine action be mainstreamed within any humanitarian or peacekeeping effort to ensure accurate information and an efficient, effective and timely response.

3. Mine action

Mine action is an umbrella term that is used to refer to various activities aimed at addressing the risks and the consequences of mines and explosive remnants of war. The primary goal of effective mine action is to create an environment in which people can live safely, in which economic and social development is unhindered, and in which the medical and socio-economic needs of victims and survivors are addressed.

The International Mine Action Standards (IMAS), which are managed by the United Nations Mine Action Service (UNMAS), guide the planning, implementation and management of mine action programmes. The Standards are available at the following address: www.mineactionstandards.org.

Mine action has **five main components**:

- **Landmine and explosive remnants of war clearance** includes non-technical, technical and socio-economic impact surveying, mapping, marking, clearance, post-clearance documentation, community mine action liaison, and the handover of cleared land and post-clearance assessment.
- **Mine-risk education (MRE)** targets individuals and communities and includes public information campaigns, education and training on the dangers of landmines. It is essential in all mine-suspected and mine-contaminated areas. MRE provides information about the risks associated with landmines and teaches individuals and communities to minimize the risk when conducting normal daily activities such as tending fields, fetching food, water or firewood, or accessing education, health care and other public services. Community liaison plays a large part in MRE.
- **Victim assistance** covers care and rehabilitation activities that aim to meet the immediate and long-term needs of landmine survivors, their families and affected communities.
- **Stockpile destruction** is aimed at assisting States in destroying their stockpiles of anti-personnel landmines, by providing support for safe and sustainable stockpile-destruction and for the mobilization of resources.
- **Advocacy** is aimed at promoting the development of, and compliance with, international legal standards on landmines and explosive remnants of war and the ratification of instruments such as the *Anti-Personnel Mine Ban Convention* (APMBC), at promoting the prevention of landmine use and encouragement of “good humanitarian donorship” in mine action and at promoting respect for the human rights of mine-affected individuals and communities. Advocacy could also include supporting the prosecution for war crimes or crimes against humanity of those responsible for the use of these weapons against civilians.

4. The responsibility of the State

The State has the responsibility to ensure the safety of the civilian population and respect for their lives and physical integrity. This includes ensuring the full respect for international law and standards on landmines and explosive remnants of war by its armed forces. The State must play a central and coordinating role in taking every possible measure to protect civilians from the effects of such weapons and to provide necessary assistance, including medical care and rehabilitation services, to all victims/survivors and their families.

The State should also ensure compliance with the *International Mine Action Standards* (IMAS). This includes facilitating access, supporting and contributing to the effective management of de-mining projects, whether carried out by local or international actors. Such activities are often overseen by a specific national mine action authority (NMAA).


Mine action in conflict situations is often a politically sensitive activity as it relates to military information. Mine agencies tasked with removing landmines are often dealing directly with explosives. Challenges may arise in situations where, for example, explosives need to be transported between areas controlled by different political or military fractions or when staff are recruited from ethnic groups associated with the “other side.”

International humanitarian law requires that parties to a conflict, including non-State actors, respect standards for the use of landmines and other explosive ordnance. In many conflicts, non-State actors, such as guerilla groups, are also responsible for the indiscriminate use of landmines, or intentional direct attacks against civilian populations. Where feasible, non-State actors should be reminded of their obligations. They should be encouraged to cease the use of these weapons and disclose information on where landmines are laid and cooperate in landmine clearance and destruction.

5. The role of humanitarian and human rights actors

Mine action requires specialized expertise and should be coordinated by specialized actors. Within the United Nations system, the United Nations Mine Action Service (UNMAS) carries the responsibility for coordinating all aspects of mine action and for providing mine action assistance in humanitarian emergencies.³ UNMAS sets up and manages mine action coordination in countries and territories as part of peacekeeping operations and humanitarian emergencies and crises. It oversees and manages mine action programmes in several countries. Where UNMAS does not manage programmes, international de-mining agencies, as well as other United Nations agencies, including UNDP, UNICEF and UNHCR, and humanitarian and human rights actors also have an important role to play in assisting States to resolve mine issues.

³ A special framework, the *Framework for Mine Action Planning and Rapid Response*, which forms part of the United Nations Mine Action Strategy, facilitates the rapid deployment of mine action capabilities in emergencies. The framework is available from www.mineaction.org/section.asp?s=strategy_and_guidance.


In our work, and where appropriate, we can ...
Assessment and analysis
(See Part III.1 )


- Ensure that protection assessments identify risks relating to mines and explosive remnants of war. This requires consultation with security experts, national or international mine action organizations, local NGOs, displaced and host communities and, where possible, armed forces or actors.
- Ensure a participatory approach to assessment and analysis of mine-affected areas. Host populations as well as IDPs are often well aware of affected areas.
- Where there is a risk of mines, notify UNMAS and other specialized agencies to ensure a thorough risk-assessment and the implementation of a mine action programme.

Coordination


- Work with relevant de-mining actors, in particular UNMAS, to ensure that mine action, education and awareness are adequately addressed and coordinated.
- Where appropriate, specialized mine action agencies, such as UNMAS, mine action coordination centres, national mine action agencies and implementing partners, can be invited to participate in the protection working group. Alternative mechanisms can also be established for cooperation and information-sharing.

Shelter
(See Part IV.10 )


- Ensure that public areas, communal buildings, camps, settlements, and other areas where IDPs have sought shelter or are provided with assistance or services are surveyed and, if necessary, cleared of mines and explosive remnants of war prior to being used. The survey and required mine clearance should also include access roads, paths, surrounding fields, water points, playgrounds and other places used by civilians, including children.

Protection monitoring
(See Part V.2 )

- In mine-affected areas, work with specialized agencies in order to coordinate monitoring and related activities in connection to mines and explosive remnants of war. This may include supporting monitoring of the population movement to allow for advanced mine action planning or monitoring to ensure that warning signs, posters, and fences are placed in prominent places and left intact, and that mine incidents and accidents are reported.
- Monitor areas that are under the control of different fighting parties to ensure, through dialogue with communities and regular field presence, that the civilian character of the IDP settlement is respected and that IDPs are not being forced to hide, or accused of hiding, weapon depots or arm caches that are in the area.


Health
(See Part IV.13 )

- Advocate to ensure that victims/survivors and their families have access to medical assistance, medication, psychosocial support, and rehabilitation and reintegration assistance, if needed.

Livelihoods
(See Part IV.16 )

- Ensure that victims/survivors and their families have access to livelihood opportunities and/or support on an equal basis with others. This can include material or financial assistance, for instance, in the form of food, non-food items, micro-financing, etc.




Advocacy*(See Part V.3 )*


- Advocate for ratification of and/or compliance with the **Anti-Personnel Mine Ban Convention** and other relevant instruments, such as Protocols II and V to the **Conventional Weapons Convention**, where these have not been ratified and/or implemented.
- Advocate with relevant national authorities and, as appropriate, non-state actors, for stockpile destruction to promote the development of, and compliance with, international legal instruments addressing the problems of landmines and explosive remnants of war.
- Advocate with relevant authorities to ensure that both victims/survivors of mines and explosive remnants of war and their families are given access to needed health care, rehabilitation, reintegration and socio-economic support.

Education

- Ensure that mine-risk education and awareness, especially that which is aimed at children, is included in school curricula and other education and training activities in mine-affected areas.


Information*(See Part V.7 )*

- Provide support to public information campaigns, education and training activities that inform both displaced and host communities about the risks of mines and ways to address or avoid such risks. Mine education and awareness can also be included in other information campaigns and training activities. This can include information related to recognition of mines and explosive remnants of war and safety precautions. Such activities can be implemented, for instance, through the dissemination of simple leaflets, notice boards, wrapping, water bottles, etc.
- Key messages should be illustrated in order to enable children, persons with low literacy skills, and those who do not speak the local language, to understand.
- Support the local authorities in establishing a mine action focal point for the dissemination of information to displaced communities regarding areas being surveyed or cleared of mines.
- Make sure that IDPs have information on where and who to contact if they identify mines or explosive remnants of war in their area.
- Provide information to IDPs on the mine action process, including the timeframe for the land to be cleared and, subsequently, handed over.

Durable solutions*(See Part VI )*

- Get information on the conditions in return or relocation areas to ensure that IDPs can make an informed decision whether or not to return/relocate.
- Before an organized return or relocation operation, ensure enough time for an assessment of possible mines and explosive remnants of war in the areas of destination.
- In situations of return or relocation of displaced populations to an area affected by mines and explosive remnants of war, intervene with concerned authorities to ensure clearance before movement takes place.
- If IDPs start to return spontaneously, make sure that mine action agencies are notified to allow for a rapid response, including mine-risk education for returnees.
- Mine clearance should prioritize access roads, homes, schools, public services and their surroundings. For the sustainability of reintegration, adjacent land needed for livelihood must also be cleared to an acceptable radius.



Technical cooperation and assistance*(See Part V.9 )*

- Provide support to, and facilitate the work of, specialized de-mining actors, both national and international. This may include information-sharing, the provision of technical support, office support, the provision of vehicles and other equipment and, in some cases, financial support and medical evacuation assistance.

Safety of staff

- Ensure that all staff and partners, including local staff and partners, receive safety training on mines and explosive remnants of war, when working in mine-affected areas. The *Landmine and Explosive Remnants of War Safety Handbook and Training Programme* (on a CD), which is available from UNMAS free of charge upon request, is useful in this respect (see www.mineaction.org).

6. Key actors


Mine action should be undertaken and coordinated by specialized agencies, such as UNMAS, with the support of other humanitarian and human rights actors as needed.

- At the **national level**: ministries of defense, the interior, health, education and social welfare; the national mine action authority (NMAA), local de-mining NGOs and commercial companies, civil society and religious charities.
- At the **international level**: UNMAS and UNICEF (for education and awareness). Other important actors include UNHCR, UNDP, ICRC, WFP, WHO, the Geneva International Centre for Humanitarian De-mining (GICHD), NGOs such as The Halo Trust, Handicap International, the Swiss Foundation for Mine Action, Mines Advisory Group, DanChurchAid, Norwegian People's Aid, Danish De-mining Group, RONCO, Landmine Action UK, and commercial firms engaged in mine action.

7. The international legal framework

Customary **international humanitarian law** and the Geneva Conventions require that combatants be distinguished from non-combatants, and they prohibit any means and methods of warfare that are indiscriminate in nature, are directed against civilians or civilian property, and/or cause unnecessary suffering or superfluous injury.

These customary rules do not prohibit the use of landmines and explosive remnants of war in all instances but rather place restrictions on their use by parties to a conflict. Several legal instruments, indicated below, specifically address landmines and explosive remnants of war, either regulating or prohibiting their use.

Guiding Principle (see *Annex 1* )

“Guiding Principle 10.2: 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: (e) the use of anti-personnel landmines”.

- The **Convention on Conventional Weapons**⁴ and its Protocols reaffirm the customary rules mentioned above. **Amended Protocol II** on landmines, booby-traps and other devices also commits parties to a conflict to maintain records about the use of such devices, to remove them following the end of active hostilities, and to take all feasible precautions to protect civilians and humanitarian missions and organizations from their effects. **Protocol V** on Explosive Remnants of War similarly commits parties to an armed conflict to maintain records on the use of explosive ordnance during hostilities, to

⁴ Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, 1980.

mark and clear all explosive remnants of war in areas under their control, and to provide assistance to facilitate the removal of explosive remnants of war in areas not under their control after the end of hostilities. Parties also commit to taking all feasible precautions to protect civilians and humanitarian actors from the effects of explosive remnants of war.

- The ***Anti-Personnel Mine Ban Convention***⁵ aims to put an end to the suffering and casualties caused by antipersonnel landmines. The treaty, which has been ratified by over 150 States, bans the use, production, and trade of antipersonnel mines, and commits States to destroy their stockpiles, to clear mined areas, provide mine risk education, and ensure adequate assistance, including care, rehabilitation, and social and economic reintegration, to landmine survivors.
- The ***Rome Statute of the International Criminal Court***, ratified by 108 States, provides for the prosecution of alleged perpetrators of war crimes and crimes against humanity and genocide. State and non-State actors who intentionally direct attacks at civilians using antipersonnel landmines could be subject to prosecution for war crimes or crimes against humanity under the Rome Statute.
- **International (and regional) human rights law** contains a number of provisions that are of relevance for those at risk of becoming victims of mines, as well as for survivors and their families. This includes, in particular, the rights to (and corresponding obligations of the State to ensure respect for) life, personal and physical integrity, freedom of movement, an adequate standard of living, the highest attainable standard of health and health care, and education.
- The ***Convention on the Rights of Persons with Disabilities*** reaffirms these and other rights and gives useful guidance on ways to ensure that persons with disabilities, including victims/survivors of mines and explosive remnants of war, can exercise their rights on a full and equal basis with others.



Key references

- *A Guide to Mine Action and Explosive Remnants of War*, Geneva International Centre for Humanitarian De-mining (GICHD), 2007.
- *A Guide to the International Mine Action Standards*, Geneva International Centre for Humanitarian De-mining (GICHD), April 2006.
- *Gender Guidelines for Mine Action Programmes*, UNMAS, 2005 (in five languages).
- *Framework for Mine Action Planning and Rapid Response*, UNMAS, 2004.
- *Landmine and Explosive Remnants of War Safety Handbook and Training Programme: A Manual for People Working in Environments Contaminated by Landmines and other Explosive Remnants of War*, UNMAS, 2005.



Useful websites

- Electronic Mine Information Network: www.mineaction.org
- International and National Mine Action Standards: www.mineactionstandards.org
- Geneva International Centre for Humanitarian De-mining: www.gichd.org
- International Campaign to Ban Landmines (ICBL): www.icbl.org
- Landmine Monitor: www.icbl.org/lm
- Survivor Corps: www.landminesurvivors.org
- International Committee of the Red Cross (ICRC): www.icrc.org

⁵ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (also referred to as the “Ottawa Treaty”), 1997.

Part IV.4

Gender-based violence

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Key message

Gender-based violence (GBV)¹ is a serious human rights issue that can cause long-term and life-threatening injury and trauma to victims/survivors. All humanitarian and human rights actors must ensure that efforts are made from the onset of an emergency to prevent and respond to acts of GBV and provide adequate care, treatment and support to its victims/survivors. *This chapter should be read in conjunction with Part IV.2 and Part IV.8*

The ***IASC Guidelines on Gender-Based Violence Interventions in Humanitarian Settings*** provide guidance on minimum prevention and response in all sectors in emergencies. They are available at www.humanitarianinfo.org/iasc/gender. This chapter provides basic guidance but does not replace or duplicate the Guidelines, which should be used and implemented in all emergencies.

1. Gender-based violence in situations of internal displacement

Acts of GBV are among the most common forms of violence in many countries and are estimated to affect the lives, health and well-being of millions of women, girls, boys and men worldwide. GBV takes place in all societies and all cultures.

1.1 What is gender-based violence?

GBV is defined as violence that is directed against a person on the basis of their gender or sex,² including acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other arbitrary deprivation of liberty. It includes physical, sexual and psychological violence perpetrated or condoned within the family, the general community or by the State and its institutions.³ Such violence can be manifested in a variety of ways, as indicated in the table below.

Overview of types of gender-based violence

Sexual violence	Includes actual, attempted or threatened (vaginal, anal or oral) rape, including marital rape; sexual abuse and exploitation; forced prostitution; transactional/survival sex; and sexual harassment, intimidation and humiliation, on the basis of sex, gender, or sexual orientation.
Physical violence	Includes actual, attempted or threatened physical assault or battery; slavery and slave-like practices; forced recruitment and trafficking.
Emotional and psychological violence	Includes abuse and humiliation, such as insults, cruel and degrading treatment, compelling a person to engage in humiliating acts, and placing restrictions on liberty and freedom of movement.

¹ The term gender-based violence (GBV) is used throughout this Handbook. The terms sexual and gender-based violence (SGBV) and violence against women may be used in other contexts. Despite differences in terminology, the strategies and activities used to prevent and respond to such violence are similar.

² The term “sex” refers to biologically determined and fixed differences between males and females, while “gender” refers to social differences that are learned, that can change over time, and that can vary widely both within and between cultures. Gender is a socio-economic, cultural and political variable that can be used to analyse roles, responsibilities, constraints, opportunities and needs of women and men in different contexts.

³ UNGA *Declaration on the Elimination of Violence against Women*, Arts. 1 and 2, A/RES/48/104 of 20 Dec 1993.

Harmful traditional practices	Includes female genital mutilation/cutting (FGM/C); forced marriage; child marriage; honour or dowry killings or maiming; infanticide, sex-selective abortion practices; sex-selective neglect and abuse; and denial of education and economic opportunities for women and girls.
Socio-economic violence	Includes discrimination and denial of opportunities or services on the basis of sex, gender, or sexual orientation; social exclusion; obstructive legal practices, such as denial of the exercise and enjoyment of civil, social, economic, cultural and political rights, mainly to women and girls.

1.2 Gender-based violence and internal displacement

The conditions that often characterize forced displacement, including conflict, breakdown of the rule of law, and the collapse of family and community support structures, increase both the frequency and the brutality of GBV. Both State and non-State perpetrators may commit acts of violence with impunity during any time within the displacement cycle, thus generating increased reluctance and fear from victims/survivors to report such incidents. In the early stages, when disruptions first occur and when protection mechanisms are no longer in place, incidents mostly take the form of sexual violence involving female survivors/victims and male perpetrators. Moreover, during armed conflict, sexual violence is also often a military tactic - a weapon of war used to humiliate and demoralize individuals, to tear families apart and to devastate communities.

Later, in a more stabilized phase and during rehabilitation and recovery, other forms of GBV may occur, and/or be reported with increasing frequency (domestic violence, forced early marriage, genital mutilation, honour killings, etc...).⁴


1.3 What are the main causes of gender-based violence?

GBV is deeply rooted in discriminatory cultural beliefs and attitudes that perpetuate inequality and powerlessness, in particular of women and girls. Various other factors, such as poverty, lack of education and livelihood opportunities, and impunity for crime and abuse, also tend to contribute to, and reinforce, a culture of violence and discrimination based on gender.

Such factors are frequently aggravated in times of conflict and displacement as the rule of law is eroded and families and societies are torn apart. The result is often an increase in both the frequency and brutality of GBV. In its worst form, GBV has become a weapon of war, intentionally directed against and aimed at terrorizing, displacing and destroying certain communities or ethnic groups.

Combating GBV requires an **understanding of its causes and contributing factors, which often also serve as barriers to effective prevention and response**, as outlined below.

⁴ See IASC, *Guidelines for Gender-based violence interventions in Humanitarian Settings*, September 2005.

Causes	Common barriers to prevention and response
Physical factors	<ul style="list-style-type: none"> • Lack of physical security owing to the breakdown of law and order, presence of armed forces/groups, collapse of law enforcement, justice institutions and family, social or community structures. Women and girls are particularly vulnerable when leaving their communities in search of work, food, water and/or firewood. • Poverty, lack of education and livelihood opportunities, and inadequate access to shelter, food, water, fuel, and income generation can increase exposure to GBV, including forced prostitution or survival sex.
Social, cultural and political factors	<ul style="list-style-type: none"> • Discriminatory social, cultural or religious laws, norms and practices (including witchcraft) that marginalize women and girls and fail to respect their rights. • Collapse of family, social and communal structures and disrupted roles within the family often expose women and girls to risk and limit coping mechanisms and avenues for protection and redress. • Lack of confidence and/or trust in social or public institutions, including law enforcement and justice institutions that discourage victims/survivors from seeking redress. • Lack of technical skills among service providers to handle survivors of GBV.
Legal/Judicial barriers	<ul style="list-style-type: none"> • Lack of access to justice, resulting in culture of impunity for violence and abuse (<i>as outlined in Part IV.18</i> ). • Lack of adequate and affordable legal advice and representation. • Lack of adequate victim/survivor and witness protection mechanisms. • Inadequate legal framework, including national, traditional, customary and religious law, that discriminates against women and girls, fails to guarantee their rights, or exposes them to further harm and abuse. As an example, national law may fail to guarantee a certain right (e.g. non-discrimination), fail to criminalize certain acts (e.g. rape), or narrowly interpret them (e.g. rape defined as not including marital rape). In some cases, national law also criminalizes the victim (e.g. rape defined as adultery) or criminalizes acts that allegedly are primarily associated with women (e.g. witchcraft or sorcery). In some cases, the victim/survivor faces harassment, intimidation and/or severe punishment.
Individual barriers	<ul style="list-style-type: none"> • Threat or fear of stigma, isolation and social exclusion. • Exposure to further violence at the hands of the perpetrator, the community or the authorities, including arrest, detention, ill-treatment and punishment. • Lack of information about GBV, human rights and how and where to seek remedies.
Humanitarian programming obstacles	<ul style="list-style-type: none"> • Failure to address or prioritize GBV in assessments, strategy development, planning and programming because of a lack of information or understanding about the extent or nature of GBV. • Lack of gender-sensitive design of programmes, services and facilities, including inadequate registration practices and distribution of food and non-food items. • Sexual exploitation and abuse by peacekeepers, human rights and humanitarian workers. • Other challenges including weak links with other assistance and protection programmes, lack of confidentiality, confusing reporting and referral mechanisms, and GBV committees that are isolated, under-resourced and weak, and lack support from the wider community.


1.4 What are the consequences of gender-based violence?

GBV can have serious long-term and life-threatening consequences for victims/survivors. These can range from permanent disability or death to a variety of physical, psychosocial and health-related problems that often destroy the survivor's self-worth and quality of life, and expose him/her to further abuse. GBV can lead to a vicious cycle of violence and abuse as survivors risk being rejected by their families, excluded and ostracized by society, and even arrested, detained or punished – or sometimes abused again – for seeking protection, assistance or access to justice.

Examples of consequences frequently associated with gender-based violence		
Fatal	Acute physical	Chronic physical
<ul style="list-style-type: none"> • Homicide • Suicide • Maternal mortality • Infant mortality 	<ul style="list-style-type: none"> • Injury, including fistulas • Shock • Disease • Infection 	<ul style="list-style-type: none"> • HIV/AIDS • Disability • Chronic pain or infections • Gastrointestinal problems • Eating or sleeping disorders • Alcohol/drug abuse
Reproductive	Emotional and psychological	Social and economic
<ul style="list-style-type: none"> • Miscarriage • Unwanted pregnancy • Unsafe abortion • STDs, inc. HIV/AIDS • Menstrual disorders • Pregnancy complications • Gynecological disorders • Sexual disorders 	<ul style="list-style-type: none"> • Post-traumatic stress • Depression • Anger, anxiety and fear • Shame, self-hate and self-blame • Mental illness • Suicidal thoughts and behaviour 	<ul style="list-style-type: none"> • Blaming of the victim/survivor • Loss of role or functions in society • Social stigma, rejection and isolation • Feminization of poverty • Increased gender inequalities • Loss of livelihood and economic dependency • Arrest, detention and/or punishment

Discussing issues relating to sex or gender can be considered inappropriate in some cultures and may expose victims/survivors to risk. Victims/survivors of GBV may also have suffered severe injury or trauma, which may resurface during the interview. In general, victims/survivors should not be interviewed or questioned about their experiences except by trained counselors who have the required skills, experience and knowledge about appropriate referral and response mechanisms. The safety and best interests of the victim/survivor must be a primary consideration at all times and their informed consent must be sought for any action or disclosure of personal information.

1.5 Who are the primary victims/survivors of gender-based violence?

GBV affects women and men of all ages and backgrounds. Women and girls are the primary victims/survivors but men and boys are frequently targeted as well. They, however, may face different forms of violence. As an example, women and girls may be more often exposed to rape and other forms of sexual violence, while men and boys may be more likely to be forcibly recruited into armed forces or armed groups (*as outlined further in Part IV.5* ).

Persons who have been separated from their families or communities, and/or lack access to shelter, education and livelihood opportunities, are among those most at risk of GBV. This includes unaccompanied or separated children, female and child heads-of-households, boys and girls in foster families or other care arrangements, persons with disabilities, persons in detention, working girls, girl mothers, and girls and boys born to rape victims/survivors. Persons that have been exposed to such violence are referred to as “victims/survivors.”

1.6 Who are the main perpetrators of gender-based violence?

GBV is usually perpetrated by persons who hold a position of power or who control others, whether in the private or public sphere. In most cases, those responsible are known to the victim/survivor, such as intimate partners, members of the (extended) family, friends, teachers or community leaders. Others in positions of authority, such as police or prison officials, and members of armed forces and groups, are frequently responsible for such acts, in particular in times of armed conflict. In some cases, the perpetrators have also included humanitarian workers and peacekeepers.

2. The responsibility of the State

The State has the primary responsibility to prevent and respond to GBV.⁵ This includes taking all necessary legislative, administrative, judicial and other measures to prevent, investigate and punish acts of GBV and provide adequate care, treatment and support to victims/survivors, based on the principles of respect, confidentiality, safety/security and non-discrimination. To that effect, States should ensure the measures indicated below are taken.⁶


- **Criminalize all acts of GBV** and ensure that national law, policies and practices adequately respect and protect human rights without discrimination of any kind, including on grounds of gender.
- **Investigate** allegations of GBV thoroughly and effectively, and **prosecute and punish** those responsible. Appropriate military disciplinary measures should also be enforced, and troops should be trained on the prohibition of all forms of sexual violence against civilians.
- **Provide adequate protection, care, treatment and support** to victims/survivors, including the evacuation of civilians under imminent threat of sexual violence to safety, access to legal counseling, health care, psychosocial support, rehabilitation and compensation for the harm suffered.
- **Condemn** violence against women and refrain from invoking any custom, tradition or religious consideration to evade obligations pertaining to the elimination of violence. States should pursue by all appropriate means and without delay a policy to eliminate violence against women.
- Take action to **empower women** and strengthen their personal, legal, social and economic independence.
- **Exclude sexual crimes from amnesty** provisions as part of conflict resolution processes.
- **Ratify and/or implement international human rights norms and instruments**, as they relate to violence against women (*as provided in Part IV.4.5*).


⁵ See Security Council Resolution 1820 (2008) on Women and Peace and Security, <http://daccessdds.un.org/doc/UNDOC/GEN/N08/391/44/PDF/N0839144.pdf?OpenElement>.

⁶ For more examples of possible actions, see the UN Fourth World Conference on Women Platform for Action (Beijing, 1995), www.un.org/womenwatch/daw/beijing/platform/violence.htm.

All parties to an armed conflict, including non-State actors are prohibited from committing any act of sexual violence against civilians, including using sexual violence as a tactic of war.

3. The role of humanitarian and human rights actors

While primary responsibility lies with the national authorities, humanitarian and human rights actors also play an important role in preventing and responding to GBV, guided by the principles of respect, confidentiality and security. In addition to ensuring an effective response to GBV from the outset of an emergency, this entails ensuring that gender concerns are adequately integrated into, and mainstreamed at, all levels of the humanitarian response (as outlined in Part I.1 for information about gender-mainstreaming ).

As humanitarian and human rights actors, as well as peacekeepers, we must **not** under any circumstances, encourage or engage in any form of sexual exploitation or abuse. We must at all times ensure that such acts do not take place by our staff or partners or as a result of our interventions. This includes any act or attempted abuse of a position of vulnerability, differential power or trust for sexual purposes as well as any actual or threatened sexual act, whether by force or under unequal or coercive conditions. Such acts include, but are not limited to, all forms of rape and sexual assault, forced prostitution, trafficking and various forms of transactional or survival sex in exchange for money, food, access to shelter, education and other services (as outlined in Part IV.8 ).⁷ Policy guidance on disciplinary measures and codes of conduct have been developed to prevent sexual exploitation and abuse by United Nations personnel and humanitarian workers.⁸

Several guidelines provide useful guidance on GBV prevention and response. These include, in particular, the following: the *IASC Guidelines for Gender-based Violence Interventions in Humanitarian Settings*, which focus on minimum prevention and response to sexual violence in all sectors during emergencies; the *UNHCR Guidelines for Prevention and Response*,⁹ which provide a comprehensive guidance on prevention and response, including in post-emergency and early-recovery settings; and the *IASC Gender Handbook*,¹⁰ which sets forth standards that guide the integration of gender in humanitarian action. The table below gives some examples of possible activities that can be undertaken.

⁷ These responsibilities are further outlined in the *UN Secretary-General's Bulletin: Special Measures for Protection from Sexual Exploitation and Sexual Abuse*, ST/SGB/2003/13, 9 October 2003.

⁸ *DPKO guidance and directives on disciplinary issues for all categories of personnel serving in United Nations Peacekeeping and other field missions; Secretary General's Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse, October 2003; Implementation Guidelines for the Field on the Secretary-General's Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse (ST/SGB/2003/13).*


⁹ *Sexual and Gender-based Violence against Refugees, Returnees and Internally Displaced Persons: UNHCR Guidelines for Prevention and Response*, UNHCR, 2003.

¹⁰ *Women, Girls, Boys and Men: Different Needs – Equal Opportunities*, IASC, 2006, www.humanitarianinfo.org/iasc/gender.




In our work, we can ...

Assessment and analysis

(See Part III.1 )


- Ensure that protection assessments are based on participatory methods and identify the major causes and consequences of GBV, the individuals and groups most at risk, and existing coping mechanisms. In many cases, specific GBV assessments must be undertaken by trained staff with expertise in the area of GBV.

Coordination

(See Part III.2 )


- Ensure that GBV is addressed by the protection working group and other relevant coordination structures. This may include appointing a focal point or a working group on GBV. Standard operating procedures, outlining roles and responsibilities of relevant actors, should be agreed upon and implemented.
- Work with other clusters/sectors to ensure that gender concerns are taken into account and integrated into planning and programming activities at all levels, including in areas such as shelter and physical planning, health, food and nutrition, and safety/security.

Advocacy

(See Part V.3 )

- Advocate with relevant actors, including national and local authorities, traditional, cultural or religious bodies, armed forces and security forces, law enforcement officials, civil society groups, and others, to ensure effective prevention and response. This may include advocacy with non-State actors.

Information and communication activities


(See Part V.7 )

- Support or undertake information activities that aim to raise awareness of GBV and that combat discrimination and other underlying causes of GBV.
- Ensure that information about GBV prevention and response, including how and where to access relevant assistance and services, is readily available for all survivors of GBV.

Referral and response mechanisms








- Ensure that adequate, respectful and well-coordinated referral and response mechanisms from multisectoral actors (health care, psychological/social and legal advice and support) are put in place, including clear and acceptable referral and reporting mechanisms that respect confidentiality and the rights of the victim/survivor, and that these are known and available to the community. Guidance on setting up such mechanisms is available in the IASC and UNHCR Guidelines mentioned above.





Physical safety and security

(See Part IV.2 )

- Take action to improve safety and security in and around camps, settlements, villages and other areas, paying particular attention to locations where acts of GBV have occurred or are likely to occur. This includes food distribution sites, water points, areas for firewood collection, schools, public spaces, etc.
- Ensure that mechanisms are in place to guarantee the security of victims/survivors and witnesses in order to protect them against further harm. These can include traditional protective mechanisms, establishments of shelters for victims/survivors, foster care arrangements for children, or, in exceptional cases, assistance to relocate to another place. In some cases, measures may need to be taken to protect the perpetrator from violence, such as at the hands of the victim's family or clan.



Health (See Part IV.13 )	<ul style="list-style-type: none"> • Ensure that adequate and confidential basic health care, including physical, reproductive and psychosocial health care, is available and fully accessible to all displaced women, girls, men and boys particularly victims/survivors of GBV, in camps as well as in settlements, villages or in other areas.
Community mobilization (See Part V.10 )	<ul style="list-style-type: none"> • Build the capacity of individuals to protect themselves and recover from acts of GBV, for instance by encouraging and promoting equal participation of men and women in all community activities and supporting education and vocational training programmes, income-generating activities and literacy programmes that empower women and girls. • Build the capacity of the local community by re-building family and community support systems, particularly women's/youth groups and organizations, including by encouraging and supporting social and recreational programmes and encouraging the resumption of cultural and spiritual activities.
Livelihoods (See Part IV.16 )	<ul style="list-style-type: none"> • Support self-reliance and sustainable livelihood programmes, and ensure that these are available to victims/survivors of GBV. Such programmes can reduce the risk of GBV and mitigate its effects by facilitating the rehabilitation and reintegration of victims/survivors.
Material assistance (See Part V.5 )	<ul style="list-style-type: none"> • Try to ensure that victims/survivors of GBV and their families, as well as those most at risk of GBV, have full and equal access to needed material and other support. This can include safe shelter, livelihood support, non-food items, modest financial grants to access education or training, and/or micro-financing opportunities.
Technical advice and assistance, including training (See Part V.9 )	<ul style="list-style-type: none"> • Provide training or technical advice and assistance on human rights, including on GBV prevention and response, to relevant actors, including, for instance, community leaders, civil society and NGOs, the police and armed forces, judges and lawyers, health workers, social workers and others. Material assistance may include the provision of drugs or medical equipment. • Ensure that peacekeepers, humanitarian workers and others working with displaced persons and communities receive training and sensitization on GBV, including their responsibility to prevent and respond to such acts. • Ensure that humanitarian staff and partners, including peacekeepers, are familiar with relevant codes of conduct and the prohibition against engaging in sexual exploitation and abuse of any kind. Adequate and confidential complaints mechanisms should be established and complaints promptly investigated and followed up.
Shelter and physical planning (See Part IV.10 )	<ul style="list-style-type: none"> • Provide or advocate for the establishment of safe shelter for victims of GBV, in particular single women and unaccompanied children. Where individuals or families are provided shelter material, ensure that gender concerns are considered. As an example, women or girls should not have to travel long distances to collect the material and should have the ability to erect the shelter themselves or receive adequate assistance to do so, without being exposed to pressures for transactional sex. • Ensure that gender concerns are taken into account in the physical planning of camps and in the design and implementation of services, such as health care, education, water/sanitation and food distribution (as outlined further in Part V.5 )

<p>Justice (See Parts IV.18 and V.8 )</p>	<ul style="list-style-type: none"> • Ensure that victims/survivors have access to free and confidential counseling about legal and/or other avenues for redress. • Provide modest material and other support to victims/survivors and their families, where needed, to facilitate their access to justice (whether formal or through traditional justice systems, <i>as outlined in Annex II, Part IV.18</i> ). This can include assistance with legal fees, translation, travel to and from court, and/or measures to ensure the safety and security of the victim/survivor. • Provide legal advice and assistance to victims/survivors and to witnesses in sexual violence cases in courts. • Monitor and follow up on cases of GBV to ensure that these are investigated, prosecuted and resolved in accordance with established laws and procedures. • Help build the capacity of the justice sector, including police, prosecutors, lawyers and judges, to deal with issues related to GBV, including training and data recording of GBV cases. In particular, advocate for the recruitment of female police officers to deal with GBV victims/survivors.
<p>Legal reform</p>	<ul style="list-style-type: none"> • Review national laws, regulations, policies, procedures and practices, including traditional and cultural practices and, based on the result, advocate with relevant stakeholders to ensure they provide adequate protection against GBV. • Where key human rights instruments, including the <i>Convention on Elimination of All Forms of Discrimination against Women</i>, have not been ratified by the State or where their adoption has been accompanied by reservations, advocate for the adoption and implementation of these instruments or the lifting of reservations.
<p>Education (see Part IV.15 )</p>	<ul style="list-style-type: none"> • Promote and/or provide full and equal access for internally displaced persons and other affected individuals to safe education, and vocational and skills training, that can strengthen self-reliance and economic independence. • Promote a safe learning environment both within and around schools and other educational facilities. This may include awareness raising among children, parents, teachers and other educational staff, and relevant local authorities.
<p>Children</p>	<ul style="list-style-type: none"> • Ensure that child victims/survivors are provided with special care and assistance as appropriate. Such interventions should be guided by the key principles of the <i>Convention on the Rights of the Child</i>, namely the best interests of the child and the child's right to life, survival and development, non-discrimination, and participation.
<p>Durable solutions (See Part VI )</p>	<ul style="list-style-type: none"> • Advocate with relevant actors to encourage attention to GBV in all return, relocation and reintegration frameworks, development action plans, and disarmament, demobilization and reintegration programmes. Such frameworks and action plans should contain measures to prevent and respond to GBV and provide adequate care, treatment and support to victims/survivors.

"Do"s and "don't"s for collecting, analysing, and reporting on sexual violence

A. GENERAL

- **Do seek advice from data experts** to agree on what information to collect, share and report, and how to do so safely and ethically.
- **Do verify the information wherever possible.** Obtain data from at least three different sources, and always inquire about the methodology used to collect this data.

B. ANALYSING DATA

- **Do examine how the data match** other information coming from the field, and consider how contextual factors influence their quality.
- **Do assess the quality of the data.** Have the data been collected and analysed in methodologically sound ways? Are they applicable to a larger population? If so, to which population?

C. REPORTING

- **Do keep in mind the audience and possible use.** If the data are being shared with the media, donors or policy-makers, make sure that guidance is offered on the interpretation of the data. Briefing notes may help.
- **Do provide the context for all data reported.** If known, and safe to do so, provide information on the camps/clinics/districts where cases are reported. Be specific, e.g. "reported cases from x number of health facilities."
- **Do provide a comprehensive description of the incident** as long as this cannot be linked back to individual survivors (including the precise date and location, information on the victims and perpetrators, ethnicity, age and sex, when it is safe to provide such information).
- **Do provide additional information which may have contributed to changes in the number of reported cases.** For example, note if more services are available, public information campaigns have been held, or there has been an upsurge in violent attacks. Whenever possible, information on when incidents took place should be collected, and reported along with aggregated numbers.
- **Do label all tables, charts and maps appropriately** to avoid the mis-use of the data and clearly state the sources for any data cited.
- **Don't share data that may be linked back to an individual or group of individuals.**
- **Don't take data at face value:** assess original sources, including their quality/reliability.
- **Don't assume that data reported on sexual violence or assessments of trends are necessarily accurate.**

United Nations Action Guidance Note "Reporting and Interpreting Data on Sexual Violence from conflict-affected countries: Dos and Don'ts."

4. Key actors

All humanitarian and human rights actors have a responsibility to prevent and respond to GBV. Ensuring an effective response requires a multi-sectoral and coordinated effort by a range of local, national and international actors.

- At the **national level**, key actors include displaced persons and communities; ministries for justice, health, education, social services and the family; the parliament, particularly relevant legislative or monitoring committees; health-care institutions and personnel; police and prison authorities; prosecutors; the military and para-military groups; traditional, customary or religious associations and councils; local NGOs and civil society, particularly women's and youth organizations.
- At the **international level**, UNICEF and UNFPA serve as focal point agencies for GBV within the Global Protection Cluster. Other important actors include OHCHR, UNDP UNHCR, DPKO, WFP, WHO, ICRC/IFRC, IOM, and many international NGOs.


5. The international legal framework

Acts of GBV, as well as threats or incitements to commit such acts, constitute a serious violation of international human rights and humanitarian law.

5.1 International (and regional) human rights law¹¹

International (and regional) human rights law prohibits all forms of violence and discrimination, including GBV. Any form of GBV constitutes a serious violation of human rights. Depending on the act in question, it may violate a number of rights, such as the following: the right to dignity and physical, mental and moral integrity; the right to freedom from torture and cruel, inhuman or degrading treatment or punishment; the right to liberty and security of person, and to freedom from slavery; the right to life; and the right to non-discrimination, equality and to equal protection of the law. Rape and sexual violence suffered at the hands of agents of the State, such as police or military officers, are generally considered to constitute an act of torture under human rights law.

GBV also impairs or nullifies a range of other rights, such as the rights to the highest attainable standard of physical and mental health, to an adequate standard of living, to education, and to just and favourable conditions of work.¹²

See also **Principle 11 of the Guiding Principles on Internal Displacement** (in Annex 1 of the Handbook ).

5.2 International humanitarian law and international criminal law

Many acts of GBV, including rape and any other form of sexual violence, such as sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization, are strictly prohibited by international humanitarian law as well as by the military code of most States.

¹¹ In particular, the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Trafficking in persons, especially women and children Protocol to the Convention against Transnational Organized Crime. Regional instruments include the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo, 2003), and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belem Do Para").

¹² CEDAW Committee, General Recommendation No. 19 (1992) on Violence against Women, para. 7.

Such acts constitute a serious violation of the law and a grave breach of the *Geneva Conventions*.¹³ In addition, depending on the context in which they are committed, such acts might constitute war crimes,¹⁴ crimes against humanity¹⁵ or genocide,¹⁶ all of which are punishable under international criminal law. All States and non-State actors are obliged to take action to prevent such acts and investigate and prosecute those responsible, or extradite them to other States or international tribunals with jurisdiction to try such acts.

Various resolutions and declarations of the United Nations Security Council, the General Assembly and other bodies have repeatedly condemned various forms of GBV and emphasized the responsibility of the State to end impunity for war crimes and crimes against humanity, including sexual and other violence against women and girls. The Security Council has passed a series of resolutions calling upon parties to armed conflict to fully respect international law and to take special measures to protect women and children from the effects of hostilities, including any form of sexual violence, by ending for example impunity and prosecuting those responsible for such crimes.¹⁷ The Security Council has also established monitoring and reporting mechanisms on children in armed conflict, which includes rape and other sexual violence among the six gravest violations against children.¹⁸



Key references

- *Guidelines for Gender-based Violence Interventions in Humanitarian Settings: Focusing on Prevention of and Response to Sexual Violence in Emergencies*, IASC, available in 5 languages, 2005.
- *Sexual and Gender-based Violence against Refugees, Returnees and Internally Displaced Persons: Guidelines for Prevention and Response*, UNHCR, available in 5 languages, 2003.
- *Gender-based Violence Tools: Manual for Assessment, Programme Design, Monitoring and Evaluation in Conflict-affected Settings*, Reproductive Health Response in Crisis Consortium, 2004.
- *Women, Girls, Boys and Men: Different Needs – Equal Opportunities*, IASC, 2006.
- *Standard Operating Procedures for Prevention of and Response to Gender-based Violence*, UNHCR, 2006.

¹³ See Rules 90, 93 and 94 of Customary International Humanitarian Law, Volume I (ICRC, 2005). Such acts are also prohibited through (i) grave breaches provisions such as Art. 147 of the Fourth Geneva Convention and Art. 85 of Additional Protocol I, which prohibit torture, inhuman treatment, and willfully causing great suffering or serious injury to body and health; (ii) Common Art. 3, which prohibits violence to life and person, cruel treatment and torture, and outrages upon personal dignity; and other provisions, such as Art. 27 of the Fourth Geneva Convention, Arts. 75-77 of Additional Protocol I and Art. 4(2) of Additional Protocol II, which explicitly prohibit attacks against women, including rape, enforced prostitution and any form of indecent assault.

¹⁴ See, for example, Arts. 8(2)(a)(ii) and (iii), 8(2)(b)(xxi) and (xxii), 8(2)(c)(i) and (ii), 8(2)(e)(vi) of the Statute for the International Criminal Court (ICC Statute). Note that even a single act of sexual violence can constitute a war crime.

¹⁵ Art. 7(1)(g) of the ICC Statute; Art. 5 of the ICTY Statute; and Art. 3 of the ICTR Statute. Crimes against humanity are crimes that are committed as part of a widespread or systematic attack against civilians, regardless of whether they are committed in times of peace or armed conflict.

¹⁶ Rape, sexual violence and abuse may amount to genocide if committed with intent to destroy, in whole or in part, a particular group, as defined in Art. 6(b) of the ICC Statute; Art. 2 of the ICTR Statute; and Art. II(b) of the Convention on the Prevention and Punishment of the Crime of Genocide. This was confirmed, for instance, by the ICTR in its judgment in *Prosecutor v. Akayesu* (Case No. ICTR-96-4-T).

¹⁷ See Security Council Resolution 1325 (2000), op. paras. 9, 10 and 11; Resolutions of the Council on Protection of Civilians, including Resolution 1674 (2005), and on Protection of Children in Armed Conflict, including Resolutions 1612 (2005), 1539 (2004), 1460 (2003), 1379 (2001), 1314 (2000) and 1261 (1999). See, in particular, Security Council Resolution 1820 (2008) on Women and Peace and Security, <http://daccessdds.un.org/doc/UNDOC/GEN/N08/391/44/PDF/N0839144.pdf?OpenElement>.

¹⁸ See, in particular, Security Council Resolution 1612 (2005) of 26 July 2005. For further information, see the Report of the Secretary-General on Children and Armed Conflict, A/59/695-S/2005/72, 9 February 2005.

- *UN Action Guidance Note “Reporting and Interpreting Data on Sexual Violence from conflict-affected countries: Dos and Don’ts,”* June 2008.
- *IASC Guidelines for Gender-based Violence Interventions in Humanitarian Settings,* IASC.

Further reading

- *Abuse and Exploitation Module,* Action for the Rights of Children, 2002.
- *Clinical Management of Survivors of Rape: Developing Protocols for Use with Refugees and Internally Displaced Persons,* WHO/UNHCR, rev. ed. 2004.
- *Early Marriage: A Harmful Traditional Practice: A Statistical Exploration,* UNICEF, 2005.
- *Good Practices in Combating and Eliminating Violence against Women: Report of the Expert Group Meeting,* UN Division for the Advancement of Women, May 2005.
- *Harmful Traditional Practices Affecting the Health of Women and Children,* Fact Sheet No. 23, OHCHR, 1995.
- *How to Use International Criminal Law to Campaign for Gender-sensitive Law Reform,* Amnesty International, 2005.
- *It’s in our hands: Stop violence against women,* Amnesty International, 2004.
- *Potential links between food aid, distribution of relief items and sexual exploitation and proposed preventive/remedial actions,* UNHCR, 2002.
- *Women in an Insecure World: Violence against Women: Facts, Figures and Analysis,* Geneva Centre for the Democratic Control of Armed Forces, 2005.
- *Women, War, Peace: Progress of the World’s Women 2002,* UNIFEM, 2002.



Useful websites

- United Nations Population Fund (UNFPA): **www.unfpa.org**
- United Nations High Commissioner for Refugees (UNHCR): **www.unhcr.org**
- UNIFEM Portal on Women, Peace and Security: **www.womenwarpeace.org**
- Reproductive Health Response in Crisis Consortium (RHRCC): **www.rhrc.org**
- World Health Organization (WHO): **www.who.int/gender/violence/en/**
- UN Action against Sexual Violence in Conflict: **www.stoprapenow.org/about.html**
- International Committee of the Red Cross (ICRC): **www.icrc.org/eng/women**
- Women’s International League for Peace and Freedom (WILPF): **www.peacewomen.org/wpsindex.html**
- International Rescue Committee (IRC): **www.irc.org**

Part IV.5

Children associated with armed forces or armed groups

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Key message

Hundreds of thousands of children are associated with armed forces or armed groups in armed conflicts in over 20 countries around the world. Girls and boys are used in a variety of ways providing support, as cooks or porters for example, participating in active fighting, laying mines and spying and, in many cases, they are also frequently used for sexual purposes.

