



# ICRC

## ADVISORY SERVICE ON INTERNATIONAL HUMANITARIAN LAW

# Internally Displaced Persons and International Humanitarian Law

## INTRODUCTION

International humanitarian law (IHL) seeks to limit the effects of armed conflict and to protect persons who are not or are no longer participating in the hostilities. IHL violations – such as attacks against civilians and ill-treatment of them, destruction of property, sexual violence and restricted access to health care and other essential services – are some of the main causes triggering displacement. While displaced, these communities struggle to meet essential needs amid exacerbated hardship and they may face particular threats, such as tension between them and host communities, settlement in unsafe or unfit locations, and forced return to unsafe areas. IHL contains important provisions to prevent the displacement of people and the suffering that follows and for the protection of persons forced to flee.

### Who are internally displaced persons?

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

### Is there an international instrument to protect IDPs?

There is no universal instrument specifically addressing the plight of IDPs but in 1998 the UN General Assembly and the UN Commission on Human Rights took note of the Guiding Principles on Internal Displacement. While these Guiding Principles do not constitute a binding instrument, they have received large support from the international community. More recently, in 2009, the African Union adopted the Kampala Convention on IDPs.<sup>2</sup> This regional instrument is an important step forward in the protection of and assistance to IDPs in one of the continents most affected by displacement.

### How does IHL protect IDPs?

IHL contains many provisions concerning the prevention of displacement and the protection of IDPs - mainly in Geneva Convention IV (GC IV) and Additional Protocols I and II (AP I and APII), as well as in customary international law. States have the responsibility to implement these protections in their internal legal framework. The following provisions should be considered when enacting national legislation:

#### ...Prohibition of displacement and the right to voluntary return

In general terms, the prevention of violations of IHL would lead to a reduction of IDPs as a result of armed conflict. Forcible displacement is prohibited, whether within the borders of a country or across international borders.

Displacement of civilians can be considered, exceptionally and temporarily, when justified by considerations of their security or imperative military necessity. IDPs shall be allowed to return to their place of origin as soon as the security concerns have ceased to exist in the affected area. *GC IV Art. 49 and 147, AP I Art. 51(7), 78(1) and 85(4)(a) AP II Art. 4(3)(e) and 17, International Customary Humanitarian Law (ICHL)<sup>3</sup> Rules 129 and 132.*

#### ...Non-discrimination

Because of their situation of being displaced, IDPs suffer from particular vulnerabilities. IDPs must be treated humanely and shall not be discriminated against on the grounds of their displacement or for any other reason. It is important that nothing in the existing law singles out IDPs for less favourable treatment than the general population. Protected persons shall be treated with the same consideration without any adverse distinction. *GC IV Art. 3 and 27, AP I Art. 75 and AP II Art. 2(1) and 4(1), CIHL Rules 87 and 88.*

#### ...Protection as part of the civilian population

IDPs are part of the civilian population and therefore are entitled to the protections afforded to all civilians. *GCIV* in particular *Art. 4 and 27*. Other important provisions are *API Art. 51 and 75, and APII Art. 4 and 5, CIHL Rules 1 and 7.*

#### ...The right to life, to dignity and to freedom

The life and dignity of IDPs shall be respected. *GC IV Art. 3, 27 and 32, AP I Art 75(2) and AP II Art. 4.* As with all

<sup>1</sup> Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.1, February 11. New York: United Nations.

<sup>2</sup> African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, (Kampala Convention). Adopted by the Special Summit of the Union held in Kampala on 22 October 2009.

<sup>3</sup> ICRC, *Customary International Humanitarian Law*, Henckaerts, Jean-Marie and Louise Doswald-Beck, ICRC-Cambridge University Press, UK, 2009 Third Edition.

civilians, they shall not be the object of attack unless they directly participate in hostilities. *AP I Art. 51 and AP II Art. 13, CIHL Rules 1 and 7.*

They shall not be subject to collective punishments, *GC IV Art. 32, API Art 75(2), and APII Art. 4 (2,b), CIHL Rule 103*, be used as human shields, *GC IV Art. 28, AP I Art. 51(7) and APII Art. 5 (2,c), CIHL Rule 97*, or taken hostage *GC IV 34 and 147, API Art 75(2,c), and APII Art. 4 (2,c), CIHL Rule 96*. Furthermore, their physical and mental well-being shall be protected. *AP I Art. 75(2)(a) and AP II Art. 4(2)(a and c), CIHL Rules 90-93.*

As with forced displacement, internment or assigned residence of IDPs may be conducted only if imperative reasons of security call for such action. *GC IV Art. 78*. In non-international armed conflicts, *arbitrary* arrest or detention is prohibited in all situations. *AP II Art. 5(1), CIHL Rule 99*. Internally displaced people should have the right to move freely in and out of camps or other settlements.

