



**FROM RESPONSIBILITY
TO RESPONSE:
ASSESSING NATIONAL
APPROACHES
TO INTERNAL
DISPLACEMENT**

The Brookings Institution –
London School of Economics
Project on Internal Displacement

November 2011

Cover photo: Jalojai Camp, Pakistan/ Five-year-old internally displaced girl Sonya, whose family fled military operations in Bara, takes refuge near a water container at the UNHCR Jalojai camp in Pakistan's northwest Khyber-Pakhtunkhwa Province. At least 18,000 people have fled their homes in Pakistan's tribal district of Khyber, fearing a fresh onslaught of fighting between the army and Islamist militants, local media reported Tuesday. REUTERS/Adrees Latif / October 2011

Back cover photos: *Left:* Rift Valley, Kenya / Internally displaced persons rest at a temporary camp in the Adult Education Center in Dondull, 12 miles from the town of Nakuru. UNHCR / T. Mukoya / March 2008; *Right:* Kabul, Afghanistan/ A young girl waits in line with her mother at a UNHCR distribution event at Tamir Mill Bus site. Fifty-seven families eke out a living in a dilapidated warehouse building owned by the Ministry of Transportation that originally served as a storage facility for the national bus company. Tajik and Pashtun families live side by side without any major conflict. Over 70 percent of the families are returnees from the period 2002-2004 who are unable to achieve sustainable reintegration in their places of origin and subsequently drifted to Kabul City in search of work. There is a nearby school which is accessible to the children but the poor economic circumstances of the families oblige them to send their children out to work. Low levels of literacy, particularly amongst the women, limit their access to employment aside from the lowest paid daily wage labor. Photo: UNHCR / J. Tanner / February 2011

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**From Responsibility to Response:
Assessing National Approaches
to Internal Displacement**

BY

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The Brookings-LSE Project on Internal Displacement seeks to promote more effective national, regional and international responses to the global problem of internal displacement and to support the work of the UN mandate on the human rights of internally displaced persons. The Project provides a focal point to ensure that issues surrounding internal displacement are on the international agenda; monitors displacement problems worldwide; promotes the dissemination and application of the *Guiding Principles on Internal Displacement*; works with governments, regional bodies, international organizations and civil society to create more effective policies and institutional arrangements for IDPs; convenes international seminars on internal displacement; and publishes major studies, articles and reports.

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North Darfur, Sudan/ Dali camp for internally displaced persons, located next to Tawilla.
Photo: Albert Gonzalez Farran-UNAMID / August 2011

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ACRONYMS

AIHRC	Afghanistan Independent Human Rights Commission
ASEAN	Association of South East Asian Nations
AU	African Union
CAR	Central African Republic
CHA	Consortium of Humanitarian Agencies (Sri Lanka)
CODHES	Consultoría para los Derechos Humanos y el Desplazamiento (Observatory on Human Rights and Displacement – Colombia)
CPA	Comprehensive Peace Agreement (Sudan)
CPA	Comprehensive Peace Accord (Nepal)
CRC	United Nations Committee on the Rights of the Child
CSAC	Community Security and Arms Control Bureau (GoSS)
DDPR	Department of Disaster Preparedness and Refugees (Uganda)
DoR	Department of Refugees and Repatriation (Afghanistan)
DRC	Democratic Republic of the Congo
FARDC	Forces Armées de la République Démocratique du Congo (Armed Forces of the Democratic Republic of the Congo)
HAC	Humanitarian Aid Commission (Sudan)
HRCP	Human Rights Commission of Pakistan
IASC	Inter-Agency Standing Committee
ICC	International Criminal Court
ICGLR	International Conference on the Great Lakes Region
ICRC	International Committee of the Red Cross
IDMC	Internal Displacement Monitoring Centre
IDP	Internally Displaced Person
IOM	International Organization for Migration
KNCHR	Kenyan National Commission on Human Rights
LTTE	Liberation Tigers of Tamil Eelam
MINURCAT	United Nations Mission in Central African Republic and Chad
MoFTA	Ministry of Frontiers and Tribal Affairs (Afghanistan)
MoPR	Ministry of Peace and Reconstruction (Nepal)
MoRR	Ministry of Refugees and Repatriation (Afghanistan)
MoRRD	Ministry of Rural Rehabilitation and Development (Afghanistan)
MoSWRR	Ministry of Social Welfare, Relief and Resettlement (Myanmar)
MRA	Ministry for Refugees and Accommodation or Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees (Georgia)
NGO	Non-governmental organization

NHRC	National Human Rights Commission
NHRI	National human rights institution
NPDS for IDPs Project	National Protection and Durable Solutions for Internally Displaced Person's Project (Sri Lanka)
NRC	Norwegian Refugee Council
NWFP	North-West Frontier Province
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
PADCO	Planning and Development Collaborative International
PDO	Public Defender's Office (Georgia)
PRDP	Peace, Recovery and Development Plan for Northern Uganda
RSG	Representative of the United Nations Secretary-General on Internally Displaced Persons or Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons
RVRP	Return to Village and Rehabilitation Project (Turkey)
SNAIPD	Sistema Nacional de Atención Integral a la Población Desplazada por la Violencia (National System for Comprehensive Assistance to the Population Displaced by the Violence – Colombia)
SPLM/A	Sudan People's Liberation Movement/Army
SRRA	Sudan Relief and Rehabilitation Agency
SSHRC	Southern Sudan Human Rights Commission
SSPC	Southern Sudan Peace Commission
SSRRC	Southern Sudan Relief and Rehabilitation Commission
STAREC	Stabilization and Reconstruction Plan for War-Affected Areas (Democratic Republic of the Congo)
UHRC	Uganda Human Rights Commission
UN	United Nations
UNAMA	United Nations Assistance Mission in Afghanistan
UNAMI	United Nations Assistance Mission for Iraq
UNAMID	African Union/United Nations Hybrid Operation in Darfur
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNMIS	United Nations Mission in Sudan
USAID	United States Agency for International Development
WFP	World Food Programme

FOREWORD

It is with great pleasure that I introduce this study, *From Responsibility to Response: Assessing National Approaches to Internal Displacement*. National responsibility is fundamental to ensuring an effective approach to internal displacement. The simple fact that internally displaced persons (IDPs) remain within the borders of their country means that it is their own government that bears primary responsibility for protecting and assisting them and for safeguarding populations from arbitrary displacement in the first place.

The central role of national authorities in addressing internal displacement has been affirmed in international law, in UN General Assembly and UN Human Rights Council resolutions, in the Guiding Principles on Internal Displacement, in regional legal instruments such as the African Union Convention on the Protection and Assistance of Internally Displaced Persons, and in many national laws and policies. Indeed, governments regularly insist that it is their responsibility to protect and assist those displaced within their countries' borders. Moreover, the concept of "sovereignty as responsibility" was the foundation for the development of the concept of "Responsibility to Protect," which also places strong emphasis, first and foremost, on the role of national governments in protecting their own populations.

The question of what it means for a government to exercise its responsibility for IDPs is a relevant and timely one. This study is based on a publication developed in 2005 by the Brookings-Bern Project on Internal Displacement: *Addressing Internal Displacement: A Framework for National Responsibility*, which suggests twelve benchmarks for governments to use as a guide to develop effective national policies for preventing, responding to and resolving internal displacement situations. This framework, developed by Erin Mooney, one of the coauthors of this study, has been widely used by governments, international organizations, nongovernmental organizations and civil society groups to encourage governments to develop appropriate laws, policies and institutional responses regarding IDPs and to monitor their actual response.

This study goes beyond simply recommending steps that governments should take to protect and assist IDPs by examining whether they are doing so in practice. It uses the Framework as a tool for assessing the extent to which fifteen governments in countries experiencing large-scale internal displacement are exercising their national responsibility along each of the twelve benchmarks. The detailed research indicates the ways in which governments have—and have not—exercised the responsibility entrusted to them by international law and the international community and thereby seeks to strengthen governments' accountability to IDPs.

This is an important study that will be helpful to me in carrying out my mandate to support the efforts of governments to protect and assist those displaced within their borders. The study should also be of interest to governments of countries with large numbers of IDPs or of those in which displacement is a risk. Governments can see how other governments have dealt with similar challenges, such as preventing displacement, collecting data on IDPs or supporting durable solutions. Civil society groups, UN agencies, human rights organizations, humanitarian actors and donor governments can use this study as a tool to help governments to do the right thing for IDPs.

I hope that this report is widely read, discussed, and acted upon.

Chaloka Beyani

United Nations Special Rapporteur on the Human Rights of Internally Displaced Persons



North Darfur, Sudan/ Internally displaced persons (IDPs) settled in Dali camp, next to Tawilla, farm the lands rented by local owners for the rainy season. Most of these IDPs came to Tawilla fleeing the clashes in Shangle Tubaya at the beginning of 2011.
Photo: Albert Gonzalez Farran-UNAMID / August 2011

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The in-depth research assessments that apply the Framework for National Responsibility to four countries were carried out by Prisca Kamungi (Kenya), Andrew Solomon and Chareen Stark (Afghanistan), Erin Mooney (Georgia), and John Schroder and Chareen Stark (Sri Lanka). These four case studies are included as chapter 2 of this volume.

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Iraq / Kirkuk/ A displaced girl in Qadesia holds her grandmother's hand. The village, which is located 20 kms away from Kirkuk, comprised 160 Arab local families as well as 100 displaced families, mainly from Arab (Sunni) origin. They were displaced from Salahaddin governorate in 2006.

Photo: UNHCR / H. Caux / September 2010

EXECUTIVE SUMMARY

It is a central tenet of international law that states bear the primary duty and responsibility to protect the fundamental rights and freedoms of persons within their borders, including the internally displaced. While internally displaced persons (IDPs) remain entitled to the full protection of rights and freedoms available to the population in general, they face vulnerabilities that nondisplaced persons do not face. Therefore, in order to ensure that IDPs are not deprived of their human rights and are treated equally with respect to nondisplaced citizens, states are obligated to provide special measures of protection and assistance to IDPs that correspond to their particular vulnerabilities. Reflecting these key notions of international law, the rights of IDPs and obligations of states are set forth in the Guiding Principles on Internal Displacement (hereafter, “the Guiding Principles”).