This unrelenting and brutal use of children violates their rights and causes them significant physical, developmental, emotional, mental, and spiritual harm. The **release, protection and reintegration** of children recruited or used by armed forces or armed groups must be sought at all times, including during armed conflict. All humanitarian and human rights actors must take **preventive action** from the onset of humanitarian operations in a coordinated and strategic manner in order to ensure the unimpeded protection of children.

A “**child**” means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier (*Article 1, Convention on the Rights of the Child*).

A **child associated with an armed force or an armed group** refers to any person below 18 years of age¹ who is or has been recruited or used by an armed force or an armed group in any capacity, including but not limited to children used as fighters, cooks, porters, messengers, spies or for sexual purposes. It does not only refer to a child who is taking or has taken an active part in hostilities.²

1. The impact of displacement on the risk of recruitment

Children who become internally displaced as a result of natural disasters or armed conflict are usually at greater risk of recruitment or use by armed forces or armed groups. This is due to reduced social protection and coping mechanisms, discrimination on the basis of their displaced status or their perceived allegiance with a belligerent in the armed conflict. Additionally, lack of economic, educational or other opportunities caused by displacement affecting displaced children and their families can make internally displaced children more vulnerable to recruitment.

Children separated from their families or without family are particularly exposed and, where the security situation is fragile, for example when camps for internally displaced persons (IDPs) are close to conflict areas or infiltrated by armed actors, the potential for forced recruitment through abduction of children or other means is very high. Separated or orphaned children displaced into IDP settlements and in host communities may find themselves roaming the streets and, thus, become easy targets for recruitment.

¹ See section 7 at the end of this chapter regarding recruitment age. The Convention on the Rights of the Child and international humanitarian law absolutely prohibit the recruitment and participation of children of less than 15 years of age in armed conflicts.

² “Armed forces” refers to the armed forces of a State. “Armed groups” refers to groups distinct from armed forces as defined by Article 4 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. “Recruitment” refers to compulsory, forced and voluntary conscription or enlistment of children into any kind of armed force or armed group.

2. Why children are recruited into armed forces or armed groups

Children become associated with armed forces or armed groups for many reasons, depending on the context. A situation analysis is essential in order to identify the specific causes of recruitment in any given operation. While many children are forcibly recruited, others “volunteer” because of their circumstances.

2.1 Forced recruitment by armed actors

State and non-State armed actors target children due to a shortage of manpower or because children are particularly useful in certain roles, for example as spies or messengers. They are also more likely to obey orders, work for food, security or status rather than wages and can be used as sex slaves or “wives” of soldiers. They are easily manipulated and sometimes forced to commit grave crimes, including murder of civilians or other child soldiers.

Children are recruited in different ways. Some are conscripted, while others are abducted or threatened to be killed or have their family members killed if they do not join. Many are arbitrarily seized from camps, streets or even from schools and orphanages.

2.2 Circumstances leading to “enrolment” into armed groups

War itself is a major determinant, but children may see enlistment as the only alternative when they lack access to education or employment or when their families are abusive or violent or fail to provide proper care. Girls frequently join to escape sexual violence, forced marriage, domestic violence or other forms of discrimination. In such contexts, children may see participation in armed forces or armed groups as their best option for survival for themselves, their families or communities.

Children living in highly militarized or politicized communities or areas where violence is organized or commonplace may also be vulnerable to recruitment; children often join armed actors to support or remain with their families. Many also join armed forces and armed groups out of revenge for the murder of members of their family, while others may also view membership as a way to gain perceived social recognition or status.

3. The consequences for children associated with armed forces or armed groups

The involvement of children in conflict exposes them to extreme and unacceptable threats to their health and well-being and violates their rights, some of which are noted below.

- Boys and girls are deprived of the opportunity to grow up with their families and to develop physically and emotionally in a familiar or protective environment.
- In combat, many children are killed, severely injured or permanently disabled, and they may be forced to witness or participate in atrocities, or take drugs before combat.
- In many contexts, children, mainly girls, associated with armed forces or armed groups are subjected to GBV and may contract sexually transmitted infections including HIV/AIDS.
- Boys are also vulnerable to sexual violence, including rape, sexual torture and humiliation and sexual slavery.³
- Children whose families are displaced are at greater risk of remaining separated from their families and communities once released.

³ See *Shattered Lives, Immediate medical care vital for sexual violence victims*, a report by Médecins Sans Frontières, March 2009.


- Children may also be stigmatized or rejected by their families or communities. Girls face particular difficulties reintegrating, especially if they return pregnant or with children. Despite their experiences, these children usually see themselves as strong and hard working. They are resilient and able to do well in life if given appropriate help, support and encouragement.

Girls and forced recruitment

Girls constitute up to 40 per cent of children associated with armed forces or armed groups. While their experiences may lead to significant problems, particularly regarding their reintegration, their specific needs are rarely adequately addressed. Gender roles may contribute to girls' vulnerability to recruitment, which may be heightened in situations of displacement, for example by having to fetch water or firewood unaccompanied in conflict zones. Health risks may increase as they can become pregnant or give birth during their time with armed forces or armed groups.

Thus, the specific needs of forcibly recruited girls should be addressed at all stages of displacement and include the measures indicated below.

- Ensure that all aspects of the prevention of recruitment, the release and the reintegration processes include concrete measures to respond to the specific needs of girls. Pay particular attention to the needs for protection and support for both girl mothers and children born to girls as a result of their recruitment by armed forces or armed groups. They may require (i) health care including reproductive health; (ii) psychosocial support; and (iii) measures to ensure they can access services including education or training programmes;
- Display sensitivity in identifying and assisting girls, in order not to increase the stigma attached to their involvement with armed forces or groups.

As a preventative measure, ensure that humanitarian programmes promote gender equality and freedom of choice, and provide girls with opportunities to develop skills and generate income in non-exploitative settings (*further outlined in Part V.11* ).

4. The responsibility of the State

States bear the primary responsibility for providing security to, and ensuring the protection of, all children within their jurisdiction. Where States cannot meet all of their humanitarian responsibilities directly, they are charged with enabling the provision of humanitarian action by impartial actors.

States should take all necessary legislative, administrative and judicial measures to prevent and prohibit the recruitment of children into armed forces or armed groups. In particular, States should raise the age of recruitment and participation to armed forces to 18 years of age and provide clear instructions to all armed forces or armed groups not to engage in or support the forced recruitment of children. States should take all measures to criminalize such practices.

Where children have already been recruited, the State should demobilize child soldiers or facilitate the release of those children and provide them with protection, physical and psychological rehabilitation and reintegration support.

All peace agreements should include specific measures to demobilize and reintegrate all child soldiers formerly recruited by State and non-State actors into society.

Measures also include the ratification and implementation of all relevant legal instruments, in particular the *Convention on the Rights of the Child*, ensuring that all relevant international

standards are respected and reflected in national law and establishing and enforcing recruitment procedures in compliance with international law, including the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*.

5. The role of humanitarian and human rights actors

The Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups and the Paris Principles and Guidelines on children associated with armed forces or armed groups provide comprehensive guidance for country teams; reference should be made to the *Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS)* (outlined below) when working in a peacekeeping environment.

While the primary responsibility for preventing and responding to the forced recruitment of children rests with the State, humanitarian and human rights actors also play an important role in supporting and facilitating State's actions, as well as in persuading and engaging non-State actors to respect the rights of children not to be forced to participate in conflicts.



Child protection actors, working together with government ministries and other bodies with a child protection mandate, should support States by providing the required technical and operational expertise and leadership in decision-making and programme implementation for the prevention of recruitment as well as for the release, demobilization and reintegration of children.



All humanitarian and human rights actors, including those without expertise in the area of child protection, should

take measures to prevent and to ensure an effective response to the recruitment of children into armed forces or armed groups from the outset of an emergency. This entails ensuring that child protection concerns are adequately integrated and mainstreamed at all levels of the humanitarian response. The following matrix outlines key activities that could form part of an effective response.

In Sri Lanka,
a database was established in 2002 to collect information on children recruited in conflict-affected areas. The data was disaggregated by age, gender and district, and the database tracked the status of children (recruited, re-recruited, released, disappeared). The database constituted a powerful tool for advocacy and provided national/local authorities and humanitarian organizations with regular updates.
For more information, see: protection.onerresponse.info.




In our work, we can ...	
<p>Assessment and analysis (See Part III.1 )</p>	<ul style="list-style-type: none"> • Ensure that a joint situation analysis includes (i) the specific reasons for recruitment; (ii) the identification of children most at risk of recruitment; (iii) the identification of those carrying out recruitment; (iv) the steps being taken to prevent recruitment; and (v) existing initiatives and key stakeholders for demobilization or release and reintegration. • Ensure that the joint analysis integrates an age and gender perspective.
<p>Coordination (See Part III.2 )</p>	<ul style="list-style-type: none"> • Support the establishment of an interagency group involving all actors implementing programmes for children associated with armed forces or armed groups where roles and responsibilities are agreed; policy and programme approaches are defined; and linkages established with all other sectors. This group should also ensure that common protocols on documentation and information sharing are developed.

	<ul style="list-style-type: none"> • Work closely with peacekeeping forces to prevent forced recruitment, and demobilize and reintegrate child soldiers. (For further information on demobilization in a peacekeeping environment see the <i>Integrated Disarmament, Demobilization and Reintegration Standards</i>.⁴)
Prevention	<ul style="list-style-type: none"> • Ensure that prevention activities, which address the underlying causes of recruitment, are implemented within a broad child protection framework. • Advocate with national authorities and other stakeholders, as appropriate, to improve safety and security in and around camps, villages and other urban areas in order to prevent forced recruitment. (<i>outlined further in Part IV.2</i> ) • Develop advocacy campaigns with national civil society groups, including religious associations, to convey to key national stakeholders that the recruitment and use of children by armed forces or armed groups is not acceptable. • Develop local capacity, where possible, to follow up and monitor the situation of those children who require additional support, including girls and girl mothers, and any children at risk of re-recruitment (<i>further discussed below, under monitoring and reporting</i>).
Advocacy <i>(See Part V.3</i> )	<ul style="list-style-type: none"> • Undertake coordinated and well-planned advocacy strategies with a range of actors, taking into consideration the sensitivity and complexity of the issue of children affected by armed conflict. • Ensure that criteria for any release or demobilization process is based on the definition of “children associated with armed forces or armed groups” used in this document and that the objective of the release process is the early reintegration of children. These points should be clearly communicated to both armed forces and armed groups and communities, including children. • Advocate with States to take the necessary steps to ensure that all relevant international standards are ratified, respected and reflected in national law and practice. This includes ensuring that children who leave the armed forces or armed groups by any means (including escape or capture) be provided with protection in accordance with international human rights standards (particularly where those groups acted against the State or IDP community).⁵ • While recognizing that States have different obligations under international law, advocate, as do the majority of child protection actors, for States to raise the minimum age of recruitment to 18 years in all circumstances. • Advocate for children associated with armed forces or armed groups to be treated in accordance with international standards for juvenile justice. • Advocate for the inclusion in all ceasefire or peace agreements of demobilization and reintegration programmes for child soldiers.

⁴ Particularly Module 5.30 on Children. The module provides policy makers, senior management, operational staff and DDR officers with guidance on the planning and implementation of child specific demobilization and integration programmes for children associated with armed forces or armed groups in a peacekeeping environment. See also Module 5.10 on Women, Gender and DDR and Module 5.20 on Youth and DDR, www.unddr.org/iddrs/framework.php.


⁵ See section 7 at the end of this chapter.

Monitoring and reporting

(See Part V.2 )

- Support the establishment of specialized mechanisms for the systematic monitoring and reporting on the recruitment (or re-recruitment) or use of children by armed forces or armed groups, such as the task force on monitoring and reporting chaired or co-chaired by UNICEF.⁶ This is an essential protection measure and also serves as the basis for actions to pressure armed forces or armed groups to respect fundamental humanitarian and human rights norms and for actions to end impunity for those who violate those norms. Discuss roles and responsibilities for monitoring and reporting such cases within the child protection group and/or the country team. Such mechanisms must operate with the participation of, and in cooperation with, national governments and relevant United Nations and civil society actors.
- Support the development of a database on children affected by armed conflict.


Community mobilization


(See Part V.10 )

- Develop a prevention strategy in consultation with children, families and communities, which builds on their own protection initiatives and responds to the reasons for recruitment. This should include (i) the practical application of relevant law and standards such as the *Optional Protocol to the CRC*; (ii) practical measures to improve children's safety, for example, ensuring family unity; and (iii) programming to prevent recruitment such as the provision of education and livelihood opportunities.
- Work with key members of the community to prevent propaganda or active recruitment taking place in or around schools. Parents, teachers and religious leaders are very important stakeholders in this respect.
- Promote the development of plans by specialized organizations for programmes to support the release and reintegration of children; this should not be dependent either on the progress of any formal peace process or any formal DDR process. The plans should (i) emphasize the engagement of communities and build on existing resources; (ii) ensure the participation of children, their families and communities; (iii) include a strategy to meet the needs both of children who enter a release process and those who do not; and (iv) include specific activities to meet the needs of girls and their children.
- Encourage the establishment of child protection committees – where children and adults can work together to develop effective protection strategies – and the formation of youth groups.


⁶ Pursuant to Security Council Resolutions 1539 (2004) and 1612 (2005), the Secretary-General, UNICEF and the Office of the Special Representative of the Secretary-General for Children Affected by Armed Conflict (SRSG-CAAC) are tasked with a lead role in the implementation of a mechanism for monitoring and reporting on the recruitment or use of children and other egregious violations against children in armed conflict. They are tasked with working alongside United Nations Peacekeeping forces and United Nations Country Teams. They act in collaboration with governments, local and international NGOs, civil society actors and other partners. In each country where children and armed conflict is an issue, a task force on monitoring and reporting will be constituted. The country-level Task Force on Monitoring and Reporting will be co-chaired by the Deputy SRSG and UNICEF Representative in situations where a United Nations peacekeeping mission is in place or by the UNICEF representative in situations without a peacekeeping mission.


Capacity building

(See Part V.9 )

- Support the provision of technical assistance and advice to relevant stakeholders, including peacekeepers, local and national authorities and community-based organizations.
- Ensure that training is provided to all those implementing programmes or working with children associated with armed forces or armed groups, for example in interviewing and communicating with children. All staff working with children should adhere to a code of conduct on the protection of children (*further addressed in Part IV.4 .*⁷)
- Ensure that staff are trained and experienced in working with children, that health and psychosocial needs are addressed, and that urgent family tracing can be undertaken.

Health

(See Part IV.13 and V.11 )

- Ensure that adequate, free, confidential, accessible and “child friendly” health care, including reproductive health services and HIV/AIDS testing, are available. Following release or demobilization, all children should undergo an assessment of their physical health, including nutritional screening, and receive treatment or referral for specialist services as necessary.
- Provide appropriate medical care and support for children who have been subjected to gender-based violence (*further addressed in Parts IV.4 and 13 .*) Provide appropriate responses to meet the particular needs of girls including those who are pregnant or girl-mothers and their children.


Interim care

- Ensure that safe and secure interim care is provided for those children released or demobilized from armed forces or armed groups. They may benefit from a period of time in a setting where special assistance is provided by experienced staff; this might include children with medical needs, girl-mothers, children whose families cannot be traced or where the community is hostile to returning children.
- Interim care is not universally necessary for all children and, where it is used, it should always be planned and implemented as part of a community-based programme to facilitate the return of children to their communities and to promote the protection and development of conflict-affected children in general, building upon the resilience and the skills these children possess.



⁷ An example of a code of conduct developed by a coalition of organizations is *Keeping Children Safe: A toolkit for child protection*, by the Keeping Children Safe Coalition, 2006.

Reintegration of children and livelihoods

(See Parts VI and IV.16 )

- Trace family members of child soldiers, including through the use of the database on children affected by armed conflict.
- Reunite or place children in a supportive family environment as soon as possible following preparation of the child, family and community. Assess and seek ways to address any obstacles to reintegration including hostility towards returning children, medical needs or economic constraints. Prepare communities to receive children, including through their involvement in dialogue and conflict resolution mechanisms. Reintegration programs should aim at supporting and implementing the protection and rehabilitation roles of the State.
- Develop alternatives to cash benefits to released or demobilized children; and ensure that reintegration assistance generally is provided through broader support to children, families and communities. Assistance interventions should always build on the resilience of children and aim to benefit the wider community whilst developing the capacity of communities to provide a protective environment.
- Provide educational activities that promote psychosocial well-being and take into account the children's lost educational opportunities, their age and stage of development, and their experiences with armed forces or armed groups.
- Conduct a technical assessment of the livelihood systems, market opportunities, and household economies in the areas to which children are returning in order to develop economically relevant training and opportunities for economic reintegration.
- Develop links with any governmental programmes, policies and initiatives that could benefit these children and their families either directly, for example through social welfare programmes, or indirectly, through reconstruction and rehabilitation of national institutions and other development programmes. Ensure that these programmes support the inclusion of all children and do not neglect the specific situations of girls, young mothers or children with a disability.

6. Key actors

- At the **national level**: In addition to the internally displaced and host communities, including children, key actors include community and youth organizations, civil society organizations, community-based organizations and NGOs; local and central government including ministries of social welfare and family, ombudsman or commissioners for children, ministries for justice, education and health; national governments (both affected countries and donor governments); human rights actors; military and security actors (State or non-State).
- At the **regional level**: Key actors include any regional military and civilian peacekeeping forces; regional organizations, such as the African Union, the European Union, Economic Community of West African States, the Organization for Security and Cooperation in Europe; regional human rights commissions and courts; governments of neighbouring States; influential States in the region, and donor countries.
- At the **international level**: Key actors include United Nations organizations, in particular the Office of the Special Representative of the Secretary-General for Children Affected by Armed Conflict (SRSG-CAAC), UNICEF, UNHCR, OCHA, DPKO; the ICRC and IFRC, United Nations Security Council, International Criminal Court (ICC); United Nations treaty bodies and special procedures; INGOs such as Save the Children.

The Office of the Special Representative of the Secretary-General for Children Affected by Armed Conflict (SRSG-CAAC)

Since the World Summit for Children in 1990, the United Nations has increasingly sought to draw international attention to the horrendous plight of children affected by armed conflict. Collaborative efforts between the Office of the Special Representative, the United Nations Children's Fund (UNICEF) and key United Nations entities, as well as Member States, regional organizations, NGOs and other civil society groups, have resulted in significant advances, actions and tangible results for children. These advances include increased global awareness of the issues concerning children affected by armed conflict; development and strengthening of international norms and standards for the protection of children; implementation of a mechanism for monitoring and reporting on recruitment or use of children and other egregious violations against children in armed conflict (pursuant to Security Council Resolutions 1539 and 1612); consistent focus and prioritization of this issue by the General Assembly and the Human Rights Council; placement of children and armed conflict on the international peace and security agenda through systematic engagement of the Security Council; and deeper mainstreaming of children and armed conflict in the United Nations system and concerted advocacy.

7. The international legal framework

International human rights law, particularly the *Convention on the Rights of the Child*, provides the core principles for protecting the rights of all children at all times; more specifically, it prohibits the recruitment and the participation in conflict of children of less than 15 years of age.⁸ In addition, it lays down State obligations in a number of areas which are of direct relevance to children recruited by armed forces or at risk thereof. These include the protection of separated and unaccompanied children; the recovery and social reintegration of children victim of neglect, exploitation or abuse, torture, ill treatment or punishment, as well as

⁸ See Art. 38(2).

of armed conflicts; children's right to education; the prohibition of torture and the unlawful or arbitrary deprivation of liberty; and treatment under the juvenile justice system.⁹

The *ILO Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* defines children as below the age of 18 years and refers to forced and compulsory recruitment of children in armed conflict as *one of the worst forms of child labour*.

An *Optional Protocol to the CRC on the Involvement of Children in Armed Conflict* was adopted in the year 2000. It raises the minimum age for direct participation in hostilities and compulsory recruitment to 18 years; urges armed groups not to recruit or use children under the age of 18 and requires States Parties to take all feasible measures to criminalize such practices. It also calls on States to raise the minimum age and introduce strict safeguards for any voluntary military recruitment under 18.

The *Optional Protocol* builds on other standards, in particular the *1999 African Charter on the Rights and Welfare of the Child*. The Charter is the only **regional treaty** in the world which addresses the issue of child soldiers. It defines a child as anyone below 18 years of age without exception and charges States to ensure that no child takes direct part in hostilities and to refrain, in particular, from recruiting any child.¹⁰

International humanitarian law provides broad protection to children. In the event of armed conflict, both international and non-international, children benefit from the general protection provided to all civilians not participating in hostilities. Given the specific needs of children, the *Geneva Conventions of 1949* and their two *Additional Protocols of 1977* lay down a series of rules according them special protection; children who take a direct part in hostilities do not lose that special protection. In addition, international humanitarian law absolutely prohibits the recruitment of children younger than 15 into the armed forces or other armed groups and their involvement in hostilities in non-international conflicts.¹¹

International criminal law, in particular the Rome Statute of the International Criminal Court (ICC) adopted in 1998, states that conscripting or enlisting children under 15 years into national armed forces or armed groups or using them to participate actively in all kinds of hostilities, is a war crime. The ICC has no jurisdiction over persons below 18 years of age.

UN Security Council Resolutions have repeatedly condemned and called for an end to the unlawful recruitment and use of children.¹² States Parties to the above-mentioned treaties must ensure that their national laws are in conformity with their international obligations. They also must ensure that non-State actors comply with the prohibition to recruit or use children in armed conflicts.¹³

⁹ See Arts. 20, 28, 29, 39 and 40 of CRC. In addition to the CRC, the following international instruments provide protection for children in the justice system and the protection of children as witnesses: UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) 1985, UN Rules for the Protection of Juveniles Deprived of their Liberty 1990, and the International Covenant on Civil and Political Rights 1966 (Articles 6 and 10).

¹⁰ See Art. 22(2).

¹¹ See Art. 3(c) of the Additional Protocol II to the Geneva Conventions, applicable to non-international armed conflicts. Children younger than 15 years of age are also protected from direct involvement in international armed conflicts but, in this case, the prohibition is not absolute. Instead, parties to the conflict "shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities, and in particular, they shall refrain from recruiting them into their armed forces" (see Art. 77 of the Additional Protocol I to the Geneva Conventions). The use of the term "direct part" implies that children younger than 15 years can be involved as long as it is not in direct combat. Children below the age of 15 years, for instance, could be involved as messengers, porters, etc.

¹² See UN Security Council Res. 1261 (1999) 1314 (2000) 1379 (2001), 1460 (2003), 1539 (2004) and 1612 (2005).

¹³ See Art. 4 of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.



Key references

Standards, Principles and Codes of Conduct related to personnel

- *Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief*, IFRC, 1994.
- *Keeping Children Safe: A toolkit for child protection*, by the Keeping Children Safe Coalition, 2006.

Selected tools, guidelines and principles

- *The Capetown Principles and best practices on the prevention of recruitment into the armed forces and on the demobilization and social reintegration of child soldiers in Africa*, 1997.
- *The Paris Commitments to protect children from unlawful recruitment or use by armed forces or armed groups*, 2007.
- *The Paris Principles and Guidelines on children associated with armed forces or armed groups*, UNICEF, 2007.
- *Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS)*, particularly Module 5.30 on children, and also Module 5.10 on Women, Gender and DDR and Module 5.20 on Youth and DDR, 2006.
- *Humanitarian Charter and Minimum Standards in Disaster Response; Interagency Guiding Principles on Unaccompanied and Separated Children*, The Sphere Handbook, ICRC, 2004.
- *Child Soldiers*, ref 0824, ICRC, 2003.
- *Children and war information kit*, ref. 0577K, ICRC, 2004.

Further reading

- *A Fighting Chance*, Guidelines and Implications for programmes involving children associated with armed groups and armed forces, Save the Children Alliance, 2004.
- *Children - Not Soldiers: Guidelines for working with child soldiers and children associated with fighting forces*. McCONNAN Isobel and UPPARD Sarah, Save the Children UK, 2001.
- BRETT, R. & McCALLIN, M., *Children: The Invisible Soldiers*, Stockholm, Rädda Barnen, 2nd Edition, 1998.
- *Promoting Psycho-social Well-Being among Children Affected by Armed Conflict and Displacement: Principles and Approaches*, Geneva, SCA - Working Paper No. 1. Save the Children Alliance, 1996.
- *Global Report on Child Soldiers*, Coalition to Stop the Use of Child Soldiers, 2004.
- *Guidelines on Mental Health and Psychosocial Support in Emergency Settings and Guidelines for Gender Based Violence Interventions in Humanitarian Settings*, IASC, 2007.
- *Introduction to Child Protection in Emergencies—an Inter Agency Modular Training Package*, February 2009.



Useful websites

- Coalition to Stop the Use of Child Soldiers: www.child-soldiers.org
- International Committee for the Red Cross (ICRC): www.icrc.org
- United Nations Children’s Fund (UNICEF): www.unicef.org
- Office of the High Commissioner for Human Rights (OHCHR): www.ohchr.org
- Special Representative of the Secretary-General for Children and Armed Conflict: www.un.org/special-rep/children-armed-conflict/fsoldiers.htm
- Office for the Coordination of Humanitarian Affairs (OCHA): www.ochaonline.un.org
- Save the Children: www.savethechildren.org/

Part IV.6

Threat to liberty and freedom of movement

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Key message

The ability to move freely and in safety within one's country is a basic right as well as a pre-condition for the enjoyment of many other rights. Limitations on freedom of movement can have serious consequences for the lives, health and well-being of individuals and communities. Ensuring freedom of movement, thus, forms an important part of any protection strategy.

1. What do we mean by the term “freedom of movement”?

Freedom of movement consists of the right and ability to move and choose one's residence freely and in safety within the territory of the State, regardless of the purpose of the move. It also includes the right to leave any country and to return to one's own country. It is closely related to the right to liberty and security of person, which guarantees freedom from arbitrary arrest and detention, and the right to seek asylum in another country. Taken together, these rights mean that all persons, including internally displaced persons (IDPs), have the right to:

- **take flight and seek safety** in another part of the country (of choice), or leave the country in order to seek asylum in another country;
- **move freely and in safety** within the country, including in and out of camps and settlements, regardless of the purpose of the move;
- **voluntarily return** to the place of origin **or relocate** to another part of the country;
- **not be arbitrarily displaced or forced to return or relocate** to another part of the country; and
- **not be arbitrarily arrested or detained or forced to reside in specific camps or settlements.**


Lack of freedom of movement can have serious **consequences** on the lives, health and well-being of displaced individuals and communities. It not only limits their ability to flee and seek safety from the effects of conflict or serious human rights abuses but furthermore impedes their ability to secure a sustainable livelihood, to access humanitarian assistance (*further elaborated in Part V.4* ) and find durable solutions to their displacement. Lack of freedom of movement can result in limited access to work, markets, land and basic necessities (food, water, firewood) as well as life-saving public services, such as education and health care. It may also lead to the separation of families and pose obstacles to family reunification. Further, it diminishes the possibilities for IDPs to find durable solutions, as they may not be able to go and see the conditions at their former place of residence or travel in the country to find another place in which to settle. Overall it is likely to result in increased poverty, marginalization and dependency on humanitarian aid.

2. Freedom of movement in the context of internal displacement

The ability to move freely and in safety is of particular importance for IDPs, who often live in or near areas of conflict and need to access vital humanitarian assistance or reside in camps and settlements where access to sustainable livelihoods and humanitarian assistance is limited and threats to life, safety and security frequent. Various obstacles may limit their freedom of movement, including (i) practical barriers; (ii) legal or administrative restrictions; (iii) forced encampment; (iv) forced population movement; (v) and arbitrary arrest and detention.

2.1 Practical barriers

Practical barriers take different forms, depending on the context, but can include the following:

- **Lack of safety and security** stemming from crime, armed conflict, generalized violence, harassment, intimidation, or the presence of landmines and unexploded ordnance can affect the IDPs disproportionately, or they may be targeted because of perceived association with political factions or parties to a conflict. Such security risks usually persist in the aftermath of a conflict. In situations of natural disasters, unmitigated risks of further calamitous effects due to natural hazards, harassment or intimidation can also limit freedom of movement.
- **Lack or loss of identity or travel documents** can limit freedom of movement and expose IDPs to harassment, extortion, arbitrary arrest or detention. Replacement documentation is often difficult or impossible to obtain, for instance owing to strict administrative requirements, high fees or discriminatory practices. IDPs may also be obliged to return to their areas of origin, despite the dangers involved in obtaining new documentation (*further addressed in Part IV.1* ).
- **Discrimination** on the basis of gender, ethnic origin, political opinion, religion or other status, such as that of being displaced, can curtail freedom of movement. As an example, women and girls are frequently barred from obtaining documentation in their own names and may be prevented from traveling except with the permission of, or in the company of, male relatives;
- **Lack of adequate infrastructure**, including destroyed or damaged roads and bridges, lack of safe and affordable **transport**, in particular in situations of natural disasters, can hinder movement.
- **Poor physical condition** owing to age, ill-health or disability can also limit people's ability to travel.

2.2 Legal or administrative restrictions

Legal or administrative restrictions on freedom of movement by local or national authorities are often used to monitor or control movement within a country's borders. Restrictions are **subject to strict criteria under human rights law**. They must be provided for by law, be considered necessary and proportionate to achieve a legitimate aim (such as the protection of national security or public order, health or morals, or the rights or freedoms of others), including in the aftermath of a natural disaster, and they must be non-discriminatory and consistent with other human rights.

In situations of displacement, restrictions have sometimes been implemented in an arbitrary or discriminatory manner or been used for unlawful purposes, including to isolate or marginalize the displaced population. Common restrictions are noted below.

- **General travel restrictions**, either legal or administrative, which regulate movement within the country, for instance from rural to urban areas, often disproportionately affect IDPs, owing for instance to a lack or loss of documentation or financial means. These can include curfews, restricted traveling hours or days, or strict travel criteria, such as a need for specific documentation or travel permits. Illegal checkpoints put in place by uncontrolled armed elements or non-State actors also restrict the ability of IDPs to move freely.
- **Targeted travel restrictions** on, for example, movement in and out of camps or settlements for IDPs, are often imposed to deal with perceived or actual security threats but frequently violate the rights of those residing in the area. These can include curfews, restrictive traveling hours or days, restrictions on travel distances, strict exit/entry criteria, and documentation requirements.


Whenever restrictions are imposed by the State, it must ensure that these comply with the criteria mentioned above. As an example, where documentation or travel permission are required, the State should ensure that these can be obtained without delay or hardship and that they are not subject to unreasonable requirements or high fees.

2.3 Forced encampment

In some countries, IDPs have been forced to reside in special IDP camps or settlements, often despite the fact that they might prefer to seek shelter with members of their families, friends, or extended communities. Such camps or settlements are often poor, over-crowded and located in remote areas where access to sustainable livelihoods, basic necessities and vital services are limited or lacking entirely.


As a general rule, IDPs should be able to reside where they choose. Forced encampment, with few exceptions, is likely to constitute a grave violation of a number of human rights, including the right to freedom of movement. It may also amount to de facto detention in violation of the right to liberty and security.

2.4 Arbitrary displacement, forced return or relocation

Forced population movements have regrettably been used by both political and military factions to displace individuals and communities, gain control over land and natural resources, or to collectively punish a certain population group for alleged support for opposing factions. Forced population movement, as a general rule, is prohibited. It can only be lawful in a limited number of cases, such as to safeguard public safety or interest, or for reasons of military necessity, in which case it must take place in safety and meet certain minimum standards, as described in *Part IV.1* .

The principle of the voluntariness of movement entails that:

- the decision is made freely (without duress, compulsion or undue influence);
- the decision is based on accurate, objective information; and
- the decision is made expressly and individually (with women on equal footing with men).

It can be difficult at times to assess the voluntariness of movement, in particular in the context of large-scale return or relocation. Displaced populations may be vulnerable to outside influence or manipulation or may lack information and access to adequate food, water, shelter and other necessities. As a result, they may feel compelled to return or relocate although it may not be safe to do so. Conversely, some persons may feel compelled to stay although conditions for a safe and sustainable return exist. The voluntariness of movement needs to be assessed as thoroughly as possible in each given case (*as outlined in Part VI.1* .

2.5 Arbitrary arrest and detention

Arbitrary arrest and detention, and ill-treatment while in detention, is a serious problem in many countries. Such abuse can affect IDPs disproportionately because of discrimination, distrust, stigma and/or lack or loss of documentation proving legal identity. This is frequently the case in countries where displacement has been motivated by political or ethnic factors. Poverty and marginalization can also force individuals to adopt survival strategies, such as brewing alcohol, trading goods without permission or survival sex, which breach national law and thus place them at increased risk of arrest and detention.

While the State has the right and indeed the duty to maintain law and order, including through powers of arrest and detention, such powers must be exercised in accordance with the law and

with respect for human rights. As an example, all detainees must be treated humanely, be informed of any charges against them in a language they understand, and be given the opportunity to contest the lawfulness of the arrest before a judge. Any form of torture or ill treatment, including rape, beating or excessive use of solitary confinement, is prohibited at all times.

3. Individuals and groups at particular risk

Different groups may experience different obstacles or violations of freedom of movement. For instance, women and girls are often discriminated against, prevented from obtaining documentation in their own name, or harassed or subjected to sexual violence when traveling alone. Men and boys, however, may be more likely to be arbitrarily arrested and detained, forcibly recruited into armed forces/groups, or placed at risk of extra-judicial and summary executions. Ethnic and religious minorities and stateless persons as well as persons with special needs, such as unaccompanied and separated children, older persons, and persons living with disability or disease, often face additional difficulties.

4. The responsibility of the State

The national authorities carry primary responsibility for respecting and ensuring respect for the rights to freedom of movement, liberty and security of person. This means that the State must ensure that the rights are adequately protected in national legislation and respected by all agents of the State at the national, regional and local levels. The State must also take action to ensure that freedom of movement is not limited by third parties and that any obstacles to the full enjoyment of the right are adequately addressed.

5. The role of humanitarian and human rights actors

Humanitarian and human rights actors can play an important role in ensuring freedom of movement and respect for other human rights through advocacy, monitoring and capacity-building efforts, both with the authorities and with displaced individuals and communities.




In our work, we can ...

Assessment and analysis

(See Part III.1 )


- Work with displaced communities and relevant colleagues, including security experts, to identify and assess obstacles to freedom of movement, liberty and security, and the ways in which these can be addressed.

Presence

(See Part V.4 )






- Ensure regular visits and the visible presence of protection staff in areas or locations where freedom of movement and other rights are frequently violated. This may include checkpoints, exit/entry points into camps and villages, roads and paths leading to markets, schools, and other public spaces.

Advocacy

(See Part V.3 )

- Advocate for, and sensitize, relevant actors, including national and local authorities and non-State actors, to the importance of respecting freedom of movement, liberty and security, and the prohibition on forced and arbitrary displacement, return or relocation of any kind.




<p>Documentation (See Part IV.9 )</p>	<ul style="list-style-type: none"> • Work with relevant authorities to ensure that IDPs have safe and effective access to documentation and/or replacement documentation, that strict documentation requirements are eased or suspended for IDPs, and that those without documentation are not arbitrarily arrested and detained. In some cases, modest financial or material assistance might be appropriate in order to assist local authorities to issue or replace lost documentation.
<p>Information (See Part V.7 )</p>	<ul style="list-style-type: none"> • Ensure that IDPs have access to information about the security situation and other factors that may affect their ability to move freely and in safety. In the context of return or relocation, this includes information about travel conditions and conditions in the place of return or intended relocation. Where appropriate, organize “Go and see” visits in consultation with the concerned displaced persons or groups and the receiving communities.
<p>Community mobilization (See Part V.10 )</p>	<ul style="list-style-type: none"> • Work with the community to identify obstacles and take steps to strengthen its ability to move freely and in safety. This can include safe transportation; joint travel or transportation to markets, schools, and clinics; joint collection of food, water and firewood; accompanied travel, for instance for women and children; and assisted travel, for example for older persons or persons with disabilities.
<p>Safety and security (See Part IV.2 )</p>	<ul style="list-style-type: none"> • Negotiate for, and support efforts to, improve safety and security in and around camps, settlements and urban IDP areas. This may include an increase in the number of civilian police and, if present, patrols by peacekeeping forces. To safeguard their civilian character, military forces should be involved only on an exceptional basis and never within, or in the immediate vicinity of, such areas.
<p>Mine action (See Part IV.3 )</p>	<ul style="list-style-type: none"> • Coordinate with de-mining experts and other partners, including local authorities and displaced communities, to ensure the early identification, marking and de-mining of areas inhabited by IDPs, and provide support for mine-awareness and education activities aimed at both the displaced and the wider population.
<p>Transport</p>	<ul style="list-style-type: none"> • Advocate for, and assist, the authorities to improve road infrastructure and public transport to enable displaced individuals and communities to seek work, access markets, tend fields, and access education and health care. This can include repairing roads or bridges, loaning or donating vehicles, such as buses, and modest financial or material assistance, for instance in the form of fuel. In situations where harassment and violence against ethnic groups may persist, assist the authorities to introduce unified license plates that would prevent the identification of places of residence. • Consider providing modest financial or other assistance to persons in need or at particular risk to enable them to travel, for instance to work or to attend schools or health clinics.



Persons in detention

- Ensure that effective monitoring mechanisms are established to monitor that conditions in detention and the treatment of individuals deprived of their liberty meet established minimum standards. Such activities should be undertaken in close cooperation with the ICRC or other actors with expertise in monitoring prison conditions. Where needed, modest financial or material assistance can be provided to improve prison conditions and services.
- Make interventions on behalf of individuals who have been arbitrarily arrested or detained. This can include legal advice and assistance as well as advocacy with relevant authorities to ensure respect for relevant rights, including the right not to be arbitrarily arrested or detained, to be informed of any charges, to be brought before a judge in order to challenge the lawfulness of detention, and to a fair trial.

Durable solutions
(see Part VI )

- Monitor return and relocation movements to ensure IDPs are informed, the movements are voluntary, and minimum standards relating to safety and security as well as the provision of basic necessities are met. Where such movement is deemed involuntary, in part or in whole, ensure that it is monitored, documented and reported to all relevant stakeholders, including in particular the protection working group and the Humanitarian/Resident Coordinator.
- Advocate for and support development projects that aim to restore or rehabilitate damaged infrastructure (roads, bridges) or public services (schools, health clinics, community centres) that facilitate voluntary return, resettlement or integration in the area of displacement.

6. The international legal framework

6.1 Freedom of movement

International (and regional) human rights law guarantees everyone the right to freedom of movement and residence within the borders of the State, and the right to leave and enter one's own country.¹ It consists of the right to move and choose one's residence, freely and in safety, without undue influence or interference from the State, regardless of the length of stay or the reason or purpose of the move.

While States might have a legitimate interest in controlling or monitoring the movement of people in their territory, such restrictions are only permissible if they meet the established criteria of (i) being provided for and being in accordance with law; (ii) being necessary to achieve a legitimate aim, such as protecting national security, public order, public health or morals or protecting the rights and freedoms of

Guiding Principles (outlined further in Annex 1 of the Handbook)

“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.”

¹ See, at the international level, Art. 13 of UDHR; Art. 12 of ICCPR; Art. 5(d)(i) and (f) of ICERD; Art. 15 of CEDAW; and, at the regional level, Art. 12 of AfCHPR; Art. 22 of AmCHR; Arts. 20 and 21 of ArCHR; and Art. 2 of Protocol 4 to ECHR.

others; and (iii) being consistent with other human rights, particularly the right to non-discrimination, and the State's other international legal obligations.

Women and girls are entitled to equal respect of freedom of movement and residence, and States are obliged to take all necessary measures to ensure that they can exercise this right on an equal basis with men and boys.²

The right to freedom of movement is also closely related to, and often a prerequisite for the enjoyment of, other human rights, including the rights to life, liberty and security, to an adequate standard of living, including health, food and water, and to property. It is also closely related to the right to seek asylum from persecution in another State.³

International humanitarian law forbids parties to the conflict to order the displacement of the civilian population in whole or in part, unless their security or imperative military reasons so demand, and it requires that displaced persons be allowed to voluntarily return in safety as soon as those reasons cease to exist. The law also requires that all possible measures be taken to protect any property left behind and to ensure satisfactory conditions while in displacement, including shelter, hygiene, health, safety, nutrition and family unity.⁴

6.2 The right to liberty and security of person

International (and regional) human rights law guarantees the right to liberty and security of person.⁵ This includes a prohibition on arbitrary arrest and detention as well as any other deprivation of liberty that is not based on and in accordance with the law. The right also includes the right to (i) be informed immediately of the reasons for arrest; (ii) be brought promptly before a judge; (iii) be able to challenge the lawfulness of detention; (iv) be brought to trial or released within a reasonable time; and, (v) in case of unlawful arrest or detention, compensation. The law also calls for the humane treatment and respect of other human rights while in detention.

Guiding Principles (outlined further in Annex 1 of the Handbook)

“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”.

The UN *Basic Principles for the Treatment of Prisoners*, the UN *Standard Minimum Rules for the Treatment of Prisoners*, and the UN *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* provide useful and more detailed information about the standards that should be followed.⁶

² See, for example, Art. 15 of CEDAW. See also General Comment No. 27 (1999) on freedom of movement (para. 6) and General Comment No. 28 (2000) on equality of rights between men and women (s.16), of the UN Human Rights Committee.

³ See, in particular, at the international level, the 1951 Convention on the Status of Refugees and its 1967 Protocol, and Art. 14 of UDHR, and, at the regional level, Art. 12(3) of AfCHPR; Art. 23 of AfCRWC; Art. 22(7) of AmCHR; and Art. 23 of ArCHR.

⁴ See, for example, Rules 129-132 of *Customary International Humanitarian Law* – Volume I: Rules (ICRC, 2005). See also Art. 49 of the Fourth Geneva Convention and Arts. 4(3)(b) and 17 of Additional Protocol II.

⁵ At the international level, see for example Art. 3 of UDHR; Art. 9 of ICCPR; Art. 5(b) of ICERD; Arts. 9(4) and 37 of CRC and, at the regional level, Art. 6 of AfCHPR; Art. 7 of AmCHR; Art. 4(c) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women; Art. 8 of ArCHR; and Art. 5 of ECHR.

⁶ These are available at: www.ohchr.org/english/law.

International humanitarian law prohibits arbitrary deprivation of liberty, i.e. detention that is not based on and in accordance with the law.⁷ It also establishes extensive safeguards for the treatment of detainees during times of armed conflict.⁸ In particular, they must be provided with adequate food, water, clothing, shelter and medical attention, and be allowed to correspond with, and receive visits from, their families. Violations of these rules might amount to inhumane treatment, which may constitute a war crime. Women and children should also be kept separate from adult men, except where families are accommodated as family units.



Key references & useful websites



- General Comments No. 27 (1999) on **freedom of movement** (Art. 12); No. 21 (1992) replaces general comment No. 9 concerning **human treatment of persons deprived of liberty** (Art. 10); and No. 8 (1982) on the **right to liberty and security of persons** (Art. 9) of the Human Rights Committee.
- **Protection of detainees:** “Action Behind Bars,” International Review of the Red Cross, Alain Aeschlimann, Vol. 87, No. 857, International Committee of the Red Cross, Geneva, March 2005.

⁷ See Rule 99 of *Customary International Humanitarian Law – Volume I: Rules* (ICRC, 2005).

⁸ See Rules 87 and 118-128 of *Customary International Humanitarian Law – Volume I: Rules* (ICRC, 2005). See also Common Art. 3 of the Geneva Conventions.

Part IV.7

Family separation

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Key message

The family is a fundamental social unit that is entitled to special respect and protection. The family is also an important source of protection in itself. It unites individuals and provides important physical, social, legal, material and emotional stability and support to its members, in particular for children. Efforts aimed at preserving the unity of the family can prevent exposure to various risks and help individuals and communities rebuild their lives and minimize the adverse effects of displacement.

The *Inter-Agency Guiding Principles on Unaccompanied and Separated Children* provide guidance on preventing family separation, undertaking family tracing and reunification, and ensuring adequate care arrangements for unaccompanied children pending reunification. The Principles are available from <http://www.unhcr.org/refworld/docid/4113abc14.html>. This chapter provides basic guidance but does not replace or duplicate the Principles, which should be implemented in all emergencies.

1. What constitutes a family?

There is no universally accepted definition of the family and the meaning of the term may differ from one country to another. In some cultures the term refers to parents and their children only; in others, it includes a larger group of extended family members. It is important to understand and respect such differences and **adopt a working definition that suits the context**, as outlined below.


- Use a **practical, flexible and comprehensive** definition that extends beyond the nuclear family in order to include relationships of social, emotional or material dependency. In some cases, this may include individuals who are not blood relatives.
- Use **appropriate and realistic criteria** relating to documents and other evidence that may be required to demonstrate a family connection. Internally displaced persons have often lost personal documents, and alternative methods may need to be developed to confirm family connections.
- Use a **broad definition of terms** such as “spouse” and “dependent child.” As an example:
 - “Spouse” should not be restricted to persons in legal unions only but extend to those who are engaged, have entered into a customary marriage, or have formed a household (cohabitation/common law couples). It may also include same sex partnerships and spouses in a polygamous marriage.
 - A dependent child is normally defined as any unmarried child under the age of 18 years. However, in some cases, children over 18 years could be included if, for instance, they remain dependent upon, and continue to share, a household with their parents. No distinction should be made between children born in and those born outside marriage.

2. Family separation in the context of internal displacement

Families and communities are frequently torn apart as a result of forced displacement. Such separation can occur deliberately where, for instance, parents entrust the care of their children to others, often in the belief that it will be in their best interests or accidentally, including during flight or when seeking shelter and assistance in large or crowded camps, settlements and

urban areas. Internally displaced persons (IDPs) are often forced to flee on short notice and family members, in particular young children, older relatives or persons with disabilities, may be left behind or become separated on the way.

Separation can also occur as a result of well-meaning but ill-conceived or even unlawful, humanitarian interventions. By way of example, evacuating children or facilitating adoption arrangements can lead to forced and permanent separation of children from their parents. Providing them with shelter and other assistance without making arrangements for their parents or caregivers can also lead to separation.

Separation also occurs when children are forcibly recruited into the State military or into armed groups in territories controlled by non-State entities (*as outlined in Part IV. 5* ).

Humanitarian actors must always act to ensure that children are not separated from their parents against their will or against their best interests.¹

Separation from family members and lack of knowledge about the fate and whereabouts of loved ones can give rise to grief, anxiety and depression. It can also expose individuals to various, but different, protection risks depending on their age, gender and specific needs, as outlined below.