### **...Life standards and humanitarian assistance**

Should displacements take place, all possible measures shall be taken in order that IDPs' hygiene, health, nutrition and accommodation conditions are satisfactory. *GC IV Art. 49(3) AP II Art. 17(1) CIHL 131*. Failure to comply with these requirements may constitute a grave breach. *GC IV Art. 147, API Art. 85(4)(a)*.

In armed conflict situations, the targeting of foodstuffs, crops, livestock, drinking water supplies, or irrigation works is prohibited. *AP I Art. 54 and 56, AP II Art. 14, CIHL Rule 54*. Occupying powers are responsible for ensuring that local populations have food. *GC IV Art. 55*. Starvation as a method of warfare constitutes a war crime. *AP I Art. 54(1) AP II Art. 14, International Criminal Court (ICC) Statute Art. 8 (2) (b) (xxv), CIHL Rule 53*.

During armed conflicts, States must fulfil their obligation to provide the highest attainable standard of physical and mental health by giving medical attention to the wounded and sick *GC IV Art. 16, 55, 56, Common article 3, AP I Art. 10, AP II Art. 7(2), 8, CIHL Rules 109-110*, by seeking, permitting, and facilitating the passage of medical supplies and by ensuring the safety of medical workers *GC IV Art. 23, 50(5), 56, API Art. 12 - 17, APII Art. 9 and 10, CIHL Rule 56*.

When necessary, parties to armed conflicts must fulfil their obligation to

secure adequate food by seeking, permitting, and facilitating the delivery of food aid. *GC IV Art. 55 and 59, CIHL Rule 56*. If responsible authorities are unable to meet these standards, they should not impair humanitarian assistance from other impartial humanitarian bodies. *GC IV Art. 23 and 59, AP I Art. 70 and 71, AP II Art. 18(2), CIHL Rule 55, ICC Art. 8(2)(b)(iii) and (e)(iii)*. The assistance of these actors shall be of exclusively humanitarian and impartial nature, and conducted without any adverse distinction. *AP I Art. 70 and 71 and AP II Art. 18(2)*.

### **...Family life**

The unity of families should be protected. In situations of internment or detention during armed conflict, and in camps or other communal shelter generally, family members must be accommodated together *GC IV Art. 82 (2) and (3), AP I Art. 75 (5), CIHL Rule 131*. If family members become separated, all appropriate steps must be taken to facilitate their reunification. *GC IV Art. 26, 27 and 49, AP I Art. 74, AP II 4(3)*.

### **...Documentation**

Every person is entitled to registration and a name immediately at birth, especially in situations of occupation *GC IV Art. 50*. States are specifically obliged to ensure that vulnerable groups such as refugees and interned civilians in occupied territories are provided with basic documentation. *GC IV Art. 97(6)*.

### **...Property and Possessions**

In armed conflict situations, civilian property and possessions shall not be subject to pillage *GC IV Art. 33, ICHL Rule 52* or direct or indiscriminate attacks *AP I Art. 85, CIHL Rule 11*, used as a shield for military operations or objectives *AP I Art. 51* or destruction or appropriation as reprisal *AP I Art. 52* or collective punishment *AP I Art. 75(2) d)*. In all situations, property and possessions shall be protected from destruction or arbitrary and illegal appropriation, occupation, or use.

Shelter is not specifically provided for in the protection of protected persons under the Geneva Conventions and Additional Protocols, however, the extensive destruction and appropriation of housing is prohibited *GC IV Art. 147*.

The obligation to transfer persons evacuated in or from occupied territories back to their homes as

soon as hostilities have ceased there implies the right to recovery of their property. More particularly, the property rights of displaced persons must be respected. *CIHL Rule 133*.

### **...Employment and Social Protection**

The general non-discrimination clauses of IHL *GC IV Art. 27, AP I Art. 75 (1)* applicable during armed conflict also apply to the areas of employment, economic activities, and social security. Minimum standards of working conditions must be respected for certain categories or persons who are made to work during situations of armed conflict. *GC IV Art. 40*. Customary international humanitarian law also prohibits uncompensated or abusive forced labour *AP II Art. 4(2)(f), CIHL Rule 95*.

### **...Education**

In international armed conflict, parties to the conflict must take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources and that their education is facilitated in all circumstances *GC IV, Art. 24(1)*. Occupying powers must also facilitate the functioning of educational facilities in occupied territories *GC IV, Art. 50(1)*. In situations of non-international armed conflict, children must receive an education, including religious and moral education *AP II Art. 4(3)(a), 28(2)*.

### **...Prohibition of forcible recruitment of children**

As a result of displacement children are particularly vulnerable to forcible recruitment into armed forces or groups. IHL prohibits forcible recruitment of children under 15 years of age *API Art. 77(2), APII Art. 4(3), CIHL Rule 136<sup>4</sup>*. They must not be forced nor permitted to take direct part in hostilities. Persons over 15 years of age shall not be subject to discriminatory practices of recruitment as a result of their displacement.

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<sup>4</sup> The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict increases this age to 18, Art. 2.