Using the Guiding Principles as a departure for analysis, this study examines government response to internal displacement in fifteen of the twenty countries most affected by internal displacement due to conflict, generalized violence and human rights violations: Afghanistan, the Central African Republic, Colombia, the Democratic Republic of the Congo, Georgia, Iraq, Kenya, Myanmar, Pakistan, Nepal, Sri Lanka, Sudan, Turkey, Uganda and Yemen. The analysis seeks to shed light on how and to what extent, if any, governments are fulfilling their responsibility toward IDPs, with a view to providing guidance to governments in such efforts. In so doing, this study also seeks to contribute to research and understanding regarding realization of the emerging norm of the “Responsibility to Protect.” To frame the analysis, the introduction to this volume examines the connections among the concepts of national responsibility, “sovereignty as responsibility” and the “Responsibility to Protect” (R2P).

The comparative analysis across the fifteen countries, presented in chapter 1, is based on a systematic application of the document *Addressing Internal Displacement: A Framework for National Responsibility* (hereafter, “Framework for National Responsibility,” “the

Framework”). Seeking to distill the Guiding Principles, the Framework outlines twelve practical steps (“benchmarks”) that states can take to directly contribute to the prevention, mitigation and resolution of internal displacement:

1. Prevent displacement and minimize its adverse effects.
2. Raise national awareness of the problem.
3. Collect data on the number and conditions of IDPs.
4. Support training on the rights of IDPs.
5. Create a legal framework for upholding the rights of IDPs.
6. Develop a national policy on internal displacement.
7. Designate an institutional focal point on IDPs.
8. Support national human rights institutions to integrate internal displacement into their work.
9. Ensure the participation of IDPs in decisionmaking.
10. Support durable solutions.
11. Allocate adequate resources to the problem.
12. Cooperate with the international community when national capacity is insufficient.

Although the Framework has been used extensively in training and awareness-raising since it was developed by the Brookings-Bern Project on Internal Displacement in 2005, this is the first time it has been used as an assessment tool.

The study also includes four in-depth case studies in which the Framework is applied—Georgia, Kenya,

Afghanistan and Sri Lanka—which are presented in chapter 2. Three of these four countries count among those for which the doctrine of R2P has been invoked, whether by the UN formally, as in the case of Kenya, or, rightly or wrongly, by individual states (as in the case of Georgia) and by leading R2P advocates (in the case of Sri Lanka). For the most part, these case studies were based on interviews with in-country policymakers and practitioners. Chapter 3 draws on the analysis across the fifteen countries to provide overall observations as well as recommendations to governments that seek to protect and assist IDPs. The indicators developed for assessing each of the twelve benchmarks are provided as an annex to this volume.

Provided below are some of the key findings of this study. Further detail and analysis is provided in chapters 2 and 3.

—Prevention is paramount, but is probably the most difficult measure to take and the least likely to be taken in the countries assessed, which all had large IDP populations.

Given the scale of displacement in the fifteen countries surveyed, it was to be expected that these governments would not have been successful in preventing displacement. Nearly half of the fifteen countries assessed had adopted some preventive measures on paper, but all fifteen have fallen short of actually preventing displacement in practice. Moreover, many national authorities themselves have been or are perpetrators of violence or human rights abuses that have led to displacement, and many states foster a culture of impunity for alleged perpetrators of serious human rights violations. Further, the presence of foreign military forces and/or nonstate armed actors limits the ability of many states to exercise full sovereignty over their territory and therefore to prevent the conditions that drive people into displacement. Some countries have taken steps to prevent displacement due to natural disasters or development but not due to conflict, indicating that the

former is perhaps less politically taboo and/or practically less difficult to implement than the latter.

—Government response is heavily influenced by politics. Internal displacement due to conflict derives from political issues, and all aspects of a government's response to it therefore are affected by political considerations, including, for example, acknowledgment of displacement, registration and collection of data on IDPs, ensuring the participation of IDPs in decision-making, assistance and protection offered to different (temporal) caseloads of IDPs, support for durable solutions, which durable solutions are supported, and the facilitation of efforts by international organizations to provide protection and assistance to IDPs.

—Sustained political attention by the highest authorities is a necessary, though not sufficient, condition for taking responsibility for IDPs. Nearly all of the governments surveyed, at least at some point, have exercised their responsibility to IDPs by acknowledging the existence of internal displacement and their responsibility to address it as a national priority, for example, by drawing attention to IDPs' plight. However, government efforts to raise awareness of internal displacement through public statements was not always a useful indicator of a government's commitment to upholding the fundamental human rights and freedoms of IDPs.

—Among the five countries with laws on or related to internal displacement, there were notable limitations to the scope of the laws and gaps in implementing them. Legislation was quite comprehensive in scope in at least two cases and was narrow in others, addressing specific rights of IDPs or a phase of displacement. Other countries lacked a national legislative framework on IDPs but had generic

legislation relevant to IDPs. Still others had laws that violated or could violate the rights of IDPs. Laws on internal displacement must be viewed in the context of other legislation and administrative acts applicable to the general population (e.g., those related to documentation, residency, housing, land and property, and personal status), which this study reviews to the extent possible, particularly in the case studies on Georgia, Kenya, Afghanistan and Sri Lanka. In Africa, the region with the most IDPs, states have recognized in legally binding instruments the importance of addressing internal displacement by incorporating the Guiding Principles on Internal Displacement into domestic legislation and policy.

—Many of the governments surveyed have adopted policies or action plans to respond to the needs of IDPs, but adequate implementation and dissemination were largely lacking.

Nine of the countries surveyed had developed a specific policy, strategy or plan on internal displacement, implemented to varying degrees; those in six of these countries were still active at the time of writing. In addition, at least two countries had national policies in draft form, and one country that does not recognize conflict-induced displacement had a plan for mitigating displacement by cyclones and a plan on disaster risk reduction, although it did not discuss displacement. While in some cases positive steps had been taken, by and large implementation of policies on internal displacement remains a challenge and has, in some cases, stalled. Available information indicates that efforts to raise awareness of IDP issues and policies have largely been inadequate.

—It is difficult to assess governments' commitment of financial resources to address internal displacement, but some trends were identified. Addressing internal displacement, especially over time, is a costly venture. While

it was difficult to obtain a full picture of a country's expenditure on IDPs, several countries allocated funds to assist IDPs, including a few that had no national laws or policies on IDPs. In at least two countries, funds for assisting IDPs seemed to diminish in recent years. In many countries, difficulties arise at the district or municipal levels, where local authorities bear significant responsibility for addressing internal displacement but face many obstacles, including insufficient funds, to doing so. Allegations of corruption and misallocation of funds intended to benefit IDPs at certain points has been observed in some of the countries assessed. Some countries seem to rely on international assistance to IDPs rather than national funds.

—National human rights institutions (NHRIs) contribute invaluable to improving national responses to internal displacement in a number of countries.

In recent years, an increasing number of NHRIs around the world have begun to integrate attention to internal displacement into their work. NHRIs have played an important role in raising awareness of internal displacement, monitoring displacement situations and returns, investigating individual complaints, advocating for and advising the government on the drafting of national policies to address internal displacement, and monitoring and reporting on the implementation of national policies and legislation. In particular, the NHRIs of six of the countries surveyed stand out for their efforts to promote the rights of IDPs in their countries. Interestingly, almost all of their work with IDPs is funded by international sources, raising the question of whether national governments themselves should not be doing more to increase their funding of NHRIs in order to support their engagement with IDP issues.

—International actors are valuable resources for efforts aiming to improve government

response to IDPs. In many cases, the influence of the Representative of the UN Secretary-General on Internally Displaced Persons, the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons (both referred to hereafter as “RSG on IDPs”) and the UN Special Rapporteur on the Human Rights of Internally Displaced Persons (hereafter, “Special Rapporteur”) on governments was significant in encouraging and supporting governmental action on behalf of IDPs. In particular, RSG on IDPs Francis Deng and his successor Walter Kälin; Kälin’s successor, Special Rapporteur Chaloka Beyani; UNHCR; and the Brookings Project on Internal Displacement have provided technical assistance to support governments’ efforts to develop national legal frameworks to ensure IDPs’ access to their rights.

— **Durable solutions: Return was the durable solution most often supported by the governments assessed.** The Framework for National Responsibility identifies three durable solutions—return, local integration and settlement elsewhere in the country. However, the fifteen countries surveyed herein reflect a global tendency to emphasize return, often excluding the other durable solutions. Yet for solutions to be voluntary, IDPs must be able to choose among them, and local integration or settlement elsewhere in the country may in fact be some IDPs’ preferred solution. Especially in situations of protracted displacement, those may be the only feasible solutions, at least in the near future.

Overall, this research project has found that the Framework for National Responsibility is a valuable tool for analyzing government efforts to prevent displacement, to respond to IDPs’ needs for protection and assistance and to support durable solutions. But this study also reveals certain limitations to using the Framework as an assessment tool, particularly in terms of accounting for the responsibility of nonstate actors;

accounting for national responsibility for protection, particularly during displacement; and accounting for causes of displacement other than conflict, violence and human rights violations.

The most difficult benchmarks to analyze were those whose underlying concepts are very broad and those for which data were seemingly not publicly available. Chief among these were the benchmarks on preventing internal displacement (Benchmark 1), raising national awareness (Benchmark 2), promoting the participation of IDPs in decisionmaking (Benchmark 9), and allocating adequate resources (Benchmark 11). Analysis on all other benchmarks also faced data constraints as in many cases data were outdated or incomplete or simply were not available.

Nonetheless, we found that the twelve benchmarks all directed attention to important issues in governments’ responses to internal displacement.

We also found that while protection is central to the Framework, the issue is of such importance that there should be a benchmark explicitly focused on it—and specifically on protection as physical security, provided to IDPs during all phases of displacement. This benchmark would also underscore the responsibility of governments to protect the security of humanitarian workers engaged with IDPs. Beyond the more detailed findings presented in this study and the obligations of governments toward IDPs articulated in the Guiding Principles on Internal Displacement, this study offers the following six recommendations to political leaders seeking to translate their responsibility to IDPs into effective response:

- Make responding to internal displacement a political priority.
- Designate an institutional focal point with sufficient political clout to provide meaningful protection and assistance to IDPs.
- Develop and adopt laws and policies, or

amend existing ones, in line with the Guiding Principles on Internal Displacement by using as a guide the manual *Protecting Internally Displaced Persons: A Guide for Law and Policy Makers*, developed by the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons and the Brookings-Bern Project on Internal Displacement.

—Devote adequate financial and human resources to address internal displacement.

—Support the work of national human rights institutions engaging in IDP issues.

—Ask for international assistance when it is necessary.

—Do not put off the search for durable solutions for IDPs—and involve IDPs in the process.