- **Women and girls** often suffer as a result of discrimination and lack of access to land, shelter, public services or documentation in their own names. Separation may also place them at increased risk of various forms of gender-based violence, including sexual abuse and exploitation.
- **Men and boys** are often at increased risk of harassment, arbitrary arrest and detention, and/or forced recruitment into armed forces or armed groups.
- **Girls and boys** face a wide range of protection risks as a result of separation from their families or caregivers, including neglect, abuse and exploitation, forced labor, slavery, trafficking, limited access to education, and forcible recruitment into armed forces or armed groups.
- **Older persons**, which may have limited ability to move or secure a livelihood, may be exposed to hunger or disease and, in some cases, may suffer abuse and exploitation.
- **Persons with disabilities** may face obstacles when trying to move, when seeking shelter, or when accessing assistance and services, including health care.

DID YOU KNOW THAT...

- A **child** is any person under the age of 18 years, unless majority is attained earlier under national law.
- A **separated child** is any child that has been separated from both parents or from other legal or customary primary caregiver/s but not necessarily from other relatives.
- An **unaccompanied child** is any child who has been separated from both parents and other relatives and who is not being cared for by an adult who, by law or custom, is responsible for doing so.
- An **orphan** is a child whose parents, both mother and father, are deceased. This requires careful verification and must never be assumed. Referring to a child as an “orphan” should be avoided until the fate of his/her parents and other legal or customary primary caregivers has been conclusively determined.

¹ See reference to “best interests of the child” and Best Interest Determination (BID) Procedures under Part V.7.3.

Separated family members can face a number of obstacles when trying to trace and reunite with their families. Factors such as ongoing conflict and insecurity, collapse of institutions and infrastructure, lack of freedom of movement and means of communication, and responsibility toward other family members, can limit the ability to search for, and unite with, separated family members. Young children, older persons and persons with disabilities face particular obstacles in this regard. In some cases, separated family members may find themselves on different sides of a frontline or a border, which can make tracing and reunification very difficult.

3. Preventing and responding to family separation

Separated families and communities usually make significant efforts to find and reunite lost family members, and such efforts should be supported where possible. Local and national authorities as well as humanitarian and human rights actors also play an important role in preventing and responding to family separation. Such activities can be divided into four categories:

- **prevention** (to be undertaken at all times);
- **identification, registration and documentation** (to be undertaken from the beginning of displacement and continue until displacement has come to an end);
- **tracing, verification and reunification** (to be undertaken by specialized agencies only); and
- **temporary assistance and/or alternative care arrangements** (to be provided if and as required).

Several key principles, as indicated below, should guide all efforts to prevent family separation and ensure family unity, in particular in cases involving children.

- **Respect for human rights, including the principle of family unity:** All men and women have the right to found a family and have their right to respect for the family observed. This requires efforts to prevent separation and to ensure rapid tracing and reunification in case it occurs, even in times of conflict and displacement.
- **Principle of non-discrimination:** Any direct or indirect discrimination, for instance on the basis of age, gender, ethnic or linguistic background, political opinion, birth or other status, including that of being displaced, is prohibited. In order to ensure full and equal access to assistance and services, however, efforts must be made to meet any specific needs, including those of women and girls.
- **Participation, including that of children:** Separated family members should be informed about the relevant procedures and kept updated about any progress made. Their informed consent should be sought for the sharing of personal information and for reunification to take place. The child's right to participation should also be respected and his/her opinion given due weight, taking into account the child's age and maturity. Children may need to be interviewed by trained staff with experience working with children.
- **Best interests of the child:** The principle arising from Article 3 of the *Convention of the Rights of the Child*, that “*the best interests of the child shall be a primary consideration,*” should be applied in a systematic manner in any action that affects a child and must permeate both actions of general character, such as assessments, planning or budget allocations, and actions affecting individual children. In situations of internal displacement, this principle requires a careful assessment of the best interests of the child at every phase of the displacement cycle, regarding any action that may affect the child. While relevant for all children, the identification of the best interests of unaccompanied and separated children in situations of internal displacement requires special attention due to the particular risks that they may face.


Best Interest Determination Procedures


National child protection systems usually foresee scrupulous procedural safeguards for decisions of a certain magnitude which require that the best interests of the child be identified. Such decisions include separation from parents against their will (e.g. in case of abuse or neglect), determination of custody rights or decisions on adoption. These decisions can only be taken by competent national authorities, such as the judiciary, and are subject to procedural safeguards foreseen by law.

In humanitarian crises, protection actors may also need to establish formal procedures for the determination of the child's best interests (known as BID procedures). In the context of family unity, BID procedures are to be established when considering durable solutions, alternative care arrangements, removal from family when a child's safety is in question and, in some cases, family reunification. These should be developed building on domestic child protection systems. They should ensure that decisions are taken by more than one person with relevant expertise and are based on a balancing of all relevant factors. BID procedures should ensure adequate child participation without discrimination. The views of the child should be given due weight in accordance with age and maturity.

4. The responsibility of the State

The family is considered a fundamental social unit and is entitled to special protection under international law as well as by most national legal frameworks. The national authorities carry primary responsibility for protecting and ensuring respect for family unity and family life (as outlined in Part IV.7.7). This includes taking any necessary legislative, administrative and other measures to prevent and respond to family separation. Examples of steps that should be taken by States are indicated below.

- Take action to **prevent** family separation from taking place, including by ensuring that any action or inaction by the State does not result in separation of families who wish to remain together, including during evacuations or other population movements. This may include ensuring proper registration of births, deaths and/or changes in civil status (e.g. marriage or divorce), as well as the equal rights of men and women to manage family property and care for their children. With regard to the forced recruitment of children into the armed forces, which is prohibited under international humanitarian law, prevention also includes issuing clear governmental instructions to all actors of a conflict, including non-State actors, not to resort to child conscription (*further elaborated in Part IV. 5* ).
- Enable the rapid **tracing and reunification** of separated family members by, for instance, establishing tracing mechanisms, facilitating inquiries, assisting separated families to reunite, and cooperating with humanitarian organizations engaged in such activities.
- Provide **protection and assistance** to persons who have become separated from their families as well as for the families caring for such persons, in particular where unaccompanied or separated children are involved. Children who cannot be reunited with their families should be provided with alternative care and support. Care arrangements must be regularly monitored and measures taken to protect the child from any form of violence, maltreatment, neglect or abuse.
- Make all efforts to establish and to inform next of kin of the **fate and whereabouts** of missing relatives. In the event of death, the authorities should endeavour to collect and return the mortal remains of dead relatives to their families or indicate the location of their burial sites. Efforts should include the establishment of mechanisms, such as truth commissions, to allow IDPs to know the fate of their missing relatives (*outlined in*

Part IV.18 , and ensure access to justice and reparation for victims of grave human rights abuses.

5. The role of humanitarian and human rights actors


Humanitarian and human rights actors can support efforts to preserve family unity by helping to prevent family separation, by providing protection and assistance to those who have been separated from their families, and by supporting family tracing and reunification efforts where appropriate. Such efforts should be coordinated by actors having the required skills, expertise and experience. They should also be in line with existing guidelines on the subject, in particular the *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*. In most cases, close cooperation with national authorities and relevant line ministries is needed.

5.1 General activities



In our work, we can ...

Assessment

(See Part III.1 )

- Ensure that protection assessments take into account the risk of family separation, including its main causes, consequences, and those most at risk. Such assessments should also identify the means and mechanisms used by the community to prevent or respond to such separation (e.g. community-based tracing, reunification and provision of temporary care and support to those in need).


Coordination

- Ensure that family unity is adequately addressed by the protection working group and other coordination mechanisms if needed. This may require the establishment of a focal point or a working group that takes responsibility for coordinating the response (*as discussed in section 7 below*).
- Ensure that the roles and responsibilities of all relevant actors are clear, that adequate standard operating procedures are in place and joint referral/response mechanisms established, and that existing common standards and tools, including the *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, are used and implemented (*as further addressed in the reference list below*).

Referral and response

- Ensure that a referral and response mechanism is available and known to staff and partners. Such mechanisms are needed to ensure immediate registration, documentation and appropriate care, protection and assistance, of any identified separated family members, in particular unaccompanied children. Such mechanisms should be coordinated by actors with the required expertise.

Monitoring

(See Part V.2 )

- Ensure that all staff and partners, including those involved in protection monitoring, know how to identify separated family members and are familiar with relevant referral/response mechanisms.






Confidentiality

- Ensure that actors working with unaccompanied and separated children and other separated individuals respect privacy and the confidentiality of information, and that measures are taken to guarantee data protection.

5.2 Preserving family unity

Efforts to preserve family unity should take place during all stages of displacement. Such efforts can prevent family separation from taking place and, in case it occurs, greatly facilitate rapid tracing and reunification.



In our work, we can ...	
Advocacy (See Part V.3 )	<ul style="list-style-type: none"> Advocate with relevant actors, particularly with local and national authorities, to take appropriate legislative, administrative and other measures to promote and protect the principle of family unity. This may include advocating for the recognition of customary marriages to ensure respect for the rights of women to claim custody of their children and to inherit land and property upon the death of their husbands as well as for the full and equal rights of children born out of wedlock.
Community mobilization (See Part V.10 )	<ul style="list-style-type: none"> Work with relevant actors, including parents, community groups and local and national authorities, to raise awareness of the risks of family separation, and take measures that can help prevent separation from taking place or, where such separation occurs, that facilitate tracing and reunification. As an example, children can be taught to remember their names and those of their parents, dates of birth, addresses and other details that could assist with family tracing in the event of separation.
Civil status and documentation (See Part IV.9 )	<ul style="list-style-type: none"> Work with relevant stakeholders, including local and national authorities, to ensure that all births, deaths and changes in civil status (marriage, divorce) are registered and documented, and that IDPs have access to documentation and/or replacement documentation, if needed.
Access to assistance and services (See Part V.5 )	<ul style="list-style-type: none"> Advocate and take other steps to ensure that families with children have access to public and/or relief assistance and services, including shelter, food, non-food items and income-generating activities, to enable them to remain together and prevent families from having to abandon or give their children away. Pay particular attention to single-headed households, especially those headed by children, single women, older persons and persons living with a disability.
Programme planning and implementation	<ul style="list-style-type: none"> Ensure that humanitarian programmes and projects do not cause or result in the separation of families, either deliberately or accidentally, by for example: <ul style="list-style-type: none"> making sure family members are accommodated and assisted together wherever possible (and that children are not accommodated separately from their families or other legal or customary primary caregivers); avoiding transferring unaccompanied or separated children from the location where they were found, unless the best interests of the child so require, as it may make tracing more difficult; and making arrangements during the distribution of assistance to prevent the separation of families from taking place including, for instance, organized community child-care.
Preventive measures in case of evacuation or assisted transfer (See Part V.12 )	<ul style="list-style-type: none"> Take action to ensure family unity during evacuation or assisted transfer, including during return or relocation. This may include ensuring that: <ul style="list-style-type: none"> evacuation/transfer, reception and care are planned in advance and form part of a coordinated plan of action; and families are registered and transferred together, children are not, as a general rule, transferred without their parents or other primary caregivers and, where this is not possible, adequate reception and care arrangements are made in advance and reunification takes place as soon as possible.

5.3 Identification, registration and documentation

It is important to ensure that separated family members, in particular any unaccompanied or separated children, are identified, registered and documented as early as possible. This will increase the likelihood of successful tracing and reunification and facilitate the timely provision of adequate care, support and protection to those in need.

Unaccompanied and separated children should always be registered and documented, even when they are in the safe company or care of an adult, as it is a prerequisite for tracing and reunification with the child's family. At the same time, it is important to ensure that the process does not undermine existing care arrangements or raise false expectations about assistance and support.² The process, thus, must be explained in advance and should preferably be undertaken by experienced staff or specialized actors.

In order to ensure a consistent approach, it is important that relevant actors use existing inter-agency tools, forms and guidelines, which have been developed based on years of experience.




In our work, we can ...

Identification

- Ensure that mechanisms are in place to identify separated family members, including in particular any unaccompanied or separated children. Such mechanisms should be coordinated by actors that have the required expertise (*as outlined in section 7 below*). However, all staff and partners should be familiar with signs indicating family separation and available referral/response mechanisms.

Registration and documentation

(See Part IV.9 )

- Ensure that separated family members are registered and documented immediately following identification. Registration may include the collection of information such as name, data and place of birth, name of parents and other close relatives, former address, present location, and a photograph. Registration records should be updated as required and kept by, or with, the separated family member, and a copy shared with actors that oversee family tracing and reunification.
- Where limited time and resources are available for registration, for instance due to security reasons, priority may need to be given to very young children or children with disabilities, who may have difficulty in recalling important information at a later stage. Unaccompanied children may need to be provided with immediate care arrangements.

5.4 Tracing, verification and reunification

Family tracing, verification and reunification should take place as soon as possible, including in times of conflict and displacement.

Tracing can take place by different means, including by:

- the dissemination of Red Cross messages (delivered by ICRC or Red Cross/Crescent national societies);
- mass tracing, which involves displaying or disseminating name lists and/or photos;
- radio broadcasting of limited personal information, such as name, gender, age of the separated person and possibly parents/siblings;

² This can result in a pull-factor, with parents registering their own children as separated in order to access assistance, or a push-factor, with caretakers avoiding registering unaccompanied or separated children in their care out of fear that the children will be taken away. In some cases, caretakers may reject a child in their care if expected assistance or support fails to materialize.

- photo tracing, which involves the dissemination of photos;
- cross-referencing tracing records with other available records, such as birth or school registers or census databases; and
- case-by-case tracing, which is mostly used for small case-loads or where other efforts have proved futile.

For confidentiality and security reasons, the current location of the separated person should be kept confidential until the family relationship has been verified and those involved have agreed to be reunited. In some cases, reunification may be neither feasible nor desired if, for instance, the separated person suffered neglect or abuse at the hands of other family members prior to separation or if reunification would place the person at risk.

Tracing, verification and reunification is usually coordinated and undertaken by specialized actors, but other humanitarian actors can facilitate and support such efforts.



In our work, we can ...	
Tracing and verification	<ul style="list-style-type: none"> • Support and facilitate the work of specialized actors involved in tracing separated family members. Tracing and verification should generally be undertaken by the authorities or by specialized agencies such as ICRC or UNICEF, but other humanitarian actors can support such efforts. This can include sharing information when needed, facilitating access and/or transportation, and providing temporary care and support during the process.
Reunification	<ul style="list-style-type: none"> • Support and facilitate family reunification efforts when possible. This can include facilitating transfer or transport of separated family members or providing temporary meeting space, shelter or other assistance for reuniting families. • Support efforts aimed at establishing or re-establishing family bonds prior to, or pending reunification of, separated family members. Children and other family members may need to be provided with information about the process and, in some cases, may require short familiarization visits or periods before formal reunification can take place.
Follow-up	<ul style="list-style-type: none"> • Ensure that relevant records, including those relating to the distribution of food and other assistance, are updated to guarantee needed assistance and services for the reunited family. Where children have been reunited with their families, additional measures may need to be taken to ensure, for instance that the child is enrolled in, and has access to, schools and other education or vocational training programmes. • Support community groups or structures that can provide support and assistance to families with children, including those that have experienced previous separation to facilitate reintegration and minimize the likelihood of separation occurring or recurring.

5.5 Protection and assistance, including alternative care arrangements

While ideal, reunification may not always be possible or feasible, either in the short or the long term. In such cases, it is important to ensure that adequate care, protection and assistance is provided to separated persons, in particular unaccompanied or separated children. This includes ensuring security and physical, social, economic and emotional support and access to services, such as education and health care.

In the case of children, alternative care arrangements may need to be made and could include the possibilities indicated below.

- **Community-based care**, which builds on existing social structures, is usually the preferred option and includes extended family, previous caregivers, or a social group/community that is well known to the child.
- **Foster care**, which refers to a situation where children are cared for in a household outside their family, can take different forms and must be arranged carefully and in consultation with the child and the community.
- **Institutional care**, such as in an orphanage, is an option of last resort. It often has detrimental effects on children and can make it more difficult to prevent neglect, abuse and exploitation.
- **Group living**, refers to a situation where children have come together to form household units. It is not desirable but, where such arrangements exist, they can be supported through, for instance, daycare rather than residential care.

Adoption, which involves the permanent and legal or customary transfer of parental rights and responsibilities to the adopters, should only be considered once it has been established that the child is free to be adopted. In practice, this means that there is no hope for successful tracing and reunification or that the parents have given consent to an adoption. Adoption must be in line with national law and procedures and be subject to close governmental control and scrutiny.³

Alternative care arrangements, whether short or long term, must always be monitored and periodically reviewed to ensure the welfare of the child. Efforts must be made to protect children from any form of discrimination, maltreatment, neglect, abuse or exploitation, and ensure their full and equal access to education, health care and other services.



In our work, we can ...

Monitoring

- Ensure that adequate monitoring systems are in place to monitor the welfare of children in alternative care arrangements. This can be done through community child welfare committees or through informal means with, for instance, the help of friends, teachers and neighbours. A child in foster care should receive appropriate care and protection on an equal basis with other children in the family.


Assistance

- Advocate to ensure that foster care families receive adequate support and assistance in order to enable them to care for a child. Foster children should be protected from discrimination, neglect, abuse and exploitation and have full and equal access to services, such as education and health care.

³ For further information, see pp. 55-57 of the *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*.

6. The international legal framework

International (and regional) human rights law guarantees the right to respect for the family, including the freedom from any unlawful or arbitrary interference. As a fundamental unit of society, the family is also entitled to special protection and assistance.⁴

See Principles 16 and 17 of the Guiding Principles on Internal Displacement in Annex 1 of the Handbook .

Women are entitled to equal rights with men in all matters relating to marriage and family relations, including the same rights and responsibilities regarding their children, whether during marriage or at its dissolution.⁵ Women also have an equal right to own, inherit, acquire and manage property, including family property. The full and free consent of both spouses is required before entering into marriage. The marriage of children is considered unlawful.

Children and their mothers, both before and after childbirth, should be provided with special protection and assistance. In particular, the *Convention on the Rights of the Child*, which is nearly universally ratified, contains many important provisions, as indicated below.

- The best interests of the child must be a primary consideration in all actions concerning children. Their right to life, survival and development, and to non-discrimination and participation must also be respected.⁶
- States must protect the right of children to be cared for by their parents. Children must not be separated from their parents against their will, unless such separation is deemed necessary for the best interests of the child and necessary procedural safeguards are complied with. In the event of separation, children must be provided with special protection and assistance, including appropriate care arrangements, taking into account the child's age, maturity and ethnic, religious, cultural and linguistic background. Alternative care arrangements must always be subject to periodic review.⁷
- States must take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect, maltreatment or exploitation. States should also provide necessary support for the child and his/her caregivers and take action to ensure prevention, identification, reporting, referral, investigation, treatment and follow-up in all cases of maltreatment.⁸

International humanitarian law requires that the family rights of protected persons be respected in times of armed conflict. In case of evacuations or other transfers of people, all possible measures must be taken to ensure that the members of the same family are not separated.

In case separation occurs, family members should be able to receive news from each other and be provided with information about the fate and whereabouts of missing relatives. All appropriate steps should be taken to facilitate the reunion of dispersed families. Separated

⁴ See Art. 16 of UDHR; Art. 10 of ICESCR; Arts. 17 and 23 of ICCPR, Arts. 16 and 18 of CRC; and, at the regional level, Art. 18 of AfCHPR; Art. 17 of AmCHR; Art. 38 of ArCHR; Art. 5 of the Cairo Declaration on Human Rights in Islam; Arts. 8 and 12 of ECHR; and Art. 16 of the revised ESC.

⁵ See, at the international level, Art. 16 of UDHR; Art. 23 of ICCPR; Art. 10(1) of ICESCR; Arts. 5 and 16 of CEDAW, and, at the regional level, Art. 18 of AfCHPR and Arts. 6 and 7 of its Protocol on the Rights of Women in Africa; Art. 17 of AmCHR; Art. 5 of Protocol 7 to ECHR.

⁶ These general principles are outlined in Arts. 2, 3, 6 and 12 of CRC.

⁷ See, at the international level, Arts. 7, 8, 9, 20 and 25 of CRC; and, at the regional level, Arts. 19, 20 and 25 of AfCRWC; and Art. 8 of the Covenant on the Rights of the Child in Islam.

⁸ See, at the international level, Art. 19 of CRC, and, at the regional level, Arts. 16, 27 and 29 of AfCRWC; and Art. 17 and 18 of the Covenant on the Rights of the Child in Islam.

children should be identified, registered and provided with special protection and assistance at all times.⁹

In the case of internment or confinement, for instance to a camp, members of the same family should be accommodated together and be allowed to correspond with their families and receive visitors, especially close relatives.¹⁰

7. Key actors

While various core activities, such as family tracing and reunification, should be undertaken by specialized actors, all humanitarian and human rights actors play a role.

- At the **national level**, key actors include IDPs and host communities; child-welfare and social support services; ministries of social affairs and education; the media, local NGOs or faith-based organizations.
- At the **international level**, specialized actors include the ICRC and the national Red Cross/Crescent societies; UNICEF, UNHCR, IRC, Save the Children Alliance, and World Vision International. Other actors include OHCHR, OCHA and IOM.



Key references & useful websites



- *Inter-Agency Guiding Principles on Unaccompanied and Separated Children*, ICRC, 2004.
- *Separated Children*, Action for the Rights of Children, Save the Children Alliance/UNHCR/UNICEF and OHCHR, 1998.
- *Working with Separated Children* (Field Guide and Manual), Save the Children UK, 1998.
- *The Lost Ones – Emergency Care and Family Tracing and Reunification of Children from Birth to Five Years*, UNICEF/IRC, 2003.
- General Comment No. 19 (1990) of the Human Rights Committee on *the protection of the family, the right to marriage and equality of the spouses* (Art. 23), Human Rights Committee, 1990.
- General Comment No. 17 (1989) of the Human Rights Committee on *the rights of the child*, Human Rights Committee, 1989.
- *Mobility Mapping and Flow Diagrams: Tools for Family Tracing and Social Reintegration Work with Separated Children*, Brigitte De Lay, International Rescue Committee, 2002.
- *UN Guidelines for the Appropriate Use and Conditions of Alternative Care for Children*, A/HRC/11/L.13, 2009.
- *UNHCR Guidelines on Formal Determination of the Best Interests of the Child*, UNHCR, May 2006.

⁹ Rules 105, 117 and 131 of Customary International Humanitarian Law, Volume I: Rules (ICRC, 2005). See also, Arts. 25, 26, 27 and 50 of the Fourth Geneva Convention; Arts. 74 and 78 of Additional Protocol I; and Art. 4(3)(b) of Additional Protocol II.

¹⁰ See, for example, Rules 125 and 126 of Customary International Humanitarian Law, Volume I: Rules (ICRC, 2005). See also Art. 82 of the Fourth Geneva Convention and Art. 75(5) of Additional Protocol I.

Part IV.8

Human trafficking

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Key message

Trafficking in persons is a criminal activity and a serious violation of human rights. It is prohibited by international law and, in most cases, national law. All States have an obligation to combat trafficking and protect and assist its victims. Conflict and displacement can heighten the risk of trafficking. Humanitarian and human rights actors may play an important role in supporting counter-trafficking efforts through preventive and protective measures.

1. What is trafficking?

Trafficking in persons refers to the recruitment, transportation, transfer, harbouring or receipt of persons by improper means, such as the threat or use of force or other forms of coercion, abduction, fraud, deception, or abuse of power for the purpose of exploitation.¹

Trafficking in the context of the sex trade is well documented and primarily affects women and children who are forced into prostitution and other forms of sexual exploitation. However, trafficking is not limited to the sex trade or to women. It includes various forms of exploitation of others, such as forced labor or services, slavery or practices similar to slavery, servitude, and the forced removal of organs.

Trafficking is distinct from smuggling, which refers to the facilitation, transportation, attempted transportation or illegal entry of a person(s) across an international border.² The main differences are that:

- smuggling takes place with the consent of the smuggled migrant, while trafficking victims either have never consented or their initial consent has been rendered meaningless because of coercion, deception or abuse at the hands of the traffickers;
- smuggling usually ends with the arrival of the migrant at their destination, whereas trafficking involves the ongoing exploitation of the victim(s) to generate illicit profits for the traffickers; and
- smuggling is always transnational, whereas trafficking can take place within as well as across a country's borders.

2. Trafficking in the context of internal displacement


Forced displacement resulting from natural disasters or armed conflicts increases the risk of human trafficking by weakening or destroying family support structures, community bonds, and self-protection mechanisms that might otherwise serve as a buffer to trafficking. Because internally displaced persons (IDPs) often lack documentation and have limited access to education, livelihoods and self-reliance opportunities, they may be particularly vulnerable to traffickers who appear to offer life-saving access to employment opportunities.


IDPs who fear for their lives and wish to seek protection abroad as, for instance, refugees can also fall prey to traffickers who claim to offer a route to safety. In addition, in situations of armed conflicts, the breakdown of law and order and the inadequate or non-functioning protection mechanisms normally provided by the State or non-governmental institutions exacerbate the vulnerability of IDPs to exploitation and trafficking. In such environments, traffickers easily operate in total impunity and usually belong to State or non-State armed elements.

¹ For a comprehensive and legally accurate definition of trafficking, please see Art. 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (Trafficking in Persons Protocol), which supplements the UN Convention against Transnational Organized Crime (A/RES/55/25 of 15 Nov 2000). Note that children below 18 years of age are not considered to be in a position to give informed consent and that any recruitment, transfer, harboring or receipt of children for the purpose of exploitation is considered a form of trafficking regardless of the means used.

² Smuggling is the subject of another Protocol to the Convention against Transnational Organized Crime, i.e. the Protocol against the Smuggling of Migrants by Land, Sea and Air.


Traffickers specifically target impoverished communities, including the internally displaced, in order to exploit their vulnerability. Poor and displaced families may entrust the care of their children to traffickers who promise to provide them with education or skills training but ultimately exploit them for the purposes of prostitution, forced labor or irregular adoption.


Displaced women and girls are particularly vulnerable to trafficking for forced labor or sexual exploitation during armed conflict, especially in camp situations (See Part IV.4 ). They often struggle to survive, with inadequate access to food, shelter, health care and protection, while trying to ensure the survival of their children and other dependants, including older parents or other vulnerable relatives. Traffickers take advantage of their desperation, either by forcibly abducting them or by luring them away with false promises of a better life somewhere else.³

Unaccompanied or separated children and children of displaced families, both girls and boys, may also be at particular risk of forced recruitment, forced labor and sexual exploitation by armed forces or armed groups (See Part IV.5 ). Often, these risks are further compounded by an inadequate legal framework, weak law enforcement capacity, weak border control, lack of respect for human rights, and domestic violence and abuse, in particular against women and children.

Human trafficking does not end with conflicts. In post-conflict situations where the rule of law has not yet been re-established, where impunity still prevails and the economy is still ravaged, IDPs returning to their place of origin, or settling elsewhere continue to be vulnerable as they struggle to rebuild their lives. Former militia, ex-combatants or war lords may turn to human trafficking to replace losses of revenue caused by the cessation of the conflict. The presence of foreign peacekeeping or civilian forces in a post-conflict situation may also result in a sudden increase in trafficking for sexual exploitation.⁴

3. The protection implications of trafficking

Trafficking generally takes place in dangerous and degrading conditions and involves a range of human rights violations and abuses that endanger the life and physical security of victims of trafficking (See Part IV.2 ). Severe forms of exploitation, such as abduction, incarceration, rape, sexual enslavement, enforced prostitution, forced labor, organ removal, physical beatings, torture, starvation, and the deprivation of medical treatment, are inherent to trafficking.

Victims of trafficking are often dependent upon, and intimidated by, their traffickers, who frequently confiscate their identity documents and keep them confined and isolated, thus limiting their ability to seek assistance or protection from the authorities. In addition, trust in protection by the authorities can be undermined by the fact that alleged traffickers may have connections or support from such authorities. Victims may also fear arrest and prosecution for activities in which they are forced to engage, such as prostitution or association with armed groups. Where victims have been trafficked into another country, they may fear arrest for illegal entry and face possible deportation to their home countries. Back at home, their lives might be at risk because of ongoing conflict and displacement or threats of retaliation from the traffickers. In addition, victims of sexual exploitation might also feel shame and fear to be ostracized, discriminated against or punished by their families, communities or the authorities (as outlined further in Part IV. 4 .

³ International Studies Association, *Trafficking of Women in Conflict and Crisis*, Susan Martin and Amber Callaway, February 2009.

⁴ Ibid.

4. Individuals and groups at particular risk

Unaccompanied internally displaced children, child heads-of-households, single (especially female) heads-of-households, young girls, and former victims/survivors of trafficking are particularly vulnerable to the risks of trafficking during and after displacement.

Children are often trafficked for child-specific forms of exploitation, such as illegal adoption, child labor, child prostitution, child pornography, and forced recruitment into armed forces or armed groups. Other forms of exploitation to which children are often exposed include domestic service, agricultural work, mining, forced and early marriage, and begging. It is important to note that any recruitment, transfer, harbouring or receipt of children for the purpose of exploitation is considered a form of trafficking regardless of the means used.

5. The international legal framework

Trafficking is prohibited by **international (and regional) human rights law** and criminalized in the national legislation of a growing number of States. It is generally considered to amount to a form of slavery and constitutes a violation of a range of human rights, most notably the right to freedom from slavery and slave-like practices;⁵ to personal liberty and security; to freedom from torture and other cruel, inhuman or degrading treatment or punishment; and to freedom of movement. It also infringes on a number of other rights, such as the right to respect for the family; the right to an adequate standard of living; the right to the highest attainable standard of health; and the right to favorable working conditions, including just compensation and reasonable working hours. Trafficking also violates a number of international legal principles relating to the protection of children from forced labor and social and economic exploitation and abuse.⁶

Trafficking is specifically prohibited by the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children* (“*Trafficking in Persons Protocol*”), which supplements the *UN Convention against Transnational Organized Crime*. The Protocol, which seeks to prevent and combat trafficking in persons and facilitate international cooperation against such trafficking, defines criminal activities relating to trafficking, guides States on ways to combat them, and provides guidance on victim protection.

Trafficking is criminalized in the national legislation of a growing number of States, including through national criminal and labor law codes.

International humanitarian law similarly prohibits slavery and the slave trade in all its forms as well as a number of other acts to which victims of trafficking are often subjected, including torture, cruel or inhuman treatment and outrage upon personal dignity; rape and others forms of sexual violence; uncompensated or abusive labour; and arbitrary deprivation of liberty.⁷

⁵ The prohibition against slavery and slave-like practices is a peremptory norm of international law and a rule of customary international law. It is also widely prohibited in treaty law, including, at the international level, in Art. 4 of UDHR; Art. 8 of ICCPR; Arts. 10, 19, 21 and 32 of ICESCR; Art. 6 of CEDAW; Art. 11 of CMW; in the 1926 Slavery Convention and its Protocol; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; and ILO Conventions No. 29 (Forced Labour), No. 105 (Abolition of Forced Labour); No. 182 (Worst Forms of Child Labour), and No. 138 (Minimum Age Convention). See also GA Resolution 57/176 of 18 Dec 2002 on Trafficking in Women and Girls. At the regional level, it is similarly prohibited in Art. 5 of AfCHPR and Art. 4 of its Protocol on the Rights of Women in Africa; Art. 6 of AmCHR; in Art. 11(a) of the Cairo Declaration on Human Rights in Islam; Art. 31 of ArCHR; and Art. 4 of ECHR.

⁶ See Art. 10(3) of ICESCR; Arts. 11, 19, 32, 34, 36 and 39 of CRC and its Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography; ILO Conventions No. 138 (Minimum Age Convention) and No. 182 (Worst Forms of Child Labour Convention). See also, at the regional level, Arts. 24 and 29 of ACRWC; and the Inter-American Convention on International Traffic in Minors.

⁷ See Rules 90, 93-94, 95 and 99 of Customary International Law, Volume I: Rules (ICRC, 2005) as well as Common Art. 3 of the Geneva Conventions, Art. 4(2)(f) of Additional Protocol II; and Arts. 75 and 76 of Additional Protocol I.

Trafficking may constitute a crime against humanity and, in armed conflict, a war crime.⁸ Aiding and abetting, through trafficking, the forcible conscription or enlistment of children under the age of fifteen years into the national armed forces or their active participation in hostilities also constitutes a war crime.

6. The responsibility of the State

All States have a responsibility to prevent trafficking, to investigate and prosecute traffickers, and to protect, assist and provide adequate redress to the victims. Respect for human rights and the best interests of the victims should be at the centre of all such efforts. The role and responsibilities of the State, summarized below, are further outlined in the *Trafficking in Persons Protocol* as well as in the *Recommended Principles and Guidelines on Human Rights and Human Trafficking*.⁹


- Take all **appropriate national, bilateral and multilateral measures** to prevent trafficking, in particular of children, for any purpose or in any form. This includes the issuance of codes of conduct or strict instructions to military and law enforcement personnel not to engage in or support trafficking activities. In addition, as trafficking can also be a transnational crime, measures should include regional cooperation with transit or destination countries to prevent trafficking, protect and assist victims, and prosecute traffickers. The State should also consider becoming a party to the 2000 *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*.
- Enact domestic laws to **criminalize trafficking** and ensure the prompt **investigation and prosecution** of traffickers. Efforts must be made to ensure confidentiality and provide adequate protection to victims and witnesses that assist with legal proceedings.
- Include in ceasefire or peace agreements provisions aiming at preventing and prohibiting human trafficking by all State and non-State actors.
- Provide **protection and assistance to trafficked persons** and ensure that they receive just compensation for the harm suffered. The Protocol also encourages States to provide access to social benefits, such as housing, medical care, counseling, and legal assistance, paying attention to age, gender and the specific needs of the victims.
- Develop comprehensive **policies and programmes** to prevent and combat trafficking and protect victims from re-victimization. This can include research, mass media campaigns, social and economic initiatives, and measures to address risk factors to trafficking, such as poverty, discrimination, and lack of equal opportunities.
- **Cooperate** with other States, non-governmental organizations and other elements of society to address trafficking.
- **Implement security and border controls** to detect and prevent trafficking. States should ensure that their own border controls are effective and take measures to prevent the misuse of passports and other travel or identification documents.
- Take measures to **discourage the demand for services** that fosters the exploitative element of trafficking and provides its major source of illicit revenue.

7. The role of humanitarian and human rights actors

While the primary responsibility for combating trafficking rests with the State, humanitarian and human rights actors also play an important role. A comprehensive and well-coordinated counter-trafficking strategy, involving all relevant sectors and actors including the authorities,

⁸ See, for example, Articles 7(1)(c), 7(1)(g), 7(2)(c) and 8(2)(xxii) of the Statute of the International Criminal Court, which define “enslavement,” “sexual slavery” and “enforced prostitution” as crimes against humanity and war crimes.


⁹ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 2002 (E/2002/68/Add. 1).

should form part of the protection response in most humanitarian settings. The *UNODC Toolkit to Combat Trafficking in Persons*,¹⁰ together with *Recommended Principles and Guidelines on Human Rights and Human Trafficking*,¹¹ provide useful guidance in this regard. The table below also gives some ideas about possible activities (*further addressed in Part IV.4* ).



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Assessment

(See Part III.1 )


- Ensure that protection assessments identify existing risks of trafficking within a given community as well as any factors that can increase exposure to trafficking; the individuals most at risk; the alleged traffickers; the adequacy of the national response; existing formal and informal coping mechanisms, and ways to support these.

Information and community mobilization

(See Parts V.10 and V.7 )

- Raise awareness in the community about the risks associated with trafficking. This can be done by facilitating public discussion and dialogue, by supporting community groups working on the issue, and engaging in public information activities together with other partners.
- Information about the prevention and prohibition of human trafficking should also aim at targeting non-displaced communities, armed forced and non-State actors. Work with civil-military liaison officers to establish direct lines of communication with armed forces and armed groups to ensure that IDP camps and settlements are kept free of infiltration and are not used for recruitment purposes (*as outlined further in Parts IV.2 and II.3* ).
- Support community-based groups and networks, and local organizations and institutions that can monitor the threat of trafficking, take action to prevent it, and support the recovery and reintegration of victims.
- Work with the community and other partners to prevent the militarization of camps, settlements and other IDP-hosting areas and prevent the forced conscription of children by, for instance, establishing early-warning systems and preparedness in case of infiltration of armed elements or relocation away from unstable or conflict areas (*further addressed in Part V.2* ).

Referral and response mechanisms

- Coordinate with relevant actors to ensure the establishment and maintenance of effective referral and response mechanisms at the local and national levels, including in camps and settlements.
- Coordinate with relevant actors, in particular security personnel, to establish security mechanisms to prevent infiltration by armed forces or armed groups into civilian camps and settlements (*further addressed in Part IV.2* ).

Interim care and support





(See Part V. 11 )

- Ensure that victims of trafficking are safe and are given access to appropriate care and services (health care, psychosocial and legal counseling, education and skills training) as well as necessary material support (safe and appropriate shelter, food and non-food items). Such support should take into account age, gender and any specific needs.
- Alternative care arrangements may need to be found for unaccompanied children: under no circumstances should child victims of trafficking be detained or accommodated in detention facilities.



¹⁰ UN Office on Drugs and Crime, *Toolkit to Combat Trafficking in Persons*, 2006.

¹¹ OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, 2002 (E/2002/68/Add. 1).

Training	<ul style="list-style-type: none"> • Provide training on human rights and on the prevention and response to trafficking to relevant actors such as IDP communities, law enforcement agencies, the judiciary, NGOs, and staff of United Nations and peacekeeping forces where these are deployed as well as to non-State actors where possible, United Nations agencies and international organizations. This should include training on the code of conduct for United Nations and humanitarian personnel as well as guidance on confidentiality and on working with child victims of trafficking.
Legal review	<ul style="list-style-type: none"> • Review national legislation and its enforcement and assess to what extent it prevents and adequately responds to the risks of trafficking, including as regards the recovery and reintegration of victims of trafficking. As appropriate, advocate with national authorities for improvements in legislation, policy or practice in this field. • Ensure that all relevant actors, including those working on gender-based violence prevention and response, are familiar with relevant national laws and regulations relating to trafficking. National labor legislation might also provide extensive recourse in situations of forced and compulsory labor.
Legal aid and access to justice <i>(See Part V.8 )</i>	<ul style="list-style-type: none"> • Ensure that victims of trafficking have access to affordable and adequate legal counseling and assistance. This includes both those victims who wish to seek compensation or payment of legally due wages, and those who have been charged with offences, such as illegal prostitution. • Assist State authorities in their efforts to strengthen the rule of law including law enforcement capabilities, to investigate trafficking activities, and prosecute and punish perpetrators (<i>further addressed in Part IV.18 </i>).
Livelihoods <i>(See Part IV.16 )</i>	<ul style="list-style-type: none"> • Work with the community to identify livelihood and income-generating opportunities to strengthen self-reliance and reduce the risk of trafficking. Pay particular attention to groups at risk, such as separated and unaccompanied children, single- (female-) headed-households, and prior victims of trafficking. This can include ensuring full and equal access to education for children and adolescents.
Victim and witness protection	<ul style="list-style-type: none"> • Encourage national authorities to develop adequate witness-protection measures for the benefit of any victims who cooperate in criminal prosecutions. Such protection might need to be extended to other family members.
Family tracing and reunification <i>(See Part IV.7 )</i>	<ul style="list-style-type: none"> • Work with relevant partners, such as ICRC and UNICEF, to ensure that separated or unaccompanied children are rapidly identified, registered and documented, that best interests determinations are conducted, and that family tracing and reunification takes place or alternative care arrangements are made, as appropriate.

8. Key actors

A number of actors play an important role in combating trafficking and providing assistance to victims/survivors.

- At the **national level**, key actors include internally displaced and host communities; law enforcement agencies, ministries of justice, labor and social services, and local NGOs and civil society.
- At the **international level**, key actors include UNODC, ILO, UNICEF, IOM, UNHCR, OHCHR, various international NGOs, peacekeeping forces where present, and neighbouring States.
- In addition, at the **regional level**, a number of consortiums and initiatives have been created including: in **Asia**, the Asia Regional Initiative against Trafficking in Women and Children; the Association of Southeast Asian Nations' Declaration against Trafficking in Persons Particularly Women and Children; the Asia-Europe Meeting's Action Plan to Combat against Trafficking in Persons, Especially Women and Children; in **Africa**, the Economic Community of West African States' Initial Plan of Action against Trafficking in Persons; in **the Americas**, the Regional Conference on Migration (formerly known as the "Puebla Process"); and in **Europe**, the Organization for Security and Co-Operation in Europe (OSCE) and its Action Plan to Combat Trafficking of Human Beings, Office for Democratic Institutions and Human Rights (ODIHR), and the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings.



Key references

- *Guidelines on the Protection of Child Victims of Trafficking*, UNICEF.
- *Handbook on Direct Assistance for Victims of Trafficking*, IOM, 2007.
- *Toolkit to Combat Trafficking in Persons*, UN Office on Drugs and Crime, 2006.
- *Ethical and Safety Recommendations for Interviewing Trafficked Women*, WHO, 2003.
- *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, E/2002/68/Add.1, OHCHR, 20 May 2002.
- *Reference Guide on Protecting the Rights of Child Victims of Trafficking in Europe*, UNICEF, 2006.
- *OSCE Action Plan to Combat Trafficking in Human Beings*, Permanent Council Decisions No. 557 and No. 685, OSCE, 2003 et 2005.
- *Child-friendly Standards and Guidelines for the Recovery and Integration of Trafficked Children*, ILO 2006.
- *Guidelines on the Application of Art 1A(2) of the 1951 Convention and/or 1967 Protocol, relating to the Status of Refugees to the victims of trafficking and persons at risk of being trafficked*, UNHCR, HCR/GIP/06/07, 7 April 2006.
- *Trafficking of Women in Conflict and Crisis*, Susan Martin and Amber Callaway, International Studies Association, February 2009.



Useful websites

- United Nations for Drug and Crime (UNODC): www.unodc.org
- International Organization for Migration (IOM): www.iom.int
- United Nations Children Fund (UNICEF): www.unicef.org
- International Labour Organization (ILO): www.ilo.org
- United Nations High Commissioner for Human Rights (OHCHR): www.ohchr.org
- United Nations High Commissioner for Refugees (UNHCR): www.unhcr.org
- Organization for Security and Co-operation in Europe (OSCE): www.osce.org. See also the OSCE Office for Democratic Institutions and Human Rights (ODIHR): www.osce.org/odihr and OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings: www.osce.org/cthb
- Special Rapporteur of the Human Rights Council on trafficking in persons, especially in women and children: www.ohchr.org/english/issues/trafficking/index.htm

Part IV.9

Loss of civil status and nationality

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Key message

Displacement often results in the loss or destruction of personal documentation and registries. Lack of documentation and other means to prove one's identity can have serious consequences for individuals and communities, including restricted freedom of movement, limited access to life-saving assistance and services, exposure to harassment or arbitrary arrest and detention, and the risk of statelessness. The issue of nationality deserves special attention as displacement can also trigger or increase the risk of statelessness or place stateless persons in an even more precarious legal position.

1. The international legal framework

1.1 Civil status registration and documentation

International (and regional) human rights law requires States to take all necessary measures to ensure the full, equal and effective enjoyment of all rights and freedoms, including the right to equal recognition of, and protection before, the law.¹ This requires the authorities to ensure that everyone, including internally displaced persons (IDPs), have a legal identity, as well as the means to prove their identity if required in order to exercise their rights, for instance through civil status documentation.

This obligation is further outlined in Principle 20 of the *Guiding Principles on Internal Displacement*. It requires States to facilitate the issuance of new documents or the replacement of documents lost during displacement without imposing unreasonable conditions, such as the return to the area of habitual residence in order to obtain these or other required documents. The documents listed include those needed for the enjoyment of civil and political rights, protection against arbitrary arrest and detention, freedom of movement, and the right to vote, as well as economic, social and cultural rights, including education, adequate housing, and health care.

Even when IDPs are arbitrarily deprived of documents by non-State actors or private individuals, the State remains responsible for providing effective protection or safeguarding their rights.

Children are entitled to special protection and care under the law. All children should be registered immediately after birth and given a name. If a child is illegally deprived of some or all of the elements of his/her identity, States should provide appropriate assistance and protection, with a view to speedily re-establishing that identity.²

Women have equal rights as men to recognition before the law and should be provided with documentation in their own names.³ Some conventions also specifically require States Parties to ensure registration of marriages in an official registry, in order to ensure that the equal rights of both parties are fully respected during and upon dissolution of marriage.⁴

¹ See Arts. 6 and 7 of UDHR; Arts. 16 and 26 of ICCPR; Art. 15 of CEDAW; Art. 5(a) of ICERD; Arts. 18 and 24 of CMW; Arts. 3 and 5 of AfCHPR; Arts. 3 and 8 of its Protocol on the Rights of Women in Africa; Arts. 3 and 24 of AmCHR; and Art. 18 of ArCHR. See also Principle 20 of the Guiding Principles on Internal Displacement. This right is generally considered non-derogable. See, for example, Art. 4(2) of ICCPR and Art. 27(2) of AmCHR.

² See, for example, Art. 24 of ICCPR and Arts. 7 and 8 of CRC. At the regional level, Art. 6 of AfCRWC; Art. 18 of AmCHR and Art. 7 of the Covenant on the Rights of the Child in Islam.

³ This right is inherent in the non-discrimination provisions contained in most human rights instruments. See also Art. 4(2)(k) of the Protocol to the AfCHPR on the Rights of Women in Africa.

⁴ See, for example, Art. 16(2) of CEDAW; the 1963 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages; Art. 21(2) of AfCRWC; and Art. 6(d) of the Protocol to the AfCHPR on the Rights of Women in Africa. See also GA Resolution 2018 (XX) of 1 Nov 1965 on Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

International humanitarian law requires occupying powers to take all necessary steps to facilitate the identification of children and the registration of their parentage. In addition, all parties to a conflict should ensure that family or identity documents are not taken away from civilian detainees without the issue of a receipt. Deaths occurring during internment must be registered and death certificates issued.⁵

1.2 Statelessness

1.2.1 Prevention of statelessness

International (and regional) human rights law guarantees everyone the right to a nationality, including the right to acquire, change and retain nationality as well as the right to pass nationality on to one's children, without discrimination of any kind.⁶ IDPs should under no circumstances be deprived of, or prevented from, acquiring a nationality, or from passing it on to their children, because they are displaced.

The granting or withdrawal of nationality is a sovereign act of States and, as such, is regulated by national law and regulations. The right to nationality, however, requires States to take all appropriate steps, both internally and in cooperation with other States, to prevent and respond to statelessness and to ensure that everyone has a nationality.

