



## CAPACITY BUILDING FOR LAW AND POLICY-MAKING ON INTERNAL DISPLACEMENT

# SESSION 5: PREPARATION – LEGAL REVIEW

The following is an extract from IDMC and NRC's review of Zimbabwe's legal framework as it relates to IDPs' protection, published in December 2014. Available at: <http://goo.gl/637ZCD>

### KEY RECOMMENDATIONS

The key recommendations from the IDMC and the NRC to the Government, following the review of the relevant legal instruments discussed in the thematic chapters, are as follows:

1. To translate the provisions of the Kampala Convention into national legislation in a way that establishes a national framework addressing internal displacement in a comprehensive manner.
2. To identify and legally appoint a national institution responsible for the coordination of all efforts aimed at protecting and searching for durable solutions for IDPs, including liaising with national and international humanitarian and development actors and civil society organisations in the delivery of protection and assistance to IDPs. The legal definition of the mandate of the national institution responsible for IDPs should be accompanied by the provision of a specific yearly budget allocation for such institution to discharge its assigned tasks and the requirement to appeal to external funding in the event of unavailability of sufficient resources to address internal displacement concerns.
3. To incorporate into local legislation a definition of IDPs in line with those set out in the Kampala Convention and the U.N. Guiding Principles whilst making clear that the examples of displacement causes in the definition (i) are not exhaustive and that the definition (ii) does not create a specific legal status, but rather is to be used to address the specific vulnerabilities of IDPs through adequate provision under relevant laws and policies.
4. To enshrine in domestic law a prohibition of discrimination based on displacement as well as discrimination among IDPs or non-displaced individuals and communities based on any ground, including race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth or any similar criteria.
5. To introduce provisions into national legislation prohibiting all forms of arbitrary displacement, as defined in the Kampala Convention and the U.N. Guiding Principles, and to formulate criteria compliant with international human rights and humanitarian law standards to determine when a particular act may be considered to amount to arbitrary displacement. Such formulations should, in particular, consider the case of forced evictions, which can only be carried out lawfully under exceptional circumstances and in full accordance with relevant provisions of international human rights and humanitarian law.
6. In relation to the guarantees related to housing, land and property rights: (i) to reaffirm in the relevant legislation that IDPs have the right to have restored to them any housing, land and property assets of

which they were deprived or, if that is impossible, to be compensated for any housing, land and property loss in accordance with the Kampala Convention, the U.N. Guiding Principles and the Pinheiro Principles and, to this end, to have effective access to courts or alternative institutional dispute settlement mechanisms; (ii) to reform laws that create insecurity of tenure, especially the Housing Standards Control Act, the Regional Town and Country Planning Act and other laws that permit arbitrary displacement, including by creating a legal obligation to search for alternatives before engaging in demolitions or evictions.

7. To enact specific legislation for: (i) the regular collection of those IDP data – disaggregated by age and sex – that are deemed necessary to inform targeted humanitarian or development programmes; and (ii) the maintenance and protection of relevant IDP data in a confidential and secure manner in order to ensure the privacy of IDPs. The two tasks could be achieved either through separate legislation or, respectively, (i) through amendment of the Census and Statistics Act and (ii) through the inclusion of displacement-related data in the list of categories of information disclosure which are presumed to be unreasonable, in line with Sections 61 and 52 of the Constitution.
8. To adopt, in line with the specific requirements of the Kampala Convention and the U.N. Guiding Principles, a policy that ensures the full participation of IDPs in all initiatives that have an impact on their lives and that the State puts in place all reasonable measures required to seek the free and informed consent of IDPs and displacement-affected communities in relation to any displacement or resettlement decisions. In addition, specific arrangements must be made to guarantee that all groups with particular needs are part of the planning and management of the search for durable solutions. With this in mind, a national con- In the context of the Kampala Convention and other supranational normative frameworks. Consultative forum featuring representatives of both IDPs and local communities could be set up with a view to providing advisory opinions to the national institution in charge of the coordination of IDP protection and assistance activities.
9. To ensure that there are adequate resources to address the three phases of displacement. This could be achieved by: (i) taking into account the resources needed (including budgetary funds, human resources and humanitarian goods) when laws and policies relating to IDPs are drafted; (ii) coordinating the enactment of legislation and policies with Government budgetary cycles; and (iii) ensuring that authorities with responsibility in relation to IDPs have adequate funds.