It is hoped that this study on the ways in which governments have exercised their national responsibility toward IDPs will inspire further research, provide some concrete examples of responsible action to governments seeking to protect and assist IDPs, and lead governments to more effectively exercise their responsibility toward IDPs.



Zugdidi, Georgia / Two boys rest in one of the annexed buildings for IDPs in the Zugdidi Hospital Center's collective center. Living conditions in the center are deplorable, with collapsed ceilings, a flooded basement that seeps water into the floorboards and unsanitary shared bathroom facilities. Photo: UNHCR/ P. Taggart / October 2008

“National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.

Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities.

They shall not be persecuted or punished for making such a request.”

—Principle 3, Guiding Principles on Internal Displacement

INTRODUCTION

Background and Aims of the Study

Internal displacement is one of the major humanitarian, human rights and security problems in the world today. In the words of UN Secretary-General Ban Ki-moon, displacement is “arguably the most significant humanitarian challenge that we face.”¹ It uproots, often violently, millions of people from their homes, families, jobs and communities and exposes its victims to a terrifying range of risks. Just one indication of the precarious plight of internally displaced persons (IDPs) is the fact that some of the highest morbidity and mortality rates recorded in humanitarian emergencies have been among IDPs.² Left unaddressed, internal displacement also threatens to destabilize countries, regions and even international security and thereby risks generating additional displacement. Indeed, the number of IDPs throughout the world has continued to increase since 1997.

As of the end of 2010, there were an estimated 27.5 million internally displaced persons in more than fifty countries who had been forcibly uprooted by armed conflict, ethnic strife and other violence, a number that has increased steadily from around 17 million in 1997.³ Contrary to popular belief, there are far more IDPs than refugees: there were 15.4 million refugees at the end of 2010 but 27.5 million IDPs.⁴ No region

of the world is immune to internal displacement. Africa is the continent most affected, with 11.1 million IDPs in twenty-one countries, and Sudan remains the country with the highest number of IDPs in the world (4.5 to 5.2 million), while the Democratic Republic of Congo (DRC) and Somalia each have well over 1 million IDPs. In the Americas, there are an estimated 5.4 million IDPs, the overwhelming majority of whom are in Colombia. In the Asia-Pacific region, more specifically in South and Southeast Asia, there are more than 3.5 million IDPs, with the highest numbers reported in Pakistan, Myanmar, Afghanistan, India, Indonesia and the Philippines. The Middle East has 3.9 million IDPs, 2.8 million of whom are found in Iraq, with rising numbers in Yemen and at the time of writing, in Libya and Syria. In Europe and Central Asia, 2.5 million people remain internally displaced. More than 1 million are in Turkey, with significant populations also in Azerbaijan, Georgia, Serbia, Cyprus and Bosnia-Herzegovina more than a decade after they first were displaced. Colombia, Democratic Republic of Congo, Uganda, Kyrgyzstan and Pakistan experienced new displacement in 2010. In addition to these conflict-induced IDP populations, millions more have been displaced by natural disasters⁵ or development projects⁶

¹ “Internally Displaced People: Exiled in their Homeland” (<http://ochaonline.un.org/NewsInFocus/InternallyDisplacedPeopleIDPs/tabid/5132/language/en-US/Default.aspx>).

² Peter Salama, Paul Spiegel and Richard Brennan, “No Less Vulnerable: The Internally Displaced in Humanitarian Emergencies,” *The Lancet*, vol. 357, iss. 9266 (5 May 2001), pp. 1430–31; N. Nathan and others, “High Mortality in Displaced Populations in Northern Uganda,” *The Lancet*, vol. 363, iss. 9418 (24 April 2004), p. 1402.

³ 1997 figures are the earliest available data. IDP figures as of the end 2010 are in Internal Displacement Monitoring Centre (IDMC), *Internal Displacement: Global Overview of Trends and Developments in 2010*, March 2011 (www.internal-displacement.org).

⁴ Most recent data available on refugees. The number of

refugees includes 4.82 million Palestine refugees registered with the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA); it has fluctuated between 13 million and 16 million over the same period. See Office of the UN High Commissioner for Refugees (UNHCR), *Global Trends Report 2010* (www.unhcr.org/pages/49c3646c4d6.html); for 2010 IDP figures, see IDMC, *Internal Displacement: Global Overview of Trends and Developments in 2009*, May 2010 (www.internal-displacement.org).

⁵ *Monitoring Disaster Displacement in the Context of Climate Change: Findings of a Study by the United Nations Office for the Coordination of Humanitarian Affairs and the Internal Displacement Monitoring Centre* (Geneva: UN OCHA and IDMC, September 2009), p. 3. Also see IDMC, *Displacement Due to Natural Hazard-Induced Disasters: Global Estimates for 2009–2010* (Geneva: IDMC) (www.internal-displacement.org).

⁶ According to the World Bank’s Environmental

and also often face protection concerns owing to their displacement.⁷

Behind these rather overwhelming statistics are tens of millions of people who suffer a highly precarious plight. To begin, the very fact of being displaced may constitute an abuse of rights—for instance, when IDPs are the victims of a strategy of deliberate forced displacement, typically carried out through a campaign of massive violations of human rights. When that occurs along ethnic or religious lines and for the purpose of altering the demographic profile of an area, it constitutes what is known as “ethnic cleansing.” Of populations at risk in the world today, the internally displaced tend to be among the most vulnerable. Once displacement occurs, it inevitably exposes its victims to a range of particular risks and vulnerabilities.⁸ The International Committee of the Red Cross points out that while IDPs uprooted by war are part of the broader category of civilians in armed conflict, “it goes without saying that, deprived of their shelter and their habitual sources of food,

water, medicine and money, they have different, and often more urgent material needs.”⁹ Simply put, in the words of Walter Kälin, former Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons: “All IDPs are vulnerable in ways that non-displaced persons are not.”¹⁰ The vulnerabilities and uncertain future faced by IDPs can exist for years, even decades, on end: around the world most IDPs have been displaced for a protracted period, on average nearly eighteen years.¹¹

National responsibility is fundamental to ensuring an effective approach to internal displacement. The simple fact that IDPs remain within the borders of their country means that it is their own state that bears primary responsibility for protecting and assisting them and for safeguarding them against arbitrary displacement in the first place. This principle is affirmed in international standards, namely the Guiding Principles on Internal Displacement, and regularly restated, both by the international community and by individual states. Although there exists broad consensus on the normative principle of national responsibility, realizing it often proves challenging in practice.

For example, governments may lack adequate capacity to address internal displacement, especially if large numbers of people are involved, if they constitute a large percentage of the country’s population,¹² or if the

Department, approximately 10 million people are displaced worldwide each year due to dam construction, urban development, and transportation and infrastructure programs. However, researchers point out that the actual magnitude of development-induced displacement is thought to be much greater, given that available figures typically count only persons compelled to leave legally acquired land as part of the process directly related to the planned project, thereby “ignoring those living in the vicinity of, or downstream from, projects whose livelihoods and social cultural milieu might be adversely affected by the project.” Moreover, World Bank figures do not take into account displacement due to other types of development projects, such as for natural resource extraction. See Jason Stanley, “Development-Induced Displacement and Resettlement,” *Forced Migration Online Research Guide*, 2004 (www.forcedmigration.org/guides/fmo022/).

⁷ See further Elizabeth Ferris, *The Politics of Protection* (Washington, D.C.: Brookings Institution, 2011); Elizabeth Ferris, *Protecting Civilians in Disasters and Conflicts*, Policy Brief 182, Brookings Institution, March 2011.

⁸ Erin Mooney, “The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern,” *Refugee Survey Quarterly*, vol. 24, no. 3 (2005), pp. 9–26.

⁹ Jean-Daniel Tauxe, “We Should Have Access to Displaced Civilians,” *International Herald Tribune*, 1 May 2009. Tauxe was, at the time, director of operations for the International Committee of the Red Cross.

¹⁰ Walter Kälin, “Walter Kälin on the Outlook for IDPs,” *Forced Migration Review* 37 (2011), p. 44 (www.fmreview.org).

¹¹ IDMC, *Global Overview of Trends and Development in 2008* (May 2009), p. 14; IDMC, *Internal Displacement: Global Overview of Trends and Developments in 2010* (March 2011), p. 8, noting that in “at least 40” of the 54 countries experiencing internal displacement due to conflict, internal displacement is protracted. See also *Forced Migration Review* 33 (September 2009), which is dedicated to examining the issue of protracted displacement (www.fmreview.org).

¹² According to the latest available estimates, the countries

displacement persists for several years. Moreover, many of the countries in which IDPs are found already were experiencing serious resource constraints before displacement occurred.

There also may be an absence of political will to respond effectively to the needs of internally displaced populations. For instance, it may be that the state downplays the protection and assistance needs of IDPs, discriminates against particular groups of IDPs (including, for instance, by helping IDPs displaced by natural disasters but not those uprooted by conflict or by helping only those IDPs who are in camps), or even denies the existence of internal displacement altogether. In many cases, the authorities deliberately cause internal displacement or at least condone the circumstances and actions that compel people to flee.¹³ By imposing political, security, or bureaucratic restrictions, they may prevent humanitarian and human rights organizations from safely accessing internally displaced and other civilian populations at risk. Or they may exhibit solidarity with the internally displaced but be single-minded in insisting, for political reasons, on a particular solution—most often return of IDPs to their homes—to end displacement.

These and other such constraints are real and often formidable, posing significant obstacles to IDPs' ability to enjoy the protection that they require and to which they are entitled by right. Yet, at the same time, there is only so much that international efforts, however effective

with the largest IDP populations as a proportion of total population, are Cyprus (23 percent), Somalia (16 percent), Sudan (10.5–13 percent), Colombia (8–11.6 percent), and Georgia (about 6.1 percent). IDMC, *Internal Displacement: Global Overview of Trends and Developments in 2010*, p. 17.

¹³ According to the Internal Displacement Monitoring Centre, in almost half of the over fifty countries in the world today in which there is internal displacement due to conflict generalized violence or human rights violations, the “agents of displacement” were government forces or armed groups allied with them. *Internal Displacement: Global Overview of Trends and Developments in 2010* (IDMC, Norwegian Refugee Council, 2011), p. 10.

“...in the end, if the state doesn't do or allow protection to be done, not much can be done.”

—António Guterres, UN High Commissioner for Refugees

they may be, can do to help fill this gap. As UN High Commissioner for Refugees António Guterres has emphasized, while recent improvements in the coordination of the international response to internal displacement and other humanitarian crises are important, “in the end, if the state doesn't do or allow protection to be done, not much can be done.”¹⁴ To be sure, the efforts of other actors, whether national or international, often do manage to enhance protection of IDPs and other persons at risk within their own country, at least until the conflict has ended. Ultimately, however, only the state can provide lasting protection for internally displaced persons.