The *1961 Convention on the Reduction of Statelessness*, which aims to prevent and reduce statelessness, also specifically requires States to refrain from arbitrarily denying or depriving individuals of their nationality; to ensure non-discrimination, due process and procedural guarantees when granting or withdrawing nationality; and to facilitate the naturalization of stateless persons, to the greatest extent possible.

Women are guaranteed equal rights with men in all matters related to nationality. Neither marriage nor divorce, or change or loss of nationality by the husband during marriage, should change or otherwise affect the nationality of the wife, render her stateless or force upon her the nationality of her husband.⁷

All **children** must be registered immediately upon birth and have the right to a name and a nationality. States must also take action to preserve the identity of the child, including nationality, name and family relations, and provide assistance and protection to re-establish identity where it has been lost.⁸ Some conventions specifically require States to grant nationality to children born in their territory if they would be rendered stateless otherwise.⁹

1.2.2 Protection of stateless persons

Stateless persons are entitled to full and effective enjoyment of human rights and freedoms. The only exceptions to this rule relate to the right to participate in government, which can be limited to citizens of the State under the *ICCPR*, and to some economic rights under the

⁵ See e.g. Arts. 50, 97(6) and 129 of the Fourth Geneva Convention.

⁶ See Art. 15 of UDHR; Art. 24 of ICCPR; Art. 9 of CEDAW; Arts. 7 and 8 of CRC; Art. 5(d)(iii) of ICERD; Art. 29 of CMW; the 1954 Convention Relating to the Status of Stateless Persons; the 1961 Convention on the Reduction of Statelessness; and the 1957 Convention on the Nationality of Married Women. See also, at the regional level, Art. 23 of AfCHPR and Art. 6(g) and (h) of its Protocol on the Rights of Women; Art. 6 of AfCRWC; Arts. 18 and 20 of AmCHR; Art. XIX of AmDHR; Art. 24 of ArCHR; Art. 7 of the Covenant on the Rights of the Child in Islam; and the 1997 European Convention on Nationality.

⁷ The equal rights of women and men are guaranteed in the non-discrimination provisions of most human rights instruments, such as Arts. 1, 2 and 7 of UDHR; Arts. 3 and 26 of ICCPR; Art. 2 of CRC; and generally in CEDAW. More specifically, see Art. 9 of CEDAW; Arts. 1-3 of the Convention on the Nationality of Married Women; and the 1961 Convention on the Reduction of Statelessness.

⁸ Arts. 7(1) and 8 of CRC; Art. 24(2) of ICCPR; Art. 6 of AfCRWC; Art. 18 of AmCHR; and Art. 7 of the Covenant on the Rights of the Child in Islam.

⁹ See Art. 1 of the Convention on the Reduction of Statelessness; Art. 6(4) of AfCRWC; Art. 20 of AmCHR; and the European Convention on Nationality.

ICESCR, which allows developing States to determine to what extent such rights can be guaranteed to non-nationals.¹⁰

The *1954 Convention relating to the Status of Stateless Persons* specifically addresses some of the rights of stateless persons. It encourages States to accord stateless persons lawfully residing on their territory a standard of treatment comparable, in some instances, to that accorded to nationals of the State and, in other instances, to that accorded to nationals of a foreign country or aliens generally in the same circumstances. The Convention also guarantees stateless persons the right to identity and to travel documents, and it protects them from expulsion, except on grounds of national security or public order.¹¹

2. Civil status and documentation in the context of forced displacement

Personal documentation and civil registries establish and provide evidence of the civil and legal status of individuals, including as it relates to birth, parentage, marriage and divorce, death, absence, guardianship and nationality. In countries where such registries do not exist or are incomplete, other traditional systems can guarantee, to a certain extent, the identity of individuals.

In situations of forced displacement, personal documentation is often lost, damaged or destroyed and both formal and traditional civil status systems seriously undermined. In some countries, civil registries may have been incomplete from the beginning, certain segments of the population may never have been registered or issued documentation, or existing documents may have ceased to be valid due to a change in the legal or administrative regime.

2.1 Obstacles to establishing and proving legal and civil status or to establishing nationality

Common obstacles to establishing and proving legal and civil status or to establishing nationality are indicated below.


- IDPs may experience difficulty fulfilling onerous **legal or administrative requirements**. Replacement documentation and/or recording of events, such as any births, marriages, divorces or deaths of relatives, is often subject to strict criteria or high fees. In some cases, it may require IDPs to return to the area of origin or to the place of habitual residence, even if these areas remain unsafe. In other cases, IDPs may be obliged to register their civil status with parallel registry offices, including offices controlled by non-State actors. Documents issued by these offices may not be recognized upon return to the place of origin. Moreover, IDPs may face discrimination or threats for not registering with the government authorities.
- **Discriminatory laws or practices**, in particular against women, minority groups or indigenous persons, may prevent them from recording events and acquiring documentation or replacing lost documentation. In some cases, individuals face additional discrimination as a direct result of being displaced, especially if they are viewed with suspicion or hostility by local authorities.
- National or local authorities may lack the **capacity, including financial resources, technology, organizational skills and expertise**, to maintain civil status registries or to issue documentation. This is especially the case where conflict or natural disasters have disrupted the functioning of public institutions or where displacement is occurring on a large scale. In some cases, the authorities may also lack political willingness or may

¹⁰ Art. 2(3) of ICESCR and Art. 25 of ICCPR.

¹¹ Arts. 27, 28 and 31 of the Convention relating to the Status of Stateless Persons.

under-estimate the importance of civil status and related documentation. In other cases, the general confusion generated by displacement may create situations where many different actors are involved in an uncoordinated documentation process.

- **Traditional systems**, which often rely on witnesses and the knowledge of old people at the village or community level, can be undermined in situations of displacement owing to the separation of families and communities and the break-down of community structures and authority.
- Access to registration or documentation can be obstructed by various **logistical or practical difficulties**, including restrictions on freedom of movement and/or the inability to travel because, for instance, of ongoing conflicts or factors such as age or disability, lack of knowledge of the language of registration, lack of access to information on the documentation process and poor literacy.

Lack of documentation and an inability to register events relating to civil status can have serious consequences for individuals and communities. It can result in restricted freedom of movement, limited access to life-saving assistance and services, exposure to harassment, arbitrary arrest and detention, difficulties in repossessing property or in receiving compensation for lost property (*as addressed in Part IV.17* ) , lack of access to voting rights and various other protection risks. As an example:

- absence of birth registration and certificates can make it difficult to obtain a legal identity, which is necessary to access education, health care, and social benefits; and
- a lack of death registration and certificates can make it difficult to manage, inherit and/or reclaim lost property. Where regulations regarding missing or absent persons are inadequate, the spouse and other family members may be prevented from reclaiming property, making decisions regarding their children, or marrying again.

2.2 Preventing and responding to a lack of civil status and/or documentation

Registration of civil status and issuance of documentation are the responsibility of the State. At times, non-State actors also undertake such activities on the territory they control, but this may add to confusion and difficulties, including protection concerns, for IDPs upon return to their place of origin.

At all stages of the internal displacement cycle, every effort must be made to preserve personal documentation and registries and to support and strengthen national systems to ensure that IDPs have **full** and equal access to civil status registries and documentation, including replacement documentation. This can be achieved in various ways, including by:

- building the capacity of the national system through financial or technical support and training; and
- cancelling or easing administrative requirements, and/or addressing the various obstacles faced by IDPs. As an example, in cases where freedom of movement is limited, temporary or mobile arrangements can be made to improve access to registration and documentation.

The issuance of specific legislation or documentation pertaining to displacement is not necessarily needed or desirable in all cases and, if not carefully managed, can expose displaced individuals and communities to discrimination, stigma and other risks. Where displacement specific responses are needed, care must be taken to avoid the creation of parallel systems that may result in differences in treatment and further divide the displaced from the wider population. It must also be ensured that registration and/or documentation as an IDP does not result in limitations on various rights, such as the right to freedom of

movement or the rights to return to the area of origin, to reclaim lost property, or to vote and stand for public office.

Statutory law and customary law often overlap in plural legal systems. Each has advantages and disadvantages in resolving problems faced by IDPs. For example, customary law might offer fair and expedient mechanisms to resolve disputes, but women generally have fewer rights under customary law than they have under statutory law. The latter, in turn, often does not recognize marriages and land ownership under customary law, so widows and female-headed households often find themselves without legal standing as regards inheritance, pension or other rights that require proof of marriage and land ownership.

3. Statelessness in the context of internal displacement

Nationality is usually associated with civil status. The right to a nationality is often referred to as “the right to have rights” because of its importance as the basis for claiming other rights, ranging from recognition before the law to access to basic services.

Most human rights are to be enjoyed by everyone within the jurisdiction of the State, although a few rights, such as some political rights, can be limited to nationals. Non-citizens, including stateless persons, however often face practical obstacles to exercising their rights, including recognition as a person before the law, education and freedom of movement.

Becoming internally displaced does not automatically affect a person’s nationality status; most IDPs remain nationals of their country. In some cases, however, there might be a close **connection**

between statelessness and internal displacement:

- statelessness can be a cause or a contributing factor to internal displacement, such as in cases where people have been forced to flee due to discrimination, including through the arbitrary deprivation of nationality of specific communities;
- internal displacement can lead to statelessness, for instance in cases where territorial boundaries have been redrawn subsequent to displacement, or where birth registration is flawed or absent; and
- statelessness can serve as an obstacle to return or relocation, particularly when it prevents people from enjoying their rights, accessing basic services and establishing a sustainable livelihood.

3.1 Factors leading to statelessness

Statelessness can result from a variety of **causes**, including:

- discriminatory laws and practices;
- a conflict of nationality laws between States;
- the transfer of territory from one State to another;
- a failure to register children at birth;
- arbitrary deprivation of nationality or denationalization of individuals or groups by the State;

A “**stateless person**” is a person who is not considered a national by any State under the operation of its laws. A person who technically holds a nationality but does not receive the benefits associated with nationality may be considered *de facto* stateless.

“**Nationality/citizenship**” usually refers to the existence of a legal bond between a person and a State as provided for under the State’s laws. Nationality generally arises from descent (*jus sanguinis*), birth on the territory of the State (*jus soli*), naturalization, or State succession.

- administrative or procedural problems, such as excessive fees, lack of appeal or review procedures, or inability to obtain documentation; and
- individual renunciation of nationality without acquisition of another nationality.

In situations of internal displacement, failure to register children at birth and loss of documentation testifying to nationality are frequent causes of *de facto* statelessness.

Lack of nationality can have serious consequences for stateless persons. These are frequently exacerbated during periods of internal displacement and include the inability to claim protection from relevant authorities; arbitrary arrest and prolonged detention; unfair travel restrictions and limitations of freedom of movement; denial of employment or access to basic rights and services; inability to register marriages, the birth of children or the death of relatives; and denial of the right to stand for, or vote in, elections. On occasion, stateless persons have also been denied access to humanitarian assistance, both by relevant authorities and by the international humanitarian community.

Women often face particular difficulties due to discriminatory laws and practices relating to nationality. In some States, women who marry non-nationals are automatically deprived of their nationality, often without being able to acquire the nationality of their spouses. In addition, they might be prevented from re-establishing their former nationality in the event of a divorce, even though they may never have acquired, or have been deprived of, the nationality of their spouses.

Women are also frequently barred from passing their nationality on to their **children**, which might result in the child becoming stateless and, consequently, in the denial of custody rights and restricted access for the mother to her children upon divorce or death of the spouse. A failure to register and extend nationality to displaced children, children born out of wedlock, children of minority groups, and children of refugee, asylum-seeking or migrant families, places such children at a particular risk of statelessness.

3.2 Preventing and responding to statelessness

Although States have committed themselves to preventing and reducing statelessness, lack of nationality remains a widespread human rights violation that places the lives and well-being of millions at risk.

In situations of displacement, States should make every effort to ensure the continuity of basic civil registration mechanisms, particularly the issuance of birth certificates to IDPs as a means to prevent statelessness. Stateless persons who habitually reside in the country and who have been displaced should continue to be authorized to exercise and enjoy their rights in areas of displacement and be protected against expulsion.

An adequate humanitarian response to statelessness, in most cases, will consist of efforts to protect the right to a nationality, by making sure that States grant nationality and intervene in favor of persons whose nationality status is in dispute or in doubt, so that they are not discriminated against and are able to enjoy their rights. In exceptional cases, resettlement to a third country might need to be considered.

Some challenges in dealing with statelessness in the context of displacement are indicated below.

- Contentious ethnic and political disputes, which often are among the root causes of statelessness. In some cases, States may perceive with hostility any advocacy related to the granting of nationality as constituting interference with domestic affairs.
- Lack of interest or priority given to this issue by the relevant authorities.


- Disruption of the rule of law and of the provision of basic services. The work of relevant agencies responsible for maintaining records and/or issuing documentation and for dealing with citizenship issues may not be sustained during the displacement period.
- Lack of awareness and understanding of the consequences of statelessness by those affected. Stateless persons may not realize that they have lost their nationality or that it may result in the deprivation of their rights. Communicating this may be difficult when those affected are illiterate or poorly educated.
- Failure to identify incidents of statelessness or to prioritize responses to statelessness.

4. The role of humanitarian and human rights actors


International actors working on civil status issues, including documentation, should coordinate their positions and activities to ensure that a coherent and consistent message is delivered to national interlocutors at local and national levels. Efforts should be made to assist national and local authorities in exchanging information and in coordinating actions when documentation or statelessness problems arise because of differences in practices or application of laws or regulations. Where possible, activities aimed at preventing and responding to statelessness should take place in consultation with UNHCR, which is mandated to promote the prevention and reduction of statelessness and to provide protection to stateless persons.¹²

Humanitarian and human rights actors can undertake the activities indicated below, relating to civil status and documentation and statelessness.





In our work, we can ...	
Assessment (See Part III.1 )	<ul style="list-style-type: none"> ● Assess and monitor problems related to civil status in statutory and customary law to identify systemic shortcomings and concerns affecting IDPs. ● Ensure that protection assessments identify, where relevant, (i) individuals or groups who are stateless or are at risk of statelessness; (ii) the main causes of statelessness; (iii) the main protection risks it engenders; (iv) any remedies or coping mechanisms that are already in place.
Contingency planning and coordination	<ul style="list-style-type: none"> ● Support the authorities to develop a contingency plan that includes measures to safely store existing records, update registries, protect confidentiality and facilitate the issuance of documents in emergency situations. ● Ensure that protection working groups adequately address issues of civil status, documentation, nationality and statelessness that arise. Where possible, inform and work with UNHCR, which has a mandate to promote the prevention and reduction of statelessness and to provide protection to stateless persons.

¹² UNHCR’s mandate with regard to statelessness is based on Art. 11 CRS, read together with General Assembly resolutions and resolutions of the agency’s own Executive Committee, in particular ExCom Conclusion N° 106 on identification, prevention and reduction of statelessness and protection of stateless persons.






Advocacy*(See Part V.3 )*

- Advocate with relevant authorities to ensure that IDPs have access to civil status registration and documentation, including replacement documentation, without discrimination and without requiring that they return to the area of origin or travel in or through insecure areas.
- Encourage the authorities to cancel or ease onerous administrative or other requirements and use flexible criteria and rules of evidence.
- Based on a review of national legislation, advocate with relevant authorities for the enactment, improvement or repeal of legislation to ensure that it adequately protects the right to nationality. UNHCR can offer technical guidance and support to authorities when preparing and implementing national legislation on statelessness.
- In cases where either the *1954 Convention relating to the Status of Stateless Persons*, or the *1961 Convention on the Reduction of Statelessness* have not been adopted by the State, or if their adoption has been accompanied by reservations, advocate for the adoption and implementation of these instruments or the lifting of reservations.

Technical advice and assistance to local and/or national authorities*(See Part V.9 )*

- Encourage, support or undertake a review of national laws, regulations, policies, procedures and practices to assist IDPs in accessing documentation, and ensure that they adequately protect the right to acquire a nationality, including the prevention of discriminatory deprivation, renunciation or loss of nationality.
- Provide advice to relevant authorities and make recommendations on:
 - ♦ ways to improve civil and legal status registration and documentation, in particular as it relates to IDPs;
 - ♦ ways and mechanisms to protect personal data, respecting the rights to privacy and confidentiality in the process of collection, registration, exchange and use of personal data.
- Where needed, consider building local and/or national capacity by providing training or modest financial or material assistance or equipment to help the authorities improve existing structures.
- Where existing structures are overwhelmed or malfunctioning, assist the authorities to make temporary or mobile structures or arrangements to provide civil registration and documentation to IDPs and other affected populations. As an example, in emergency situations, temporary documentation can be provided. Such documentation should not result in a delay in obtaining permanent documentation, however, and should be properly recognized and accepted by law enforcement officials and authorities responsible for the distribution of assistance.
- On an exceptional basis and following a careful review and assessment, support national authorities in providing displacement-specific documentation to IDPs for specific purposes, such as to access certain assistance or services. Such documentation is usually provided after a registration or profiling exercise (*further addressed in Part V.1 *).



<p>Legal aid and advice to IDPs (See Part V.8 )</p>	<ul style="list-style-type: none"> • Support and build the capacity of national lawyers, paralegals, NGOs and focal points within the IDP community that can provide legal and other advice and assistance related to civil status and documentation to IDPs. This can involve creating or supporting a network of legal or paralegal aid centres. • Accompany people to documentation centres and intervene with officials in charge of registering civil status and delivering documents. • Provide help to IDPs, for example, to fill out forms, gather required documentation or alternative forms of evidence, and prepare and file complaints in court or administrative bodies.
<p>Information and outreach (See Part V.7 )</p>	<ul style="list-style-type: none"> • Support national campaigns that inform people, in their own language, about civil status requirements and procedures and about where documents can be obtained. Mobile teams can be used to facilitate access to isolated areas and to IDPs with specific needs. Information can also be disseminated through the use of the media, hotlines or legal aid centres. (See Part V.8. ) • Engage the IDP community in identifying documentation and related protection risks specific to certain groups. This can include unaccompanied or separated children, other IDP children, ethnic minorities, indigenous peoples and widows.
<p>Community mobilization (See Part V.10 )</p>	<ul style="list-style-type: none"> • Work with the community to maximize the complementarities between customary and statutory law and mechanisms. As an example, provide support to alternative community methods/practices that conform with international human rights law in order to resolve disputes related to identity, age, parentage and ownership. • Work with the community to explain the need and value of documentation and the process to secure such documentation. • Work with the community to assess the impact of activities aimed at informing IDPs about securing documentation.
<p>Birth registration</p>	<ul style="list-style-type: none"> • Advocate for and assist national and local authorities in ensuring that all children are registered at birth and provided with birth certificates. This can be done in various ways, including by providing advice, technical expertise, equipment and/or modest grants. Where birth registration has been delayed, arrangements must also be made to register older children.
<p>Assistance (See Part V.5 )</p>	<ul style="list-style-type: none"> • Ensure that stateless persons are not discriminated against in the distribution of relief and that they have equal access to all assistance and services, including food and non-food items, education, and health care, provided to persons of concern.
<p>Interventions</p>	<ul style="list-style-type: none"> • Take action where needed to ensure that stateless persons are not harassed, discriminated against, arbitrarily arrested or detained, or otherwise placed at risk due to their lack of nationality.

5. Key actors

- **At the national/local level:** relevant ministries (i.e. interior or home affairs) civil and administrative courts and tribunals, municipal agencies responsible for maintaining records and/or issuing documentation, civil society and NGOs, lawyer's associations, and displaced individuals and communities themselves.

- **At the international level:** UNHCR, which is mandated to promote the prevention and reduction of statelessness and to contribute to the protection of stateless persons; UNFPA, UNICEF, UNDP, OHCHR, the International Commission on Civil Status, the Hague Conference on Private International Law (Hcch) and NGOs such as Plan International (for birth certificates) or Norwegian Refugee Council (for Information and Legal Assistance Centers).



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- *Information and Accession Package: The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention relating to the Reduction of Statelessness*, UNHCR, January 1999.



Useful websites

- United Nations High Commissioner for Refugees (UNHCR): **www.unhcr.org/statelessness**
- Commission internationale de l'état civil (CIEC): **www.ciec1.org**
- Hague Conference on Private International Law (Hcch): **www.hcch.net**
- Universal Birth Registration Database: **www.ssl.brookes.ac.uk/ubr/**
- Norwegian Refugee Council: **www.nrc.no/**
- Brookings Institution : **www.brookings.edu/**

Part IV.10

Shelter

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Key message

Shelter is essential to survival. It is a key protection priority. The right to shelter involves both access to adequate shelter and the sustained ability to enjoy an adequate standard of shelter. While urgent operational requirements tend to impose certain shelter solutions, the meaningful participation of the community in decisions related to shelter is essential. Groups with specific needs require additional attention to ensure their access to shelter. Gradual improvement of shelter throughout the displacement cycle is vital and can also contribute to a durable solution after displacement ends. However, shelter support alone is not sufficient, particularly for the above-mentioned groups. It needs to be complemented by infrastructure, access to basic services and livelihood support.

1. Shelter options in situations of internal displacement

Humanitarian interventions usually include shelter programmes that support access to emergency shelter and/or transitional shelter, depending on the stage of the operation.

When humanitarian organizations refer to shelter, they generally mean habitable, covered living space, providing a secure and healthy living environment with privacy and dignity. Examples of emergency shelter include tents, collective centres, etc. A **settlement** is a group of shelters. In an internal displacement context, settlements can be located in urban and rural areas, and they can be **dispersed** or **grouped**. Depending on the circumstances, internally displaced persons (IDPs) usually resort to one of the following shelter options:

- **Dispersed settlement:**
 - **Host-family arrangements** (living with friends, relatives, other families or in rental accommodation);
 - **Rural self-settlement** (living in a rural context informally or on land owned collectively);
 - **Urban self-settlement** (living in an urban context informally or on land owned collectively).
- **Grouped settlement:**
 - **Collective centres** (living temporarily in pre-existing structures, such as hotels, schools or public/government buildings; living in collective centres that are organized and officially recognized or that are more informal collective settlements);
 - **Self-settled camps:** (settling without the support of the government or the humanitarian community);
 - **Planned camps:** (living on purposely-built sites, completed before or during the influx).

Where safe and appropriate, displaced populations should be supported in their respective settlement options. Their decision will be based on considerations of safety, the family's history and solidarity networks, and the extent to which a settlement provides access to water and sanitation, adequate covered and secure living space that ensures privacy, health-care services, education, recreational areas, childcare, markets and livelihood opportunities.

Generally, staying with host families is the preferred alternative for IDPs, as it builds on their own coping mechanisms and enables them to live in more dignified conditions, surrounded by extended family or friends. It is, therefore, important to ensure the participation of host communities in addressing the needs of IDPs and to recognize their contributions. Although camps are considered an option of last resort, they might be the only viable option when dealing with large influxes or when there is tension between the host and the displaced communities.

Shelter standards are different depending on the phase of the crisis. Minimum standards, notably in terms of living space, that are acceptable at the beginning of an emergency will not be adequate in a situation of protracted displacement.

2. Protection risks associated with inappropriate shelter


Specific shelter modalities may seem to be the best option at a given time; yet they are only appropriate if they meet adequate standards and allow the concerned individuals or groups to live in safety and dignity. Initial conditions can deteriorate along the displacement cycle because of the inability to maintain and improve the shelter itself or because of the interaction either between groups of IDPs or between the IDPs and other affected communities. Continued monitoring and evaluation should take place to measure the standards and overall conditions of shelter and to identify possible protection risks related to inappropriate standards or a threatening environment. Such evaluations should lead to different assistance interventions as well as to the search for alternative shelter options.

Risks related to inappropriate shelter options

In host families

- In protracted situations, deteriorating living conditions of families hosting large number of IDPs might lead to health and psychosocial problems, as well as risks of stigmatization, harassment, economic or sexual exploitation, and violence against the displaced families.
- In areas where IDPs are not welcome, both host and displaced families might become targets of retaliation by parties to the conflict or by surrounding communities.

In dispersed settlements (urban or rural)

(See also Part IV.17 and Part V.6 )

- Settling amid villages, towns or in the forest may be part of a protection mechanism employed by IDPs in order to avoid attracting attention. However, it might be difficult to monitor and identify the protection concerns of IDPs in these areas due to their isolation.
- Those settled spontaneously on private or public land are often under constant threat of being evicted by landlords or authorities. Again, their possible isolation may make it difficult for humanitarian actors to intervene in cases of threats of eviction, harassment or other protection concerns.

In medium-to large grouped settlements

- Over time, overcrowding and degrading living conditions, lack of prospects for solutions, breakdown or poor enforcement of law and order, assistance dependency and trauma related to the causes and consequences of displacement can lead to grave protection problems.
- IDPs settled in collective centres are often under threat of being evicted by landlords. Those occupying schools or religious and other public buildings are under constant pressure to leave.
- Relations with the host community as well as within IDP groups might deteriorate over the sharing of limited resources, the depletion of nearby forests for firewood, the occupation of land by IDPs or the requisition of land by local authorities for the benefit of IDPs.
- Tensions might also arise with the presence of an ethnically, culturally, religiously or linguistically different group of people amid a frightened community.
- Despite the fact that a larger group settlement may be more secure for IDPs than dispersed and exposed shelters, a large group settlement can be easily targeted for forced recruitment and attacks, including aerial bombings.
- A proliferation of high quality shelters in an area where housing standards are low can create tension with local communities unless they also benefit from the humanitarian intervention, such as by greater labor opportunities in the area of construction.

3. Individuals and groups at particular risk

Displaced unaccompanied children, particularly child-headed households, are particularly exposed to protection risks related to the lack of appropriate shelter, including trafficking and various forms of violence, abuse or exploitation. Tracing their families and/or identifying foster family arrangements, thus, should begin immediately. In the meantime, all efforts should be undertaken to secure safe housing for these children and establish monitoring procedures by specialized agencies and the community itself.

Single women or female-headed households can be at greater risk of harassment, assault or exploitation if they live in shelters without proper walls, partitioning or the possibility to lock the shelter doors.

Unaccompanied older persons might have difficulties constructing their own shelters or might need to share shelter with others. Unless they receive targeted support, they can find themselves in a precarious and undignified situation of dependency. Older persons heading households and/or caring for children are also particularly vulnerable as they are subject to a double set of protection risks.

Disabled persons (both physically and mentally) also need to receive specific attention, and shelter must be adjusted to their specific needs.

During conflict, ethnic or religious minority groups might be unwelcome among the host population or within the IDP population itself and, consequently, may experience difficulty finding shelter. Displaced families who do not own land or property may face heightened protection risks, as the legal and administrative mechanisms to support them may be less clear. Such families, which include tenants of houses and apartments as well as spontaneous settlers, may constitute a large proportion of the affected populations and, very often, they are also the most deprived and defenseless among them.

4. The international legal framework and the responsibility of the State

The right to adequate shelter is one aspect of the right of every person to enjoy an adequate standard of living. The right to adequate housing was first recognized in the *Universal Declaration of Human Rights*¹ and subsequently included in various international human rights instruments.²

While the right to adequate shelter applies to all persons, specific provisions exist at the international level emphasizing its applicability to IDPs. For instance, this is the case of the *Guiding Principles on Internal Displacement*.³ The *UN Principles on Housing and Property Restitution for Refugees and Displaced Persons*, known as the *Pinheiro Principles*, also contain specific reference to the right to adequate housing and request that States take *positive* measures to alleviate the difficulties faced by refugees and IDPs living in inadequate shelter.⁴

In some situations, the State may claim that it does not have the ability to protect the right to adequate shelter, whether due to a lack of financial resources, inexistent or ineffective law enforcement mechanisms or an inability to access parts of its territory. Nonetheless, it must

¹ Art. 25 of UDHR.

² Art. 11 (1) of ICESCR, Art. 27(3) of CRC; Art. 17 (1) of ICCPR, Art. 5(e)(iii) of CERD, Art. 14(2)(h) of CEDAW; Art. 43(1)(d) of CMW; Art. 20(2)(a) of AfCRWC; Art. 16 of AfCHPR Protocol on the Rights of Women; Art. XI of AmDHR.

³ Guiding Principle 18 provides that “all internally displaced persons have the right to an adequate standard of living” and that “At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to...basic shelter and housing.”

⁴ See Principles 2 and 8. See also the Handbook on Implementing the Pinheiro Principles.

demonstrate that it has made a maximum effort to use all of the resources at its disposal to satisfy the essential need for shelter. Such resources include “those available from the international community through international cooperation and assistance.”⁵ This does not mean that the State needs to build houses for all of the population on its territory. As other economic, social and cultural rights, the right to shelter is progressively realized, and the State needs to take the necessary steps to respect, protect and fulfil this right.

In emergency situations, the minimum requirements that need to be fulfilled in relation to the right to adequate shelter would be privacy, security of person, health and food.⁶

International humanitarian law protects the right to shelter through preventive measures, mainly through the requirement that all parties to a conflict, whether they are State or non-State actors, distinguish at all times between civilian and military objectives. Concretely, it includes the prohibition from attacking civilian homes, including those of IDPs, the use of civilian homes for military operations or objectives, their pillage or destruction, including in the context of reprisals or collective punishment.⁷

In situations where internal displacement is ordered by the State for justifiable reasons, the law requires that positive measures be taken to protect any property left behind and to ensure satisfactory conditions while in displacement, including those pertaining to shelter.⁸

In international armed conflicts, international humanitarian law establishes a positive obligation to State and non-State actors to ensure the provision of shelter and other supplies essential to the survival of the civilian population. Where the civilian population is not provided with such supplies, the parties to the conflict must allow for relief actions, which are humanitarian and impartial in character.⁹

International humanitarian law also sets forth some essentials of humane treatment with regard to detained or interned persons which also apply to IDPs detained or interned in camps.¹⁰ These guarantees include the “protection against weather and the dangers of the armed conflict” to the same extent as the local civilian population. The provision of shelter may be inferred from this expression.

5. The role of humanitarian and human rights actors

Adequate shelter is a vital component of a comprehensive protection strategy. Activities to support national authorities and IDP communities in securing access to adequate shelter must integrate relevant protection considerations. The matrix below contains general considerations applicable to all humanitarian interventions in the area of shelter, as well as specific protection considerations pertaining to each shelter option, as appropriate.

⁵ Ibid.

⁶ IASC, Gender Handbook, Different Needs – Equal Opportunities, Gender and Shelter in Emergencies.

⁷ Rules 7-23 of Customary International Humanitarian Law, Volume I: Rules (ICRC). See also Arts. 33 and 53 of the Fourth Geneva Convention; Arts. 51 and 52 of Additional Protocol I; Art. 4(2)(g) of Additional Protocol II; Art. 28 of the Hague Regulations. See also Art. 2(b)(xvi) of the ICC Statute.

⁸ See Art. 17 of Additional Protocol II.

⁹ See Arts. 69 and 70 of Additional Protocol I.



¹⁰ See Annotations to the Guiding Principles on Internal Displacement, Walter Kälin, Studies in Transnational Legal Policy No. 32, Appendix II: Compilation and Analysis of Legal Norms (Part I), Para. 189, pg. 142.



In our work, we can ...


In all situations

Cross-cutting protection considerations


- **Incorporate shelter in emergency interventions:** Where safe and appropriate, shelter support and assistance should be part of the early relief and emergency response to the crisis. Shelter interventions in these early stages can reduce the fluidity of the population. In doing so, they can help to mitigate or avoid additional displacement-related protection risks.
- **Secure land tenure:** Ensure that land tenure (temporary or permanent) is secured before embarking on emergency, transitional or permanent shelter construction. (See Part IV.17 .
- **Take into account local materials, existing capacities and the environment:** Consider the short- and long-term impact of temporary settlements on host communities and the environment within comprehensive planning activities. Whenever possible, locally acceptable and available materials and labor should be used to benefit the local economy, while not depleting local resources. Promote modalities of shelter that enable IDPs to upgrade their own shelters from transitional to more permanent structures, as their situation evolves.
- **Reinforce the community's self-help capacity:** Encourage traditional construction methods, particularly in areas where the transportation of shelter material is restricted for logistical or security reasons.¹¹ If men traditionally have been in charge of construction but women are interested in participating in construction activities, identify those who may be interested and support basic training in construction to give women the opportunity to equally participate in the process. The same is true for men if women have traditionally been in charge of building. Capacity-building can be enhanced further during the permanent reconstruction phase, by linking construction activities with training. In addition to equipping beneficiaries with knowledge of safe construction practices, this approach may also provide a livelihood opportunity, particularly in areas where large-scale reconstruction is required.
- **Address specific needs ensuring dignity and promoting empowerment:** Try to respond to the specific needs of child-headed households and single young and older women and men without creating further stress or danger and without exposing people to stigmatization or undignified solutions. Include them in the planning and implementation phases of shelter interventions to build ownership and consensus among communities. Cash-for-work or food-for-work schemes as well as childcare arrangements can be useful to support households with specific needs in building their own shelters. Monitor the implementation of such schemes to avoid exploitative and fraudulent practices.
- **Coordinate closely with partners in other sectors that can affect the quality of shelter** (i.e. water and sanitation, livelihoods, communal infrastructure, etc.), and promote joint planning among them. Ensure good coordination in the dialogue with members of the community. Coordinate with partners to establish child-friendly spaces where children can meet and share their experiences. Promote respect for social customs for dealing with the remains of the dead while ensuring that existing facilities such as graveyards or crematoria are adequate.¹² 

¹¹ Items, such as cement, iron bars, nails and wood poles, might be considered strategic items and be restricted in times of conflict.

¹² Graveyards should be at least 30 metres from groundwater sources used for drinking water, with the bottom of any grave at least 1.5m above the groundwater table. See *Sphere Humanitarian Charter and Minimum Standards*.

Assessment*(See Part III.1 )*

- Ensure that protection or community services staff work alongside shelter specialists and site planners in all multi-sectoral assessments and specialized shelter assessments to ensure that the protection implications of shelter interventions are taken into account at the onset.
- In situations of armed conflict, undertake a thorough assessment of the root causes of the conflict to ensure that they are taken into account when planning for, designing or supporting the relevant shelter options.
- Ensure the participation of concerned IDPs and other affected populations of different ages, gender and backgrounds as well as representatives of host communities during the assessment, to learn their different needs, concerns and perspectives.
- Work with the community to identify skilled women and men and adolescent girls and boys who can support shelter construction, from both the IDP and the other affected communities. Maximize the positive impact of shelter projects on the local economy and on the environment by carefully assessing which local materials and labor can be employed.
- Assess which groups in the community may not be in a position to construct, maintain or upgrade their own shelter, to develop appropriate support schemes.
- Assess how unaccompanied older persons, girls and boys are accommodated and whether they are being cared for and supported by the community.
- Together with the affected communities, humanitarian organizations should define what constitutes an eligible family or household taking into account local culture and traditions. They should also define the criteria and modalities for allocating assistance among different households. Prioritizing groups should be based on an assessment of their needs and not only on the basis of their situation as occupiers, hosts or owners. Both the displaced and host populations should be involved in such decisions.

Monitoring and evaluation*(See Parts III.4 and V.2 )*


- Ensure that evaluations of shelter programmes go beyond the performance levels and also examine the protection impact of such programmes. Include protection indicators in the terms of reference of such evaluations.
- Conduct regular structured dialogues and discussions with individuals and groups of different ages, gender and backgrounds, particularly those with specific needs on shelter issues, to ensure that any protection concerns highlighted are discussed and resolved.
- Work with the community to set up monitoring or similar mechanisms to assess the living conditions of persons with specific needs in the community, such as older persons living without adult family members or child-headed households.
- Monitoring should be particularly careful in collective centres, where the lack of privacy and the often precarious living arrangements can expose women and children to situations of gender-based violence, sexual exploitation and other forms of violence and abuse.
- Assess the effect of the provision of shelter on the relations between IDPs and other affected communities. See whether it contributes to reducing or exacerbating conflicts.



Host families	
	<ul style="list-style-type: none"> • In rural settings, depending on the size of the hosted family, provide shelter materials to build a separate transitional shelter in the host compound for privacy. When appropriate, an extension to the host family shelter can be built instead. A partition should always separate the two families to avoid sources of tension or the risk of gender-based violence. • Support displaced families with technical advice to ensure their participation in the design, construction and maintenance of the shelter and to ascertain the quality of the structure. Arrange for engineers and other technical experts to monitor the safety of construction. • If a family demonstrates an intention to host an IDP with specific needs for an extended period, provide, if appropriate, limited material assistance to the host family to assist in coping with additional persons. This will help reinforce bonds with the host community and avoid tension. • Put in place monitoring programmes to avoid fraudulent or exploitative practices. This can be done directly or through community networks. • Secure the agreement, preferably in writing, by both the displaced and host families, as to who will own the shelter material after displacement, to avoid disputes.
Dispersed settlement	
In urban settings	<ul style="list-style-type: none"> • When necessary, lobby local authorities to waive documentation requirements in lease agreements for IDPs. • Advocate for financial institutions to support local authorities' schemes to subsidize rentals.
In rural areas	<ul style="list-style-type: none"> • Identify local families with specific needs for shelter support. • When appropriate, reinforce infrastructure in the host village, such as by upgrading an access road or a bridge or drilling additional wells or communal latrines to help the community cope with the influx of IDPs.
In both cases	<ul style="list-style-type: none"> • Closely monitor the situation of particularly vulnerable individuals or households and build peer-support networks amongst IDPs and host communities to protect and support them. • Ensure that protection and other humanitarian organizations adhere to strict standard operating procedures to safeguard confidentiality in their assistance interventions for those who wish to remain unnoticed. • When appropriate, all actors involved in assisting IDPs in dispersed shelters should ensure that their offices are well-known and recognizable through visibility signs so that individuals living in dispersed settlements can approach them directly without difficulties.
Grouped settlement	
Collective centres or communal buildings	<ul style="list-style-type: none"> • Work with the authorities and the IDP community to ensure that alternatives to inadequate shelter in communal buildings can be found quickly, (i.e. found in less than one month, if possible) pending durable solutions. Collective centres or communal buildings, such as schools and religious buildings, should be closed or relocated as soon as possible to ensure that their original function can resume. Otherwise, tension may arise between the displaced and the other affected populations. • When IDPs cannot be offered alternatives in the immediate future, work with them and with host communities to ensure that a space is organized within the compound for the school or the church to reinstate its activities and to improve the space they are occupying as transitory shelter. • Provide adequate material to enable separate partitions to be placed both between and within families staying in collective centres. Privacy is especially challenging in communal shelters. Ensure that neither women nor children are compelled to share accommodation with men who are not members of their immediate family.



Camps: site selection and layout

(See Part V.6 and Annex I to this chapter )

- Establish a strong monitoring and referral network among agencies to prevent gender-based violence or forced recruitment and to immediately follow up on identified incidents. Communal buildings are likely to expose women and children to such risks. Sensitize communities and local authorities to the prevention of, and response to, these risks and support them in establishing a monitoring and reporting system.
- Keep track of arrivals and departures in each location to avoid any fraud or duplication of assistance.

- Although land might be scarce, available sites might not meet all of the desired criteria. Sensitize the host community and responsible authorities to the long-term protection and financial implications of selecting an unsuitable site.
- Ensure that physical planning is conducted with the participation of the displaced community and that it takes full account of their protection needs. Analyse baseline data gathered from registration and profiling exercises (ensuring breakdown by age and gender, and highlighting specific needs) and build the analysis into the site planning exercise.
- Site selection should also take into full account the distance of the camp from essential services and local markets, existing relationships among the different communities, traditional living arrangements and security concerns. Avoid sites located near volatile areas and, in the case of natural disasters, physically unsafe areas. Ensure that any hazards that could impact the site are mapped, mitigated and monitored.
- Measures to increase the resilience of communities to future disasters should be incorporated during the reconstruction phase and should adhere to the principles of Community Based Disaster Risk Management (CBDRM).¹³
- When designing/constructing shelter units, integrate local building practices to the extent possible and select appropriate material as a priority.

Regrouping IDPs from the same village or extended families in shelters aligned in a U-shape design allows for families to keep an eye on each other's children playing in the central area and to guard belongings against theft. Such "cluster-planned village" communities can also provide a protective environment for individuals with specific needs.

- Ensure a minimum surface area per person of 45 square meters.¹⁴
- Ensure that the roads giving access to the site are good in order to facilitate the delivery of humanitarian aid, the regular monitoring of IDPs and access for IDPs to nearby services and local markets.
- To minimize the impact of the camp on the environment, assess and support the natural resource management of both the displaced and host populations. Provide construction material and household energy fuels to avoid depleting local environmental resources, to protect vegetation needed to prevent soil erosion or flooding, and to safeguard agricultural lands and productive forests.
- Sensitize and train communities on health and fire risks, and encourage the establishment of communal systems for fire prevention and vector control. ►►

¹³ For more information about CBDRM : <http://www.proventionconsortium.org/?pageid=47> .

¹⁴ Including kitchen/vegetable gardening space. This also includes an apportioned common area for roads, foot paths, schools, sanitation, security, firebreaks, administration, water and other storage, distribution, markets.

Shelter design

- In addition to providing physical protection against the elements, shelter should provide sufficient floor space per person.¹⁵
- Avoid shared accommodation as much as possible to mitigate the risk of exploitation and abuse, particularly for single women and unaccompanied and separated children.
- Adjust shelters to the specific needs of persons with disabilities or chronically ill, female-headed households or unaccompanied older persons.
- To mitigate the risk of gender-based violence, ensure that dwellings allow the separation between genders, where culturally required, or between parents and children to provide privacy and safety. Provide material for partitions. Separate facilities, such as bathing facilities and toilets, should be constructed for women and men. They should not be located in dark or isolated areas where women and children might be at risk of sexual assault.

Limited grouped settlements in existing villages

- Depending on the wishes of the IDPs, promote smaller settlements of 20-30 families in existing villages, as opposed to establishing larger camps, as it will:
 - ♦ contribute to a more normal living environment;
 - ♦ allow for better absorption of the displaced population so that IDPs can benefit from access to the village market, local medical facilities, wells and work opportunities;
 - ♦ reduce the cost for the government or the humanitarian community, as it eliminates the need to set up a camp and to provide all services;
 - ♦ ensure that all additional infrastructures provided to the IDP settlement (wells, community buildings, classrooms) also benefit the host village;
 - ♦ lead to improved empowerment and autonomy of the community in securing its own protection; and
 - ♦ improve the possibility for local integration when IDPs opt for this as a durable solution.
- Group settlements can stimulate new forms of community and create a new social fabric. This must be supported and taken into account. Especially in a protracted situation, residents of collective centres, camps or other types of group settlements may have developed stronger community bonds and support networks among co-residents of the collective centre than in their community of origin. Thus, a durable solution may entail supporting these newer community links and support mechanisms, rather than attempting to restore and recreate links from many years ago that were disrupted as a result of displacement.

6. Key actors

- At the **national level**: displaced persons and communities; ministries of public works and infrastructure, housing, social welfare, health, education, religious affairs and interior or home affairs; social housing service agencies, national human rights commissions; engineering and architecture faculties, local industry and professional organizations.

¹⁵ Shelter area per person should average 3.50 – 4.5 m² in camp settings and no less than 1.50 – 2.50 m² for transit and temporary housing facilities (overnight stay only). Shelter standards depend on the climate: more interior space should be provided in cold weather than in warm climates.

- At the **international level**: UNHCR, ICRC/IFRC, UNICEF, UNDP, UNEP, IOM, NGOs specialized in shelter or protection (such as ACTED, Care, Christian Aid, Disasters Emergency Committee, HMD Responses, GOAL, International Rescue Committee, Oxfam, RedR, The Save the Children Fund, the Shelter Centre or World Vision).
- When not available locally, expertise and advice should be sought through the Global Emergency Shelter Cluster, which can field a specialist to coordinate activities in this sector.



Key references

- *Transitional Settlement: Displaced Populations*, Oxfam, June 2005.
- *Women, Girls, Boys and Men: Different Needs - Equal Opportunities. IASC Gender Handbook in Humanitarian Action*, IASC, December 2006.
- *Humanitarian Charter and Minimum Standards in Disaster Response, Chapter 4, Minimum Standards in Shelter, Settlement and Non-Food Items*, Sphere Project, 2004.
- *Protecting Persons Affected by Natural Disasters*, IASC Operational Guidelines on Human Rights and Natural Disasters, 2006.
- *Housing and Property Restitution for Refugees and Displaced Persons: Implementing the "Pinheiro Principles,"* FAO, NRC/IDMC, OCHA, OHCHR, UN-HABITAT, UNHCR, 2007.
- General Comment No. 4 of the Committee on Economic, Social and Cultural Rights, UN Document No. HRI/GEN/1/Rev.1, 29 July 1994.
- *Shelter after Disaster: Guidelines for Assistance*, OCHA, 1982. (In the process of being revised).
- *Handbook for Emergencies*, UNHCR, 3rd Edition, 2007.
- Needs Analysis Framework (NAF), OCHA, 2006.



Useful websites

- IASC Emergency Cluster:
www.onerresponse.info/GlobalClusters/Emergency%20Shelter/Pages/default.aspx
- United Nations High Commissioner for Refugees (UNHCR): **www.unhcr.org**
- United Nations Human Settlements Programme (UN-HABITAT): **www.unhabitat.org**
- Sphere Humanitarian Charter and Minimum Standards in Disaster Response:
www.sphereproject.org

Annex I

Site selection review: issues for consideration

<p>1. Potential beneficiaries</p> <ul style="list-style-type: none"> • Numbers • Characteristics (gender, age, background, language, etc.) 	<p>4. Complementary/Supporting points</p> <ul style="list-style-type: none"> • Presence of nearby villages/communities • Accessibility for humanitarian and other service providers • Proximity to national services: <ul style="list-style-type: none"> ◆ Health ◆ Education ◆ Administration ◆ Law enforcement structures (police, courts) • Electricity supply • Proximity to economic centres • Proximity to income-generating opportunities/ agriculture • Possibility to harvest wood for construction • Possibility to collect firewood for fuel
<p>2. Location</p> <ul style="list-style-type: none"> • Distance from major towns • Distance from the conflict or risk zone • Security and protection situation • Local health and other risks • Distance from protected areas (reserve forest, water reservoirs) 	<p>5. Observations/Recommendations</p> <p>Strengths/weaknesses of site</p>
<p>3. Basic characteristics of the site</p> <ul style="list-style-type: none"> • Area, possibility for expansion • Land use and land rights • Topography • Elevation • Soil condition • Water availability (drinking/washing/livestock) • Drainage • Sanitation possibilities • Climatic conditions • Vegetation/other environmental condition 	<p>6. Proposed next steps for consideration</p>

Part IV.11


Food aid and nutrition

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Key message

If delivered strategically and in a protection-sensitive manner, food aid will not only save lives but also help rebuild communities and foster peace and reconciliation efforts. If provided without regard to the political environment or the underlying causes of displacement and food insecurity, food aid may do more harm than good.