The state's exercise of its national responsibility for IDPs, therefore, must be the basis for an effective response to internal displacement. It is not a matter of navigating around the principle of national responsibility but of being *guided by* that principle and consciously gearing all efforts to achieve an effective response.

The primary role of the state is clear, both recognized in international law and regularly reaffirmed in international statements. Most notable is UN Resolution 46/182 (1991), “Strengthening the Coordination of Humanitarian Assistance,” which still remains the normative basis for international humanitarian action:

The sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance should be provided with the consent of

¹⁴ “UNHCR at 60: A Discussion with António Guterres, the United Nations High Commissioner for Refugees,” Brookings Institution, 5 May 2011 (www.brookings.edu/events/2011/0505_unhcr.aspx).

the affected country and in principle on the basis of an appeal by the affected country.

Each State has the responsibility first and foremost to take care of victims of natural disasters and other emergencies occurring on its territory. Hence, the affected State has the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance within its territory.¹⁵

Humanitarian organizations are acutely aware of this foundational principle, particularly as it affects their ability to enjoy safe and unimpeded humanitarian access to the populations that they seek to protect and assist.¹⁶ In practice, however, as a recent report observes, “international relief efforts have often been criticized for ignoring, sidelining or actively undermining local capacities,” thereby leading to “tense and even dysfunctional relations between states and international agencies.”¹⁷ While there exists broad consensus that “[h]umanitarian principles are compatible with the principle of encouraging and supporting governments to protect and assist the civilian population,” humanitarian agencies and nongovernmental organizations (NGOs) emphasize that “better guidance needs to be developed about how this can be put into operation.”¹⁸

Part of the problem is that the core concept of national responsibility for addressing internal displacement often is almost automatically regarded as a constraint by humanitarian actors. Certainly, there is no shortage of examples around the world today in which state practices pose real barriers—whether political, legal, administrative or operational—to ensuring that IDPs have access to the protection and assistance that they require. However, even in those cases, effective—and perhaps creative—ways need to be found to promote, support and reinforce the exercise of national responsibility for addressing internal displacement, because ultimately that is the only sustainable solution.

This research project looks specifically at the ways in which governments are exercising their responsibility to address internal displacement. Using as a guide *Addressing Internal Displacement: A Framework for National Responsibility*, a publication developed by the Brookings-Bern Project on Internal Displacement,¹⁹ this study examines the government response to internal displacement in fifteen countries, comparing those responses with the twelve benchmarks outlined in the Framework. The aim was to gain a better understanding of the ways in which and the extent to which governments are fulfilling their responsibility, with a view to distilling further guidance on how best to encourage and support governments in this regard.

In so doing, this study also seeks to contribute to research and understanding regarding realization of the emerging norm of “Responsibility to Protect”—“R2P” in the favored shorthand term.²⁰ To date, discussion of R2P, whether in policy debates or in scholarly and public discourse, has focused overwhelmingly on

¹⁵ UN General Assembly Resolution 46/182, 19 December 1991.

¹⁶ See, for example, Jan Egeland, Adele Harmer, and Abby Stoddard, *To Stay and Deliver: Good Practice for Humanitarians in Complex Security Environments*, an independent study commissioned by the Office for the Coordination of Humanitarian Affairs (OCHA), United Nations, February 2011 (http://ochanet.unocha.org/p/Documents/Stay_and_Deliver.pdf).

¹⁷ *The Role of National Governments in International Humanitarian Response*, ALNAP Meeting Paper, 26th Annual Meeting, 16–17 November 2010, Kuala Lumpur, Malaysia (London: Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP), 2011), p. 5.

¹⁸ *Ibid.*

¹⁹ *Addressing Internal Displacement: A Framework for National Responsibility* (Brookings Institution–University of Bern Project on Internal Displacement, 2005) (www.brookings.edu/projects/idp/20050401_nrframework.aspx).

²⁰ International understanding of “Responsibility to Protect” is set out in paras. 138–141 of the 2005 World Summit Outcome Document, adopted by consensus by heads of state and government. See UN General Assembly Resolution 60/1 (2005).

operationalizing the responsibilities and role of the international community in protecting persons under threat of grievous harm in cases in which their own governments are unwilling to do so.²¹ To be sure, clarifying and strengthening international accountability in such circumstances is essential, and the R2P doctrine has made a significant contribution in that regard.

“...the responsibility to protect seeks to strengthen sovereignty, not weaken it. It seeks to help States to succeed, not just to react when they fail.”

—UN Secretary-General Ban Ki-Moon

However, just as important, and indeed arguably more so, is that the doctrine of R2P, like the concept of “sovereignty as responsibility” on which it is largely based, emphasizes first and foremost the responsibility of governments to protect the populations under their territorial jurisdiction. Specifically regarding the four international crimes with which R2P is concerned (genocide, war crimes, ethnic cleansing and crimes against humanity), 186 heads of state and government convened at the World Summit in September 2005 reaffirmed unequivocally: “We accept that responsibility and will act in accordance with it.”²² That declaration constitutes the “bedrock” of R2P and the main basis for advancing its implementation according to the strategy outlined by UN Secretary-General Ban Ki-Moon, who explains: “By helping States to meet their core protection responsibilities, the responsibility to protect seeks to strengthen sovereignty, not weaken it. It seeks to help States to succeed, not just to react when they fail.”²³

²¹ An extensive and ever-growing archive of R2P-related resources, including UN reports and resolutions, government statements, NGO reports, scholarship, and media articles is maintained by the Global Centre for R2P at <http://globalr2p.org/resources/index.php>.

²² 2005 World Summit Outcome Document, para. 138.

²³ United Nations, *Implementing the Responsibility to Protect*, Report of the Secretary-General to the General Assembly,

This study, by focusing on specific countries’ experiences, opportunities and challenges in meeting their responsibility to protect and assist IDPs, seeks to contribute to understanding how states in general can succeed in meeting their core responsibilities to IDPs. The connections between national responsibility toward IDPs and R2P are clear. By no means do all situations of internal displacement fall within the scope of the R2P doctrine, nor does an R2P situation necessarily entail internal displacement (though it is highly probable). Yet these two types of situations often intersect and significantly overlap—or at the very least have the potential to do so.²⁴

Conceptual Connections: National Responsibility, “Sovereignty as Responsibility” and “Responsibility to Protect”

The notion that “statehood” entails a responsibility to ensure the protection and welfare of all persons within a state’s territorial jurisdiction is, of course, not new. In fact, its historical roots run deep, stretching back several centuries and across cultures.²⁵ It also is central to the concept of human rights and accordingly is affirmed and elaborated in over six decades of international human rights law;²⁶ it also is reflected in the statement of obligations of parties to an armed conflict, whether

A/63/677 (12 January 2009).

²⁴ Erin D. Mooney, “Something Old, Something New, Something Borrowed . . . Something Blue? The Protection Potential of a Marriage of Concepts between R2P and IDP Protection,” *Global Responsibility to Protect (GR2P)*, vol. 2, nos. 1-2 (2010), pp. 60–85.

²⁵ For recognition of the lineage of “responsibility to protect,” see Edward C. Luck, “Introduction: The Responsible Sovereign and the Responsibility to Protect,” in Joachim Müller and Karl P. Sauvant, *Annual Review of United Nations Affairs: 2006/7* (New York: Oceana, 2008), pp. xxxvi-xxxix; and Alex P. Bellamy, *The Global Effort to End Mass Atrocities* (Polity, 2009), pp. 19–21.

²⁶ James Nickel, “How Human Rights Generate Duties to Protect and Provide,” *Human Rights Quarterly*, vol. 15, no. 1 (1993), pp. 77–86.

states or nonstate actors, in international humanitarian law. In the words of Louise Arbour, then the UN High Commissioner for Human Rights:

Whether we call it responsibility to protect or anything else, States do have a responsibility under existing international law *vis-à-vis* the people on their territory, to exten[d] protection equally against genocide, as against famine, disease, ignorance, deprivation of the basic necessities of life, discrimination and the lack of freedom.²⁷

It is this older and broader notion of the state having a responsibility to safeguard from harm all persons within its territorial jurisdiction that informed and guided the approach to internal displacement that was encapsulated in the notion of sovereignty as responsibility. After having developed that idea together with colleagues at the Brookings Institution in the context of an earlier project on Africa,²⁸ Francis Deng applied the same conceptual framework to his work with IDPs after his appointment in 1992 (until 2004) as Representative of the UN Secretary-General on Internally Displaced Persons. This approach reflected and elaborated on the assertion in 1991 by then UN Secretary-General Pérez de Cuellar that “the principle of non-interference with the essential domestic jurisdiction of States cannot be regarded as a protective barrier behind which human rights could be massively or systematically violated with impunity.”²⁹ As Deng spelled out in his first study

on internal displacement, “sovereignty carries with it . . . responsibilities for the population”: in particular, “at a minimum it should guarantee food, shelter, physical security, basic health service and other essentials often denied the internally displaced.”³⁰ In other words, “national governments are duty bound to ensure minimum standards of security and social welfare for their citizens and to be accountable both to the national body public and the international community.”³¹ Accordingly,

the guiding principle . . . is to assume that under normal circumstances, governments are concerned about the welfare of their people, will provide their people with adequate protection and assistance, and if unable, will invite or welcome foreign assistance and international cooperation to supplement their own efforts. Controversy arises only in the exceptional cases when the state has collapsed or the government is unwilling to invite or permit international involvement, while the level of human suffering dictates otherwise . . . To fill the vacuum of moral responsibility created by such cleavages, international involvement becomes a moral imperative.³²

Deng used this conceptual framework in carrying out all aspects of his mandate on the protection of IDPs, to the extent that “sovereignty as responsibility” effectively became his signature “calling-card.” He consistently laid out the framework within the first few minutes of any

²⁷ Louise Arbour, “The Responsibility to Protect as a Duty of Care in International Law and Practice,” *Review of International Studies*, vol. 34, no. 3 (2008), pp. 445–58, p. 458.

²⁸ Francis M. Deng and others, *Sovereignty as Responsibility: Conflict Management in Africa*. See also the work of the Refugee Policy Group, in particular Roberta Cohen, “Human Rights Protection for Internally Displaced Persons” (RPG, June 1991).

²⁹ United Nations, *Report of the Secretary-General on the Work of the Organization*, A/46/1 (1991), pp. 10–11. See also Francis M. Deng, *Comprehensive Study on the Human Rights Issues Related to Internally Displaced Persons*, E/CN.4/1993/35/21 (United Nations, 21 July 1993), para. 84.

meeting that he held, statement that he delivered, or opening paragraphs of any report that he prepared.³³

³⁰ Francis M. Deng, *Protecting the Dispossessed: A Challenge for the International Community* (Washington, D.C.: Brookings Institution, 1993), pp. 18–19.

³¹ Deng and others, *Sovereignty as Responsibility*, p. 211.

³² *Ibid.*, pp. xxii–xxiii.

³³ Mooney can attest to this fact through her work supporting Deng’s mandate as Representative of the UN Secretary-General on Internally Displaced Persons (as a human rights officer from 1997 to 2001 in the UN Office

Therefore, it is not surprising that the Guiding Principles on Internal Displacement, which were developed under the leadership of Francis Deng in the mid-1990s, fully reflect and reinforce the concept of responsible sovereignty. Indeed, the stated purpose of the Guiding Principles is to provide specific legal guidance on the rights of IDPs and the corresponding responsibilities of states and other authorities toward them.³⁴ Principle 3 affirms that the state has primary responsibility for protecting the rights of IDPs and that IDPs should expect their government to fulfill that responsibility. The document then spells out the rights of IDPs and consequent responsibilities of the authorities in all phases of displacement: protection from arbitrary displacement, protection and assistance during displacement, and securing solutions to displacement.

Consistently, resolutions and declarations adopted, in all cases by consensus, by government forums in the UN and regional organizations have emphasized the responsibility of states to protect their internally displaced populations and have encouraged the wide dissemination and use of the Guiding Principles as tool in developing policies and programs to meet that responsibility. Most notably, in the World Summit Outcome Document of 2005, all 186 heads of state and government present unanimously reiterated the

primary responsibility of states to address internal displacement and affirmed the Guiding Principles as “an important international framework for the protection of internally displaced persons.”³⁵ In the same document the international community also endorsed the concept of “responsibility to protect.” That was no mere coincidence: on the contrary, it is now widely recognized that the development of R2P was inspired by and emerged from efforts throughout the 1990s to design an effective international response to protect IDPs based on the concept of “sovereignty as responsibility.”³⁶

As a result, there inevitably is significant overlap between the two frameworks.³⁷ Both recognize the responsibilities of the international community but, more important, stress that in the first instance, national governments are responsible for the protection and welfare of those living within their borders. In fact, the

assertion that “State sovereignty implies responsibility and the primary responsibility for the protection of its people lies with the state itself” is the first principle of the doctrine of R2P.³⁸

of the High Commissioner for Human Rights and from 2001 until the end of Deng’s tenure in 2004 through her work as senior adviser to the Representative of the UN Secretary-General on Internally Displaced Persons and deputy director of the Brookings Project on Internal Displacement, which Deng co-directed with Roberta Cohen. On the concept of “sovereignty as responsibility,” see further: Francis M. Deng and others, *Sovereignty as Responsibility: Conflict Management in Africa* (Washington, D.C.: Brookings Institution, 1996) and Erin Mooney, “The Guiding Principles and the Responsibility to Protect,” *Forced Migration Review, Tenth Anniversary of the Guiding Principles on Internal Displacement*, December 2008, p. 12 9(www.fmreview.org).

³⁴ United Nations, “Introduction: Scope and Purpose,” *Guiding Principles on Internal Displacement*, Report of the Representative of the Secretary-General, Francis M. Deng, E/CN.4/1998/53/Add.2, 1998, para. 3.

³⁵ World Summit Outcome Document, October 2005 (www.un.org/summit2005/documents.html), p. 28.

³⁶ For a sampling of acknowledgments of this fact by the principal architects of R2P and discussion of the symmetry of the two conceptual frameworks, see Erin D. Mooney, “Something Old, Something New, Something Borrowed . . . Something Blue? The Protection Potential of a Marriage of Concepts between R2P and IDP Protection,” Sara E. Davies and Luke Glanville, *Protecting the Displaced: Deepening the Responsibility to Protect* (Koninklijke Brill NV, Leiden, The Netherlands: Martinus Nijhoff, 2010), pp. 72–77. See also Gareth Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (Washington, D.C.: Brookings Institution, 2008), pp. 36–37; Roberta Cohen, “Reconciling R2P with IDP Protection,” in Davies and Glanville, *Protecting the Displaced: Deepening the Responsibility to Protect*, p. 35.

³⁷ For a discussion of the similarities and differences, both conceptual and concrete, see, respectively, Mooney, “Something Old, Something New” and Cohen, “Reconciling R2P with IDP Protection,” pp. 35–84.

³⁸ International Commission on Intervention and State Sovereignty (ICISS), *The Responsibility to Protect* (Ottawa:

While much of the policy debate on R2P has focused on when and how the international community can and should intervene when atrocities are being committed, there is a paucity of research on how national governments can more effectively exercise their sovereign responsibilities within the context of global accountability. And yet national governments are key to preventing conflicts and human rights abuses, to preparing for disasters, and to ensuring protection, assistance and durable solutions for any populations affected when prevention efforts fall short. That is no less true in situations of internal displacement.

Having framed the issue of protection of IDPs by looking at the conceptual connections between internal displacement, responsible sovereignty and the responsibility to protect, we turn below to an overview of a document which serves as a useful tool for addressing internal displacement effectively, *Addressing Internal Displacement: A Framework for National Responsibility*. The ways in which the Framework has been used to date are then examined briefly before explaining the methodology used in this study for applying the Framework to fifteen countries.

Addressing Internal Displacement: A Framework for National Responsibility: An Overview

As reflected in Principle 3 of the Guiding Principles on Internal Displacement, national authorities have the primary duty and the responsibility to protect and assist IDPs living within their borders. The Guiding Principles themselves set forth the rights of IDPs and the obligations of governments toward these populations. In order to provide more specific guidance to governments about how to exercise their national responsibility for IDP protection and assistance, in 2005 the Brookings-Bern Project on Internal Displacement developed the document entitled *Addressing Internal Displacement: A Framework*

for National Responsibility (hereafter “Framework” or “Framework for National Responsibility”). The Framework sets out twelve broad areas in which states can directly contribute to the mitigation and resolution of internal displacement (see box 1).³⁹

This is not an exhaustive list of the measures expected of governments but twelve minimum steps that governments can take to translate their responsibilities into concrete actions. Taken together, they seek to guide governments through specific suggestions on actions to take. Further guidance is given on how to implement each of the twelve benchmarks by outlining certain essential elements (for example, that data collection on IDPs should encompass all categories of IDPs, should be disaggregated and should protect privacy) as well as by suggesting different practical ways of achieving each objective.

Since the publication of the Framework, national authorities; regional intergovernmental organizations; international experts on internal displacement; UN human rights, humanitarian and development agencies; and NGOs, IDP associations and academics have made use of the it in a number of different ways, including as a tool for advocacy, awareness-raising, monitoring national responses to internal displacement, training of government officials, and providing technical assistance for the development of national legislation and policies to address internal displacement. International organizations and local NGOs have translated the Framework from English into eleven additional languages: Arabic,

International Development Research Centre, December 2001), p. xi (www.iciss.ca/report2-en.asp).

³⁹ According to the Oxford English Dictionary, a “state” is the body politic as organized for supreme civil rule and government (www.oed.com/view/Entry/189241?rskey=rwB3C2&result=1#eid20898265) while a “government” is the entity that rules and directs the affairs of a state (www.oed.com/view/Entry/80321?redirectedFrom=government#eid). While the state has obligations toward its citizens that transcend the particular government in power, the government is responsible for ensuring the state’s obligations toward IDPs. While government is a generic term referring to various levels of rule, the term “national authorities” and “national government” are used interchangeably in this study.

Box 1. IDP Protection and Assistance: Twelve Benchmarks for Action¹

1. Prevent displacement and minimize its adverse effects.
2. Raise national awareness of the problem.
3. Collect data on the number and conditions of IDPs.
4. Support training on the rights of IDPs.
5. Create a legal framework for upholding the rights of IDPs.
6. Develop a national policy on internal displacement.
7. Designate an institutional focal point on IDPs.
8. Support national human rights institutions to integrate internal displacement into their work
9. Ensure the participation of IDPs in decisionmaking.
10. Support durable solutions.²
11. Allocate adequate resources to the problem.
12. Cooperate with the international community when national capacity is insufficient.

¹ This is not an exhaustive list of the state's obligations vis-à-vis IDPs but twelve suggested areas of action that reflect and are consistent with international human rights and humanitarian and refugee law.

² See further: *IASC Framework on Durable Solutions for Internally Displaced Persons* (Washington, D.C.: Brookings-Bern Project on Internal Displacement, April 2010) (www.brookings.edu/idp).

Azerbaijani, Chinese, French, Portuguese, Russian, Serbian, Sinhala, Spanish, Tamil and Thai.⁴⁰

International Initiatives

The benchmarks outlined in the Framework form a central component of the guidance on internal displacement provided by various international organizations in their training programs and resource materials. The International Organization for Migration (IOM) uses the benchmarks in its training and capacity-building tool international migration management tool for international migration management, which has been disseminated worldwide and is promoted through workshops for government policymakers and practitioners

⁴⁰ Translations available at Brookings-LSE Project on Internal Displacement, *Addressing Internal Displacement: A Framework for National Responsibility*, April 2005 (www.brookings.edu/projects/idp/20050401_nrframework.aspx).

as well as for IOM staff around the world.⁴¹ The Internal Displacement Monitoring Centre makes use of the Framework and the guidance provided in particular benchmarks in its training modules and workshops on internal displacement.⁴² The Framework and benchmarks also feature prominently in the *Handbook for the Protection of Internally Displaced Persons*, produced by the Inter-Agency Standing Committee (IASC), the international forum on humanitarian action for UN agen-

⁴¹ IOM, *Essentials of Migration Management: A Guide for Policy-Makers and Practitioners*, 2005 (www.iom.int). Also available in Arabic, Bosnian, Korean, Spanish and Russian. Note: the displacement module in the IOM publication, which was written by the author of the Framework, predates finalization of the Framework, with some slight differences.