For food aid to be effective, it must be accompanied by other support measures, such as education on food preparation or the provision of non-food items such as cooking fuel and utensils. In addition, food security goes hand in hand with income-generation, self-reliance and development activities. *This aspect of food security is addressed in Part IV.16* .

1. Food insecurity and malnutrition during internal displacement

The use of the term **food security** in this chapter should be understood as **having physical and economic access to sufficient and sustainable food to meet their dietary needs in order to lead a healthy and productive life.**

It is essential to ensure that food aid not only contributes to preserving the life and adequate nutrition levels of those affected by displacement, but also realizes its full potential to become, itself, an agent of protection.

As an agent of protection, food aid can help ensure, for example, that children, particularly girls, have access to education. School feeding programmes encourage children to attend school regularly and in greater numbers.

Access to adequate food and nutrition is, together with access to water, one of the most important humanitarian concerns for any human being. During displacement, all stages of nutrition – production, procurement, preparation, allocation and consumption of food – are disrupted.¹ Communities that may have previously developed group coping mechanisms and solidarity networks to mitigate the impact of food shortages, find themselves suddenly scattered.

Poverty and food shortages can expose internally displaced persons (IDPs) to serious risks, such as the sexual exploitation of women and girls. Mothers may feel compelled to use any means to obtain food for their children, including by agreeing to sexual favours or prostitution in exchange for food or the means to obtain it.

Inadequate nutrition among children may seriously affect their physical and mental development, prevent them from attending school, and push them into child labor to contribute to the family's income.

2. The responsibility of the State

States should do everything possible to promote the full enjoyment of the right to adequate food for everyone within their territory. Some of these measures would be immediate; others would be long-term to progressively achieve the full realization of the right to food. In this context, States must ensure the following:

- Take steps to secure the right to adequate food whenever an individual or group is unable to enjoy this right on their own. This includes preventing discrimination

¹ Pejic, Jelena, *The Right to Food in Situations of Armed Conflict: The Legal Framework*, in IRRRC, December 2001, Vol. 83, No. 844, pp. 1097-1109.

concerning access to food and preventing malnutrition or starvation. If the State does not have the resources to do so, it should seek international support.

- Strengthen the resources citizens have and the means by which they can ensure their livelihood, including food security. This includes enforcing security measures along roads and in settlements, agricultural areas and marketplaces.
- Ensure that food not only provides the optimum nutrition required for a healthy and active life, but that it is also culturally acceptable and free from harmful substances.
- Take conflict-resolution and conflict-prevention measures to ensure access to, and sharing of, vital resources for food preparation, such as firewood.
- Abstain from taking any measure that could prevent IDPs and other affected populations from having access to food.

3. The role of humanitarian and human rights actors

Food aid is often the first form of humanitarian aid to protect the lives of war-affected populations. Food aid in displacement situations must focus on strengthening the capacity of national authorities to restore food security.

In the short term, this implies supporting the distribution of emergency rations and related non-food items. In the long term, it consists of assisting national actors in the development of opportunities to either generate income with which to obtain food or to produce food in the places of origin or relocation.



In our work, we can ...

Assessment and analysis

(See Part III.1 )


- Liaise with national and international food-aid agencies at the very onset of a crisis. They are usually the first to have access to displaced populations and they can obtain firsthand information on the overall conditions and most pressing protection gaps.
- Where not available locally, expertise and advice should be sought through the Global Emergency Shelter Cluster. They can field a specialist to coordinate activities in this sector, at least for the initial assessment/planning period to undertake an evaluation and make specific recommendations for the (re)orientation of the programme.
- Ensure that any food-aid and nutrition assessments are carried out in conjunction with specialized protection and community services staff to ensure wide-ranging identification of protection risks for individuals of different ages, gender and backgrounds.
- Food-aid and nutrition assessments should include tools to look beyond the food related needs and into the (potential) protection concerns of a community:
 - ◆ to identify the most invisible groups in the community, the power relations, and the existing specific needs of any group according to age/gender which may help to ensure that food distribution does not exacerbate vulnerability;
 - ◆ to ensure that the community's and individuals' own coping mechanisms are supported and, if possible, reinforced by, for example, assessing the level of "visibility" of IDPs and whether they hide to protect themselves, which will greatly affect how food is distributed and;
 - ◆ to ensure that the specific nutrition needs and traditions of different groups are protected, including those of children, older persons, chronically ill persons, pregnant and lactating women and indigenous groups.



- Joint assessments on food and related sectors should include displaced populations who are not in camps or broader settlements as well as those dispersed in smaller groups and living with host families.
- The food needs and nutrition and public health conditions of the host communities should also be assessed early to avoid creating tensions. Eventually, any food-aid programme should take into account the needs of the broader community.
- Familiarity with conditions in both the area of displacement and the area of origin is of utmost importance to ensure culturally appropriate food and local procurement of food and non-food items to the extent possible.

Planning and programming of food-aid and nutrition-support programmes

In war-torn countries where infrastructure has been destroyed and markets depleted and where there is no possibility of growing or purchasing food, food warehouses and convoys have been repeatedly attacked. On occasion, IDP settlements have been attacked by fighters, either during or immediately after a food distribution, as was the case in Liberia in the late 1990s. The realization that food aid could be diverted and lead to conflict prompted some NGOs and United Nations agencies to issue the **Joint Principles of Operation**, a first attempt at a code of conduct for humanitarian actors that operated in Liberia in the late 1990s and early 2000s.

- Coordinate all food distribution activities within the country team, particularly with the CCCM, protection, health, nutrition, education and agriculture sectors/clusters or working groups, and the WFP-led logistics common service area and food sector.
- Joint planning and programming between protection and specialized food agencies and public institutions is vital to mainstream protection-related aspects in the programming of food aid.
- Avoid turning food aid into a pull factor for encampment if there are other alternatives (*as addressed in Part IV.10* ). If the situation allows, a food-aid system that enables IDPs to live among host families or in a more dispersed manner should be prioritized, in spite of the greater logistical constraints it may entail.
- The possession of food should not expose IDPs to further human rights violations.
- Undertake joint planning with the community, including IDP women and men, as well as IDP leaders, to ensure that adequate measures are taken to maximize safety measures and avoid risks for the population.
- Calculate the frequency of distributions to avoid any eventual protection risks; the greater the time between distributions the larger the quantities distributed, which may put IDPs and other affected populations at risk of attacks and pillage.
- Plan the location of distribution points and their distance from places of residence taking into account possible risks for recipients of food aid; recipients should not have to traverse long distances or pass through conflict zones where they may be exposed to serious safety risks. Also, distributions need to be accessible for those who are mobility challenged, such as older persons or people with disabilities.



Registration for food distribution	<p>Registration systems should be devised in cooperation with other agencies and should include relevant information to help address food and other protection needs.</p> <ul style="list-style-type: none"> • At a minimum, registration should be based on family groups and should include the names of all male and female adults in the family. All data should be disaggregated by age, gender, place of origin, and ethnic background. • The practice of registering only the male head-of-household / head of family should be discouraged and certainly never used to exclude the registration of other adult family members. • Registration should be combined with sensitization that the food provided is for the family groups and not only for the person whose name is being registered for distribution. • Given the sensitivity of the information, personal data and lists of recipients should be kept firmly restricted to concerned actors and kept safe from unintended use. • Births should be registered in a timely manner and the necessary adjustments should be made accordingly on the lists for food distribution.
Distribution procedures	<ul style="list-style-type: none"> • Ensure that standard procedures are in place and well known to all, to guarantee the safety of women and children during food distribution. • Ensure the adoption of a zero-tolerance policy for sexual exploitation and other forms of abuse of power by aid workers or those providing food aid. To this end, it is important to: <ul style="list-style-type: none"> ◆ hire female staff for key managerial positions in food-aid programmes; ◆ make sure all IDPs are aware of their entitlements and rights; ◆ maintain complaint referral mechanisms and mailboxes in the camps or collective settings for the population to communicate their concerns; ◆ ensure that distributions are undertaken by a combined group of stakeholders, including men and women, to avoid corruption and deviation; ◆ make sure women are also on the receiving end of the distributions, either in the company of their spouses or alone, to directly receive the food rations for their families; ◆ monitor the store's management and record-keeping frequently; ◆ provide safe waiting areas for children during lengthy food-distribution processes to avoid any forms of violence and abuse or family separation during that time; and ◆ ensure all humanitarian staff know the consequences of abuse of power. • Provide transportation assistance, if needed, so women, children, older persons and persons with disabilities have access to food.

Monitoring of food-aid distribution and its effects	<p>Conduct regular food basket monitoring to assess the adequacy of food distribution systems.</p> <ul style="list-style-type: none"> • Conduct regular consultations and post-distribution monitoring with the community to assess the impact of food distributions, use of food, or protection problems that might arise during or after distributions. Involve the community in identifying solutions. Regularly monitor the use of food rations by recipients to ensure that aid is not being diverted after the distributions. • In camp situations, consult with camp management and protection agencies on the possible presence or infiltration of armed elements and provide relevant information relating to food monitoring. • Monitoring mechanisms should include a system for referral of detected cases that need immediate response such as medical care, legal assistance and counselling in cases of food-related sexual exploitation, abuse or corruption. • Undertake country-wide surveys with other agencies to identify instances of food blockage by armed actors or others and discriminatory access to food aid. These should be followed up by the Protection Cluster or working group and the Humanitarian Coordinator with the relevant stakeholders. • Monitor whether school feeding projects retain and increase the percentage of boys and girls at school, and revise the programmes as necessary. • Monitor whether food aid has a negative impact on the level of prostitution or survival sex among women and, if so, determine possible causes such as a lack of diversity in food items or insufficient quantities. • Ensure appropriate monitoring of the nutrition status of the population by specialized agencies. • Monitor appropriateness of food rations, such as for older persons who may not be able to easily chew or digest standard rations due to factors such as loss of teeth.
Training and awareness-raising	<p>In order to ensure that protection is incorporated into food-aid programmes:</p> <ul style="list-style-type: none"> • provide training on protection issues to those involved in food distribution and monitoring to make sure they understand all the implications of food aid and are able to anticipate and/or detect abuses; • provide training to food-aid staff and those of related sectors on the mandates and specific tasks of protection agencies as well as on referral mechanisms; and • maximize the use of food-distribution exercises as venues to promote awareness of certain protection issues, including access to education, separated children, nutrition, and female genital mutilation.

4. Key actors

Ensuring an effective response requires a multi-sectoral and coordinated effort by a range of local, national and international actors.

- At the **national level**, key actors include, in addition to displaced people and affected communities, government line ministries, such as those for social welfare, health, public health, education, religious affairs, the interior, police, and justice; faculties of medicine,

public health, agronomy, local industries and professional organizations; local NGOs and civil society and, in particular, women's and youth organizations.

- At the **international level**, WFP leads and coordinates food-related issues globally. UNICEF is the lead for the global nutrition cluster. They work in close partnership with the United Nations and international organizations, such as ICRC, UNHCR, WHO, FAO, OHCHR, and IFRC, as well as with a large group of international NGOs specialized in food and/or nutrition, such as Action contre la Faim, IRC, Oxfam, Save the Children Fund, World Vision and other agencies with expertise in the fields of food aid, nutrition, protection, public health, self-reliance, security, logistics, and education.

5. The international legal framework

Access to adequate food is both an **individual right** and a **collective responsibility**. The right to freedom from hunger is intrinsically linked to the right to life; at the very minimum, States must ensure that populations in their territory do not starve.²

The right to food does not mean that the State has an obligation to feed everyone. **States have a general obligation to work toward the “progressive realization”** of the right to food and the right to be free from hunger using the maximum number of “available resources.”³ States are also required to create conditions that guarantee food security through, for example, legislation, public policy and specific programmes.

States also have an immediate **obligation to avoid discrimination in access to adequate food**, including discrimination on the basis of displacement. The *Guiding Principles on Internal Displacement*⁴ establish that “humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.”

“The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.

The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients.”

CESCR, General Comment 12 (1999)

In humanitarian emergencies, the obligation to fulfil the right to food also applies.

“Whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to **fulfil (provide)** that right directly. This obligation also applies for persons who are victims of natural or other disasters.”⁵ The *Guiding Principles*⁶ establish that, at the minimum, regardless of the circumstances and without discrimination, competent authorities shall provide IDPs with, and ensure safe access to, essential food, potable water, basic shelter and housing, appropriate clothing and essential medical services and sanitation.

Where **States are unable to provide food assistance to prevent malnutrition and starvation, they are required to seek international assistance**, including from bilateral, United Nations and NGO sources.⁷ States in a position to assist have a joint and individual

² See Art. 25 of UDHR and Arts. 11.1 and 2 of ICESCR.

³ Article 2.1 of the ICESCR; see also Article 4 of the CRC.

⁴ Guiding Principle 24.1.

⁵ General Comment No. 12 (1999) on the right to adequate food, UN Committee on Economic, Social and Cultural Rights. See also Guiding Principle 25 which states that “The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.”

⁶ Guiding Principle 18.2.

⁷ Art. 2.1 of the ICESCR. This is reinforced in Art. 11.2 under which States “shall take, individually and through individual cooperation” measures to fulfil the right of everyone to be free from hunger.

responsibility, in accordance with the *Charter of the United Nations*, to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and IDPs. Food aid should be provided, to the extent possible, in ways that do not adversely affect local producers and local markets, and it should be organized in ways that facilitate the return to the food self-reliance of the beneficiaries. Such aid should be based on the needs of the intended beneficiaries. Products included in international food trade or aid programmes must be safe and culturally acceptable to the recipient population.⁸

International humanitarian law includes the **prohibition of attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population**. This prohibition is a norm of customary law and applies in both international and non-international armed conflicts.⁹ This includes foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works. International humanitarian law also **prohibits the use of starvation of the civilian population as a method of warfare**, which is a customary rule that applies in international and non-international armed conflicts.¹⁰

Using **starvation as a weapon of war constitutes a war crime** under the *Statute of the International Criminal Court*.¹¹ Under international humanitarian law, this rule does not prohibit the use of siege to achieve a military objective. However, when conducting such military operations, the parties to the conflict are to respect another customary rule: they “must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need which is impartial in character and conducted without adverse distinction, subject to their right of control.”¹²



Key references

- *Food Aid and Livelihoods in Emergencies: Strategies for WFP*, WFP, WFP/EB.A/2003/5-A, 2003.
- *Joint Assessment Mission Guidelines*, UNHCR/WFP, 2nd edition, 2008.
- *Food and Nutrition Needs in Emergencies*, UNHCR, UNICEF, WFP and WHO, 2004.
- *UNHCR Handbook for Emergencies*, UNHCR, 3rd edition, 2007.
- *Food Distribution Guidelines*, WFP, 2003 (provisional edition).
- *Nutrition in Emergencies: WFP Experiences and Challenges*,
- WFP/EB.A/2004/5-A/3, WFP, April 2004.
- *Targeting in Emergencies*, WFP/EB.1/2006/5, WFP, 2006.



Useful websites

- Food and Agriculture Organization (FAO): www.fao.org
- Right to Food: www.righttofood.org
- World Food Programme (WFP): www.wfp.org
- United Nations Children Fund (UNICEF): www.unicef.org

⁸ General Comment No. 12 (1999) on the right to adequate food, UN Committee on Economic, Social and Cultural Rights.

⁹ Rule 54, Customary International Humanitarian Law, Vol. 1: Rules, Art. 54(2) Additional Protocol I, Art. 14 Additional Protocol II.

¹⁰ Rule 53, Customary International Humanitarian Law, Vol. 1: Rules; Art. 54(1) Additional Protocol I.

¹¹ ICC Statute Art. 8(2)(b)(xxiv).

¹² Rule 55, Customary International Humanitarian Law, Vol. 1: Rules; Arts. 54 (2) and 70 Additional Protocol I; Art. 14 and 18(2) Additional Protocol II.

Part IV.12

Water and sanitation

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Key message

“The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.”¹

Water, sanitation and hygiene are essential to life, health and dignity and are a basic human right. During displacement, populations must urgently secure access to water, sanitation and basic hygiene facilities to ensure their survival, especially for protection against diseases, and their dignity until they can return home or find another durable solution. In certain country-specific situations, this may be unattainable, but all measures should be taken to ensure equity.


This chapter aims to give an overview of how the adequate provision of water, sanitation and hygiene (WASH) is essential for the protection of internally displaced persons (IDPs).

1. Protection risks

The provision of clean water, sanitation and hygiene facilities needs to be timely and adequate from the beginning of an emergency. Any water and sanitation programme implemented without simultaneously promoting proper hygiene will not effectively prevent diseases and deaths. To ensure effective protection during displacement, basic principles for the provision of water and sanitation services need to go beyond “**what**” is provided (e.g. more than 20 liters per person per day of clean water, or at least one latrine per 20 persons) to include “**how**” the services are provided. A well-planned WASH programme should ensure that **protection risks are reduced and vulnerability is mitigated**.

Inappropriate design and location of water, sanitation and hygiene facilities can provoke serious protection risks for displaced people, particularly women and girls but also for people with specific needs, such as older persons and persons with disabilities.


Access to water has frequently been a source of conflict within and between communities. This becomes particularly evident during displacement when there is often a scarcity of water due to a large influx of people. If not properly planned and implemented, WASH programmes may create tensions between communities if, for example, local water sources become inadvertently polluted. It is important to give careful consideration to the location of water-distribution points in a camp or setting, as different groups may attempt to take control of the water, claiming that these points are in their area of residence. The location of water-distribution points outside camps or collective centers in an urban environment could place women and girls at greater risk of sexual and gender-based violence, as they often have the primary responsibility for collecting water. Girls’ education might also be disrupted if they have to fetch water during school hours because the water points are far from the camp.

Communal latrines and washing facilities located far from dwellings, without some form of lighting or without the possibility of being locked from the inside, also increase the risk of women and girls being subject to harassment, sexual assault and rape. Latrines in collective centres occupying several floors in urban buildings may be inaccessible for older persons or persons with disabilities, making them dependent on assistance from others which, in turn, could increase their vulnerability (*as addressed in Parts IV.10 and V.6* ).

In protracted displacement situations, communities may feel that they are gradually losing their independence and sense of responsibility and, as a result, start to neglect the maintenance of water and sanitation facilities, contributing to the sense that they are also losing their dignity.

¹ General Comment No. 15 (2002) on the right to water, UN Committee on Economic, Social and Cultural Rights, E/C.12/2002/11.

Overview of additional protection risks related to WASH

- Water points can be a source of conflict; agencies should avoid centralizing water points in rural areas and should separate water points meant for humans and animals.
- In rural areas, land and property ownership should be taken into consideration before drilling boreholes; standard tools and considerations should exist within the water/sanitation sector. Agencies risk legitimizing illegal occupations without these proper assessments (*as outlined in Parts IV.10 and IV.17* ).
- Non-food item distributions, such as water containers for carrying and storing water safely, mosquito nets for minimizing the risk of malaria, and soap for hand-washing, which is a vital disease prevention barrier, are critical in enabling IDPs and refugees to take basic measures in protecting their health. These items may become vital commodities during conflict situations and may put communities at risk of attack. Therefore, ensure consultation with beneficiaries about the type and quality of goods and the means of distribution.

Lessons learned from a water project ...

A WASH project, aimed at increasing women's access to private latrines, used locally available materials, as recommended by the women through community participation. However, the women had to walk far from the settlement to collect these materials, which increased their vulnerability to rape. As a result, the project was modified to ensure that there were other ways of collecting the materials needed. This example shows that, with community participation, unintended harmful consequences of initiatives can be avoided to the benefit of all concerned.

2. The responsibility of the State

All States must take steps to ensure the **availability** of a sufficient and continuous supply of water of adequate **quality**. Water and water/sanitation facilities must also be **accessible** to everyone without discrimination of any kind. This includes ensuring that such facilities are located within the safe reach of all sections of the population, designed in an age- and gender-sensitive way, and affordable to all.²

3. The role of humanitarian and human rights actors

Any established WASH cluster or working group in an IDP operation needs to coordinate activities with relevant national ministries to ensure that interventions are properly planned and implemented jointly. Issues, such as disposal of waste and water-quality control, as well as technical aspects, such as the design of wells and latrines, need to be coordinated with the local authorities in order to foster ownership and to ensure that maintenance will be sustainable.


Good coordination between the protection cluster (or working group) and the WASH cluster (or working group) is also important. Protection officers and water and sanitation specialists need to work together to establish WASH activities that include efficient protection for IDPs.

² See General Comment No. 15 (2002) on the right to water, UN Committee on Economic, Social and Cultural Rights, E/C.12/2002/11. See also General Comment No. 14 (2000) on the right to the highest attainable standard of health, E/C.12/2000/4. See also Resolution 60/251 of the Human Rights Council on human rights and access to water.



In our work, we can ...³

Participation


(See Part V.10 )

- Assess, along with the displaced and host communities, the quantity of water needed in the affected area.
- Mobilize women and men to participate in deciding the location, design and maintenance of water and sanitation facilities. Whenever possible, involve women and men from the host population.
- In protracted situations, when water and sanitation facilities are repeatedly damaged, mobilize communities to analyse the causes of the degradation and to develop a sustainable response system.
- Recruit individuals from both the host and IDP populations in order to implement projects that would benefit the local economy and in order to ensure a non-discriminatory recruitment process.
- Ensure the active participation of women and girls (in separate meetings so that they can freely express their ideas and concerns) in deciding on the location and design of latrines and washing areas to maximize safety, privacy and dignity.
- Sensitize the community, and ensure that both men and women take ownership and responsibility for hygiene promotion within the community. Use participatory materials and methods that allow all groups to plan and monitor their own hygiene improvements.⁴
- Establish water and/or sanitation committees composed of 50% women, to be responsible for the maintenance of the facilities and to decide, if necessary, on a schedule for use of the facilities.

Contingency planning

- Develop emergency preparedness mechanisms at an early stage and also for the dry season which aim at identifying and responding to potential security threats linked to the provision of water and sanitation.

Monitoring

(See Part III.4 )

- Ensure that water supplies and sanitation/hygiene facilities, including in schools and health posts, are monitored on the basis of international standards, such as the Sphere standards.⁵
- Ensure that committees monitor water-distribution points and sanitation/hygiene facilities to mitigate the risk of power abuse, corruption, and security incidents. Water should not be sold as an economic good or subjected to controlled access.
- Work with State authorities to prevent displacement by ensuring access to water sources and preventing the contamination/pollution of water sources.
- Ensure that problems related to water are not misused by camp authorities to induce premature return or closure of the camp.
- Ensure adherence by humanitarian actors to the agency's Code of Conduct in order to minimize the likelihood of sexual exploitation/abuse, which has been associated with the delivery of aid.



³ The annex provides some useful questions to ask ourselves and our partners to ensure that our WASH programme includes a protection perspective.


⁴ Generally, in a camp, there should be two hygiene promoters/community mobilizers, one female and one male, per 1,000 members of the population.

⁵ See www.sphereproject.org/handbook/

Acceptability, accessibility and safety of the service provided

- Ensure that sanitation facilities, particularly in existing buildings such as collective centres, are appropriate and safe for the users, in addition to being culturally acceptable. Keep in mind an age, gender and diversity perspective as well as the need for dignity and privacy (e.g. separated cubicles for men and women or the establishment of a schedule).
- Where communal laundry facilities are necessary, create private laundering areas for women to wash and dry garments and sanitary cloths.
- Distribute suitable materials for sanitary napkins and materials for their disposal. Seek the advice of women and girls in the related design and implementation.
- Make sure water-distribution points and sanitation facilities are centrally located and not too far from dwellings⁶ so that people with chronic illnesses or disabilities and older people can access them.
- Ensure that the location of water distribution points is appropriate: water points located far from camps may pose huge logistical challenges in delivering the minimal amounts required to meet international standards; those located too close to camps increase, for example, the threat of malaria to camp residents.
- Provide adapted hand pumps and light water-carrying containers for use by chronically ill or older people.
- Locate facilities close to dwellings, in a secure environment and along safe access paths. Install lights or provide torches for each household.
- If water is trucked, pumped or rationed, ensure that the distribution time and duration are planned with the community, according to women's and men's convenience and cultural habits, and that they are limited to daylight hours.
- Make sure that people not able to attend a queuing system, such as older persons or persons with disabilities, receive their share through outreach social workers or volunteers. Ensure that this system is monitored to mitigate abuse of power.
- Take into consideration the proximity of crops and adjacent land capacity next to water points.

⁶ For example, water points within 200m with minimum waiting time and latrines not farther than 50m, preferably one for each family.

<p>Quality and reliability of services</p>	<ul style="list-style-type: none"> • Ensure that the water supplied is safe and drinkable by establishing a system for the regular monitoring of quality, particularly to reduce the risk of fecal contamination. • Design and run facilities jointly with the community to minimize waste (e.g. when fetching water) and maximize use of resources/facilities. • Ensure with the community that facilities are maintained, that spare parts and materials are in stock, and that there are adequate water storage facilities available at household and community levels in case of interruptions. • Coordinate with specialists the training of women and men on the maintenance and use of water and sanitation facilities and on how to make and/or where to find spare parts. • Organize communal awareness-raising events and meetings, involving people selected from affected communities for WASH programmes/facilities. These events are an important mechanism for reaching out to communities. The concept of community organization/mobilization is not always welcome by stakeholders in conflict-ridden areas, and they may attempt to thwart it.
<p>Minimum environmental damage</p>	<ul style="list-style-type: none"> • Ensure that water and sanitation projects respect the “Do no harm” principle of humanitarian intervention (<i>further addressed in Part I.1</i> ). • Ensure a sustainable use of the available water sources and controlled waste management, especially human excreta. • Prevent pollution of local water sources, and minimize other environmental impact related to water and sanitation activities. For example, providing a gully emptier to local authorities would serve to develop their capacity and to reduce potential hostility within the host population as it would also benefit. • Control discharge and drainage of wastewater and storm-water to avoid water-induced hazards in the camp and the vicinity.


4. Key actors

- At the **national** level: national line ministries for water and sanitation, public health and social welfare, local NGOs, IDPs and surrounding communities, who will be able to give firsthand information regarding the topography of the intended geographical area.
- At the **international** level: agencies specializing in water, sanitation and hygiene, such as UNICEF, WHO, ICRC, IFRC, and international NGOs, including ACF, CARE, IRC and Oxfam.
- Cluster and working groups on WASH, health and camp coordination and camp management.

5. The international legal framework


International (and regional) human rights law guarantees everyone the right to an adequate supply of safe water for personal and domestic use. The right to water is guaranteed both through the right to an adequate standard of living,⁷ and through the right to the highest attainable standard of health.⁸

⁷ See, for example, at the international level, Art. 25(1) of UDHR; Art. 11 of CESCR; Art. 14(2)(h) of CEDAW and Art. 24(2)(c) of CRC. At the regional level, see also Art. 14 of ACRWC and Art. 15 of Protocol to the AfCHPR on the Rights of Women in Africa.

⁸ See the legal section of Part IV.13. 

IDPs, regardless of whether they reside in camps or in urban or rural areas, should have full and equal access to water. Special efforts should be made to ensure the full participation of women in planning the distribution of water and other basic supplies.

International humanitarian law prohibits parties to the conflict from attacking, destroying, removing or rendering useless indispensable objects for the survival of the civilian population, including water installations and supplies. Care must also be taken to protect the natural environment, including water sources, against widespread, long-term and severe damage that might compromise the health or survival of the population.⁹

Guiding Principles (see Annex 1 of the Handbook )

“Guiding Principles 18.2: At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with, and ensure safe access to ... potable water.”



Key references

- *Emergency Field Handbook: A Guide for UNICEF Staff*, UNICEF, 2005.
- *Emergency Sanitation: Assessment and Programme Design*, P.A. Harvey, S. Baghri, and R.A. Reed, WEDEC, Loughborough University, 2002.
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- *The Gender Dimensions of Internal Displacement*, Women’s Commission for Refugee Women and Children/UNICEF, New York, 1998.
- *Gender Handbook in Humanitarian Action: Women, Girls, Boys and Men: Different Needs, Equal Opportunities*, IASC, 2006.
- *Guidelines for Prevention and Response to Sexual and Gender-based Violence in Humanitarian Settings*, IASC, 2005.
- *Handbook for Emergencies*, UNHCR, 3rd ed., February 2007.
- “The Right to Water and Protecting Refugees,” Shrestha D. and Cronin A., *Waterlines*, Vol. 24, No. 3, p. 12-14, 2006.
- *Sphere Project Humanitarian Charter and Minimum Standards in Disaster Response*, 2004.



Useful websites

Right to Water, WHO: www.who.int/water_sanitation_health/rightwater/en/

Gender and Water Alliance: www.genderandwater.org

Islamic Supercourse Lectures on Health Promotion, Child Health and Islam, Islamic Global Health Network: www.pitt.edu

⁹ See, for example, Art. 54 of AP I; Art. 14 of AP II and Guiding Principle 10(2)(b). See also, Art. 8(2)(b)(ii), (iv), (xxv) of ICC Statute.

Annex I

Checklist to mitigate protection risks within a wash programme

Key information

Below is a list of questions to ask when designing a WASH intervention to reduce protection risks.

1. General


- How many people are affected and where are they? Disaggregate data by gender, age and diversity.¹⁰
- Are there significant cultural attitudes or gender dynamics that can affect the way the assistance can be provided?
- What water and sanitation practices were the population accustomed to before the emergencies?
- What are the threats for people affected and for the potential relief response? Are there special threats for women and girls?
- Who are key people to contact?
- Who are individuals or groups with specific needs within the community and why?
- Is there equal access to existing facilities for all?

2. Water supply

- Are water collection points close enough to where people live? Are they safe?
- What traditional beliefs and practices relate to the collection storage and use of water?

3. Excreta disposal

- What are the current beliefs and practices, including gender-specific practices, concerning excreta disposal?
- How do women manage sanitation issues related to menstruation? Are there appropriate materials or facilities available?

¹⁰ "Diversity" can refer to individuals or groups of various social, ethnic and religious backgrounds as well as to individuals or groups with specific needs, such as persons with disabilities, or unaccompanied and separated children. These groups differ from community to community and need to be identified in an initial assessment of the population. See Part I.1. 

Part IV.13

Health

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Key message

Everyone has the right to the highest attainable standard of physical and mental health. This includes not only the right to timely and appropriate health care but also to the underlying determinants of health, such as access to adequate food, water, a sustainable livelihood, shelter and sanitation. Responding to the health needs of a displaced population requires a multi-sectoral response that takes due account of the inter-linkages between health and protection.

1. Health and protection in the context of internal displacement

The conditions that characterize forced displacement can have a profound impact on the health and well-being of individuals and communities. Conflict, displacement and other violations of human rights, combined with lack of access to adequate shelter, sanitation, food and safe water, can seriously undermine people's ability to prevent and respond to health-related risks in their environment.

Health-related factors, such as disease, disability and malnutrition brought on by displacement, often claim more lives and cause greater suffering than the conflict itself.

Internally displaced persons (IDPs) face a variety of **risks to their health and well-being** both during displacement and upon return or resettlement.

What is health?

Health is generally defined as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.

Constitution of the WHO

Is there a link between health and human rights?

A strong link binds health and human rights:

- Violations or lack of attention to human rights can have serious health consequences;
- Health policies and programmes and the ways in which they are implemented can promote – or violate – human rights;
- Vulnerability and the impact of ill health can be reduced by taking steps to respect, protect and fulfil human rights.

25 Questions & Answers on Human Rights
WHO, 2002

- **Physical health:** Physical violence, combined with poverty and marginalization and lack of access to shelter, sanitation, food and water, can result in death, disease, disability, injury or trauma. Diseases that previously have been brought under control, such as measles, diarrhea, malaria and acute respiratory infections, can also become major epidemics as a result of displacement, particularly in crowded camp environments. Chronic conditions, such as diabetes, arthritis, high blood pressure, tuberculosis and HIV, can also reduce an IDP's quality of life and ability to sustain a livelihood.
- **Mental health:** Exposure to violence, separation from family members, and the loss of homes and livelihoods, can give rise to a number of psychosocial related problems, such as post-traumatic stress disorders, psychosomatic illness, depression and anxiety, which can destroy a person's quality of life and diminish resistance to disease. Such factors can also contribute to a change in behaviour, including increased substance abuse, aggression, and higher levels of sexual and domestic violence (*further addressed in Part V.11*).
- **Sexual and reproductive health:** Reproductive health problems are a leading cause of death and illness among women and girls worldwide. Such problems are often compounded during displacement because of limited access to health care, erosion of traditional health practices, and exposure to violence, exploitation and abuse. This may

lead to a rise in maternal and infant mortality, still births, and low birth weight. Sexual violence, in particular, which often increases during displacement, can have tragic consequences for women and girls. This includes health problems associated with forced and early pregnancies, unsafe abortions, obstructed labor, sterility, incontinence, vaginal fistulas¹ and sexually transmitted infections (*also addressed in Part IV.4* 📖).

Health-related risks are often compounded by a **lack of, or limited access to, health-care facilities, services and supplies, including medicine**, during displacement. In many cases, IDPs cannot obtain timely and adequate health care.

- **Availability:** IDPs often live in poor urban areas, rural areas or crowded camps, where health care is absent, the infrastructure has been damaged, or health care workers have been wounded or displaced. Where basic health care is available, it may be incomplete (e.g. lack vaccinations, reproductive health care or psychosocial support).
- **Accessibility:** IDPs may not be able to access available health care for a number of reasons, including discrimination, high user fees, insecure environments, long distances, or lack of affordable transport. Older persons, persons who are mobility challenged, physically disabled and/or housebound, as well as women and girls, face additional obstacles in accessing health care. Their ability to travel may be limited, for instance because cultural norms prohibit them from travelling alone or from being treated by a male doctor. Survivors of sexual violence may also be reluctant to seek help because of fear of humiliation, stigmatization, or risk of further violence, arrest or detention (*further addressed in Part IV.4* 📖). Conducting awareness campaigns to reduce stigma related to sensitive health issues can also help increase access to treatment.
- **Affordability:** IDPs may lack the resources necessary to pay for health care and medication. In some cases, this leaves them vulnerable to extortion or exploitation, including forced prostitution or survival sex in exchange for medical assistance.
- **Acceptability:** Cultural and religious norms and practices influence people's perception of health. Health care, thus, must be provided in a culturally acceptable way in order to be effective. In addition, health-related information must be provided in a manner and in a language that the displaced population can understand.
- **Quality:** Ensuring that minimum standards are maintained in health services² during emergencies can be challenging because of a lack of qualified staff, a lack of knowledge or understanding of displacement-related health risks and the health profile of the displaced population, or a lack of respect for human rights, such as the right to privacy and confidentiality during all stages of treatment.

2. Individuals and groups at particular risk

Health-related risks impact people in different ways depending on a range of factors, including age and gender. As an example, young children and older persons are generally more vulnerable to disease than adults and may face additional difficulty in accessing health care. Pregnancy and childbirth, as well as exposure to harmful traditional practices or sexual violence, also pose unique challenges for women and girls. Persons living with a disability or serious/chronic illness, such as HIV or AIDS, may also need special attention and care.

¹ Fistula occurs when the wall between the vagina and the bladder or bowel is ruptured. It can result in incontinence, severe infections and loss of control of bladder or bowel functions, which may lead to social stigma and isolation of those affected. Fistula often occurs as a result of rape or obstructed labor, in particular when associated with early pregnancy. Fistula can be repaired through surgery.

² These are described in detail in Chapter 5 on Minimum Standards in Health Services in the Sphere Project, *Sphere Handbook: Humanitarian Charter and Minimum Standards in Disaster Response*, 2004.

Such needs are often overlooked or remain unaddressed due to a lack of understanding or discrimination. It is important that differential risks and needs are assessed and taken into account when planning and implementing health-related projects.

3. The responsibility of the State

National authorities carry primary responsibility for ensuring the highest attainable standard of health for everyone within their jurisdiction, including IDPs. This obligation requires States to take progressive steps, to the maximum of their available resources, towards the full realization of the right to health by all appropriate means, including legislative, administrative, financial, educational and social. In particular, national authorities must aim to ensure that health-care facilities, services and supplies are available, accessible, culturally acceptable, and of good quality.

These obligations are outlined in greater detail in a **General Comment** on the right to the highest attainable standard of health, issued by the UN Committee on Social, Economic and Cultural Rights.³


4. The role of humanitarian and human rights actors

At the global level, coordination of the humanitarian response to health is primarily the responsibility of the Global Health Cluster, which is led by the World Health Organization (WHO). Given the close inter-linkages between health and human rights, it is important that protection staff and partners work with colleagues from the health sector to ensure that the right to health is respected and that a human rights perspective is integrated into all prevention and response programming.



In our work, we can ...

Assessment and analysis


(See Part III.1 )

- Ensure that protection assessments and analyses take into account the extent to which people are able to enjoy their right to health and the underlying determinants of health, the health impact of human rights violations, and any protection concerns that arise as a result of ill health.

Coordination


- Establish a focal point for health and coordinate closely with other sectors/clusters, such as protection, shelter, food, nutrition and water/sanitation/hygiene, in order to ensure that health-related protection concerns are understood and addressed.

Advocacy

(See Part V.3 )




- Advocate with local and national authorities to ensure that health policies and programmes respect, protect and aim to fulfil the right to the highest attainable standard of health. This includes ensuring that everyone, including IDPs, has access to appropriate health care and medication. In particular, reproductive health care must be available to women and girls, including survivors of sexual violence.

Community mobilization

(See Part V.10 )

- Support cultural, social or religious activities and traditional practices that play a role in safeguarding health. This might include traditional cleansing and healing practices that help people overcome grief or trauma.
- Involve displaced communities, both men and women, in assessments, planning and implementation of projects. Community leaders, women's groups and youth associations can also play an important role in disseminating information and educating their peers about the prevention and treatment of disease and other health risks.

³ General Comment No. 14 (2000) on the right to the highest attainable standard of health, UN Committee on Economic, Social and Cultural Rights, E/C/12/2000/4, www.ohchr.org/english/bodies/cescr/comments.htm.

Information (See Part V.7 )	<ul style="list-style-type: none"> • Work together with colleagues from relevant sectors/clusters to inform the IDPs, host communities, and local and national authorities, about the right to health and the link between health and human rights. Such activities could include information on the availability and location of health-care services, general practices of good health, including sexual and reproductive health, and ways to reduce various health risks, such as sexual violence. Information should be disseminated through all means available, such as radio, television, community meetings, school programmes, etc.
Education (See Part IV.15 )	<ul style="list-style-type: none"> • Advocate for health-related information to be included in school curricula and other educational or vocational training programmes. This may include information about the link between health and human rights, about hygiene, adequate nutrition, and sexual and reproductive health.
Training	<ul style="list-style-type: none"> • Support training in human rights and on the inter-linkages between rights and health, to health professionals and relevant authorities. This could include information about the right to health and about the rights to privacy and confidentiality. • Support training for traditional practitioners, including traditional healers, traditional birth attendants (TBAs) and practitioners of female genital mutilation, in both human rights and basic health care.
Material assistance (See Part V.5 )	<ul style="list-style-type: none"> • Provide targeted assistance to individuals who cannot pay for necessary health care or medication as well as those that face particular risks. This might include young mothers, older persons, people with disabilities, survivors (or those at risk) of sexual violence, single-headed households, separated and unaccompanied children, and persons living with HIV/AIDS. • Provide financial or material assistance to relevant authorities to assist them in integrating a human rights perspective into their health policies and programmes. This might include the provision of office or medical equipment, ambulances, vehicles or fuel to access remote camps, or to enable emergency referrals for survivors of sexual violence.

5. The international legal framework

International human rights law guarantees everyone the right to the highest attainable standard of physical and mental health. This includes not only the right to equal access to timely and appropriate health care but also a wide range of socio-economic factors and the underlying determinants of health, such as access to food, shelter, safe water and sanitation, safe working conditions and a healthy environment, and access to health-related education and information, including on sexual and reproductive health.⁴

Guiding Principles (see Annex 1 )

Guiding Principle 19:

- “1. All wounded and sick internally displaced persons as well as those with disabilities shall receive ... the medical care and attention they require, without distinction on any grounds other than medical one ... [including] 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 ...”

⁴ See, for example, Art. 25(1) of UDHR; Arts. 10(2), 11 and 12 of ICESCR; Arts. 23 (3), 24, 39 of CRC; Art. 5 (e)(iv) of ICERD; and Arts. 10(h), 11 (1) (f) and 12, 14(2)(b) and 16(e) of CEDAW. For further discussion, see General Comment 14 (2000) of the Committee on Economic, Social and Cultural Rights on the right to the highest attainable standard of health, E/C/12/2000/4.

International humanitarian law provides extensive protection to the sick and wounded as well as to health workers and other humanitarian personnel, hospitals, medical equipment, medical units and transportation.⁵ In particular, the sick and wounded must be collected, protected against ill treatment and receive, to the fullest extent practicable and with the least possible delay, the needed medical care and attention, without any distinction except on medical grounds.

The right to health is also closely related to, and dependent upon, the realization of **other human rights**, including the rights to non-discrimination and equality, to respect for one's privacy during consultations, examinations and care (including the confidentiality of medical information), and to freedom of movement. The right to freedom from torture or cruel, inhumane or degrading treatment or punishment also includes the right not to be subjected to harmful traditional practices, such as female genital mutilation, or forced medical treatment, such as sterilization or mandatory testing, or experimentation.

In this context, the term "health" includes not only physical but also **mental** and **reproductive health**. Reproductive health rights, for instance, require that women as well as men have access to sexual education and information about family-planning methods and services, and that they can decide freely on the number and spacing of their children. It also requires that women have access to appropriate health-care services for pre-natal care, delivery, and post-natal care, and measures to diminish maternal, child and infant morbidity and mortality.

Since **women and girls** have an equal right with men and boys to all aspects of health and well-being, their gender-specific needs, such as the need for reproductive health care, and risks, such as sexual violence and harmful traditional practices, should always be considered.



Key references

- *25 Questions and Answers on Health and Human Rights*, WHO, 2002.
- *Gender Handbook for Humanitarian Action: Women, Girls, Boys and Men: Different Needs, Equal Opportunities*, Chapter XX (Health), IASC, 2006.
- *Handbook for Emergencies*, Chapter 14 (Health), UNHCR, 3rd ed., 2007.
- *Reproductive Health in Refugee Situations: An Inter-Agency Field Manual*, UNHCR, 1999.
- *The Right to the Highest Attainable Standard of Health, General Comment No. 14*, UN Committee on Economic, Social and Cultural Rights, E/C.12/2000/4, August 2000.
- *Sphere Project Humanitarian Charter and Minimum Standards in Disaster Response*, Chapter 5 (Minimum Standards in Health Services), Sphere Project, 2004.
- *Guidelines for Prevention and Response to Sexual and Gender-based Violence in Humanitarian Settings*, IASC, 2005.
- *Clinical Management of Survivors of Rape: Developing Protocols for Use with Refugees and Internally Displaced Persons*, WHO/UNHCR, rev. ed. 2004.
- *Guidelines for HIV/AIDS Interventions in Emergency Settings*, IASC, 2003.

⁵ This is a customary principle of IHL. See also Common Art. 3 of the Geneva Conventions; Arts. 16-23 of the Fourth Geneva Convention; Arts. 10-18 and 75(2)(a) of Additional Protocol I; and Arts. 4(2)(a), 5(1)(a), 5(2)(e) and (d), 7-12 of Additional Protocol II.



Useful websites

- Global Health Cluster: **www.onerresponse.info**
- World Health Organization (WHO): **www.who.int**
- United Nations High Commissioner for Refugees (UNHCR): **www.unhcr.org**
- United Nations Children Fund (UNICEF): **www.unicef.org**
- United Nations Population Fund (UNFPA): **www.unfpa.org**
- International Committee of the Red Cross (ICRC): **www.icrc.org**
- Physicians for Human Rights: **www.physiciansforhumanrights.org**

Part IV.14

HIV prevention and treatment

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Key message

HIV is a global epidemic that affects persons of all ages, gender and socio-economic status. The epidemic has serious personal, social and economic consequences for those living with HIV as well as for their families and communities. It is essential that appropriate HIV prevention, treatment, care and support is provided in all humanitarian emergencies, including in situations of internal displacement.

The **IASC Guidelines for HIV/AIDS Interventions in Emergency Settings** provide guidance on HIV prevention, treatment, care and support in emergency settings. They are available, in English and French, at www.aidsandemergencies.org. This chapter provides basic guidance on HIV in situations of internal displacement but does not replace or duplicate the Guidelines, which should be implemented in all emergencies.

1. HIV and AIDS in the context of internal displacement

Currently over 40 million people are living with HIV, many of them in countries ravaged by conflict and displacement. There is no causal link, however, between displacement and HIV. Existing data confirms that prevalence rates among internally displaced persons (IDPs) do not, in general, differ from those of the general population. HIV infection rates depend on a number of complex factors, such as existing prevalence rates within the country, overall population mobility, the level of risk-taking behaviour, access to accurate information, and access to prevention, treatment, care and support services. Factors such as gender inequality, poverty and marginalization also play a part.

The conditions that often characterize displacement, such as conflict, human rights violations and breakdown of families and communities, however, can increase the risk of a person's exposure to HIV. In particular, sexual violence and abuse can increase the risk of HIV infection.

Persons living with HIV or AIDS and their families, whether displaced or not, may face serious protection risks. They are often subject to discrimination, stigma and social exclusion as a result of their HIV positive condition and may be barred from accessing education, livelihood opportunities, and public services, such as health care. In some cases, they have seen their freedom of movement limited; been arbitrarily arrested and detained; been subjected to physical or psychological violence; and have suffered other similar violations of their rights. Their right to privacy and confidentiality, including as regards their HIV positive status, is also frequently compromised.

Some facts about HIV and AIDS

The human immunodeficiency virus (HIV) is a retrovirus that infects cells of the human immune system, destroying or impairing their function. In the early stages of infection, a person has no symptoms. However, as the infection progresses, the immune system becomes weaker, and the person becomes more susceptible to **opportunistic infections**.

The most advanced stage of HIV infection is acquired immunodeficiency syndrome (AIDS). It can take several years for an HIV-infected person to develop AIDS. Antiretroviral treatment can slow the progress of HIV infection and allow those infected to lead normal lives.

HIV is transmitted through body fluids such as blood, semen and vaginal fluids, for instance during unprotected sexual intercourse (vaginal, anal or oral), transfusion of contaminated blood, sharing of contaminated needles, and between a mother and her infant during pregnancy, childbirth and breastfeeding.

Such risks may be further compounded by the situation of displacement with devastating consequences for the displaced individuals, families and communities. IDPs often face additional discrimination and have limited access to information and HIV prevention, treatment, care and support, in particular where they suffer multiple displacements. Separation of families and lack of adequate shelter, food, water and basic services, such as health care, may seriously undermine their ability to cope with the physical, social and economic impact of the epidemic. Such factors may also weaken their ability to benefit from existing HIV treatment programmes, which require a long-term effort and the ability to closely follow a certain medical scheme.