⁴² See, for instance, Internal Displacement Monitoring Centre, "National Human Rights Institutions and Internally Displaced Persons," incorporating the guidance provided in Benchmark 8 (www.internal-displacement.org).

cies and NGOs.⁴³ The UN Special Representative of the Secretary-General on Children and Armed Conflict has also drawn on the Framework in setting out the expectations of government and nonstate actors in meeting their responsibilities toward internally displaced children in situations of armed conflict.⁴⁴

Box 2. IDP situations in which the Framework has been used

Afghanistan	Mexico
Central African Republic	The Philippines
Ethiopia	Russian Federation
Georgia	Sierra Leone
Iraq	Sri Lanka
Kenya	Uganda
Nepal	United States of America

In addition, regional organizations and forums have discussed and disseminated the Framework at various levels, perhaps most important, the country level.

Regional Initiatives

In the Americas, a regional conference on internal displacement attended by governments, local NGOs and researchers, and international agencies and NGOs, endorsed the Framework and elaborated upon the twelve benchmarks to specify a total of sixteen key elements in all.⁴⁵ The Framework also has been formally presented

to and discussed by member states of the Organization for Security and Cooperation in Europe and, in Africa, to member states of the Southern African Development Community and of the Economic Community of West African States.⁴⁶ Also in Africa, the Framework was presented and discussed at the pre-summit to the African Union (AU)'s first ever summit on forced displacement; the Summit which followed adopted the AU Convention for the Protection of Internally Displacement (Kampala Convention), in which national responsibility is a central theme. Local NGOs have promoted the Framework to focus attention and advocacy efforts on national responsibility for addressing internal displacement in Africa.⁴⁷ In the Asia-Pacific region, the Framework has been used in regional training forums for national human rights institutions on issues of internal displacement.⁴⁸ The Commonwealth, a cross-regional inter-governmental organization, including several countries with internal displacement (e.g. Bangladesh, Cyprus, India, Kenya, Nigeria, Pakistan, Sri Lanka, Uganda and Zimbabwe), promotes the benchmarks contained in the Framework as 'best practices' for its member states.⁴⁹

displacement in the Americas," *Forced Migration Review*, Issue 20 (2004), p. 49.

⁴³ IASC, *Handbook for the Protection of Internally Displaced Persons*, 2010 (www.unhcr.org/4c2355229.html).

⁴⁴ UN Office of the Special Representative of the Secretary-General for Children and Armed Conflict, "The Rights and Guarantees of Internally Displaced Children in Armed Conflict," Working Paper No. 2, September 2010 (www.un.org/children/conflict/english/index.html).

⁴⁵ *Regional Seminar on Internal Displacement in the Americas, Mexico City, Mexico, February 18-20, 2004*, Brookings-SAIS Project on Internal Displacement, 2004 (www.brookings.edu/idp). For a summary of the how the National Responsibility Framework was used as the basis for the Regional Framework for Action adopted, see Erin Mooney, "Promoting national responsibility for internal

⁴⁶ See further: Brookings-Bern Project on Internal Displacement, *Regional Seminar on Internal Displacement in the Southern African Development Community (SADC) Region, 24-26 August 2005, Gaborone, Botswana*, February 2006; Brookings-Bern Project on Internal Displacement, *Regional Conference on Internal Displacement in West Africa, 26-28 April 2006, Abuja, Nigeria*; Brookings Project on Internal Displacement, *Regional Workshop on Internal Displacement in the South Caucasus (Armenia, Azerbaijan, Georgia), 10-12 May 2000, Tbilisi, Georgia—Summary Report*. For reports and related conference materials, see: www.brookings.edu/projects/idp/contents.aspx

⁴⁷ Joseph Chilengi, "Appeal for IDPs," Pambazuka News, (www.pambazuka.org/en/category/letters/30019/print).

⁴⁸ See, for example, Roberta Cohen, "National Policy and Legal Development," (www.asiapacificforum.net/services/training/regional-workshops/idp/downloads/session-2/cohen2.pdf)

⁴⁹ Commonwealth Secretariat, Human Rights Unit, *Report of the Expert Group Meeting on Internal Displacement in the Commonwealth: Common Themes and Best Practice Guidelines, 19-21 May 2003* (June 2004).

National Initiatives

In Iraq, IOM published an Arabic translation of the Framework for in its capacity-building work with the Ministry of Displacement and Migration. In Sierra Leone, the UN Office of the High Commissioner for Human Rights (OHCHR) incorporated the Framework into its training for police. In Uganda, OHCHR staff worked closely with the Ugandan Human Rights Commission to promote use of the Framework, including through seminars, supported by OHCHR, UNHCR and OCHA, aimed at raising national awareness about IDPs in international and local NGOs and amongst internally displaced communities.⁵⁰ In Russia and Sri Lanka, local NGOs translated the Framework into local languages and use the Framework's twelve benchmarks as a basis for their assessment of the national response. In Afghanistan, the Framework provided a basis for evaluating and identifying areas for enhancing the government's response.⁵¹ In the Philippines, local human rights NGOs have reproduced the benchmarks set forth in the Framework in their reporting of the situation of human rights generally as well as on reports specifically on internal displacement.⁵² In Ethiopia, the Framework and its 12 benchmarks were

used to guide the assessment of the national response to internal displacement jointly undertaken by UN OCHA and the Government of Ethiopia Federal Disaster Prevention and Preparedness Commission (FDPPC).⁵³ In Nepal, UNDP has utilized the Framework to formulate and advocate recommendations to the government.⁵⁴ In Georgia, parliamentarians and local NGOs jointly have promoted the Framework, while the government has provided the Framework along with the Guiding Principles on Internal Displacement to all senior officials in the Ministry with lead responsibility for IDPs; local observers point out that "this has helped ensure that the humanitarian response has met internationally recognized standards."⁵⁵ Also in Georgia, Amnesty International uses the Framework in monitoring and reporting on the government's response to internal displacement; in a report on IDPs in Georgia, it reproduced the benchmarks in a chapter on the issue of "Accountability" and noted that "[t]hese benchmarks provide further valuable criteria for assessing the realization of the human rights of internally displaced persons."⁵⁶ In Kenya, local observers monitoring the process of national reconciliation following the post-election violence of 2007-2008, which resulted in mass internal displacement, have criticized the

⁵⁰ E-mail correspondence, May 2011, with Paul White, who was deployed as a Senior Protection Officer, ProCap, to the UN Office of the High Commissioner for Human Rights (OHCHR) in Uganda in 2006.

⁵¹ Andrew Solomon, *Realizing National Responsibility for the Protection of Internally Displaced Persons in Afghanistan: A Review of Relevant Laws, Policies, and Practices* (Brookings-Bern Project on Internal Displacement and Norwegian Refugee Council, November 2010) (www.brookings.edu/reports/2011/11_afghan_national_responsibility.aspx). See also Jacob Rothing, "Protracted Displacement in Afghanistan Can Be Mitigated by a Change in Policy," Middle East Institute and Fondation pour la Recherche Stratégique, 5 April 2011 (www.refugeecooperation.org/publications/Afghanistan/07_rothing.php).

⁵² Citizens' Council for Human Rights (CCHR), "Documented Cases of Human Rights Violations: January 2004-June 2006," (Philippine Alliance of Human Rights Advocates (PAHRA), 2006) (www.pinoyhr.net/reports/CCHRcases.pdf); Balay Rehabilitation Center, "Notes on Internal Displacement in the Philippines," June 2006, (www.internal-displacement.org).

⁵³ FDPPC and OCHA, *Joint National IDPs Assessment, Concept Note: National Assessment on IDPs, Proposed Comprehensive National Assessment of Internally Displaced Persons (IDPs) in Ethiopia*, 2005 (www.internal-displacement.org).

⁵⁴ Prabhu Raj Poudyal, "Situation of Internally Displaced Persons in Nepal and Recommended Responses," UNDP Rural Urban Partnership Programme, Nepal, 2005 (www.rupp.org.np/downloads/situation_idp.pdf).

⁵⁵ Iulia Kharashvili, Ilya Kharashvili and Koba Subeliani, "Experience of the Guiding Principles in Georgia," *Forced Migration Review*, Special Issue, "Ten Years of the Guiding Principles on Internal Displacement" (December 2008), pp. 16-17. Koba Subeliani has been the Minister for Refugees and Accommodation since late 2008, and previously was Minister, from 2007-early 2008; in the period between his two ministerial appointments, he was a Member of Parliament and Coordinator of the Georgian Parliament's IDP Group; Iulia Kharashvili has been an adviser on IDP issues in the Ministry since 2006.

⁵⁶ Amnesty International, *In The Waiting Room: Internally Displaced People In Georgia*, 2010, p. 44 (www.amnesty.org).

national policy on internal displacement drafted by the government for having “ignored international guidelines on establishing a framework for national responsibility.”⁵⁷

Important to note is that the Framework is being applied to and used in all types of internal displacement. The country examples cited above all relate to conflict-induced displacement. However, the Framework also is being promoted and used to advocate and guide national responses to internal displacement caused by natural disasters. For example, in the United States of America, lawyers’ groups have drawn upon the Framework to advocate for the protection of IDPs displaced by Hurricane Katrina.⁵⁸ More generally, UN OCHA refers UN Resident Coordinators and Humanitarian Coordinators to the Framework as among the sources of guidance in situations of natural disaster.⁵⁹ In addition, the World Bank is among those promoting reference to the Framework in examining responses to displacement in the context of development.⁶⁰

The wide dissemination and use that the Framework has enjoyed by governments and other actors supporting the promotion of IDP rights protection since its publication in 2005 is testament to the interest in and

need for guidance on IDP protection and assistance. Indeed, what is clear from the above examples is that the Framework is used primarily as an awareness-raising, monitoring and training tool. Such activities are useful and can indeed further implementation of a number of the benchmarks, namely those concerning a state’s acknowledgment of the occurrence of internal displacement (Benchmark 2), training of government officials on IDP issues (Benchmark 4) and monitoring the government response, for instance, by national human rights institutions (Benchmark 8).

Methodology

This study seeks to use the Framework for National Responsibility, in particular its twelve benchmarks, to understand and assess the specific measures that national authorities have taken or have failed to take to meet their obligations to protect the human rights of internally displaced persons in fifteen countries.