2. Individuals and groups at particular risk

While HIV affects people without regard to their age, gender, ethnic or religious origin, sexual orientation or other status, women and children bear the brunt of the epidemic in many ways. Discrimination, inability to negotiate safe sex, and exposure to sexual violence and abuse, including forced prostitution and survival sex, can increase the risk of HIV infection. In addition, women and girls often have limited access to HIV information, prevention, treatment, care and support. They are also more likely to suffer from stigma, social exclusion and violence as a result of an HIV positive status. The responsibility of caring for orphaned children or ill family members also falls primarily on the shoulders of women and girls, often limiting their access to education and livelihood opportunities. Their property and inheritance rights are also frequently violated, with dire economic consequences.

Children and adolescents, of both sexes, as well as older persons, and persons living with disability, are particularly vulnerable to the effects of HIV. Children and adolescents may become infected as a result of mother-to-child transmission or exposure to sexual violence or drug abuse, and may have to take responsibility for younger siblings and older relatives upon the death of their parents. Similarly, older persons often carry the burden of caring for sick relatives and children orphaned by AIDS as well as often being HIV positive themselves. In addition, people with HIV are at higher risk of deteriorating health due to the disruption of access to necessary care and support services, as well as absence of antiretroviral treatment, in situations of displacement.

3. A multi-sectoral response

An effective HIV response will require a multi-sectoral approach that addresses both the short-term and long-term physical, social and economic aspects of the epidemic. Comprehensive guidance on HIV prevention, treatment, care and support can be found in the ***Guidelines for HIV/AIDS Interventions in Emergency Settings***,¹ which should be implemented in all emergencies, including those involving internal displacement. For ease of reference, the table below gives examples of activities which may be appropriate and which are described in greater detail in the Guidelines.

¹ IASC, *Guidelines for HIV/AIDS Interventions in Emergency Settings*, 2003, www.aidsandemergencies.org.

Examples of multi-sectoral HIV prevention, treatment, care, support, and mitigation activities

Prevention	<ul style="list-style-type: none"> • Develop HIV awareness-raising and sensitization programmes that encourage reduction in risk-taking behavior. • Ensure adequate prevention and response to sexual and gender-based violence. • Ensure provision of post-exposure prophylaxis (PEP) to rape survivors. • Implement universal precautions, such as safe blood transfusion and injection practices, in health-care settings to prevent HIV transmission. • Support the promotion and distribution of male/female condoms. • Offer voluntary, and confidential, HIV counselling and testing (VCT). • Ensure the early and effective treatment of sexually transmitted infections (STI), including ensuring links between such treatment, VCT services and tuberculosis programmes. • Prevent mother-to-child transmission (PMTCT). • Provide evidence-based sexual and reproductive health education in schools and through other means, in order to reach out-of-school adolescents. • Ensure targeted prevention and care programmes for individuals or groups most at risk.
Treatment	<ul style="list-style-type: none"> • Ensure the provision of antiretroviral treatment (ART). • Ensure the provision of prophylactic and other treatment for opportunistic infections.
Care and support	<ul style="list-style-type: none"> • Provide nutritional support for those in need. • Organize and support community-based home-care programmes. • Provide targeted support to caregivers of those living with HIV, particularly single-female or child-headed households. • Ensure family tracing and reunification for unaccompanied or separated children and adequate foster care arrangements for children orphaned by AIDS.
Mitigation	<ul style="list-style-type: none"> • Ensure that those living with, at risk of, or otherwise affected by HIV are not discriminated against and are able to exercise their rights. • Support information and education activities that aim to dispel misconceptions and counter prejudice, discrimination and social exclusion. • Provide training on HIV, human rights and gender to all relevant stakeholders, including national and international actors in the health, social services, law enforcement and humanitarian sectors. • Ensure that the land, property and inheritance rights of women and children are respected. • Advocate against cultural practices that expose individuals, especially women, to the risk of HIV infection.

4. The responsibility of the State

Ensuring equal and effective access to HIV prevention, treatment, care and support is the responsibility of the national authorities. This responsibility flows from the duty of the State to protect, respect and fulfil its human rights obligations, particularly the right to the highest attainable standard of health. States should take all appropriate measures to ensure that such mechanisms are available, accessible, affordable and culturally acceptable to the population, including to IDPs. In addition, States must ensure that their laws, policies and practices on HIV respect human rights and that those living with HIV are not discriminated against, excluded or

exposed to violence and abuse. These and other obligations are outlined in greater detail in the **International Guidelines on HIV/AIDS and Human Rights**, which provide valuable guidance to States, civil society and other stakeholders on effective national HIV policies and strategies.


5. The role of humanitarian and human rights actors

Given the significant protection implications of HIV, protection staff and partners have a crucial role to play in ensuring that protection concerns are integrated into the broader multi-sectoral response.




In our work, we can ...

Assessment and analysis

(See Part III.1 )


- Ensure that attention to HIV is integrated into protection assessments, analyses and responses. This requires identifying the causes, contributing factors and consequences of HIV; individuals and groups most at risk; existing coping mechanisms and capacities; gaps in the existing response; and priority areas for intervention.
- Ensure that data is collected and analysed on the prevalence of HIV, access to treatment, morbidity and mortality.

Advocacy

(See Part V.3 )


- Support the development and implementation of a comprehensive HIV advocacy strategy that promotes respect for the rights of persons living with HIV. This may include advocacy aimed at ensuring that national HIV policies and programmes incorporate IDPs and that the IDPs have full and equal access to public services and support, including shelter, food, water and health care, and to humanitarian assistance.
- Train and support relevant stakeholders, such as community leaders, women's groups, youth associations, and networks of people living with HIV, to raise awareness of HIV, combat stigma and discrimination, and promote human rights, including gender equality and universal access to prevention, treatment, care and support.

Information

(See Part V.7 )


- Support awareness raising and information activities that provide evidence-based, yet culturally sensitive, information about HIV, including information about prevention, treatment, care and support, for both women and men of all ages.








Technical expertise and advice

(See Part V.9 )


- Provide advice about the protection implications of HIV to relevant stakeholders, including national authorities, local NGOs, civil society and IDP community leaders. This can include advice to national authorities on ways to integrate human rights in national HIV policies and programmes.

Training

- Support training on HIV and human rights for all relevant stakeholders, including government officials, armed forces, law enforcement officials, peacekeeping forces, IDP community members, and humanitarian workers. Training for humanitarian workers should also include codes of conduct, particularly regarding sexual violence, exploitation and abuse. 

<p>Health care (See Part IV.13 )</p>	<ul style="list-style-type: none"> • Advocate and take other action to ensure that health-related services, such as those indicated below, are available, accessible, affordable and provided in a culturally acceptable manner: <ul style="list-style-type: none"> ♦ primary health-care services that address physical, mental, psychosocial and reproductive health; ♦ access to treatment of sexually transmitted infections (STI) and opportunistic infections (OI); ♦ provision of male/female condoms and continuing access to antiretroviral treatment (ART); ♦ targeted health-care services for rape survivors, including the provision of Post-Exposure Prophylaxis (PEP); ♦ voluntary counselling and testing programmes (which include older persons and persons with disabilities); ♦ prevention, treatment and care services, including prevention of mother-to-child transmission for people living with HIV; and ♦ community-run home-based care and support programmes. Privacy and confidentiality of medical information should be respected at all times.
<p>Education (See Part IV.15 )</p>	<ul style="list-style-type: none"> • Ensure that children living with, at risk of, or otherwise affected by HIV, such as taking care of terminally ill adult family members, have full and equal access to education, vocational training and recreational activities. Pay particular attention to girls which may have more limited access to education than boys. • Ensure that education and peer-education activities raise awareness of, and provide information about, HIV prevention and response. Where possible, this should be incorporated into the school curriculum.
<p>Livelihoods (See Part IV.16 )</p>	<ul style="list-style-type: none"> • Ensure that those living with HIV and their families have equal access to vocational training and income-generating activities that promote self-reliance, thus providing protection from economic dependency and exploitation, such as forced prostitution and survival sex.
<p>Targeted humanitarian assistance (See Part V.5 )</p>	<ul style="list-style-type: none"> • Provide targeted material or financial assistance to individuals and families living with, or affected by, HIV, including in particular single-headed households and households headed by children or older persons. • Support community-based male/female condom promotion and distribution.
<p>Family reunification (See Part IV.7 )</p>	<ul style="list-style-type: none"> • Ensure that separated and unaccompanied children are identified and registered, that determinations of the best interests of the child take place, and that they are reunited with their families, if appropriate. In some cases, adequate foster care arrangements might be required.
<p>Land and property (See Part IV.17 )</p>	<ul style="list-style-type: none"> • Help ensure that the land, property and inheritance rights of women and children are respected.
<p>Durable solutions (See Part VI )</p>	<ul style="list-style-type: none"> • Advocate to ensure attention to HIV prevention, treatment, care and support in return, relocation, and/or (re)integration programmes run by the government, the United Nations and other partners. This may include advocacy aimed at ensuring that (former) IDPs living with HIV can continue their treatment and are not discriminated against, regardless of whether they choose to return, relocate or integrate in the area of displacement. This might require efforts to sensitize the host community or communities in areas of return to the rights and needs of persons living with HIV.

6. Key actors

Effective HIV prevention and response requires coordinated efforts by a range of actors – local, national, regional and international – with different mandates, expertise and operational capacity. At the field level, HIV response in displacement settings is coordinated jointly by UNHCR and UNAIDS, working closely with all relevant stakeholders. HIV is a cross-cutting issue in the “cluster approach,” meaning it should be integrated and mainstreamed into the work of all clusters and sectors of the humanitarian response (*further addressed in Part I.3* ).

- **At the national level**, key actors include displaced individuals and communities; networks of persons living with HIV; ministries of health, education and social services; national AIDS commissions and/or programmes; health-care providers; the national human rights commission; local NGOs and civil society; religious organizations; and the media.
- **At the regional level**, an array of initiatives is being undertaken at the regional level such as the Great Lakes Initiative against AIDS and the Asia Pacific Network of People Living with HIV.
- **At the international level**, key actors include UNHCR, UNAIDS, WHO, UNFPA, OHCHR, UNICEF, WFP, FAO, World Bank, ILO, IOM, the Special Envoy of the Secretary-General for HIV/AIDS in Africa, international NGOs, networks of persons living with HIV/AIDS, and peacekeeping forces.²

7. The international legal framework

Ensuring that human rights are respected and protected is critical both for reducing exposure to HIV and to mitigating its adverse effects on individuals and communities. International human rights law contains a number of **rights that are of direct relevance to those living with or otherwise affected by HIV**. These include the rights to:³

- life, liberty and security of person;
- non-discrimination, equal protection and equality before the law;
- freedom of movement;
- the highest attainable standard of health;
- an adequate standard of living;
- equal access to education;
- privacy;
- work;
- freedom of peaceful assembly and association;
- marry and found a family;
- be free from torture and cruel, inhuman or degrading treatment or punishment;
- to seek and enjoy asylum;
- freedom of opinion and expression and to freely receive and impart information;
- social security, assistance and welfare;
- share in scientific advancement and its benefits; and
- participate in public and cultural life.

States have recognized the importance of gender equality, empowerment and participation of **women and girls** in all aspects of HIV prevention and response.⁴ In particular, gender-specific protection risks must be adequately addressed and special attention paid to the health needs of women and girls, including ensuring access to reproductive health care and services, and appropriate counselling and treatment in all cases of gender-based violence.

² See UN Security Council Resolution S/1308/2000 (2000) on HIV/AIDS and Peacekeepers.

³ Based on the *International Guidelines on HIV/AIDS and Human Rights* (OHCHR/UNAIDS, 2006, p. 80-103) and General Comment No. 3 (2003) of the UN Committee on the Rights of the Child (CRC/GC/2003/3), para. 6. See also Principle 19(3) of the *Guiding Principles on Internal Displacement*. For further discussion, see UNHCR, *Note on HIV/AIDS and the Protection of Refugees, IDPs, and Other Persons of Concern*, 2006.

⁴ Declaration of Commitment on HIV/AIDS (General Assembly Resolution A/RES/S-26/2 of 2 Aug 2001), paras. 14, 37, 58–62. See also Principle 19(2) of the *Guiding Principles on Internal Displacement*.

Children are entitled to special protection under the law, as highlighted by the UN Committee on the Rights of the Child in its General Comment on HIV/AIDS and the rights of children.⁵ In particular, the general principles of the *Convention on the Rights of the Child* – including non-discrimination (Art. 2), best interests of the child (Art. 3), the right to life, survival and development (Art. 6), and participation of the child (Art. 12) – should guide the response in all cases involving children. Other important rights include the rights to:

- the highest attainable standard of health and health care;
- access information and material aimed at the promotion of their social, spiritual and moral well-being and physical and mental health;
- preventive health care, sex education and family planning education and services;
- an adequate standard of living;
- not to be separated from parents;
- privacy;
- be protected from violence;
- special protection and assistance by the State;
- rights of children with disabilities;
- social security, including social insurance;
- education and leisure;
- be protected from economic and sexual exploitation and abuse, and from illicit use of narcotic drugs;
- be protected from abduction, sale and trafficking as well as torture or other cruel, inhuman or degrading treatment or punishment; and
- physical and psychological recovery and social reintegration.

The rights of persons living with, or affected by, HIV are sometimes limited or restricted based on purported public health concerns. Such measures, which have included deprivation of liberty, denial of access to public services, and mandatory HIV testing, are unlawful and in violation of basic human rights. In addition, such measures are rarely effective in dealing with HIV, which is not casually transmitted. In fact, such measures may be counter-productive and may discourage people from undergoing voluntary testing or accessing prevention, care and support programmes.



Key references

Tools and guidelines

- *Guidelines for HIV/AIDS Interventions in Emergency Settings*, IASC, 2003.
- *International Guidelines on HIV/AIDS and Human Rights: Consolidated Version*, OHCHR/UNAIDS, 2006.
- *Practical Guidelines for Intensifying HIV Prevention*, UNAIDS, 2007.
- *Strategies to Support the HIV-related Needs of Refugees and Host Populations*, UNAIDS/UNHCR, 2005.
- *HIV and IDP Assessment Tool*, UNHCR/UNAIDS, 2007.

⁵ General Comment No. 3 (2003) on HIV/AIDS and the Rights of Children, UN Committee on the Rights of the Child (CRC/GC/2003/3), in particular paras. 5 and 6.

Further reading

- *HIV/AIDS and the Rights of Children*, General Comment No. 3, UN Committee on the Rights of the Child, CRC/GC/2003/3, 2003.
- *Framework for the Protection, Care and Support of Orphans and Vulnerable Children Living in a World with HIV and AIDS*, UNICEF, 2004,
- *Enhanced Protection for Children Affected by AIDS*, UNICEF, 2007.
- *Educational responses to HIV and AIDS for Refugees and Internally Displaced Persons: Discussion Paper for Decision-makers*, UNESCO/UNHCR, 2007.
- *Gender and HIV/AIDS: Resource Pack*, UNAIDS, 2006.
- *HIV and Conflict: A Double Emergency*, International Save the Children Alliance, 2002.
- *HIV/AIDS and Children Affected by Armed Conflict* (fact sheet), UNICEF, 2002.
- *HIV/AIDS and Internally Displaced Persons in Eight Priority Countries*, UNHCR/OCHA-IDD, 2005.
- *HIV-Related Stigma, Discrimination and Human Rights Violations: Case Studies of Successful Programmes*, UNAIDS, 2007.
- *Note on HIV/AIDS and the Protection of Refugees, IDPs, and Other Persons of Concern*, UNHCR, 2006.



Useful websites

- Joint United Nations Programme on HIV/AIDS (UNAIDS): www.unaids.org
- Global Coalition on Women and AIDS: www.womenandaids.unaids.org
- UNHCR: www.unhcr.org/hiv-aids
- UNICEF: www.unicef.org/aids
- UNFPA: www.unfpa.org/hiv/index.htm
- UNIFEM: www.genderandaids.org
- WHO: www.who.int/topics/hiv_infections/en/
- OHCHR: www.ohchr.org/english/issues/hiv/index.htm
- FAO: www.fao.org/hivaids
- IOM: www.iom.int

Annex I

Key principles

Relating to HIV prevention, response, care and support in the context of internal displacement

- **Non-discrimination, equal protection and equality before the law**
Persons living with, or otherwise affected by, HIV/AIDS are entitled to full respect for their human rights without discrimination of any kind. Human rights law prohibits discrimination on a number of grounds, including on the basis of “other status,” such as health status, including HIV/AIDS. Misconceptions that IDPs are associated with an increased prevalence of HIV might lead to discriminatory practices and should be dispelled.
- **Access to HIV and AIDS health care**
The right to the highest attainable standard of health includes non-discriminatory access to HIV and AIDS prevention, treatment, care and support, including psychosocial support. This includes access to voluntary (and confidential) HIV counselling and testing (VCT); antiretroviral therapy (ART); protection from mother-to-child transmission; and access to reproductive health care, including appropriate pre-natal, delivery and post-natal care.
- **Protection from arbitrary detention and unlawful restrictions on movement**
There is no public health justification for depriving liberty or restricting movement, including forced return or relocation, solely on the basis of actual or suspected HIV status. Such measures are not only ineffective, as HIV is not casually transmitted, but are also likely to be discriminatory and violate the rights to liberty and security, and freedom of movement.
- **Respect for confidentiality and privacy**
Personal data, including data on health status, is confidential and should not be shared without the prior informed consent of the individual concerned. Ensuring confidentiality is the responsibility of all those who have access to such information. Informed consent requires that individuals clearly understand what information will be shared, with whom, for what purposes, and what the potential consequences may be.
- **Freedom from mandatory testing**
There is no public health justification for mandatory HIV screening. Mandatory testing violates the rights to privacy, personal integrity and security. It is also ineffective and does not prevent the occurrence or spread of HIV. Public health interests are best served by voluntary counselling and testing in an environment where confidentiality and privacy are respected.
- **HIV/AIDS-related needs of women, girls and boys**
Women and children are disproportionately affected by HIV and AIDS. Appropriate measures should be taken to address the particular protection problems they face, including the risk of rape, sexual violence and exploitation, social exclusion and discrimination, and violations of a number of other rights, including access to health care, property and education.
- **Access to HIV/AIDS information and education**
The right to the highest attainable standards of health and health care includes access not only to HIV treatment but also to HIV-related information and education, and to information about sexual and reproductive health. The rights to education and to seek, receive and impart information guarantee access to life-saving information. For children, such information must be relevant, appropriate, and timely and presented in a manner appropriate for their age.

■ **Access to durable solutions**

Access to, and the choice of, a durable solution to internal displacement should not be adversely affected by positive HIV status. Persons living with HIV and their families should be able to decide, freely and in safety, whether to return, integrate in the place of displacement, or settle elsewhere in the country. They should have full and equal access to HIV prevention, treatment, care and support regardless of their choice of a durable solution.

Part IV.15

Education

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Key message

Education is both a basic human right and an essential protection tool. When provided in a safe learning environment, education can be both life-saving and life-sustaining. It can prevent exposure to serious protection risks, help individuals and communities to cope with the effects of displacement, and facilitate reconciliation and reintegration once displacement ends. It is crucial to ensure that all internally displaced persons (IDPs) - children, adolescents and adults - have full and equal access to education during all stages of displacement.

The ***Minimum Standards on Education in Emergencies, Chronic Crisis and Early Reconstruction*** provide minimum standards, indicators and guidance notes on ensuring access to quality education in humanitarian settings. The Standards are available in English, French, Arabic, Spanish, Portuguese, Urdu, Japanese, Thai, Bahasa Indonesian, and Bengali at www.ineesite.org/page.asp?pid=1240.

(See also Annex I at the end of this chapter .)

1. The importance of education

Ensuring full and equal access to education in situations of internal displacement is both an aim in itself and an essential element for IDP protection. Education provides people with access to life-saving and life-sustaining skills and knowledge and, if provided in a safe learning environment, it can:

- help reduce exposure to serious protection risks, such as sexual violence and exploitation, forced recruitment, trafficking, or forced and hazardous labor;
- convey key messages about protection risks and concerns, such as landmines, sanitation and hygiene, and nutrition;
- provide a basis for sustainable livelihoods and successful social and economic (re)integration into society;
- mitigate the psycho-social impact of conflict and displacement by providing a degree of stability and normalcy, in particular for children and adolescents; and
- contribute to peace and reconciliation by promoting understanding and tolerance.

Different forms of education

Formal education usually results in the attainment of recognized certificates or diplomas. It includes primary, secondary and tertiary education, as well as formal vocational trainings.

Non-formal education is usually undertaken in less formal settings and does not necessarily lead to recognized certificates or diplomas. It includes various semi-structured recreational and learning activities in child-friendly spaces.

2. Obstacles to full and equal access to education in situations of internal displacement

Education, vocational training and other learning activities are often disrupted during conflict-induced and disaster-related displacement. The social networks and support systems that normally protect individuals, in particular children and adolescents, can erode. IDPs face numerous obstacles in accessing safe education, as indicated below.

- **Lack of adequate educational facilities:** School buildings and/or grounds may be lacking or inadequate because, for instance, they have been damaged by a natural disaster or conflict or because they lack heating, electricity or sanitation facilities. They may also be occupied by displaced persons in need of shelter or be located in places that are inaccessible due, for instance, to a lack of safe transport. In addition, school facilities may be used for other purposes, such as to hold political rallies. Such situations deny children full access to their right to education and put them at risk of abuse and exploitation.
- **Lack of resources:** Loss of homes, land and livelihoods often results in poverty and marginalization and IDPs may lack the resources to pay for tuition, books, clothing, school supplies and/or meals. Children and adolescents, in particular girls, are often required to work or assist with domestic chores and, as a result, may not be able to attend school.
- **Discrimination:** Access to education can be limited as a result of discrimination on grounds, for instance, of gender, ethnic or linguistic background. Displacement can both compound such discrimination and give rise to additional discriminatory practices. As an example, displaced children are often unable to enrol in school in the place of displacement because they lack the necessary documentation or are unable to meet strict admissions and enrolment procedures.
- **Lack of safety and security:** IDPs, in particular children and adolescents, can be exposed to various protection risks *en route* to, or while attending, school or training as a result, for instance, of direct or indiscriminate military attacks, forced recruitment practices, or the presence of landmines.
- **Lack of safe learning environments:** Conflict and displacement can undermine the safety of the learning environment. Peer-to-peer violence, corporal punishment, sexual abuse or exploitation, lack of qualified staff, and inadequate monitoring and supervision within the education system, can discourage children and adolescents from attending school and contribute to high drop-out rates.

3. The role of humanitarian and human rights actors

Humanitarian and human rights actors play an important role in ensuring full and equal access to education. This includes advocating with national authorities who have the primary responsibility for ensuring education and, where appropriate, assisting them in ensuring that IDPs, in particular children and adolescents, have full and equal access to education, vocational training and other learning opportunities. In some cases, schools and/or vocational training programmes may also be run by humanitarian or other actors.

Internally displaced children and adolescents should have full and equal access to education, and every effort should be made to ensure their (re)integration into the national educational system. Where access to formal education has been temporarily disrupted, immediate action should be taken to provide semi-structured learning and psychosocial support in safe spaces for children and adolescents. Such activities can contribute to their physical, mental and emotional well-being and facilitate their transition back into the formal school system. The following table provides basic guidance on the steps that should be followed when addressing lack of education in emergency settings.




In our work, we can ...

Immediate response


Work with the community to provide displaced children and adolescents with semi-structured educational activities in a safe space. Such activities should be age and gender-sensitive, and be designed, planned and implemented by, or together with, the displaced community, including displaced teachers, community leaders, parents, and older children and adolescents with basic teaching capabilities. This may include:

- basic numeracy and literacy classes;
- recreational activities (sport, music, games or art) aimed at alleviating trauma and psychosocial distress;
- information about risks and ways to avoid these, including mine awareness, disease prevention, basic hygiene, etc.; and
- psychosocial support and referral mechanisms.

Initial assessment
(See Part III.1 )

Work with national authorities, local (host) communities given their valuable knowledge on local resources, as well as the displaced community to assess if and to what extent displaced children and adolescents can be integrated into the formal educational system in the place of displacement. This may include assessing:


- the number, level and profile of displaced students and teachers;
- the capacity of the local school system and its ability to cater for IDPs;
- the obstacles experienced by IDPs (legal, economic, cultural, institutional);
- any documentation and certification requirements;
- the need for special or additional schooling or training for children, parents, or teachers to enable their full participation in the system, including the need for language classes, peace education, positive discipline, prevention of GBV, etc.; and
- the possibilities for adult education, including training in literacy, skills development and vocational training.

Advocacy
(See Part V.3 )

Advocate with relevant authorities to ensure full and equal access to education for all, including IDPs. This may include ensuring that:

- displaced persons, including children and adolescents, have full and equal access to the formal educational system, including local schools and other learning opportunities;
- displaced teachers can be employed in local schools without discrimination;
- strict enrolment and/or admissibility criteria are eased or applied with flexibility so as not to exclude the internally displaced (e.g. documentation requirements); and
- adequate facilities and resources are provided to enable schools and other educational institutions to cater to IDPs including, for example, enlargening or improving existing school infrastructure or establishing new institutions or subsidiary classes.



Reintegration into the formal education system	<p>Assist relevant authorities to build the capacity of the national education system in order to facilitate the integration of the IDPs at the earliest opportunity (within six to 12 months maximum). This may include:</p> <ul style="list-style-type: none"> • providing support for the rehabilitation of existing institutions and/or the building of new schools and educational facilities; • providing or supporting the development of educational materials; • supporting measures aimed at ensuring safe learning environments; • providing training for teachers and instructors, including on subjects such as peace education, psychosocial support, and the prevention of gender-based violence; • providing targeted support to individuals that may face specific obstacles to accessing education or vocational training, including orphaned children, adolescent girls, and teenage mothers; and • linking education initiatives and projects for displaced persons, in particular children and adolescents, to national education programmes to ensure a smooth integration into normal school and other learning programmes.
Monitoring and evaluation <i>(See Part V.2 and Part III.4 )</i>	<p>Ensure that all education activities, both formal and non-formal, are monitored and evaluated on a regular basis through participatory methods involving students, parents, teachers and other educational staff. In particular, ensure that adequate monitoring, reporting and referral mechanisms are established in order to ensure adequate follow-up on incidents of sexual violence or exploitation, peer-to-peer violence, corporal punishment and other abuse, and increases in drop-out rates.</p>

Key considerations

Several key considerations should guide our efforts to ensure full and equal access to education.

- **Equal access:** Both the displaced and the host population should have full and equal access to education and, thus, all education activities should target the community as a whole, with particular attention on women's and girls' education. The creation of parallel or separate institutions or activities should be avoided where possible in order to avoid stigma and discrimination. Distribution of school kits, school materials, and/or financial support for educational purposes similarly should be made available to both groups.
- **Community-based approaches:** The participation of the displaced and the host community, including students, parents and teachers (of both sexes), is essential to create a sense of ownership and to ensure that activities are adapted to the local cultural and social context. The community should participate in the design, implementation and monitoring of education activities and form part of the decision-making process at all stages. The community can organize alternative childcare to enable girls to attend school, provide escorts to and from school, and help define codes of conduct for education staff. Students can also play an active role through peer-to-peer support, the dissemination of life-saving messages in a child-friendly manner, and mentoring. In order to ensure effective participation, parents and students should have access to information, be represented in school management or education committees, and be provided with training on human rights and other issues.

- **Keeping children safe:** Schools and other learning spaces must be safe and secure in order to avoid exposing children and adolescents to violence, exploitation and other protection risks. This includes ensuring that:
 - schools and their surroundings, including latrines, are safe, gender-sensitive and child-friendly;
 - all education staff, both national and international, has decent working conditions, respects a code of conduct, and receives basic training on topics such as teaching methodology, human rights, prevention of sexual violence and exploitation, psychosocial support, and positive discipline, and the recruitment of female teachers and assistants should be promoted;
 - the curriculum and teaching methodology are participatory and aim to promote peace, reconciliation and constructive dialogue, including life-skills education;
 - students are informed of their rights (and responsibilities), are familiar with available monitoring and referral mechanisms, and the code of conduct governing the work of teachers and other educational staff; and
 - parents and any parent-teacher associations are involved in keeping their children safe, and monitoring the safety of learning spaces.
- **A holistic approach** - Education cannot be provided in isolation, and important linkages must be forged with other sectors, such as health, food, nutrition, and community services, in order to address the root causes of lack of access to education.

4. The international legal framework

International (and regional) human rights law guarantees the right to free and compulsory education for all at the elementary level.¹ It encourages the development of accessible and affordable secondary education, including both general and vocational education as well as higher education. The law also prohibits any form of discrimination in this regard, including on the grounds of being internally displaced.

All States, therefore, must ensure that primary education is **available** to everyone and that secondary and higher education is progressively made available; that education is provided without discrimination and that it is physically and economically **accessible** to everyone; that education is of **acceptable** quality; and that it is **adaptable**, meaning that it is flexible and responds to the best interests of each child or adult.²

States must also take steps to ensure the full and equal participation of women and girls in all education and vocational training programmes. This includes taking all appropriate measures to eliminate discrimination against women and girls, including through various forms of affirmative action.

¹ See, at the international level, Art. 26 of UDHR; Arts. 24(2)(e) and (f), 28 and 29 of CRC; Arts. 6, 13 and 14 of ICESCR; Art. 18 of ICCPR; Art. 5(e)(v) of ICERD; Arts. 10, 11(1)(c) and 14(2)(d) of CEDAW; the Convention against Discrimination in Education; and Principle 23(3)(4) of the Guiding Principles on Internal Displacement; and, at the regional level, Art. 17 of AfCHPR and Arts. 4(d) and 12 of its Protocol on the Rights of Women in Africa; Arts. 11 and 20(2)(a) of AfCRCW; Art. 13 of the Additional Protocol to the AmCHR in the Area of Economic, Social and Cultural Rights; Art. 34 of ArCHR; and Art 2 of Protocol I to ECHR. See also the Education for All Framework and the Millennium Development Goals.

² See, for example, General Comment No. 13 (1999) on the right to education, Committee on Economic, Social and Cultural Rights (E/C.12/1999/10). See also General Comment No. 11 on plans of action for primary education (E/C.12/1999/4) and General Comment No. 1 (2001) on the aims of education, Committee on the Rights of the Child (CRC/GC/2001/1).

International humanitarian law requires that children be provided with special respect and protection and given the care and aid they require, including access to safe education.³ The law also prohibits direct and indiscriminate attacks or reprisals against civilian property, including schools, playgrounds and other educational facilities.⁴ Intentionally directing attacks against such objects can constitute a war crime in both international and non-international conflicts.⁵

5. Key actors

At the global level, the coordination of the humanitarian response to education is primarily the responsibility of the Education Cluster, which is co-led by UNICEF and the Save the Children Alliance. A number of actors may need to be involved in order to ensure the success of education programmes, including:

- at the **national level**: displaced individuals and communities; ministries of education and social services; teachers' unions; students' unions; and local NGOs and civil society; and
- at the **international level**: UNHCR, UNICEF, UNESCO, WFP (school feeding programmes), UNFPA, UNDP, Save the Children Alliance, CARE, CCF, CRS, AED, NRC, IRC, Refugee Education Trust, and World Vision.



Key references

- *Minimum Standards on Education in Emergencies, Chronic Crisis and Early Reconstruction*, (available in 10 languages), Inter-agency Network for Education in Emergencies (INEE), 2004.
- *Technical Kit for Emergency Education*, Inter-agency Network for Education in Emergencies (INEE).
- *Education in Emergencies: A Resource Toolkit*, UNICEF, 2006.
- *Guidebook for Planning Education in Emergencies and Reconstruction*, IIEP-UNESCO, 2006.
- *Safe Schools and Learning Environments: How to Prevent and Respond to Violence in Refugee Schools*, UNHCR, 2007.
- "Child Friendly Schools" and "Care Support in Schools," UNICEF, UNGEL Forum, Vol. 6, Number 1, March 2006.
- *The Right to Education in Situations of Internal Displacement, in Protecting Internally Displaced Persons: A Manual for Law and Policy Makers*, Brookings-Bern Project on Internal Displacement, 2008.
- *Guidelines on Mental Health and Psychosocial Support in Emergency Settings*, IASC, 2007.

³ See Rule 135 of Customary International Humanitarian Law, Vol. I: Rules (ICRC, 2005). See also, Arts. 23-24, 38, 50, 76 and 89 of the Fourth Geneva Convention; Arts. 70(1), 77(1) and 78(2) of Additional Protocol I; and Art. 4(3) of Additional Protocol II.

⁴ See, for example, Rules 1-2, 7, 9, 11-13 of Customary International Humanitarian Law, Vol. I: Rules (ICRC, 2005). See also, Arts. 48, 51 and 52 of Additional Protocol I; Art. 13 of Additional Protocol II; and Principle 21(2)(b) of the *Guiding Principles on Internal Displacement*.

⁵ See, for example, Arts. 8(b)(ix) and 8(e)(iv) of the Statute of International Criminal Court.



Useful websites

- Inter-Agency Network for Education in Emergencies (INEE): **www.ineesite.org**
- Right to Education: **www.right-to-education.org**
- United Nations Children Fund (UNICEF): **www.unicef.org**
- United Nations High Commissioner for Refugees (UNHCR): **www.unhcr.org**
- United Nations Education, Scientific and Cultural Organisation (UNESCO): **www.unesco.org**

Annex I

INEE minimum standards for education in emergencies, chronic crisis and early reconstruction

The INEE Standards contain minimum standards, indicators and guidance notes on ensuring access to quality education in humanitarian settings. The Standards, which are summarized below, are divided into five categories: (1) standards common to all categories; (2) access and learning environment; (3) teaching and learning; (4) teachers and other education personnel and (5) education policy and coordination. The Standards are available at:

www.ineesite.org/page.asp?pid=1240.

Minimum standards common to all categories	
Community Participation	
Participation	Emergency-affected community members actively participate in assessing, planning, implementing, monitoring and evaluating the education programme.
Resources	Local community resources are identified, mobilized and used to implement education programmes and other learning activities.
Analysis	
Initial assessment	A timely education assessment of the emergency situation is conducted in a holistic and participatory manner.
Response strategy	A framework for an education response is developed, including a clear description of the problem and a documented strategy for action.
Monitoring	All relevant stakeholders regularly monitor the activities, the education response and the evolving needs of the affected populations.
Evaluation	There is a systematic and impartial evaluation of the education response in order to improve practice and enhance accountability.
Access and learning environment	
Equal access	All individuals have access to quality and relevant education opportunities.
Protection and well-being	Learning environments are secure, and promote the protection and mental and emotional well-being of learners.
Facilities	Education facilities are conducive to the physical well-being of learners.

Teaching and learning	
Curricula	Culturally, socially and linguistically relevant curricula are used to provide formal and non-formal education appropriate to the particular emergency situation.
Training	Teachers and other education personnel receive periodic, relevant and structured training according to needs and circumstances.
Instruction	Instruction is learner-centred, participatory and inclusive.
Assessment	Appropriate methods are used to evaluate and validate learning achievements.
Teachers and other education personnel	
Recruitment and selection	A sufficient number of appropriately qualified teachers and other education personnel is recruited through a participatory and transparent process based on selection criteria that reflect diversity and equity.
Conditions of work	Teachers and other education personnel have clearly defined conditions of work, follow a code of conduct and are appropriately compensated.
Support and supervision	Supervision and support mechanisms are established for teachers and other education personnel, and are used regularly.
Education policy and coordination	
Policy formulation and enactment	Education authorities prioritize free access to schooling for all, and enact flexible policies to promote inclusion and education quality, given the emergency context.
Planning and implementation	Emergency education activities take into account national and international educational policies and standards and the learning needs of affected populations.
Coordination	There is a transparent coordination mechanism for emergency education activities, including effective information-sharing among stakeholders.

Part IV.16

Livelihoods

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Key message

Livelihood refers to the capabilities, assets and strategies that people use to make a living, i.e. to secure food and income through a variety of economic activities.

Everyone has the right to a livelihood. For internally displaced persons (IDPs), the loss of livelihood might engender a number of protection risks, as it affects the psychosocial well-being of individuals by lowering self-esteem. Generating income during displacement not only improves the quality of life for individuals; it helps avoid protracted dependency and exposure to further discrimination and abuse.


Although livelihood programmes, as such, may not be sustainable, they should aim to sustain livelihoods in both the short term – to save lives – and the long term – to build resilience and address vulnerability.

1. What are sustainable livelihoods?

A **sustainable** livelihood is one that enables a person to:¹

- cope with and recover from stress and shocks;
- maintain or enhance his/her capabilities and assets;
- provide sustainable livelihood opportunities for the next generation; and
- contribute net benefits to the community in which s/he lives.

To achieve these objectives, livelihood programmes cover a range of issues including community mobilization, development of leadership skills, non-formal education, vocational training and skills-training programmes, income-generating activities, food or cash-for-work programmes, apprenticeship placement projects, micro-finance schemes, agriculture programmes, business start-up programmes, seeds and tools projects, animal husbandry projects and self-employment and job-placement programmes.²

There are also many challenges faced in supporting livelihoods, e.g. not enough markets, high unemployment, little investment, etc. The security aspects can also affect the sustainability of livelihoods in IDP and other affected communities, such as freedom of movement for economic purposes, arbitrary detention, the presence of mines in agricultural fields and roads and local markets (*further addressed in Part IV.2 to 5* ).

In Somalia, IDP

women were trained on livelihood activities (e.g. milling, oil grinding, sewing, baking and petty trading), as well as basic literacy and numeracy. They were given small one-off grants to purchase raw materials. Women were, then, able to work closer to their homes and some could stop collecting firewood, which was a high-risk activity.

For more information, see:



protection.oneresponse.info

¹ Overseas Development Institute, *Livelihoods, Chronic Conflict and Humanitarian Response: A Synthesis of Current Practice*, Longley, C. and Maxwell, D., London, UK, 2003.

² IASC, *Women, Girls, Boys and Men, Different Needs – Equal opportunities*, Gender Handbook in Humanitarian Action, December 2006.

2. The disruption of livelihoods in the context of internal displacement

When IDPs can no longer rely on known ways of generating income, they have difficulty adjusting to new markets, learning new skills and fully integrating with surrounding communities. This situation triggers a larger number of protection risks, which may seriously affect many aspects of an individual's life and the life of the host community in a variety of ways, as exemplified below.

- The disruption of livelihoods might aggravate **the trauma and stress** already caused by conflict or disaster. Prolonged humanitarian assistance will make it more **difficult to become self-reliant**. The earlier livelihood interventions take place, the easier it will be for IDPs to regain their self-esteem and their ability to be self-reliant. Close cooperation between psychosocial services and livelihood-support organizations is important to ensure an innovative approach to each intervention (*further explored in Part V.11* .
- The lack of livelihood can also trigger **family separation**, with parents having to leave their children or older relatives behind to find work. **Children might have to abandon their schooling** to contribute to their families' income.
- **Sexual abuse and gender-based violence** is often a grim consequence of the lack of sustainable livelihoods, affecting particularly displaced women, girls and boys who might be forced to provide sex in exchange for food and basic supplies.
- In some displaced societies, **men may find themselves unable to play their traditional role** of "breadwinner," as gender roles might have been re-defined during displacement. This can lead to a loss of self-esteem, abuse of alcohol or drugs and increased domestic violence.
- **Surrounding communities might perceive the presence of IDPs as a threat** to their already scarce resources, leading to discrimination and exclusion, particularly in regard to the labor market.
- **Interventions that focus only on identifying sustainable livelihoods for IDPs may create tension with the host population** and negatively affect the ability of IDPs to find durable solutions. Livelihood interventions for the host communities, when they face similar constraints, can contribute to peaceful coexistence and ensure that the livelihood strategies intended for IDPs are sustainable.
- **Authorities might view livelihood interventions as a way of consolidating a specific durable solution and hampering others**. For instance, a government trying to facilitate the return of displaced persons might be concerned that livelihood support in areas of displacement might promote local integration and discourage return. A dialogue with the government can help reach the understanding that the promotion of self-reliance should be seen as the precursor to any of the three durable solutions (return, local integration or resettlement) (*further addressed in Part VI* .

3. The responsibility of the State

The government and public service providers have primary responsibility for ensuring that the environment is conducive to achieving self-reliance. IDPs, however, often face considerably more obstacles than other civilians in achieving sustainable livelihoods because of the loss of their own assets and strategies, disputes over lost land and property, and the breakdown of their previous socio-economic support networks. This requires the State to take specific

actions to support IDPs in developing sustainable livelihoods during and immediately after their displacement. These include:

- ensuring non-discriminatory access to public services, such as health, education, social welfare and housing loans to secure a stable and dignified environment so that IDPs can become self-reliant;
- developing an appropriate legal and administrative framework to enable IDPs to have access to the labor market while taking into account their specific needs, including recognition of academic and professional credentials, non-discriminatory job-recruitment policies and psycho-social support;
- respecting and promoting the freedom of movement of IDPs for economic purposes;
- integrating the development of IDP livelihoods into national development programmes and poverty-reduction strategies; and
- securing all areas related to livelihoods and strengthening the rule of law to protect the assets and activities of IDPs in their attempts to become self-reliant.

4. The role of humanitarian and human rights actors

When there is a crisis, the international community tends to mobilize its efforts and resources to respond to the most urgent needs (food, water, shelter, health) of displaced and other affected populations. Livelihood interventions are broadly regarded as pertaining to the post-emergency phase. However, after the first year of displacement, when the international attention has been moved to a new crisis, many IDPs still find themselves dependent on a rapidly decreasing amount of assistance and with few opportunities for sustainable livelihoods.

Early involvement by reintegration and development actors and joint programming between them and protection agencies is vital for maximizing the protection impact of humanitarian interventions. The Protection Cluster Working Group needs to work closely with the Early Recovery and the Agriculture Clusters as well as with other relevant clusters/sectors, to develop a joint approach to development, humanitarian assistance and generic protection interventions. Livelihood interventions, thus, should be part of a multifaceted strategy to further the realization of the legal, social, cultural and economic rights of the displaced and other affected populations.



In our work, we can ...


Assessment

(See Part III.1 )


The steps indicated below should be taken through a joint assessment exercise:

- Identify **pre-displacement household livelihood strategies** and economic and traditional roles, particularly with regard to the control of resources and assets, mobility, access to markets and access to and administration of resources. A thorough understanding of how income was generated prior to displacement will help ensure that livelihood interventions promote gender equality and the maximum use of existing resources within the community.
- Identify, through participatory assessments, the skills and capacities as well as the **economic coping strategies during displacement**, focusing on various age and gender groups. Ensure that the results inform the design of livelihood projects and build on existing coping strategies specific to each group. What may be appropriate for demobilized combatants, for example, might not be appropriate for female heads-of-households or older persons.




	<ul style="list-style-type: none"> • Be sensitive to skills and activities that might be unproductive or even seen as undesirable from different perspectives (i.e. undignified, discriminatory, unsustainable, overloading of local market, lack of markets for products produced). • Assess the livelihood situation of all groups in the local community. The results of this assessment should be used to identify areas of intervention among the most affected populations. Commission an analysis of the local market to identify local production, workforce and services in the public and private sectors. • Identify instances of discrimination in accessing vital natural resources, such as water, firewood or land, and try to understand the reasons (whether economic, political, or other) and its impact on displaced persons' access to livelihoods. <p>Consult with IDPs to identify the barriers they face in accessing national programmes that give access to greater livelihood opportunities, such as micro-finance institutions, housing loans, etc.</p>
<p>Coordination and partnerships</p>	<ul style="list-style-type: none"> • Promote the practical exchange of knowledge and experiences among human rights/protection staff involved in livelihood programmes to ensure protection aspects are integrated into programming and into the delivery of livelihood interventions. • Liaise with agencies promoting self-reliance, livelihood and development to ensure that livelihood-support programmes are launched from the outset of displacement along with food aid and other emergency interventions. • Within the Early Recovery Clusters or sectors, ensure cooperation between humanitarian organizations and national and local public institutions to develop a common livelihood strategy and to ensure inclusion of livelihood programmes for IDPs in national poverty-reduction strategies. • Advocate for livelihood projects that promote peaceful coexistence, reconciliation and conflict prevention, such as by setting up vocational training centres benefiting both IDPs and surrounding communities. • Promote close cooperation of psycho-social and health institutions with employment and income-generation projects to strengthen the link between trauma recovery and self-reliance. • Where feasible, mediate for the incorporation of IDP leadership and associations into existing local structures, such as municipalities or unions, to support economic and social integration. • Ensure that IDPs' reintegration and DDR programmatic interventions are well placed and linked with wider recovery efforts, including those designed to support employment, income generation and reintegration in accordance with the <i>UN Policy on Employment, Income Generation and Reintegration</i>.
<p>Protection monitoring and reporting (See Part V.2 )</p>	<ul style="list-style-type: none"> • Monitor instances of discrimination against IDPs in accessing public support schemes, such as credit schemes and agricultural programmes. Ensure that discriminatory policies and procedures are reported and addressed by the relevant actors, including national authorities, local unions, and development and humanitarian actors. • Identify instances of child labour, and ensure adequate livelihood support to families with the aim of eradicating such practices. Refer cases of children performing work that may be hazardous or harmful to their development and growth to specialized organizations so they can be immediately removed from dangerous environments. Try to find viable alternative income-generating opportunities.




- Monitor any possible **increase in local commercial sex work** (women and girls selling sex for their survival), and identify any possible links with the increase of IDPs and their lack of alternative and dignified livelihoods. Identify exploitative and trafficking networks, and ensure that national mechanisms for protecting victims of trafficking and exploitation are activated. Try to find viable alternative income-generating opportunities. (See Part IV.8. )
- Closely monitor criteria and procedures for accessing livelihood support programmes and micro-finance schemes, particularly to **identify instances of economic and sexual exploitation**, including by humanitarian workers involved in implementing these programmes.
- Monitor the **viability of IDP settlements** to ensure that they allow for the achievement of sustainable livelihoods. Different issues must be addressed such as the right location and the access in and out of settlements to go to fields, to markets, etc.
- Monitor whether or not **procedures for recognizing educational or professional qualifications of IDPs** and other affected populations who lost their documentation are in place and, if so, whether they are simple, transparent and effective.

Community participation and mobilization



(See Part V.10 )

- Identify existing **community-level traditional support mechanisms**, formal and informal leadership structures, self-help groups, management committees, community-run care facilities and social clubs that can be supported by the international community to maximize their capacity. This is particularly important in situations of **urban displacement** or rural dispersion, where it is difficult to identify and reach IDPs directly.
- Support **existing local and traditional livelihood strategies in host communities**, and promote the participation of IDPs in their structures, such as in traditional group-based micro-finance, small holders associations, producers' associations and market committees.
- Ensure **differentiated livelihood support strategies** to address the specific needs of IDPs and members of the host community, depending on the particular protection risks they face. Make sure that IDPs participate in the design and development of these strategies, and be aware of the needs of particular groups, such as those indicated below.
 - ♦ **Persons with disabilities**, including those with pre-existing disabilities and those with disabilities resulting from trauma and/or conflict-related injuries, may require specific support to identify suitable employment opportunities.
 - ♦ **Single heads-of-households** may require additional support to access self-reliance activities through community-based daycare centres where they can leave their children while they go to work.
 - ♦ **Youth** (above 18 years old) **formerly associated with armed forces or armed groups** require dedicated support for their reintegration into civilian life. Generating youth employment is vital for providing an alternative to warfare as a means for survival.³ Disarmament, demobilization and reintegration (DDR) programmes should be promoted.
 - ♦ **Older persons headed households** may need assistance in securing livelihoods, including equal access to income-generating activities and micro-finance activities, and may require help in carrying out those activities which demand physical strength.
 - ♦ **Demobilized soldiers**, within the framework of DDR programmes, need dedicated support to be reintegrated into civilian life. Their specific needs must be understood and addressed to avoid stigmatization and exclusion. 


³ This can be done, for instance, by including youth in reconstruction and rebuilding projects, such as restoration of vital transportation routes or health and education facilities.

	<ul style="list-style-type: none"> ◆ Ethnic minorities are often exposed to increased levels of discrimination, including by displaced communities. Supporting the development of a certain skill or area of work can lead to improved social status in the society. ◆ Groups or individuals who prefer to remain in hiding close to their areas of origin will require tailored income-generation support that can be undertaken from their hidden locations while ensuring that their products can reach local markets. ● Assist in the organizational development of IDP community groups and associations that include members of the host community. This will enable IDPs to assume an active role in their new community and provide valuable services to others. IDPs' efforts to reconstruct their livelihoods greatly depend on the reconstruction of such community-support networks.
<p>Skills development and (re) training</p>	<ul style="list-style-type: none"> ● Support livelihood programmes that help develop skills that match local market needs. Target, however, the less saturated areas of the local market which may help prevent possible tensions between the displaced and host communities. ● As much as possible, work to overcome traditional gender patterns for division of labor, thereby ensuring that women and men have access to non-traditional professions, such as women working in construction, as carpenters, plumbers or accountants. ● Focus skill development and re-training programmes on activities that do not require using the host areas' limited natural resources as a way of facilitating reconciliation. ● Support the implementation of quick orientation programmes for groups or individuals with specific needs, such as persons who are illiterate, prior to skills-training programmes to ensure that they will be able to participate subsequently in the skills-training programmes. ● Support and encourage the design and implementation of two-phase skills and vocational training activities that allow participants to "graduate" from the training and have access to a start-up grant or loan to facilitate links between the skills acquired and self-reliance. ● Promote re-certification and re-credentialing programmes in situations where IDPs already have the necessary skills to match local market needs but do not have professional or academic certification due to lack or loss of documentation.
<p>Legal aid, counselling and human rights advocacy (See Part V.3 and V.8 )</p>	<ul style="list-style-type: none"> ● Provide legal aid and legal counselling to IDPs and national actors to overcome and eradicate instances of discrimination concerning livelihoods. Often, this includes: <ul style="list-style-type: none"> ◆ providing technical advice for the establishment of an adequate legal and administrative framework for local institutions; ◆ supporting and advocating for the development of concrete measures allowing IDPs' access to opportunities and services on a comparable basis to those in the surrounding communities; ◆ facilitating women's access to documentation, education, health services, social assistance programmes, and employment and property rights; ◆ providing training materials and programmes to staff of relevant ministries, local health and education providers and local social assistance offices to promote better understanding and knowledge of these rights; and ◆ promoting the inclusion of a "fair and non-discriminatory treatment clause" in the Code of Conduct of national civil servants as well as high standards of conduct in job descriptions.




- Support IDPs in **accessing natural and productive resources and assets** to re-build their livelihoods. Oversee restitution and compensation mechanisms in cases of land disputes (See Part IV.18 ).
- In situations where livestock stealing has been widespread, support the establishment of a system for the restitution of the livestock that will contribute to the local reconciliation process.
- Promote **mechanisms to ease administrative procedures for IDPs to access employment** in the public and private sectors. Ensure an appropriate balance between emphasizing the specific needs and the equal rights of IDPs to avoid undue categorization or marginalization.
- Advocate for State support for the **recognition of academic and professional titles** and certification, particularly of individuals who lost their documents during flight and violence. Promote technical guidance for recognition procedures, if required (See Part IV.1 ).
- Advocate for the clear regulation and respect of **labor rights**. Advocate for the development of national institutions that can support “decent work conditions,” such as cooperatives, unions, administrative tribunals, labor courts, and social insurance bodies. **Unions and cooperatives** are particularly strong public actors that seek to uphold the socio-economic rights of their workers/employees. As such, they can often become highly effective advocates for IDPs and other affected communities.
- Promote **“life skills” support programmes** in conflict-resolution, negotiation, peaceful coexistence.
- Promote rapid and well-conceived **income-generation support immediately following displacement** to help restore human dignity and help people avoid illegal or unsustainable strategies.

Material, technical or financial assistance

(See Part V.9 )

- Work with relevant clusters and sectors for **multi-dimensional projects** covering all required services, including housing, health and employment, because livelihood needs are interlinked.
- Ensure that **material and financial assistance** for livelihood opportunities also involve and target individuals or groups with **specific needs in host communities** to avoid creating tension between IDPs and surrounding communities.
- Mainstream as many livelihood projects as possible into State services through specific coordination and hand-over structures.
- Advocate with relief and development agencies for the implementation of projects aimed at **strengthening the absorption capacity of host communities** by investing in and/or upgrading infrastructure, community services and the local economy.
- Support the development of sustainable assistance and community-support projects to assist **IDPs and other affected communities to care for older persons, persons with disabilities** or other members of the community with specific needs in order to fill the gaps left by the disruption of family-based economies and care structures that existed prior to displacement.
- Support national and international efforts to create employment and development **opportunities for all in places of return or new settlement**, regardless of gender, ethnicity, etc.
- Agree with all stakeholders, including IDPs, on clear, transparent and protection-oriented **criteria for phasing out** assistance and livelihood programmes that will be handed over to long-term development programmes. Material and financial aid for livelihood programmes should continue until IDP livelihoods are self-sustaining or until support through national institutions is available and sustainable.



Evaluation and monitoring(See Part III.4 )

- Develop and agree with relevant partners on **benchmarks for self-reliance** in a given displacement situation. IDPs and other affected communities should be closely consulted in order to arrive at criteria that are relevant, realistic, specific and measurable within a given period. Use these criteria to measure progress of humanitarian and early recovery interventions.
- Take part in debriefings following programme evaluations and use monitoring reports to follow up on identified **protection concerns** that threaten the effectiveness and success of livelihood interventions, such as security threats, discrimination in accessing resources, gender inequality or lack of resources from, or training by, the public administration.

5. The international legal framework

The right of IDPs to access sustainable livelihoods is primarily rooted in the principle of **non-discrimination, the right to an adequate standard of living, and the right to work**. Access to **education** and adequate **health** care are also closely linked to the ability to develop a sustainable livelihood. In turn, achieving sustainable livelihoods is considered a prerequisite for the exercise of other fundamental rights.

The **right to an adequate standard of living**⁴ encompasses several more specific rights, including those to food, water, clothing, and housing.

The **right to work**⁵ refers to the right of everyone to the opportunity to earn a living in a safe work environment, and also provides for the freedom to organize and bargain collectively. This right also prohibits the use of compulsory or forced labor.

The *Guiding Principles on Internal Displacement*⁶ establish that IDPs shall not be discriminated against as a result of being displaced, and refer to the right to **freely seek opportunities for employment and participate in economic activities**.

The right to an adequate standard of living and the right to work do not mean that the State is obliged to provide houses or jobs to everyone. Rather, it is a basic obligation of States to **take steps**, individually and through international assistance and cooperation, especially economic and technical to achieve the **full realization** of these rights.⁷

In the context of **humanitarian relief operations**, however, this means that the State is required to **provide** goods and services, such as shelter, food and water, to persons who, due to the circumstances, are unable to satisfy their basic needs. If a State is unable or unwilling to guarantee a minimum level of each right, international human rights law requires that the State seeks international assistance.

International humanitarian law includes the prohibition of attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population. This prohibition is a norm of customary law and applies in both international and non-international armed conflicts.⁸ These objects include crops, livestock, drinking water installations and supplies and irrigation works. The list is not exhaustive and includes other productive assets together with medicine, clothing and shelter.

International humanitarian law also **prohibits the use of starvation as a method of warfare**, a customary rule that applies in international and non-international armed conflicts. Starvation

⁴ Art. 11 of ICESCR; See also General Comments Nos. 7, 12 and 15, Committee for Economic, Social and Cultural Rights.

⁵ Art. 23 of UDHR; Art. 5 (e) (i) of ICERD; Arts. 6 and 7 of ICESCR.

⁶ Guiding Principles 22 and 29.1.

⁷ Art. 2 of ICESCR.

⁸ Rule 54, Customary International Humanitarian Law, Vol. 1: Rules.

used as a weapon of war constitutes a war crime under the *Statute of the International Criminal Court*.⁹ Under international humanitarian law, this rule does not prohibit the use of siege to achieve a military objective. However, when conducting such military operations the parties to the conflict are to respect another customary rule of international humanitarian law: they “must allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need, which is impartial in character and conducted without adverse distinction, subject to their right of control.”

6. Key actors

A credible livelihood programme will require that IDPs and other affected populations are at the centre of the initiatives taken and will involve close cooperation with the IASC Country Team, the government, and development actors, such as the World Bank, UNDP, ILO, FAO and bilateral agencies. There should be coordination mechanisms within the ministry in charge of internal displacement, and among other ministries, particularly those responsible for planning, finance, labor and economic development, agriculture, health, housing, education and public order. Protection and assistance programmes for IDPs should be incorporated into national development plans and poverty-alleviation initiatives.

Discussions with donors should involve suggestions regarding how they can best contribute to self-reliance and sustainable livelihoods. Members of the international community can use their influence and “good offices” with national authorities to advocate for sustainable livelihoods for IDPs.

Partnerships with the private sector can also support the small and medium enterprises of IDPs both in camps and in areas of solutions. Initiatives in this case would include, for example, sub-contracting small/micro business ventures, organized seasonal/short-term wage employment, etc.



Key references

- *Gender Handbook for Humanitarian Action: Women, Girls, Boys and Men: Different Needs, Equal Opportunities*, IASC, 2006.
- *Handbook for Repatriation and Reintegration Activities*, UNHCR, Geneva, 2004.
- *Handbook for Self-Reliance*, UNHCR, Geneva, 2006.
- *UN Operational Guide to the Integrated Disarmament, Demobilization and Reintegration Standards*.
- *Building livelihoods. A field Manual for Practitioners in Humanitarian Settings*, Women’s Refugee Commission, New York, 2009.



Useful websites

- Livelihoods Connect, Support for Sustainable Livelihoods: www.livelihoods.org
- UNDP, Crisis Prevention and Recovery: www.undp.org/cpr/we_do/early_recovery.shtml
- United Nations Disarmament, Demobilization and Reintegration Resource Centre: www.unddr.org

⁹ ICC Statute, Art. 8 (2) (b) (xxiv).

Part IV.17

Land and property

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Key message

Forced displacement often leads to the loss of land, homes and other property of individuals and communities who, as a result, are deprived of their main source of physical and economic security. Disputes over land and other property are frequently among the root causes of conflict and displacement and can pose obstacles to return, reintegration and reconciliation. Efforts to address deprivation of land and property must form part of the protection response during all stages of displacement and later recovery.

The ***UN Principles on Housing and Property Restitution for Refugees and Displaced Persons*** (“the *Pinheiro Principles*”), together with the inter-agency ***Handbook on Implementing the Pinheiro Principles***, provide essential practical guidance to all those who work on housing and property restitution issues.

1. Loss of property in situations of internal displacement

Forced displacement can be a cause as well as a consequence of deprivation of land, homes and other property. People often must leave behind land and other property when they flee and seek safety from the effects of armed conflict, human rights abuses and other events. In many cases, such property is subsequently damaged or destroyed by fighting or appropriated by parties to a conflict or by other persons, who themselves may be displaced.

Deprivation of property can also form part of a deliberate political or military strategy, a weapon of war aimed at terrorizing, punishing and displacing particular communities and altering the ethnic or religious composition of a country, in whole or in part. Disputes over land and property are also frequently among the root causes of conflict and displacement and, as a result, are often highly complex and difficult to resolve.

Property can also be lost during forced return or relocation while in displacement. Such events can take place as part of, or under the guise of, land reform, agricultural restructuring or urban planning.

Loss of land and property can have serious consequences for the lives, health and well-being of individuals and communities and expose them to various risks. Without access to land, homes and property, people are often deprived of their main source of physical and socio-economic security, including shelter, water, and food as well as the ability to earn a livelihood.

Lack of a home or a fixed residence can also restrict people’s access to assistance and services, including education and health care, and limit their access to credit. As a result,

What do we mean by “property”?

“Property” refers to both tangible and intangible property, including land, homes, money, crops and livestock. Rights to property are not limited to private ownership but include a range of formal and/or informal rights and entitlements relating to access to, use of, control over and/or transfer of property.

Property rights can be defined by diverse sources, including not only national law, but also customary or religious law or practice, and local tradition. They can also be acquired over time through consistent use and practice. Such rights can be held privately by, for instance, an individual or collectively by, for instance, a family, a social group, or a community.

Today, this area of law is often referred to, particularly by humanitarian and development actors, as “Housing, Land and Property Rights,” or “HLP.”

internally displaced persons (IDPs) may suffer increased poverty, marginalization and risk of harassment, exploitation and abuse.

Women and children often suffer disproportionately from loss of land, homes and property. Discriminatory laws and practices frequently prevent women and girls from owning, leasing, renting and/or inheriting property. In case of divorce or the death of husbands, fathers or other male relatives, women and girls may be forced to leave their homes, coerced into marriage, or subjected to other harmful practices. Very few women own land titles and are at an increased risk of tenure insecurity if the husband or family members is killed in war. During displacement, which often results in the separation of families and a surge in the number of women-headed households, such discrimination might make it impossible for displaced women or girls to reclaim or repossess their homes. Lack of shelter and limited access to land and sustainable livelihoods can also heighten their specific risks of rape, forced prostitution or trafficking.

Many of the factors that lead to the deprivation of property are likely also to pose obstacles to sustainable return and reintegration. The table below lists many of the factors that need to be assessed and considered when developing and implementing strategies to prevent and/or respond to the deprivation of property.

Table 1: Factors that impact efforts to prevent and respond to deprivation of property

Type	Factors
Political/ economic factors	<ul style="list-style-type: none"> • Ongoing conflict and tension over land and other resources, including tension that has not been satisfactorily addressed in peace negotiations. Resistance to fair restitution to displaced individuals and communities may persist. • Privatization or re-allocation of socially or publicly-owned land or housing immediately prior to, during or after the cessation of conflict, without regard to existing ownership, tenancy or occupancy rights. Such practices – sometimes referred to as “land grabbing” – may be used to secure political support, consolidate ethnic cleansing, or gain financial profit by, for instance, allocating land to large business corporations. They may also be part of structural adjustment and other development aid programmes. • Formalization of customary ownership rights and land titling programmes. In informal ownership settings, restitution and compensation are often considered difficult to carry out in the absence of formal property titles. Land titling reforms can be put in place in countries affected by internal displacement as part of a development scheme or in order to address land disputes. Titling programmes often discriminate against women, minority groups and indigenous peoples who are less informed and, consequently, do not know how to use the existing legal mechanisms to defend their rights. As an example, informal titles and the rights of women and girls are often ignored during privatization and establishment of formal titles because their male relatives will fail to include their wives’ names on the property titles. Criteria and procedures set up to formalize customary land rights should be carefully examined to ensure that they do not exclude IDPs (e.g. a requirement of continuous occupation for a certain number of years, which IDPs would be unable to fulfil). • Sharp increase or decrease in value of land, housing and property, making fair restitution and/or compensation difficult to achieve or subject to abuse. For instance, compensation based on pre-conflict prices might not be sufficient to acquire land or housing elsewhere at newly prevailing market values.



Physical factors	<ul style="list-style-type: none"> • Lack of safety and security in areas of origin due to ongoing violence and/or the presence of landmines or unexploded ordnance on land and roads/paths. • Secondary occupation of land and homes by, for instance, other IDPs or combatants or members of rival ethnic, national or religious groups. • Damage and/or destruction of land, housing and property, often combined with lack of available material, tools and expertise for repair and reconstruction. Disputes over boundaries of land might arise upon return, particularly when landmarks have been destroyed or removed. Checkpoints by military or irregular forces may restrict the free movement of building materials.
Legal factors	<ul style="list-style-type: none"> • Discriminatory laws, rules and regulations that target certain ethnic or religious groups and restrict their ability to reclaim lost property. • Gender or age discrimination rooted in discriminatory laws or cultural beliefs and practices that prevent women from owning, inheriting, controlling or making use of property, including upon divorce or upon the death of their husbands, fathers or other male relatives. • Inappropriate use of laws and regulations related to properties left behind by IDPs, resulting in seizure of vacated property after certain, often short, periods of time. Such laws have been abused to punish people for fleeing or to prevent people of certain ethnic, religious or other groups from returning and reclaiming property, thus consolidating practices of deliberate displacement or ethnic cleansing. Where such “abandonment,” regardless of its duration, is the result of armed conflict, violence, discrimination or other violations of rights, it should not be held against the owner or result in a loss of rights. • Forced or fraudulent housing sales, rental contracts or exchanges made under duress prior to or during flight, often without real compensation. • Existence of complex and parallel systems of ownership/tenure based on different sources, such as law, custom, tradition, or religion. These can take different forms, ranging from legal title or tenancy/occupancy rights in socially-owned properties, to permanent or temporary user rights in extended family-, collectively- or traditionally-owned properties. In situations of legal pluralism, IDPs will tend to use customary mechanisms rather than judicial ones because the former are usually closer, quicker, cheaper and more immediately enforced than the latter. This may create problems for certain groups such as women, who may be less protected under traditional mechanisms and may not have ready access to formal mechanisms.
Institutional / administrative factors	<ul style="list-style-type: none"> • Lack of documentation or records and/or destruction of cadastral or other title records. In some cases, people may never have possessed documents attesting to title or tenancy rights. In other situations, these documents may have been destroyed, lost or confiscated in the course of displacement. • Lack of clarity regarding, or conflicting, jurisdiction for land and property dispute resolution mechanisms, including tension between national, provincial and local government institutions, as well as customary mechanisms. • Lack of resources to pursue property claims, including lack of financial, legal and social support for individuals — particularly women and children — to pursue their legal claims.



- Lack of expertise, capacity and/or capability within central and local State institutions, including courts, tribunals or other dispute resolution mechanisms, making it difficult to resolve competing claims over property in a fair and efficient manner and/or establish specialized mechanisms to do so. Implementation of restitution programmes or land reform can also be hindered by the weakness of central institutions or their absence at the local level. Corruption may also impair equitable administration or fair dispute resolutions.
- **Lack of enforcement mechanisms**, including absence, inability or unwillingness of police and law enforcement authorities to respect and enforce decisions regarding the restitution of property.

Cultural factors

- **Discrimination and/or harmful traditional norms and practices** including with conflict resolution mechanisms that may infringe on the rights of women, such as prohibitions for women to inherit property, requirements of celibacy or of marriage to relatives of a deceased husband, and/or imposition of traditional but sometimes harmful “cleansing” rituals for the purported community benefit.

2. The international legal framework and the responsibility of the State

International (and regional) human rights law guarantees several rights of particular importance for those who have been, or are at risk of being, deprived of their land and property.

The right to **peaceful enjoyment of property** includes the right to own, acquire (through purchase, gift or inheritance), manage and enjoy property, without discrimination of any kind. Women should have equal rights with men in all matters relating to property.¹ National authorities should refrain from arbitrarily depriving people of their property, protect such property from illegal interference by third parties, and ensure restitution and/or compensation of lost property to the rightful owners following a period of **unlawful** dispossession. The right to restitution and/or compensation is not conditional on the physical return of the owner to the area where the property is located but remains valid even when a person chooses not to return and opts, instead, to resettle and integrate elsewhere. This right to restitution can prove particularly difficult to enforce in situations of long-term displacement and where land rights are held informally and are normally dependent on continued use of the land.

Deprivation of property is not necessarily arbitrary or unlawful in all cases. The authorities may have a legitimate interest in regulating or seizing private or communal property. In order to be lawful, however, any such action must meet certain conditions. It must have a basis in law and serve a legitimate aim, such as protecting the public interest, and be proportionate to achieving this aim. It must also respect certain substantive and procedural safeguards. For example, evictions must be preceded with a timely warning and evictees must be given the opportunity to challenge the eviction order. Even when evictions are deemed lawful, those affected should be provided with fair compensation.²

The **right to restitution and/or compensation** for lost property (*outlined in the table below*) is further reinforced by the **right to an effective remedy** for wrongful acts and violations of

¹ See, for example, Art. 17 of UDHR; Art 16(2)(h), and 15(2) of CEDAW; Arts. 13-19 of ILO Convention No. 169; Art. 14 of AfCHPR and Art. 6(j), 7(d) and 21 of its Protocol on the Rights of Women in Africa; Art XXIII of AmDHR; Art. 21 of AmCHR; Art. 25 of ArCHR and Art 1 of Protocol 1 to the ECHR. The right is further affirmed in various resolutions of the General Assembly, Security Council and the Human Rights Council (formerly Commission), as well as its Sub-Commission; and in the case law of the regional human rights courts. See also Principles 3-7 of *Pinheiro Principles* and Principle 21 of the Guiding Principles on Internal Displacement.

² See also Principle 17.1 of *Pinheiro Principles*.

human rights.³ Other important rights in this context include the **right to return**,⁴ which includes not only the right to return to the area of origin but more specifically to return to one's home or place of habitual residence, the right to **freedom of movement and to choose one's residence**, the right to **respect for the home**, and the right to **an adequate standard of living**, including housing and food.⁵

“Restitution” or “Compensation”?

Restitution, which refers to the return of lost property to its rightful owner, is generally the preferred remedy as it both redresses the wrong done and facilitates return and reintegration in the area of origin. The right to restitution is not restricted to those holding legal title or claim to property but also extends to other forms of ownership or title, such as tenancy, occupancy or user rights in collective or communal property.

The legitimate rights of third parties that may be affected by the restitution of land and property need to be taken into account, in particular those who acquired land or property in good faith and are obliged to leave it once it is restored to the original owners.

Compensation, in cash or in kind, can be given in lieu of restitution in cases where restitution is either impossible or impracticable, such as for reasons of security or public interest and or when IDPs “consciously and voluntarily choose or express a clear preference for compensation-based durable solutions, on the understanding that this may conclude the restitution process for them and result in them being unable to submit future housing and property restitution claims.”⁶ The wish of IDPs to opt for compensation instead of restitution should be taken into consideration, particularly in situations where displacement has lasted for a long period of time and no improvement of security conditions are foreseeable. Caution should be exercised, however, to ensure that compensation is not politically manipulated and used as way to prevent return of displaced population. It can be difficult to calculate the value of lost property, in particular if the value has changed during displacement, but efforts nevertheless must be made to ensure that any compensation is adequate and fair.

Lessons learned: Experience indicates that compensation is less successful than restitution. In many cases, IDPs either remain displaced or are displaced a second time because of difficulties to integrate and secure a sustainable livelihood in areas of relocation. In addition, land and other property may have a symbolic, cultural or religious value which compensation can rarely address. Compensation can also be associated with restitution, to rebuild a destroyed property for instance.

Restitution and/or compensation usually take place through existing judicial, administrative or traditional mechanisms. Where such mechanisms are non-existent, malfunctioning or over-burdened, special land and/or property claims commissions can be established. Efforts to address land and property disputes should always be accompanied by mediation and reconciliation efforts, which can help to reduce the risk of renewed conflict and displacement.

³ See Art. 8 of UDHR; Art. 2(3) of ICCPR; Art. 6 of CERD; Art. 30 of CRC; Art. 75(1) of the ICC Statute; and, at the regional level, Arts. 10 and 25 of AmCHR; Art. 7 of AfCHPR and Art. 25 of its Protocol on the Rights of Women in Africa, and Art. 13 of ECHR. See also Arts. 35 and 26 of the Articles on State Responsibility, as well as resolutions of the Council, formerly Commission on Human Rights, including 2005/35. See also Principle 2 of Pinheiro Principles.

⁴ See Art. 13(2) of UDHR; Art. 12(4) of ICCPR; Art. 16(3) of ILO Convention No. 169; and, at the regional level, Art. 12(2) AfCHPR; Art. 22(5) of AmCHR; and Art. 3(2) of Protocol IV to the ECHR. See also Principle 10 of the Pinheiro Principles and Principle 28 of the Guiding Principles on Internal Displacement. The right also has been affirmed in resolutions of the UN Security Council, General Assembly and Human Rights Council (formerly Commission) and its Sub-Commission; as well as in the case law of the regional human rights courts.

⁵ See *Pinheiro Principles*. See also Principles 21 and 29 of *Guiding Principles on Internal Displacement*.

⁶ *Handbook on Housing and Property Restitution for Refugees and Displaced Persons. Implementing the Pinheiro Principles*, Inter-Agency, March 2007. See Key References Section.

Standards: Regardless of the form that they take, restitution and/or compensation mechanisms as well as land reform schemes should meet certain minimum standards, as outlined below.

- Remain independent, impartial and transparent; respect standards of due process, and use all appropriate forms of remedies, including both restitution and fair and equitable compensation. Such mechanisms should not be prejudiced by, or promote the return or non-return of, IDPs.
- Be accessible to all of those who have been deprived of their property, regardless of their current place of residence or socio-economic status; be free of charge; and enable submission of claims in all relevant languages. Displaced individuals and communities must be informed of such mechanisms through sufficient and appropriate outreach and public information.
- Decisions should be respected by political, judicial and administrative authorities and be enforced by law enforcement authorities, while taking into account the rights of secondary occupants and evictees by providing, where appropriate, alternative land or housing.
- Their mandate should cover all residential sectors and address different types of land, housing and property rights, and these rights should extend not only to those with legal title to property but also to tenants, usage rights holders, dwellers and customary rights holders.

International humanitarian law requires all parties to a conflict, whether they are State or non-State actors, to distinguish at all times between civilian objectives and military objectives. International humanitarian law prohibits:

- direct and indiscriminate attacks and other acts of violence against civilian objectives;
- using civilian property to shield military operations or objectives;
- pillage and/or destruction of private and public property; as well as
- targeting private property as the object of reprisals or collective punishment.⁷

Military objectives are generally defined as being limited to those objectives which by their nature, location, purpose or use make an effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.

3. The role of humanitarian and human rights actors

Safeguarding land, housing and property rights should form part of the protection strategy during all stages of displacement and later recovery. These rights are integral to any attempt to restore justice and the rule of law in post-conflict settings and to ensure a safe, sustainable and dignified return. With the realization of these rights, IDPs are more likely to be able to earn their livelihood, to be less dependent on humanitarian assistance, and to be less exposed to further violations.

In Bosnia and Herzegovina, the illegal occupancy of housing was one of the main obstacles to the return of IDPs and there was considerable overlap between international organizations working on issues of property restitution. In 2000, all agencies agreed to a Focal Point Scheme, whereby only one agency would act as the focal point for property restitution issues for each municipality. Resources were better used, data were more consistent, and advocacy was more credible.
For more information, see: protection.oneresponse.info.

⁷ See Rules 7-23 of Customary International Humanitarian Law, Volume I: Rules (ICRC, 2005). See also, Arts. 33 and 53 of the Fourth Geneva Convention; Arts. 51 and 52 of Additional Protocol I; Art. 4(2)(g) of Additional Protocol II; Art. 28 of the Hague Regulations. See also Art. 2(b)(xvi) of the ICC Statute.


Safeguarding property-related rights in situations of internal displacement requires multi-sectoral efforts that aim to:

- prevent arbitrary deprivation of property;
- preserve property which has been abandoned or lost during displacement; and
- provide an effective remedy for the arbitrary deprivation of property, in the form of restitution and/or compensation.



In our work, we can ...

Assessment and analysis

(See Part III.1 )

- Ensure that protection assessments and analyses adequately address land and property issues, and support specialized land and property assessments where they take place. This could include analyses of (i) the different legal, cultural or traditional systems of ownership, tenancy and use of land and property; (ii) distribution of land among different population groups; (iii) any disputes or root causes of conflict related to land or property; (iv) existing laws, practices and mechanisms for restitution and/or compensation; (v) the obstacles IDPs face or are likely to face when trying to preserve or reclaim property.

Prevention

- Encourage relevant authorities and other actors to respect property rights and refrain from evicting or displacing individuals and communities from their land or property. All actors should monitor and intervene to ensure that relevant procedural safeguards are complied with when displacement is unavoidable and lawful, and that individuals have access to appropriate remedies.
- Encourage relevant actors to take measures to protect property rights once displacement has occurred. Such measures could include a temporary freeze on the purchase or transfer of land and property in areas affected by, or at high risk of, displacement and/or the organization of public information and outreach campaigns to discourage the secondary occupation or damage of abandoned land and property.
- Collect information as soon as possible, for instance during registration, regarding land, housing and other property that IDPs may have lost or been forced to abandon. Where security conditions allow, specific property assessments or property registration exercises could be conducted.






Contingency-planning

- Encourage the authorities to take measures to ensure that displacement does not result in the loss or destruction of land and property registries, cadastral records and/or personal documents that can provide proof of ownership or tenancy or user rights. This may include ensuring that registries and records are kept in a safe location and that back-ups/copies are regularly taken and safely stored elsewhere.

Legislation

- Undertake a comprehensive review of national laws, policies and practices, including traditional and cultural practices, regarding land and property. Advocate with relevant authorities to ensure that the rights to land and property are adequately protected in national legislation, without discrimination of any kind, including on grounds of gender. The authorities should be encouraged to incorporate relevant international standards and principles, including *the Pinheiro Principles*.




<p>Capacity building (See Part V.9 )</p>	<ul style="list-style-type: none"> • Build the capacity of land/property registry offices and/or existing judicial, administrative, traditional and other mechanisms to resolve land and property disputes in a fair, effective and timely manner and with respect for international law and standards. This can include the provision of training, technical and operational expertise, and modest financial or material assistance, including office and other equipment. Such efforts should draw on lessons learned in other contexts. • Where existing mechanisms are malfunctioning or over-burdened, consider supporting the establishment of specialized tribunals or commissions that can address property-related claims. Such mechanisms must respect basic substantive and procedural safeguards, and be fair and non-discriminatory.
<p>Training</p>	<ul style="list-style-type: none"> • Support, facilitate or undertake training programmes in human rights, including housing, land and property rights, for IDPs, national and local authorities, the national human rights commission, NGOs, and civil society organizations.
<p>Information and communication activities (See Part V.7 )</p>	<ul style="list-style-type: none"> • Support information activities that provide IDPs and affected communities with information about property rights and any available mechanisms for reclaiming or seeking compensation for lost property. • Inform displaced individuals and communities about the importance of safeguarding documents and any other material that provide evidence of their title to land and other property.
<p>Legal advice and assistance (See Part V.8 )</p>	<ul style="list-style-type: none"> • Support legal aid clinics and networks of lawyers and paralegals to provide legal advice and assistance to IDPs and returnees. In addition to advice, such centres and networks can assist individuals in completing administrative requirements, filing documentation, appearing before tribunals or commissions, and negotiating a settlement and reconciliation amongst opposing sides.
<p>Physical safety (See Part IV.2 )</p>	<ul style="list-style-type: none"> • Advocate with relevant national, regional and local authorities and other actors, including peacekeeping missions where present, to guarantee the security and safety of persons that have, or wish to, return and/or reclaim their land or property. • Liaise with relevant national and international actors to ensure that any mine-affected areas are identified, assessed, and cleared at the earliest opportunity. This should include land, homes, public spaces, such as schools and market sites, roads, and paths (e.g. those used by women and children to collect water or firewood). Women and young girls and boys are often at a special risk of sexual violence, and their safety concerns with voluntary return must be addressed.
<p>Monitoring (see Part V.2 )</p>	<ul style="list-style-type: none"> • Monitor any potential negative impact of land titling, distribution or restitution programmes to prevent further violations of rights, particularly where such systems aim to establish legal title over land, housing or property that was previously publicly, collectively or communally owned/used. Pay particular attention to the ability of women, children and indigenous peoples to claim and document title.



Shelter / livelihoods*(See Parts IV.10 and 16 )*

- Advocate for the allocation of land to displaced individuals and communities during displacement to facilitate self-reliance and sustainable livelihoods. This can include the allocation of government-owned land or the purchasing of or loan of privately-owned land. Special efforts must be made to reach an agreement with landowners having IDPs on their land to reduce tensions and avoid secondary displacement.
- Advocate for and support programmes that provide transitional, temporary or permanent housing to meet immediate needs for shelter. Such programmes can involve repairs of damaged housing, construction of new housing, or the identification of public property that can serve as temporary shelter. The use of temporary shelter should not in any way undermine a person's right to restitution or compensation for lost property. Shelter and reconstruction programmes should include provisions that ensure an adequate level of tenure security for beneficiaries (secure renting arrangements) who do not own the repaired premises.

Community mobilization and reconciliation*(See Part V.10 )*

- Encourage and support national consultations, including all relevant stakeholders, aimed at identifying challenges or obstacles to accessing remedies and finding fair and practical solutions to land, housing and property-related claims.
- Work with and support local authorities, civil society and other community groups to address issues relating to land and property, including through active dialogue, mediation, community mapping and reconciliation efforts. Support community efforts to allow “space” for shelter and livelihood activities for the landless.

Durable solutions*(See Part VI )*

- Advocate for the inclusion of provisions on housing, land and property rights, and restitution and/or compensation, as a component of peace agreements, development and/or voluntary return agreements, policies and programmes.
- Encourage authorities to allocate land to displaced individuals and communities who cannot, or choose not to, return to their areas of origin. Allocation should be permanent and the new owners/users provided with documentation confirming ownership or tenancy/user rights, to provide security and to avoid evictions and renewed displacement. Single heads-of-households and older persons should be allocated land on an equal basis with others.
- Ensure that land reform programmes or land allocation schemes are implemented in a way that does not deprive IDPs from their pre-war housing, land and property. This may require adapting eligibility criteria and procedures to the specificity of displaced populations (i.e. adapting residency and documentation requirements).

4. Key actors

- At the **national level**: displaced individuals and their communities; ministries of housing, interior, justice and social affairs, courts and tribunals, administrative or specialized property tribunals or commissions, traditional, customary or religious councils, national human rights commissions, social/housing service agencies, legal or paralegal networks, and civil society.

- At the **international level**: FAO, IOM, OHCHR, UNDP, UN-HABITAT, UNHCR, the World Bank, regional developmental banks, and various NGOs, such as the Norwegian Refugee Council. The United Nations Human Rights Council also has a Special Rapporteur on the right to adequate housing,⁸ a Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and a Special Rapporteur on the right to food who can also play a role.



Key references

- *Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles)*, UN Sub-Commission on the Promotion and Protection of Human Rights, E/CN.4/Sub.2/2005/17, 28 June 2005.
- *A Handbook on Implementing the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons*, Inter-Agency, 2007.
- *Quick Guide to Post-Conflict Land Issues*, Early Recovery Cluster/GLTN/UN-Habitat, Draft, June 2009.
- *Checklist for Humanitarian Coordinators on Land, Housing and Property Issues*, Protection Cluster/HLP Sub-Working Group, August 2009.
- “Housing and Property Restitution for Returnees,” *Refugee Survey Quarterly*, Vol. 19, No. 3, UNHCR and Oxford University Press, 2000.
- “Property and Possessions,” in *Protecting Internally Displaced Persons: a Manual Law and Policymakers*, Brookings-Bern Project on Internal Displacement, October 2008.



Useful websites

- Protection Cluster: Housing, Land and Property Sub-Working Group: <http://onerresponse.info/GlobalClusters/Protection/LHP/Pages/Land%20Housing%20and%20Property.aspx>
- Centre on Housing Rights and Evictions (COHRE): www.cohre.org
- Internal Displacement Monitoring Centre (IDMC): www.internaldisplacement.org
- International Organization for Migration (IOM): www.iom.int/pressproject
- Shelter Centre: www.sheltercentre.org
- United Nations Human Settlements Programme (UN-HABITAT): www.unhabitat.org
- United Nations High Commissioner for Refugees (UNHCR): www.unhcr.org

⁸ In full, “the Special Rapporteur on the right to adequate shelter as a component of the right to an adequate standard of living.”

Part IV.18

Justice

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Key message


Access to justice is a basic right as well as a key means of defending other human rights and ensuring accountability for crimes, violence and abuse. Justice plays an important role in combating impunity, ending discrimination and poverty, and paving the way for peace and national reconciliation. Efforts to strengthen the rule of law and ensure full and equal access to justice for all, including internally displaced persons (IDPs), should form part of the humanitarian response from the outset of an emergency. IDPs may also have no or limited access to justice because of their displacement. Beyond the humanitarian response to strengthen the rule of law, a specific response to promote access to justice for IDPs should also be planned as early as possible.

1. What is justice?

The exact meaning of the term might differ from one country to another; **ideas of justice**, however, are common to all cultures and generally include notions of fairness, accountability and equity of outcome.

For the purpose of this chapter, **access to justice** can be defined as the ability to obtain an adequate remedy for any harm suffered, whether at the hands of an individual, a group, or another entity. Such remedies can take different forms, ranging from restitution or compensation for the harm done (*restorative or restitutive justice*) to penalties or punishment of those responsible (*retributive or punitive justice*).¹

Systems of justice, formal and informal, generally are composed of two frameworks.

- A **normative framework** (*a body of law*), which consists of national law (constitutional, federal, provincial and municipal, and often customary traditional or religious law) together with international and regional law. All States have an obligation to ensure that their national law gives effect to, and is in conformity with, their international legal obligations, including human rights law.
- An **institutional framework**, which includes both formal (State-run) justice mechanisms, such as courts and tribunals, and quasi-judicial or alternative mechanisms, such as religious courts, tribal councils or grievance committees (*outlined further in Annexes I and II to this chapter* ). In some countries, temporary mechanisms are also established to deal with transitional justice (*outlined further in Annex III to this chapter*). A complementary role can also be played by international or regional bodies, such as the International Criminal Court.

All systems of justice should respect human rights, both in terms of process and outcome. States have a range of human rights obligations which their legislative, judicial and executive branches are bound to respect and protect. International involvement with, and support for, systems of justice similarly must be guided by human rights standards.

“[We have] learned that the rule of law is not a luxury and that justice is not a side issue. We have seen people lose faith in a peace process when they do not feel safe from crime. We have seen that without a credible machinery to enforce the law and resolve disputes, people resorted to violence and illegal means. And we have seen that elections held when the rule of law is too fragile seldom lead to lasting democratic governance. We have learned that the rule of law delayed is lasting peace denied...”

Kofi Annan, Secretary-General of the United Nations, Access to Justice Practice Note (UNDP, 2004).

¹ This chapter focuses on rule of law and access to justice and does not address other forms of justice, such as social or distributive justice.

2. Lack of access to justice in the context of internal displacement

The ability to access justice is essential to combat impunity and prevent and respond to protection risks and concerns. IDPs and other affected populations, however, often lack or have limited access to justice owing to a number of factors. Armed conflict, generalized violence and collapse of institutions and infrastructure frequently result in a breakdown in the rule of law and access to justice. In some cases, an otherwise functioning justice system may remain out of reach for displaced individuals and communities owing to discrimination, marginalization and poverty.

Having fled their homes and lost their livelihoods as well as the protective presence of their families and communities, IDPs might find themselves at an increased risk of violence, exploitation and abuse at the same time as their access to justice and other remedies is curtailed because of displacement.

Table 1: Common obstacles to ensuring full and equal access to justice

Type	Specific Obstacles
Discrimination	<ul style="list-style-type: none"> • Discriminatory social and cultural norms and practices, particularly on grounds of gender, age, religion, ethnic, religious or linguistic background, or other status, such as displacement, can result in a lack of access to, and/or discriminatory treatment within, the justice system. • Chronic under-representation of women and minority groups in the justice and law enforcement sectors can contribute to a lack of attention to, and understanding of, protection risks faced by these groups.
Normative obstacles	<ul style="list-style-type: none"> • National laws that do not protect or inadequately protect human rights. For instance, national laws might fail to recognize a certain right (e.g. protection from rape), define it narrowly (e.g. define rape as not including marital rape), or criminalize the victim of a violation (e.g. define rape as adultery). • Confusing or complicated legal framework because of overlaps or incompatibility between national law and traditional or religious laws. The latter may be unrecorded or not widely known and, thus, be open to manipulation or abuse. • Lack of a clear institutional and procedural framework and/or professional and ethical standards and codes of conduct governing the work of justice institutions. • Amnesty laws: while negotiating or signing peace deals, political leaders may grant immunity from prosecution for gross human rights violations committed by members of former warring groups or members of previous regimes, often in contradiction with the country's own constitutional law and human rights law. For example, in Argentina in 1981, judges ruled that the amnesty laws blocking the prosecution of crimes committed during the military dictatorship were unconstitutional. In 2001, the Inter-American Court of Human Rights held that the amnesty laws adopted by the Peruvian government conflicted with the American Convention on Human Rights.
Institutional/ administrative obstacles	<ul style="list-style-type: none"> • Breakdown of infrastructure and institutions because of conflict, violence and insecurity, and/or lack of human and financial resources, including lack of qualified staff and basic supplies, such as office space, computers, paper, and telecommunication equipment. • Lack of oversight and accountability mechanisms capable of preventing and addressing corruption, patronage, malpractice and abuse in the justice system. • Weak enforcement capacity, including relating to the arrest of offenders and the investigation and prosecution of cases.



	<ul style="list-style-type: none"> • Lack of independent appeals procedures for review of judicial and administrative decisions. • Lack of adequate victim and witness protection resulting in exposure to further physical, psychological, economic or other harm.
Political obstacles	<ul style="list-style-type: none"> • Lack of separation of powers and independence of the justice sector. • Politicization or militarization of public institutions, including segregation along ethnic or religious lines, which may become a source of insecurity, intimidation or violence. • Lack of political will to bring perpetrators to justice for graves breaches to international human rights and humanitarian law. For reasons of political expediency, and sometimes arguing the need for peace and reconciliation in post-conflict situations, the prosecution of alleged perpetrators of serious human rights abuses has often been overlooked by governments.
Individual obstacles	<ul style="list-style-type: none"> • Lack of affordable and adequate legal aid for disadvantaged individuals and groups, particularly women/girls and minority groups. • Lack of public confidence in the justice and political system because of actual or perceived bias, corruption, abuse or lack of effectiveness and efficiency. • Lack of public information and understanding about rights, institutions and procedures for accessing justice. • Lack of legal, financial and social resources and support, making it difficult for displaced individuals, particularly women, to pay for legal aid or transportation to attend court hearings. Lack of education and/or literacy skills can also limit access to justice. • Fear of reprisals, trauma, religious beliefs, social stigma or ostracism often prevents individuals, especially women, from seeking justice, particularly in cases involving gender-based violence.

Victims and witnesses and their families and wider communities can be exposed to serious risks as a result of their efforts to seek justice. This includes acts or threats of physical violence, destruction of property, harassment, intimidation, and/or social exclusion at the hands of the perpetrators, the authorities and/or the community itself. IDPs and other disadvantaged individuals or groups, including minority groups, are often particularly vulnerable to such threats.

***Note!** Seeking justice is not without risks. Always ensure that the victim/survivor is aware of the **risks involved**, **respect confidentiality** and seek **informed consent** before taking action or disclosing personal information. The safety and best interests of the victim must be a primary consideration at all times.*

In addition, men and women who speak out and seek justice for acts of gender-based violence, such as sexual violence, often face further violence, punishment or ostracism. Survivors of rape are sometimes forced to marry their rapists or are arrested, detained and sentenced to imprisonment or other forms of punishment, including in some cases death.

3. The responsibility of the State

The State has primary responsibility for maintaining law and order and ensuring full and equal access to justice for everyone within its jurisdiction. This includes ensuring that all institutions and agents of the State, including the courts, the police, prosecutors and prison authorities, respect and protect human rights. To that effect, States are required to:

- take all appropriate legislative, administrative and other action to **prevent** violations of rights;

- **investigate** violations effectively, promptly, thoroughly and impartially;
- **prosecute** or take other action against those allegedly responsible;
- provide the victims with full, equal, effective and safe **access to justice**; and
- ensure that **remedies are provided and enforced** by institutions of the State.

4. The role of humanitarian and human rights actors


Efforts to improve access to, and the administration of, justice should take place within a broader framework aimed at strengthening the rule of law in the country concerned. However, specific responses to issues of justice affecting IDPs can also be designed. It is important that such efforts take into account and support the primary role of the State and that they are coordinated with all relevant actors, including humanitarian and human rights actors. The need for immediate results must also be balanced with longer-term structural and system-wide improvements. The table below lists some activities that could prove helpful in this regard.



In our work, we can² ...

General

Assessment and analysis

(See Part III.1 )


- Ensure that protection assessments include the following: matters relating to the rule of law and access to justice, including whether IDPs and other affected individuals can access justice and obtain remedies for any harm suffered; the main obstacles they face in this regard and activities that can be undertaken to improve their capacity to access the justice system; and the capacity of the justice sector and other relevant institutions, such as the police, prosecutors, and the prison system.

Coordination

- Ensure that matters relating to the rule of law and access to justice are addressed by the protection working group, and that they are closely coordinated with all relevant actors, particularly with national authorities, national and international humanitarian and human rights actors and, as appropriate, peacekeeping forces.

Legislative reform


Legal reform

- Review national laws, policies and practices to assess to what extent human rights are adequately protected. As appropriate, advocate with relevant authorities and offer assistance to revise or adopt new laws, policies or practices, ensuring their conformity to international human rights law and the principle of the independence and impartiality of the judiciary, and oppose any legal discriminatory provisions that prevent access to justice for IDPs. Where key human rights instruments have not been ratified by the State or where their adoption has been accompanied by reservations, advocate for the adoption and implementation of these instruments or the lifting of reservations.
- Engage with alternative justice mechanisms, such as religious or traditional dispute-resolution bodies, and seek ways to ensure that these respect human rights, particularly the rights of women and children. 