Country selection

Using this template of benchmarks, in addition to indicators developed for each benchmark (see below), data on national responses to internal displacement in fifteen countries was collected and analyzed. The countries included in the study (see map 1) were selected from a list of the twenty countries with the largest populations of IDPs, according to global figures on internal displacement in situations of armed conflict, generalized violence and human rights violations. Together, these 15 countries represent around 72 percent of the world’s 27.5 million IDPs (see figure 1).⁶¹ Nine of the ten countries with the highest number of IDPs were included in the study; Somalia was excluded on the grounds that the Somali government does not exercise effective control over more than a few square kilometers

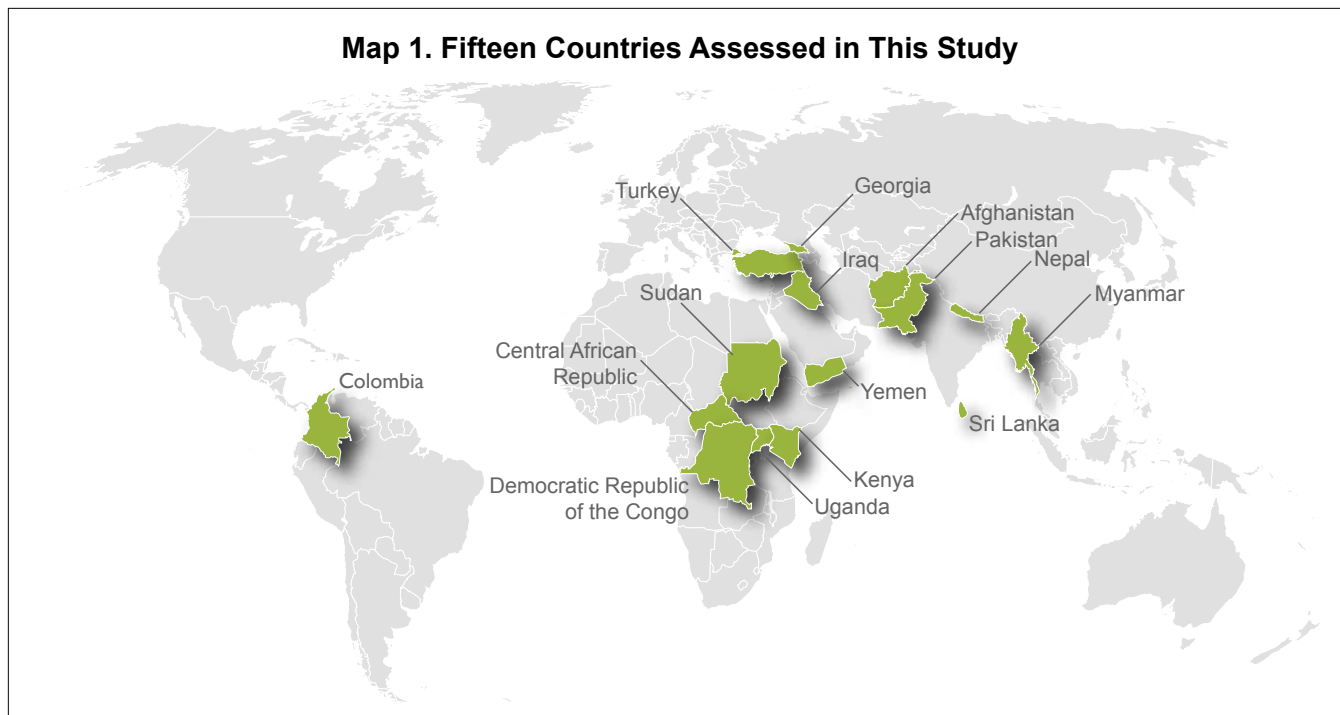
⁵⁷ The Kenya National Dialogue and Reconciliation Monitoring Project, *Agenda Item 2: Addressing the Humanitarian Crisis and Promoting National Healing and Reconciliation, Report on Status of Implementation* (January 2009). (www.dialoguekenya.org/docs/Agenda%20Item%20Two%20chapter.pdf).

⁵⁸ Hon. Cynthia Diane Stephens and Jerome Reide, “Katrina & Internally Displaced Persons: More than Mere Semantics,” *Human Rights*, Fall 2006, vol. 33, no. 4, p.2-4 (www.americanbar.org/publications/human_rights_magazine_home/irr_hr_fall06_stephensreide.html).

⁵⁹ See, for example, “Protection in Disasters,” presentation by UN OCHA at Resident Coordinators Regional Workshop on Humanitarian Coordination, 16-18 June 2008, Panama City, Panama.

⁶⁰ Asger Christensen and Niels Harild, *Forced Displacement – The Development Challenge*, The World Bank Group, December 2009, p. 7 (http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1164107274725/3182370-1164201144397/Forced_Displacement.pdf).

⁶¹ Percent estimate is according to correspondence with IDMC, based on the best estimates of IDPs displaced by armed conflict, generalized violence and human rights violations as of December 2010.

Map 1. Fifteen Countries Assessed in This Study

of the country.⁶² In addition, six more countries from those ranked 11 to 20 were included. In selecting the additional six from this second set, consideration was given not only to the number of IDPs but also to achieving a balance between different regions and different types of displacement, including in terms of the duration of displacement (recent onset as well as protracted), the location of IDPs (including both camp and non-camp environments), and the cause of displacement. While the main focus of this study, as with global statistics on IDPs, was on conflict-induced IDPs, an effort was made to ensure that some cases of natural disaster-induced internal displacement were included. Indeed, that a number of the countries selected for the case studies had experienced internal displacement due to natural disasters as well as conflict provided an important additional element of analysis. In particular, it allowed for comparative analysis of whether the exercise of national responsibility within a country varied with different

causes of internal displacement. The study did not include cases of displacement caused by development projects although this may be an area for further work.

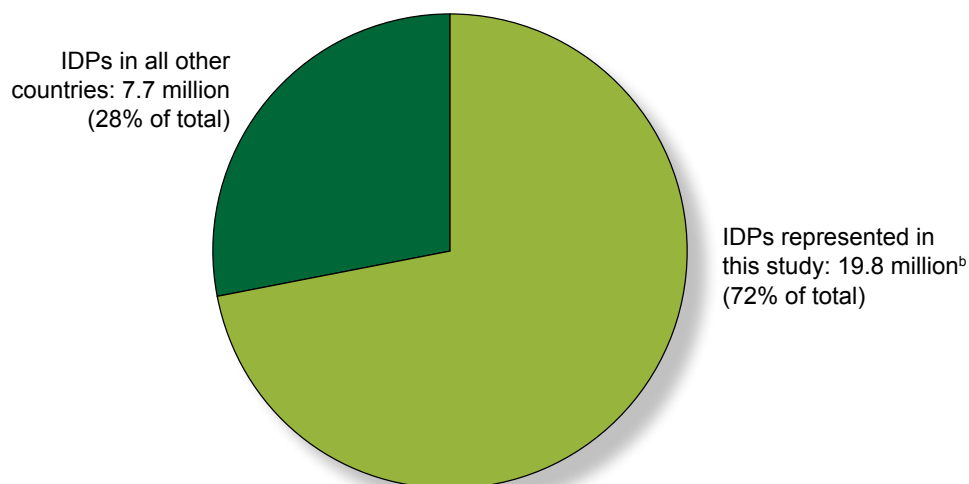
The fifteen countries for which case studies were undertaken, as shown in the above map, are Afghanistan, Central African Republic, Colombia, Democratic Republic of the Congo, Georgia, Iraq, Kenya, Myanmar, Pakistan, Nepal, Sri Lanka, Sudan, Turkey, Uganda and Yemen. The countries include five cases from Africa; five from Asia; two from the Middle East; two from Europe (as defined by participating states in the Organization for Security and Cooperation in Europe); and one from Latin America. This largely reflects the global incidence of internal displacement, in terms of the regional distribution of the number of countries affected: Africa is the continent with the most countries experiencing displacement, followed by Asia, the Middle East, Europe and the Americas.

Indicators and Analysis

Given the scope of this study—comparative analysis using twelve benchmarks across fifteen countries—and

⁶² A separate study on what national responsibility for addressing internal displacement means in such a situation nonetheless would be an interesting issue for research, which may be considered at a later stage.

Figure 1. Global IDP Population: 27.5 Million (as of December 2010)^a



- a. Figures refer to estimates of individuals displaced by conflict, generalized violence and human rights violations. The 15 countries assessed in this study are: Afghanistan, Central African Republic, Colombia, Democratic Republic of the Congo, Iraq, Georgia, Kenya, Myanmar, Nepal, Pakistan, Sri Lanka, Sudan, Turkey, Uganda and Yemen. “All other countries” refers to: Algeria, Angola, Armenia, Azerbaijan, Bangladesh, Bosnia and Herzegovina, Burundi, Chad, Côte d’Ivoire, Croatia, Cyprus, Eritrea, Ethiopia, FYR Macedonia, Guatemala, India, Indonesia, Israel, Kosovo, Kyrgyzstan, Laos, Lebanon, Liberia, Mexico, Niger, Nigeria, Occupied Palestinian territory, Peru, Philippines, Republic of the Congo, Russian Federation, Rwanda, Senegal, Serbia, Somalia, Syria, Timor-Leste, Togo, Turkmenistan, Uzbekistan and Zimbabwe. See IDMC, *Internal Displacement: Global Overview of Trends and Developments in 2010*, March 2011 (www.internal-displacement.org).
- b. Based on correspondence with IDMC.

in the interest of streamlining the collection of empirical data and analysis by a team of several researchers, a structured approach was developed. Indicators for implementation of each of the benchmarks were developed, in the form of questions to guide the research conducted on each benchmark (see annex). The aim in drafting the indicators was to develop data points that were more specific than the benchmarks but not so specific that they would not be of universal relevance. At the same, the indicators had to be developed taking into account what data could reasonably be accessed from a distance—a factor that was especially important for the studies that were not expanded by using field research.

Because a meaningful assessment of impact often is difficult to make, some indicators were framed to ascertain basic facts relating to the benchmark, but they did not always lend themselves to impact analysis due

to lack of information. For instance, for “Benchmark 4: Support Training on the Rights of IDPs,” the focus for assessment was on indicators such as when, for whom, with what content and at whose initiative the training occurred rather than on speculation about the impact of training on government policy and practice. Indeed, the difficulty of quantifying impact is a well-recognized limitation of any training conducted on any topic. The same can be said for “Benchmark 2: Raise National Awareness of the Program,” in countries in which national authorities publicly recognized their responsibility to address internal displacement but researchers could not ascertain whether such statements had any bearing on raising national awareness.

National responsibility for addressing internal displacement was assessed in each country by using the indicators. Data were collected, primarily in English but also

in French and Spanish depending on the country at hand, mostly from publicly available resources, including UN agencies, the Internal Displacement Monitoring Centre, the International Organization for Migration, government websites and documents, international and national NGOs, civil society organizations and academic publications. Data on a number of independent variables were also collected and were expected to potentially influence the government's will and capacity to implement the measures recommended in the Framework (see chapter 3 of this volume).