² See also Annexes I-II of this chapter for more detailed guidance on working with institutions of justice.

Public information and outreach

Information and communication activities

(See Part V.7 )


- Support public information and outreach programmes aimed at ensuring that IDPs and other affected individuals are aware of their rights, in particular the right to equal access to justice, and that local or national judicial or administrative bodies are aware of and respect these rights. These programmes should include information about human rights and humanitarian principles in general, the rights of IDPs and other affected individuals, the relevant international and domestic laws relating to IDP rights, the responsibility of the State and its institutions to respect such rights, and avenues available for redress, whether through the formal or the informal justice system, and procedural or practical steps to access such avenues. Activities can include public awareness and educational programmes, including information campaigns, workshops, trainings, and integrating human rights in school curricula.

Mainstreaming of rule of law and access to justice

- Advocate with relevant actors to ensure that rule of law and access to justice by IDPs are included in peace negotiations and agreements, in relocation and integration frameworks and agreements, and in development plans and programmes.

Supporting and strengthening the capacity of persons of concern to access justice

Legal assistance and advice


(See Part V.8 )

- Ensure that legal aid is available, affordable and adequate, and that it is provided in an appropriate language. This can be done by supporting the establishment of legal clinics and information centres, including mobile clinics, and/or by supporting and training networks of lawyers or paralegals that provide free legal advice and assistance.

Material or financial assistance

- Provide modest material or financial assistance to disadvantaged individuals in order to enhance their access to justice. This could include modest financial grants to pay for legal fees, interpretation, or travel costs to and from court.

Safety and security

(See Part IV.2 )






- Take steps to ensure the safety and security of IDPs who are victims/survivors as well as those who are witnesses seeking justice. This may include supporting the authorities or civil society groups to develop victim/witness-protection programmes, advocating with relevant authorities to guarantee their safety, accompanying them to and from court, observing court proceedings and, in exceptional circumstances, assisting them in relocating to a place where their safety can be guaranteed.

Rights of the accused

- Take steps through, for instance, advocacy and monitoring, to ensure that the rights of arrested or detained IDPs on criminal or other charges are respected. These include the rights not to be ill treated, to be informed of the charges, to be brought promptly before a judge and to have a fair trial. (See section 6.)
- Protection monitoring: This will include monitoring of court cases and of compliance by State judicial bodies with national, international human rights law and standards.



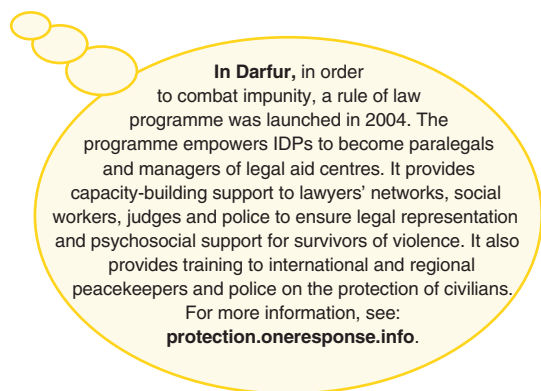
Reforming and building the capacity of the justice sector and other institutions

<p>Institutional reform</p>	<ul style="list-style-type: none"> • Advocate for and support, as appropriate, the reform of institutions of justice as well as other relevant institutions, including the police, prosecutors and prison authorities. (See Annexes I-III to this chapter ) • Advocate for, and support the establishment of, an independent national human rights institution and, where it already exists, support its effective functioning. Also, support the work of mediators and ombudsmen.
<p>Technical advice and expertise (See Part V.9 )</p>	<ul style="list-style-type: none"> • Provide technical advice and expertise to build the capacity of the justice sector in the field of human rights and international humanitarian law, including as it relates to displacement. This can be done by providing advice or legal briefs, holding trainings, workshops and seminars, and exchanging or loaning staff on a temporary basis. (See Annexes I-III to this chapter ) • Consider providing such human rights capacity-building support to other related institutions as well, particularly the police and prison authorities and traditional justice mechanisms, civil society organizations and communities. (See Annexes I-III to this chapter )
<p>Material or financial assistance (See Part V.5 )</p>	<ul style="list-style-type: none"> • Consider providing modest material or financial assistance to formal and informal justice institutions, or to police, prosecutors, or prison authorities, if appropriate, to facilitate and strengthen their work. This can include the establishment of mobile courts, office space, office or communication equipment, computers, vehicles or fuel. Such assistance should be temporary, be governed by a formal agreement, and subject to continuous monitoring and evaluation. • In countries where the judicial institutions and infrastructure have been destroyed or have collapsed, a restoration of the justice system would need major coordinated efforts and assistance, including the physical rebuilding of structures, the acquisition of basic equipment, training of new judicial officers or lawyers, and ensuring adequate salaries to prevent corruption.

5. Key actors

Enhancing the rule of law and access to justice requires concerted efforts by a range of actors as indicated below.

- At the **national level**: the courts at all levels; police, prosecutors and prison authorities; ministries of justice, the interior, and education; parliament; bar associations and networks of lawyers and paralegals; national human rights institutions; university law departments; NGOs and civil society groups; traditional, customary or religious councils and associations; the media; IDP communities and affected populations; and the public.
- At the **regional level**: courts and commissions, such as the African Court and the African Commission on Human and Peoples' Rights, the Inter-American Court and Commission on Human Rights, and the European Court of Human Rights.



In Darfur, in order to combat impunity, a rule of law programme was launched in 2004. The programme empowers IDPs to become paralegals and managers of legal aid centres. It provides capacity-building support to lawyers' networks, social workers, judges and police to ensure legal representation and psychosocial support for survivors of violence. It also provides training to international and regional peacekeepers and police on the protection of civilians.

For more information, see: protection.oneresponse.info.

- At the **international level**: UNDP, OHCHR, DPKO and peacekeeping forces on the ground; UNHCR, UNICEF, UNODC, United Nations human rights treaty bodies and special procedures of the Human Rights Council, including the Special Rapporteur on Independence of Judges and Lawyers, and the International Criminal Court and NGOs.

6. The international legal framework

International (and regional) human rights law contains several guarantees, some of which are indicated below, that are of particular importance to ensure full and equal access to justice.

- The **right to an effective remedy**³ calls for full, equal and effective access to justice and adequate reparation for violations of human rights. The right to a remedy extends not only to the direct victim but may also extend to the immediate family or dependents and persons who suffered harm in intervening to assist victims. Reparations should be just and proportional to the gravity of the violation and can involve restitution (restoration to the previous situation), compensation (e.g. for physical or emotional suffering or economic loss), rehabilitation (e.g. medical care), satisfaction and guarantees of non-repetition.
- The right to **equal recognition of and equality before the law**⁴ requires that everyone, including IDPs, has access to, and is accorded fair and non-discriminatory treatment before, courts and tribunals. In many cases, fulfilling this right will require the State to take affirmative action to ensure that IDPs are able to access formal or informal justice mechanisms. It might also require affirmative action on behalf of women, children and marginalized groups, such as ethnic, religious or linguistic minorities, older persons or persons with disabilities.

Human rights law also protects the rights of those who are arrested or detained: the **right to liberty and security** prohibits arbitrary arrest and detention and provides minimum guarantees to those detained; and the **right to humane treatment** protects individuals while they are in detention. The **right to a fair trial** establishes the minimum substantial and procedural principles (*due process*) applicable in criminal cases.⁵

States must ensure that the right of access to justice and fair and impartial proceedings are reflected in domestic laws. Most constitutions and national laws normally contain these guarantees. Advocacy activities aimed at ensuring respect of these rights for IDPs and legal challenges against abuses should also be based on domestic legal provisions that offer adequate guarantees.

³ The right to an effective remedy is implicit in the obligation to respect, protect and fulfil human rights, and is recognized as a general principle of international law. It is also specifically guaranteed in various provisions, including, at the international level, in Art. 8 of UDHR; Arts. 2(3), 9(5) and 14(6) of ICCPR; Art. 6 of ICERD; Arts. 12, 13 and 14 of CAT; Art. 39 of CRC; and Principle 7(3)(f) of the Guiding Principles on Internal Displacement; and, at the regional level, Arts. 7 and 21(2) of AfCHPR and Arts. 8 and 25 of its Protocol on the Rights of Women in Africa; Arts. 10, 15, 27, 63 and 68 of AmCHR; Art. 4(g) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women; Art. 9 of the Inter-American Convention to Prevent and Punish Torture; Arts. 9 and 16 of ArCHR; Art. 19 of the Cairo Declaration; and Arts. 5(5), 13 and 41 of ECHR.

⁴ At the international level, Arts. 6 and 7 of UDHR; Arts. 16 and 26 of ICCPR; Art. 5 of ICERD; Art. 15 of CEDAW; and Principle 20 of the Guiding Principles on Internal Displacement; and, at the regional level, Arts. 3 and 5 of AfCHPR and Arts. 3(1) and 8 of its Protocol on the Rights of Women in Africa; Art. 17 of AmDHR; and Art. 3 of AmCHR. For further information, see General Comment No. 32 (2007) of the Human Rights Committee on Article 14: Right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32).

⁵ Based on Arts. 10 and 11 of UDHR; Arts. 9 and 14 of ICCPR; Art. 5(a) of ICERD; Art. 15 of CEDAW; and Art. 40 of CRC; and, at the regional level, Arts. 7 and 26 of AfCHPR; Arts. 17 and 30 of AfCRWC; Art. 8 AmCHR; Art. 7 of ArCHR; Arts. 6 and 7 of ECHR and Arts. 2, 3 and 4 of Protocol 7. For further information, see General Comment No. 32 (2007) of the Human Rights Committee on Article 14: Right to equality before courts and tribunals and to a fair trial (CCPR/C/GC/32).

The right to a fair trial: An overview

- Receive equal treatment before courts and tribunals.
- Have access to a fair and public hearing by a competent, independent and impartial tribunal established by law.
- Be presumed innocent until proved guilty.
- Be informed promptly and in detail, in a language one understands, of the nature of the charges.
- Have adequate time and facilities to prepare a defense and to consult with the counsel of one's own choosing.
- Be tried without undue delay and in person.
- Defend oneself in person or through legal counsel of choice, with legal counsel being offered without charge if necessary or the interests of justice so require.
- Have access to free interpretation, if needed.
- Examine or have examined witnesses on the same conditions as the adverse party.
- Not be compelled to testify against oneself or to confess guilt.
- Not be convicted for any act that did not constitute a criminal offence at the time it took place.
- Not be convicted for any offence for which one has already been convicted or acquitted.
- Have a conviction reviewed by an independent appeal court.
- Benefit from any subsequent decrease in punishment.
- Be compensated for any miscarriage of justice.

Children who come into contact with the justice system are entitled to special treatment that takes into account their age, well-being and need for special protection. This applies both to children who are victims/survivors of crimes as well as children who come into conflict with the law. Juvenile justice which is aimed at reconciliation rather than retribution promotes the use of community solutions, rather than judicial proceedings, and alternatives to custodial sentencing, such as counselling, probation and community service.⁶

International humanitarian and criminal law **also contain important legal principles**. In general, States are considered responsible for grave breaches of the Geneva Conventions and their Additional Protocols committed by State agents, including its armed forces and other entities that exercise governmental authority or act under instructions from the State or under its direction or control, during international and non-international armed conflicts. States are expected to make full reparation for any loss or injury caused.⁷

Serious violations of the international humanitarian and criminal law, including war crimes, crimes against humanity and/or genocide, can also give rise to individual criminal responsibility and to the prosecution of State and non-State actors for grave breaches or war crimes, crimes against humanity and/ or genocide committed during armed conflicts as well as during times of peace. This includes both the individuals who committed the crime and commanders and other superiors who either ordered or knew, or had reason to know, that their subordinates were about to commit or were committing such crimes and neither took all necessary and reasonable measures in their power to prevent such crimes nor punished the persons responsible.⁸

Genocide, war crimes and crimes against humanity are subject to universal jurisdiction; thus, any State has the power and duty to prosecute and punish offenders. The mandate of international or mixed criminal tribunals clearly shows that non-State actors can incur individual responsibility for any international crime.

⁶ See, in particular, Arts. 37 and 40 of CRC; and, at the regional level, Art. 17 of AfCRWC. See also United Nations, *Rules for the Protection of Juveniles Deprived of their Liberty*; United Nations, *Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)*; United Nations, *Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)*; *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime* (ECOSOC Res. 2005/20 of 22 July 2005); and *Guidelines for Action on Children in the Criminal Justice System* (ECOSOC Res. 1997/30 of 21 July 1997).

⁷ See, for example, ICRC, Rules 149 & 150 of Customary International Humanitarian Law, Volume I: Rules, 2005.

⁸ See, for example, ICRC, Rules 151-155 of Customary International Humanitarian Law, Volume I: Rules, 2005.

Basic rules, principles and/or guidelines relating to access to justice and the rule of law
(Available at www2.ohchr.org/english/law/index.htm)

- Basic Principles and Guidelines on the **Right to a Remedy and Reparation** for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law
- Set of Principles for the Protection and Promotion of Human Rights through **Action to Combat Impunity**
- Declaration of Basic Principles of **Justice for Victims of Crime and Abuse of Power**
- UN Principles relating to the **Status of National Institutions** (Paris Principles)
- Basic Principles on the **Independence of the Judiciary**
- Basic Principles on the **Role of Lawyers**
- Guidelines on the **Role of Prosecutors**
- Principles on the Effective Prevention and Investigation of **Extra-legal, Arbitrary and Summary Executions**
- Code of Conduct for **Law Enforcement Officials**
- Basic Principles on the **Use of Force and Firearms** by Law Enforcement Officials
- Body of Principles for the Protection of All Persons under Any form of **Detention or Imprisonment**
- Basic Principles for the **Treatment of Prisoners**
- United Nations Minimum Rules for **Non-custodial Measures** (the Tokyo Rules)
- United Nations Rules for the **Protection of Juveniles** Deprived of their Liberty
- United Nations Standard Minimum Rules for the Administration of **Juvenile Justice** (the Beijing Rules)
- United Nations Guidelines for the Prevention of **Juvenile Delinquency** (the Riyadh Guidelines)
- ECOSOC Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime
- ECOSOC Guidelines for Action on Children in the Criminal Justice System

International humanitarian law also prohibits the conviction or sentencing of persons except following a fair trial affording all essential judicial guarantees.⁹ This includes: a right to a trial by an independent, impartial and regularly constituted court; presumption of innocence; information on the nature and cause of the accusation; and necessary means of defense, including access to legal assistance and interpretation, if required. Depriving a person of his/her right to a fair trial during an armed conflict constitutes a grave breach of the Geneva Conventions and can amount to a war crime.¹⁰

⁹ See, for example, ICRC, Rules 100-102 of Customary International Humanitarian Law, Volume I: Rules, 2005. See also Common Art. 3 to the Geneva Conventions; Arts. 5 and 66-75 of the Fourth Geneva Convention; Art. 75 of Additional Protocol I; and Art. 6(2) of Additional Protocol II.

¹⁰ See, for example, Art. 147 of the Fourth Geneva Convention; Art. 85(4)(e) of Additional Protocol I; Art. 8(2)(a)(vi) and (c)(iv) of the Statute of the International Criminal Court.



Key references

- *Access to All: A Practitioner's Guide to a Human Rights-based Approach to Justice*, UNDP, 2005.
- *Access to Justice: Practice Note*, UNDP, 2004.
- *General Comment No. 32 (2007) of the Human Rights Committee on Article 14: Right to equality before courts and tribunals and to a fair trial*, UN Human Rights Committee, CCPR/C/GC/32, August 2007.
- *The Administration of Justice in Refugee Camps: A Study of Practice*, Rosa da Costa, UNHCR, 2006.
- *Guide to International Human Rights Mechanisms for Internally Displaced Persons and Their Advocates*, Brookings-Bern Project on Internal Displacement, 2006.
- *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, OHCHR/International Bar Association, 2003.
- *Rule-of-Law Tools for Post-Conflict States*, on prosecution, truth commissions, monitoring of legal systems, and vetting, OHCHR, 2006.
- *Juvenile Justice: Modern Concepts of Working with Children in Conflict with the Law*, Save the Children, 2006.
- *Reconciliation after Violent Conflict*, IDEA, 2003.



Useful websites

- United Nations Development Programme (UNDP): www.undp.org
- International Centre for Transitional Justice (ICTJ): www.ictj.org
- International Criminal Court (ICC): www.icc-cpi.int
- International Criminal Tribunal for Rwanda (ICTR): www.un.org/icttr
- International Criminal Tribunal for the former Yugoslavia (ICTY): www.un.org/icty
- Reports of the Special Rapporteur on the Independence of Judges and Lawyers: www.ohchr.org/english/issues/judiciary/index.htm

Practical guide to strengthen formal (state-run) justice and law enforcement institutions


Institution	Description	Common challenges	In our work, we can ...
<p>All</p> <p>The term “formal justice mechanisms” includes not only the judiciary but also the police, prosecutors, and prison authorities. Like all other institutions of the State, they are obliged to respect human rights and professional and ethical standards applicable to their work, including principles of fairness, transparency, impartiality and accountability. In practice, particularly in situations of conflict and forced displacement, such institutions might face various challenges resulting in the partial or complete breakdown of access to justice. In some cases, such institutions can also become a source of discrimination, violence and abuse of IDPs and affected populations.</p>	<p>General breakdown of the legal, institutional and social order, resulting in disruption, closure or destruction of institutions and infrastructure.</p> <ul style="list-style-type: none"> Inadequate or outdated legislation, rules and procedures that fail to respect human rights and professional/ethical standards. Lack of transparency, accountability and adequate oversight mechanisms. Lack of resources and capacities, including qualified staff, adequate infrastructure and necessary equipment. Widespread culture of discrimination, corruption, extortion, violence and abuse. Lack of public confidence and public access to information. Under-representation of women and minority groups. 	<p>A competent, independent and impartial judiciary is the cornerstone of a functional justice system. It ensures the rights and freedoms of individuals and functions as a mechanism of checks and balances for other branches of government. The UN Basic Principles on the Independence of the Judiciary summarize many of its basic principles, including the following: hearings must be conducted fairly and in public; due process rights must be respected; and matters must be decided impartially on the basis of facts and in accordance with the law, without any restrictions, improper influences, threats or interferences, whether direct or indirect.</p>	<ul style="list-style-type: none"> Assess the level of material destruction and the availability of human resources; plan and coordinate with other national and international actors to ensure an appropriate level of response to assist in the rebuilding of the justice system. Provide or support training on human rights law and professional/ethical standards for relevant stakeholders. Provide short-term material support, such as office space, furniture, stationery, additional staffing support, or vehicles (for mobile courts). Provide technical advice and expertise, where needed. Advocate for the establishment or strengthening of institutional accountability and oversight mechanisms. Advocate for the revision of laws, regulations and procedures to ensure they are in conformity with human rights and professional/ethical standards. Encourage and support the strengthening of the role of women and other disadvantaged groups. Advocate for issues relating to the rule of law and access to justice to be included in peace negotiations, settlements and development plans.
<p>Judiciary (includes the courts and quasi-judicial bodies, such as tribunals and commissions)</p>	<ul style="list-style-type: none"> Lack of resources and capacities, including qualified staff, adequate infrastructure, legal materials and office equipment. Undue delays owing to ineffective administration and excessive case loads. Prohibitive litigation costs. Insecurity and violence, including lack of victim and witness protection, <i>en route</i> to and on court premises. Undue influence or interference by other branches of government, undermining the independence of the judiciary. Lack of legal aid and representation. Lack of adequate mechanisms to follow and ensure that judicial decisions are respected and enforced. Lack of information on decisions, jurisprudence and legal interpretation related to internal displacement. 	<ul style="list-style-type: none"> Provide material support, such as legal materials/publications and/or office equipment. Encourage and support the establishment of mobile courts and provide temporary material/technical support. Encourage the use of informal dispute resolution systems or small claims tribunals, provided these meet and respect human rights standards. Advocate for improved security measures, in particular for victims and witnesses as well as for judicial staff. Encourage legal and administrative reform, including transparency, accountability and security of tenure for judges, recruitment of female judges, and streamlining of rules and procedures. Advocate for and support legal aid programmes. 	

Institution	Description	Common challenges	In our work, we can ...
<p>Police</p>	<p>The police play an essential role in ensuring access to justice. In addition to maintaining law and order, the police are usually the first point of contact in the judicial system, and take responsibility for enforcing judicial decisions. The police hold broad discretionary powers that, if misused, can result in grave human rights violations. The UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials govern the conduct of the police, including the use of force and firearms, respect for confidentiality, and treatment of detainees.</p>	<ul style="list-style-type: none"> ● Lack of resources and capacities, including delays in salary payments, lack of qualified staff and weak forensic and investigative abilities. ● Targeted attacks of police staff by parties to hostilities. ● Widespread culture of violence and abuse of discretionary powers, including unnecessary and excessive use of force, arbitrary arrest and detention. ● Discrimination, harassment, extortion and exploitation of individuals and groups, particularly women and those of certain ethnic, religious or indigenous origin. ● Lack of resources or expertise to prevent and respond to certain types of violence, including sexual and gender-based violence and domestic violence, as well as violence committed against certain groups, such as women, children, older persons, and ethnic or religious minorities. 	<ul style="list-style-type: none"> ● Provide or support training on human rights, including the rights of IDPs, and on professional/ethical standards. ● Assist authorities with the development and implementation of crime-prevention and response strategies. ● Improve community-police relations, including through community policing or joint patrols. ● Advocate for the establishment of appropriate accountability and oversight mechanisms that can monitor and restrict the abuse of police powers. ● Advocate for the strengthening of the police's conditions of service, facilities and infrastructure. ● Encourage the establishment of units and trained staff dealing specifically with sexual and gender-based crimes and with child protection issues. ● Advocate for an increased number of female police officers.
<p>Prosecutors</p>	<p>Prosecutors play a crucial role in the criminal justice system and often hold quasi-judicial powers. They decide which criminal cases to pursue, prosecute offenders, often supervise the police in investigating and gathering evidence, and might be entrusted with enforcing court judgments. The UN Guidelines on the Role of Prosecutors establishes minimum standards for prosecutors, including that they perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights.</p>	<ul style="list-style-type: none"> ● Lack of resources and capacities, including qualified staff and weak investigation capabilities. ● Imprecise criminal procedural codes and codes of conduct for prosecutors. ● Blurring of the boundaries between judicial and prosecutorial functions, especially in rural areas where prosecutors may be called on to act as judges and arbiters. ● Lack of safety and security for prosecutors and their families. ● Lack of information on decisions, jurisprudence and legal interpretation related to internal displacement. 	<ul style="list-style-type: none"> ● Provide or support training on case management, evidence-gathering and investigation. ● Provide material and technical support to assist prosecutors in building and pursuing cases involving major human rights violations. ● Advocate for the establishment of adequate criminal procedural codes and codes of conduct for prosecutors.
<p>Prisons</p>	<p>Prisons should be included in wider justice reform programmes, and detention and imprisonment should always be subject to strict rules. The rights of prisoners must be respected and prisoners should be treated in a humane and dignified manner. Pre-trial detention should be kept to a minimum and imprisonment should be used as a last resort and only where non-custodial alternatives have been exhausted or deemed inappropriate (e.g. because of the seriousness of the crime). These and other rules are stipulated in the UN Basic Principles for the Treatment of Prisoners, the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.</p>	<ul style="list-style-type: none"> ● Sub-standard living conditions, including overcrowding, a lack of adequate shelter, sanitation, clothing, food and water, and a failure to provide needed services, such as health care. ● Violence and abuse of prisoners and detainees at the hands of other prisoners or prison officials. ● Failure to respect basic principles and standards for the treatment of prisoners, including relating to the segregation of prisoners by gender, age, and criminal conviction. ● Arbitrary, prolonged and excessive pre-trial detention because of delays in other parts of the justice system. ● Emphasis on confinement and punishment rather than rehabilitation and eventual reintegration into society. ● Outdated or abusive prison and penal legislation, rules and procedures. 	<ul style="list-style-type: none"> ● Ensure the regular monitoring of prison conditions and compliance with basic principles/standards. As appropriate, advocate for improvements. ● Advocate for the establishment of internal and external oversight and investigation mechanisms to ensure that incidents of violence and abuse are reported and investigated and that the perpetrators are punished. ● Encourage the use of non-custodial measures or alternative forms of detention aimed at facilitating rehabilitation and social reintegration of offenders. ● Advocate for the review and revision of prison and penal legislation, rules and procedures, and offer technical assistance to do so, if and when needed. ● Advocate for a greater number of female prison officials, including guards, managers, monitors and evaluators. <p>Note! These activities should be undertaken in consultation with the ICRC and OHCHR where present.</p>

Annex II

Alternative dispute resolution mechanisms

A range of traditional, customary or religious dispute resolution systems (DRS) operate in most societies, particularly in the developing world, where up to 80% of disputes might be handled by religious courts, tribal councils, groups of elders, grievance committees or community leaders. Such mechanisms can play an invaluable role in ensuring access to justice. Their **main advantage** lies in the fact that they might be more accessible and acceptable from a cultural or religious perspective, consume less time and resources, focus on restitution and compensation rather than punishment, and use methods, such as mediation, negotiation and arbitration, that can foster social cohesion and reconciliation.

DRS should not be seen as a substitute for formal justice institutions but rather as a **complementary system** aimed at improving access to justice. DRS are particularly well suited to resolve minor conflicts and disputes between people living in the same community where reconciliation and restoration, rather than retribution and punishment, are needed. Formal justice, on the other hand, is best equipped to provide the legal and procedural guarantees needed in cases involving serious crimes, including torture, rape or murder, or serious penalties, such as long-term imprisonment. However, some countries have also resorted to a combined mechanism. For instance, to speed up the delivery of justice in the wake of the genocide in Rwanda, the Gacaca, originally a village assembly presided over by village elders to resolve minor disputes, was reactivated to prosecute thousands of alleged perpetrators of serious crimes (*further addressed in Annex III on Transitional justice* .

Any involvement with DRS, however, **must be guided by human rights standards**. In general, such mechanisms should only be supported where they are consistent with the rule of law and respect the human rights of all groups in society. The use of DRS can raise a **number of concerns**. They frequently reflect and reinforce prevailing power relationships that perpetuate discrimination based on gender, age, caste, religion or ethnicity. In particular, women and girls are routinely excluded from such bodies or, where admitted, often lack real authority and decision-making power. In some cases, particularly in internal displacement contexts when community structures have been disrupted, DRS might be relatively new or might include neo-traditional institutions that lack cultural and moral legitimacy, despite claims to the contrary. Other concerns are indicated below.

- Limited respect for basic human rights, including the principle of non-discrimination and recognized standards of fair trial and due process. In particular, DRS might fail to address and provide redress for violations that predominantly affect women and girls, such as rape, domestic violence and women's property or inheritance rights.
- Use of customary or religious rules that criminalize acts that **do not** constitute a violation of national law (e.g. sorcery, rape defined as adultery) or fail to criminalize and punish acts that **do** violate national law (e.g. rape and sexual violence, harmful traditional practices, female genital mutilation, and forced and early marriage).
- Use of remedies and/or punishments that are disproportionate to the offence or fail to respect the rights or the best interests of the victim. Compensation might be provided to the family or clan rather than the individual victim(s), or it might be provided at the expense of the victim (e.g. by forcing the victim to marry the rapist to restore family honour). Similar concerns might apply to punishment, which may be excessive (e.g. capital punishment for adultery); overly lenient (small fines for capital crimes, such as murder or child rape); amount to torture or ill-treatment (e.g. chopping of limbs); be unfair (e.g. confiscation of a family's food ration cards); or violate the rights of a third party (e.g. by offering a daughter or sister of the accused for marriage).

- Sub-standard detention and/or prison facilities and conditions and ill treatment of detainees, including lack of food, shelter, clothing and access to medical care.
- Lack of confidentiality, transparency and accountability; lack of legal aid and representation; inadequate record-keeping; failure to provide reasons for decisions; and lack of appeal procedures.
- Provided that our involvement with DRS is guided by human rights standards, a **number of activities can be undertaken** to build the capacity of DRS to play a positive protection role. These include:
 - raising awareness of, and provide training on, human rights and relevant standards of fair trial, due process and punishment, and minimum standards of detention and imprisonment;
 - supporting efforts aimed at reconciling and strengthening the link between traditional and religious norms and practices and human rights standards through, for instance, research and constructive dialogue with and within the community;
 - working with the community to ensure that DRS are truly representative and non-discriminatory towards women and minority groups, including by ensuring that they address violations faced by such groups and respect their rights;
 - providing DRS with technical or material support, such as providing meeting space, office equipment, and/or modest incentives or compensation for their work; and
 - advocating for a closer link between DRS and formal justice mechanisms to ensure adequate support, supervision and oversight.

Annex III

Transitional justice

In many conflict and post-conflict societies, coming to terms with the legacy of large-scale human rights abuses and atrocities is a major challenge. Confronting the past, providing justice to victims and bringing perpetrators to account is an integral element of peace-building, reconciliation and restoration of the rule of law. It is also an important part of beginning the long-term process of healing among individuals, families and communities.

Peace and justice should be seen as mutually reinforcing imperatives, rather than mutually exclusive aims. Failing to address questions of justice can reinforce a culture of impunity, cause further injustice to victims and survivors, and, in some cases, might undermine rather than strengthen post-conflict reconciliation and peacebuilding in the longer term.

There are several ways to address past abuses in post-conflict societies, often through a form of transitional justice. The term **transitional justice** refers to judicial and non-judicial mechanisms or processes that communities adopt to come to terms with a legacy of past abuses during conflict or authoritarian rule. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuses. It generally involves a combination of complementary judicial and non-judicial strategies, some of which are highlighted below, that might differ from one society to another.

- **prosecution of alleged perpetrators of widespread or systematic human rights abuses** before national courts, hybrid tribunals (such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia) or international courts (such as the permanent International Criminal Court);
- **truth commissions**¹¹ or other truth-seeking initiatives, including investigating and reporting on past abuses, holding public meetings, recording survivor and witness testimonies, exhuming victims' remains, conducting historical research, and making recommendations on reparation or institutional reforms;
- **reparation programmes** for survivors providing restitution, compensation, and rehabilitation, actual or symbolic, as appropriate, for abuses suffered;
- **commemoration** of victims and survivors through ceremonies or the construction of memorials or museums, often through the conversion of sites of former abuse, such as prisons or detention camps;
- **reconciliation initiatives**, including healing ceremonies for victims and individual acts of acknowledgment, apology, symbolic payment or community service by perpetrators; and
- **institutional reform** aimed at building fair, effective and transparent public institutions to safeguard against further abuse, often including **vetting** (i.e. the screening and dismissal of abusive, corrupt or incompetent officials from public institutions, including the judiciary, the police, military and other security services).

The choice of transitional justice mechanisms depends on the context as well as on the type, nature and scale of the abuses committed. However, experience suggests that combined mechanisms, with the active participation of victims and perpetrators, are more effective in the search for truth and justice.

¹¹ Truth commissions have been established in Argentina, Chile, Ecuador, El Salvador, Ghana, Guatemala, Liberia, Morocco, Nigeria, Panama, Peru, Rwanda, Sierra Leone, South Korea, South Africa and East Timor.

Transitional justice mechanisms have often been negotiated, developed and implemented with little regard for the important contribution of, and the harm suffered by, **women and girls**. Rape, gang rape, forced prostitution, forced pregnancy and some other forms of sexual violence may constitute torture, genocide, mutilation, and enslavement, under international law. Such acts, however, generally have not been treated with the same seriousness as other war crimes. Neglect of patterns of gender-based abuse has entrenched impunity, limited the reach of reparation programmes, and undermined the legitimacy of transitional justice initiatives.

Strategies to strengthen transitional justice mechanisms include:

- ensuring that questions of transitional justice, including for women and girls, are addressed in peace negotiations and settlements;
- establishing or supporting the work of courts, tribunals, truth commissions and other justice mechanisms through financial, material or technical assistance; and
- providing support to grassroots peacebuilding and reconciliation efforts.

Part IV.19

Political participation and the right to vote

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Key message

All persons, including internally displaced persons (IDPs), have the right to participate in the governmental and public affairs of their country, which includes having the right to vote and to stand for election to public office. Internal displacement, however, can make it difficult for individuals to exercise their rights to political participation, particularly in elections. As a result, IDPs risk being denied a voice in the political and economic decisions that affect their lives.

1. Political participation in the context of internal displacement

The term “political participation” includes any form of engagement in the political and public life of a community, including seeking and holding public office, participating in the work of political parties or opposition groups, and voting and standing for elections. When conducted in a fair and inclusive manner, elections can pave the way for peace, national reconciliation and good governance, thus fostering long-term stability and durable solutions to displacement.


In practice, however, IDPs often cannot exercise their electoral rights, whether during displacement or upon return to their areas of origin or settlement elsewhere in the country. This can result in disenfranchisement and exclusion from the political and public life of the country which, in turn, can exacerbate the discrimination and marginalization that displaced persons and communities often experience. Some of the obstacles that displaced voters often face are described below.

- **Restrictive residency requirements:** National electoral regulations generally link the exercise of electoral rights to the place of residence. Displacement, which by definition entails a temporary or permanent loss of residence, thus makes it difficult for IDPs to register and vote; in some cases, they may even be required to return to their areas of origin, which often remain unsafe. Registering to vote in the area of displacement is often difficult owing, for instance, to strict residency or documentary requirements, or it may be altogether unfeasible, as it can result in the loss of humanitarian assistance or the automatic de-registration in the area of origin, creating obstacles to return.
- **Lack of documentation:** Identity documents, which are often needed in order to register and vote, are frequently lost, destroyed or confiscated during displacement. It can be difficult to obtain replacement documentation, and it may require IDPs to return to their areas of origin. Certain individuals and groups may have lacked documentation prior to displacement or may be denied documentation owing to discriminatory laws and practices. Women and girls, for example, are often unable to acquire documentation in their own names and must register as dependents of spouses or male relatives, which violates their rights and leaves them without the means to prove their identity, especially in the case of family separation or death of these relatives.
- **Discrimination:** Discriminatory laws and practices, which may have contributed to displacement in the first place, can mar all aspects of the electoral process. In some cases, displaced voters or certain groups of displaced voters, such as ethnic minorities, have been deliberately barred from voting, have been given access to fewer or more remote polling stations with shorter voting hours, have been subjected to cumbersome registration procedures, or have lacked access to electoral information in a language they understand.
- **Conflict and insecurity:** Elections sometimes take place in a climate of ongoing violence or communal tensions. Voters and candidates have been threatened, harassed or assaulted at all stages of the electoral process: during voter registration; when obtaining replacement documentation; while en route to or at polling stations; during the

electoral campaign; or when taking office. Elections can only be free, fair and legitimate if voters can participate without fear of risk, intimidation or harm.

- **Lack of access:** Access to polling stations is often limited in situations of displacement owing to a lack of security, long distances, a lack of safe and affordable transport, or inadequate voting arrangements, such as an insufficient number of polling stations. Women, older persons, and persons with disabilities face particular obstacles in this regard.
- **Lack of information:** IDPs, in particular those residing in camps or settlements, often lack information in a language they understand about political processes, parties and voting arrangements.

2. The international legal framework

The **right to political participation**, which is guaranteed in international and regional human rights law, includes the right to participate in government and public affairs, to vote and stand for election, and to have equal access to participate in public service.¹ (See also *Principles 22(1)(d) and 29(1) of the Guiding Principles on Internal Displacement, Annex 1 of the Handbook* .)

Certain limitations on the right to political participation are permissible, but they must be reasonable, objective and non-discriminatory. For example, the right to vote can be limited to citizens who have attained the age of majority under national law. Any form of discrimination, including on the basis of gender, ethnic origin, religion or political opinion, however, is prohibited, as are any restrictions on grounds of income, education, literacy, disability, descent, property status, political affiliation or displacement. IDPs, thus, have a full and equal right to political participation, including the right to vote, both while they are displaced and upon their return or settlement elsewhere in the country. Where residency requirements apply, they must not exclude IDPs or any other voters without a permanent residence.²

Women have equal rights with men in all matters relating to political participation. States should take all necessary steps to ensure that women are able to exercise their political rights and participate at all stages of the electoral process as well as during negotiations and the implementation of peace agreements and early recovery and development programmes.³

International law also protects a number of other rights which are important to ensure meaningful political participation, including the rights outlined below.


- The right to **freedom of opinion and expression**, including the right to seek, receive and impart information in a language of one's choosing, without threat of harassment, coercion or violence. It implies the freedom to discuss, support and oppose ideas, candidates or political parties, including through the media, without risk of censorship or restraint, although propaganda for war and violence or advocacy of national, racial or religious hatred should never be tolerated.⁴

¹ See Art. 21 of UDHR; Art. 25 of ICCPR; Art. 5(c) of ICERD; Arts. 7 and 8 of CEDAW; Arts. 41 and 42 of CMW. At the regional level, see also Art. 13 of AfCHPR and various articles of its Protocol on the Rights of Women in Africa; Art. 23 of AmCHR; Art. XX of AmDHR; Art. 4(j) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women; Art. 19 and 33 of ArCHR; and Art. 3 of Protocol 1 to ECHR.

² See General Comment No. 25 (1996) of the UN Human Rights Committee on the right to participate in public affairs, voting rights and the right to equal access to public service (Art. 25), paras. 3 and 11.

³ Discrimination between women and men is prohibited in the non-discrimination clauses of all major human rights instruments. See also Art. 7 of CEDAW; the Convention on the Political Rights of Women; Art. 9 of the Protocol to the AfCHPR on the Rights of Women in Africa; as well as SC Resolution 1325 (2000), op. para. 8.

⁴ See Arts. 19 and 20 of UDHR; Art. 19 of ICCPR; Art. 5(d)(viii) of ICERD; Arts. 12, 13 and 17 of CRC; Art. 13 of CMW and Principle 22(1)(a) of the *Guiding Principles on Internal Displacement*; and, at the regional level, Art. 9 of AfCHPR; Art. 7 of AfCRWC; Art. 13 of AmCHR; Art. IV of AmDHR; and Art. 10 of ECHR. See also General Comment No. 10 (1983) of the UN Human Rights Committee on Freedom of expression (Art. 19).

- The right to **peaceful association and assembly**, which includes the right to form and join organizations and associations, including political parties, to debate political and public affairs, and to hold peaceful demonstrations and meetings.⁵
- The right to **freedom of movement**, which includes the right to move freely, without fear or threat of harm, including for the purposes of campaigning, voting or assuming public office (See *Part.IV.6* ).

Elections should be free and fair, based on universal and equal suffrage and held by secret ballot, enabling voters to express their will freely and without violence, intimidation or threat. Internationally recognized electoral standards and principles should be respected, and mechanisms for independent and impartial review and appeal should be available.

3. The responsibility of the State

The State has a responsibility to ensure that IDPs are able to exercise their rights to political participation, both while they are displaced and upon their return or relocation, on an equal basis with other citizens in their country. In order to facilitate their participation, the authorities can:

- reform national law and administrative procedures to enable IDPs to register and vote in the area of displacement, without facing any adverse consequences;
- establish absentee registration and voting arrangements for IDPs to enable them to participate in elections in their area of origin while they are displaced;
- enhance security en route to, and at, polling stations, including by ensuring that adequate numbers of trained police officers, both female and male, are deployed;
- conduct targeted public information and outreach campaigns to inform displaced voters about available registration and voting arrangements;
- ensure that safe and affordable transportation to and from polling stations is available for displaced and other voters; and
- request international assistance to organize, supervise and monitor fair elections, where needed.⁶

4. The role of humanitarian and human rights actors

International assistance can be valuable where the State has limited capacity or lacks technical expertise and resources to ensure free and fair elections, including the full and equal participation by displaced voters and candidates. Election assistance and monitoring is a specialized area of international cooperation and should be coordinated by actors that have the required expertise and experience (*further examined in the section on key actors below*). However, all humanitarian and human rights actors can play an important role, including by assisting the State as well as displaced candidates and voters to participate safely in elections on a full and equal basis with others in their country.


⁵ See Art. 20 of UDHR; Arts. 21 and 22 of ICCPR; Art. 14(2)(e) of CEDAW; and Art. 15 of CRC; and, at the regional level, Arts. 10 and 11 of AfCHPR; Art. 8 of AfCRWC; Arts. 15 and 16 of AmCHR; Art. 4(h) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women; Art. 28 of ArCHR; and Art. 11 of ECHR. The right is reflected in Principle 22(1)(c) of the *Guiding Principles on Internal Displacement*.

⁶ For detailed guidance on the specific legislative, administrative and institutional measures that States can take to ensure the electoral rights of IDPs, see papers by J. Grace and E. Mooney referenced at the end of this chapter.



In our work, we can ...

Assessment and analysis

(See Part III.1 )

Ensure that protection assessments identify (i) any legal, administrative or practical obstacles to political participation by IDPs, paying particular attention to residency, registration and documentation requirements; (ii) the groups most at risk of exclusion from political and public affairs; (iii) the protection impact of a lack of participation with regard to specific groups within the community, including on the basis of age, gender or other background; and (iv) key local, national and international actors that can help to address these obstacles.


Community participation and mobilization

Ensure that women, girls, boys and men of diverse backgrounds are consulted and take active part in planning, implementing and evaluating humanitarian projects and programmes. This can contribute to creating a culture of participation in public affairs among the population and the authorities.

Election monitoring


Election observation and monitoring requires technical expertise and should be undertaken by specialized agencies/NGOs. Humanitarian and human rights actors can support their efforts by, for instance, (i) encouraging election monitors to pay attention to the ability of IDPs to exercise their political rights; (ii) sharing information about any obstacles faced by IDPs; and (iii) providing advice and helping to address such obstacles.

Advocacy

(See Part V.3 )


Advocate with relevant authorities for fair, transparent and inclusive political processes. Encourage the authorities to respect the political rights of IDPs, and take any obstacle they may face into account when developing and implementing electoral policies, practices and frameworks. This may include (i) legal and administrative reform; (ii) establishment of absentee registration and voting arrangements; (iii) easing of residency, documentation and other restrictive requirements; and (iv) ensuring that women are issued documentation in their own names. Advocate with national and local law enforcement agencies and with regional and international actors, if present, for measures to ensure safety during all phases of the electoral process.

Information, education and communication activities

(See Part V.7 )


Support voter-education campaigns aimed at informing IDPs and other affected communities about (i) their political rights; (ii) where, when and how to register and vote, including any absentee voting arrangements; and (iii) the availability of complaints and appeal mechanisms. Such campaigns must reach both women and men of different ages and backgrounds in areas where IDPs are located, including in camps and settlements; be conducted in a language which they understand; and take place through appropriate information channels. As an example, the use of radio may be more appropriate than printed media among groups with limited literacy skills.

Technical advice and assistance

(See Part V.8 )

Help build the capacity of the authorities to conduct free and fair elections. Technical advice and assistance can be provided by specialized actors, but humanitarian and human rights actors can support such efforts by, for instance, providing information about the obstacles faced by IDPs and the ways to address them. In some cases, material or financial assistance can be provided, for example to establish absentee voting mechanisms or to facilitate voter transportation.



Training	Support training about the rights of IDPs, including the right to political participation, and standards for free and fair elections, for relevant stakeholders, including government officials, particularly electoral officials and law enforcement agencies, IDP communities, particularly community leaders, both female and male, and local NGOs and civil society.
Presence and monitoring (See Parts V.2 and 4 )	Maintain visible protection presence in areas of displacement during and immediately after elections, if security conditions allow. Visible protection presence can encourage participation and discourage election-related fraud, violence and abuse.

5. Key actors

- At the **national level**: displaced individuals and communities; national electoral commissions; ministry of justice and the interior; national courts and tribunals; law enforcement agencies; national human rights institutions; local NGOs and civil society, including the media.
- At the **regional level**:
 - **in Africa**: the African Union's Election Unit; at the sub-regional level, the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC);
 - **in the Americas**: the Organization of American States (OAS) Unit for the Promotion of Democracy; and
 - **in Europe**: the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE); the European Commission for Democracy through Law (Venice Commission) of the Council of Europe; and the European Union.
- At the **international level**: United Nations Electoral Assistance Division (EAD) of the Department of Political Affairs; International Organization for Migration (IOM), particularly its project on Political Rights and Enfranchisement System Strengthening (PRESS); International Institute for Democracy and Electoral Assistance (IDEA); Inter-Parliamentary Union (IPU); the Commonwealth Secretariat; and the United Nations Office of the High Commissioner for Human Rights (OHCHR). In addition, a number of international NGOs, such as the International Foundation for Electoral Systems (IFES) and the Carter Center, provide electoral assistance and undertake election-observation missions.



Key references

- Safeguarding IDP Voting Rights, by Mooney E. and Jarrah B., in *Forced Migration Review*, Vol. 23, 2005.
- *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges, Chapter 13: Political Participation Rights in Particular the Right to Vote*, by Jeremy Grace and Erin Mooney, Brookings-Bern Project on Internal Displacement and American Society of International Law, 2010.
- Peacebuilding through the Electoral Participation of Displaced Populations, by Jeremy Grace and Erin Mooney, in *Refugee Survey Quarterly*, Volume 28, Number 1 pp. 95-121, 2009.
- *Enfranchising Conflict-forced Migrants: Issues, Standards, and Best Practices*, by J. Grace and J. Fischer, Participatory Elections Project (PEP), Discussion Paper No. 2, IOM, 2003.

- Displaced and Disenfranchised: Internally Displaced Persons and Elections in the OSCE Region, by E. Mooney and B. Jarrah, in 29 *Ethnopolitics* 36, 2005.
- *Internally Displaced Persons' Voting Rights in the OSCE Region*, by E. Mooney and B. Jarrah, Brookings-SAIS Project on Internal Displacement, 2004.
- *Enhancing Women's Participation in Electoral Processes in Post-conflict Countries*, UN Office of the Special Adviser on Gender Issues and Advancement of Women, UN Doc. EGM/ELEC/2004.
- *Women and Elections: Guide to Promoting the Participation of Women in Elections*, United Nations, 2005.
- *Training Manual on Human Rights Monitoring*, Chapter XIV: Election Observation, OHCHR, 2001.



Useful websites

- Electoral Assistance Division (EAD) of the United Nations Department of Political Affairs: www.un.org/Depts/dpa/ead/
- European Commission for Democracy through Law (Venice Commission) of the Council of Europe: www.venice.coe.int/site/main/Elections_Referendums_E.asp
- Inter-Parliamentary Union (IPU): www.ipu.org/dem-e/overview.htm
- International Institute for Democracy and Electoral Assistance (IDEA): www.idea.int/
- Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE): www.osce.org/odihr-elections/
- Political Rights and Enfranchisement System Strengthening (PRESS) project of the International Organization for Migration (IOM): www.geneseo.edu/~iompres/