Comparative analysis of governments' implementation of the twelve benchmarks was conducted in desk studies of fifteen countries. Consolidated analysis of the findings from these fifteen cases, benchmark by benchmark, is provided in chapter 1.

These 15 desk studies were followed by a more in-depth assessment of four of the fifteen countries: Georgia, Kenya, Afghanistan and Sri Lanka. Among the factors taken into account in selecting the countries for the expanded case studies were ensuring a range of scenarios in terms of duration of displacement (recent or protracted); location of the displaced (camp and non-camp environments); cause of displacement (natural disaster as well as conflict); progress toward durable solutions and the applicability of alternative solutions (not only return but also local integration); varying levels of international presence and engagement on IDP issues; differing government attitudes to internal displacement and to international access for protection of and assistance to IDPs; the extent of existing scholarship on the issue, with a view to addressing gaps in the literature;⁶³ safe access for undertaking independent field research; and consideration of geographical representation. Further, the four countries selected for the expanded case studies count among those for which the doctrine of Responsibility to Protect (R2P) has been invoked,

⁶³ On this basis, it was decided not to include Colombia and Sudan among the expanded cases. Such a study of these countries would be valuable nonetheless and would be welcomed.

whether by the UN formally as in the case of Kenya⁶⁴ or, rightly or wrongly, by individual states (as in the case of Georgia)⁶⁵ and by leading R2P advocates (in the case of Sri Lanka).⁶⁶ The aim was to examine, through the four expanded case studies in particular, the challenges and obstacles that national authorities have faced in implementing the measures outlined in the benchmarks as well as to assess their approaches (if any) to overcoming them. For the most part, the expanded case studies were based on research interviews with in-country policy-makers and practitioners.

Limitations of the Study

To be sure, there are obvious weaknesses with the data due to a number of challenges. First, there is no single source to consult for each benchmark in a given country. Hence, this study relied on myriad sources, published by various actors with differing mandates or interests and length and scope of involvement in a given country as well as reporting methods; as a result, data across various sources were not always consistent and often exhibited many gaps (granted, due to other factors as well). In many

⁶⁴ Former UN Secretary-General Kofi Annan, who was dispatched by the UN to mediate the conflict that erupted following elections in Kenya in December 2006, commented: "I saw the crisis in the R2P prism with a Kenyan government unable to contain the situation or protect its people. . . . Kenya is a successful example of R2P at work." Roger Cohen, "How Kofi Annan Rescued Kenya," *New York Review of Books*, vol. 55, no. 13 (14 August 2008).

⁶⁵ Foreign Minister Sergei Lavrov argued the Russian Federation's use of force in Georgia in August 2008 was an exercise of its "responsibility to protect" Russian citizens living in Georgia, in particular in South Ossetia. For the full quote and an analysis arguing that this invocation is a misapplication of the R2P norm, see "The Georgia-Russia Crisis and the Responsibility to Protect: Background Note," Global Centre for the Responsibility to Protect: Background Note, 19 August 2008 (<http://globalr2p.org/media/pdf/GeorgiaRussia.pdf>).

⁶⁶ Global Centre for the Responsibility to Protect, "Open Letter to the Security Council on the Situation in Sri Lanka," 15 April 2009 (<http://globalr2p.org/media/pdf/OpenLetterSriLanka.pdf>).

of the countries surveyed, even if information existed, it was dated (for example, due to the fact that a country was no longer a focus of international attention or did not have NGOs or a national human rights institution reporting on the IDP situation) or incomplete in terms of geographical or thematic scope. In addition, the research was limited largely to published data available in English and to a lesser degree in Spanish (for example, Colombia) and French (for example, the Democratic Republic of the Congo and the Central African Republic). In some of the more recent emergency situations, due to obstacles to obtaining humanitarian access, it was difficult to find even basic information on internal displacement in a country. In many instances, information on particular indicators simply was not publicly available. For example, even when training on internal displacement was known to have occurred in a country, it was rarely reported in publicly available literature or websites. In other cases, information collected was inadequate and the secondary literature was weak on analysis. For instance, it was difficult to determine from a desk study and literature review whether a government policy was in fact being implemented.

Through these two methods of empirical research—desk studies and expanded case studies—this report seeks to identify the challenges and opportunities facing governments in their efforts to respect and ensure respect for the human rights of IDPs. Further, this study sheds light on how governments can best translate abstract concepts into concrete national policies and practices that ensure protection, assistance and durable solutions for IDPs and persons at risk of becoming internally displaced. It is to be hoped that its findings offer insights into the often overlooked, but critical, element of Responsibility to Protect, namely improving understanding of how and with what impact governments make efforts to fulfill their national responsibility to protect their own populations, of whom IDPs surely count among the most vulnerable and in need of protection.

The study provides a first step in coming up with an empirical basis for determining whether and in what main ways the primary duty of the state—to protect its own

people—a duty affirmed by both R2P and the Guiding Principles, is being effectively exercised and through what legal, administrative and other measures.

We wondered, for instance, whether we would find the following:

—A direct relationship between the number of IDPs and government performance. One could hypothesize that governments of countries with a large number of IDPs would be more likely to adopt policies to protect and assist them. Conversely, a high number of IDPs could also be understood as a reliable indicator of the *failure* of state responsibility.

—A correlation between the duration of displacement and the stage of development of the government response. It might reasonably be expected that governments would be unable to implement all or many of the benchmarks in the immediate emergency phase of displacement but that as displacement became protracted, they would be more likely to take measures to address IDPs' needs. Conversely, it could be that protracted displacement signaled poor performance in terms of the exercise of national responsibility.

—Greater government involvement with IDPs in countries with a higher percentage of IDPs living in camps because they are more visible than IDPs living in communities. Conversely, IDPs not living in camps might have better living conditions, in terms of shelter, mobility and participation in the socioeconomic life of the local community.

—A positive relationship between involvement of the UN High Commissioner for Refugees (UNHCR) with IDPs and exercise of government responsibility because UNHCR encourages government engagement. Conversely, it could be that greater international involvement

serves only to supplant and absolve governments of their responsibility.

—A positive relationship between a country's rank on the UN Human Development Index and exercise of national responsibility. Would countries with higher rankings be more likely to take measures to address displacement than those with lower scores?

Chapter 1 provides consolidated, benchmark-by-benchmark analysis of the findings from the fifteen countries surveyed, tests the above hypotheses. The four in-depth case studies (Georgia, Kenya, Afghanistan and Sri Lanka) are then presented in chapter 2. Further insights and conclusions as well as recommendations to governments for improving their response to internal displacement are presented in Chapter 3. The chart of indicators developed for each of the twelve benchmarks, which served as the basis for analysis, is included as an annex.



An internally displaced man, who lost his leg from a land mine, finds shelter in the village of Loi Tai Leng under control of Shan State Army (SSA). Photo: REUTERS/Stringer / February 2010



Democratic Republic of the Congo (DRC) / Thousands flee the IDP site and surrounding area in Kibati, North Kivu. Gunfire was heard near the IDP site, causing a steady stream of IDPs heading south toward the provincial capital, Goma. Photo: UNHCR/ P. Taggart / November 2008

CHAPTER 1

Assessing National Approaches to Internal Displacement: Findings from 15 Countries

As discussed in the introduction to this volume, this chapter contains comparative analysis of each of the twelve benchmarks of the Framework for National Responsibility across the fifteen countries surveyed: Afghanistan, Central African Republic, Colombia, Democratic Republic of the Congo, Georgia, Iraq, Kenya, Myanmar, Pakistan, Nepal, Sri Lanka, Sudan, Turkey, Uganda and Yemen. These countries represent over 70 percent of the best estimate of the 27.5 million individuals internally displaced due to conflict, generalized violence and human rights violations.¹ Each of the twelve benchmarks is a lens allowing for government practice, policy or inaction vis-à-vis internally displaced persons to be viewed and assessed.

This chapter includes analysis from the four in-depth case studies on Georgia, Kenya, Afghanistan and Sri Lanka, which follow in chapter 2.

¹ According to correspondence with IDMC. Figure as of December 2010.



Kampala, Uganda / The opening of the extraordinary session of the AU Executive Council in Kampala.
Photo: UNHCR / J. Akena /October 2009

Benchmark 1

Prevent Displacement and Minimize Its Adverse Effects

Do national authorities take measures to prevent arbitrary displacement and to minimize the adverse effects of any unavoidable displacement?

Preventing the conditions that drive people into displacement is central to the responsibility of states to protect all persons residing within their territories. As elaborated in Principles 5 to 9 of the Guiding Principles on Internal Displacement, national authorities must prevent and avoid conditions that might lead to displacement, minimize unavoidable displacement, mitigate its adverse effects, and ensure that any displacement that does occur lasts no longer than required by the circumstances. Further, Principles 10 to 13 reaffirm basic rights and guarantees—the rights to life, integrity, dignity, and security—which, if respected, would prevent many of the conditions and threats that compel people to flee.

The Guiding Principles on Internal Displacement, which are reflected in the Framework for National Responsibility, distinguish between arbitrary displacement and other forms of displacement.² For example, during armed conflict, involuntary transfer of civilian populations within their own countries is prohibited under international humanitarian law except when justified by considerations of their own security or by imperative military reasons. Where those justifications are valid, evacuated persons must be permitted to return to their places of origin as soon as hostilities in the area have ceased.³ Moreover, any such removals must be car-

ried out in conditions that are satisfactory with respect to hygiene, health, nutrition, and accommodation.⁴ During natural disasters, there may be cases in which governments have a responsibility to relocate people in order to protect them from the effects of natural hazards. For example, in 2011, the government of Uganda developed a five-year resettlement plan to relocate 10,000 people per year who were living in disaster-prone mountainous regions. Many have already moved with government assistance to temporary shelters alongside hundreds of homes under construction in the western province of Kiyriandongo.⁵

As provided under Principle 7.3, national authorities should take the following steps in cases of involuntary displacement that are not related to emergency situations during armed conflicts or disasters:

- Ensure that a specific decision authorizing the displacement has been taken by a government authority empowered by law to order such measures;
- Inform those displaced of the reasons for their displacement and procedures to be followed as well as of arrangements for compensation and relocation, where applicable;
- Seek the free and informed consent of those to be displaced;
- Involve those affected, particularly women, in the planning and management of their relocation;
- Ensure that the competent legal authorities carry out law enforcement measures where required and;

² See Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, 2nd ed., Studies in Transnational Legal Policy 38 (Washington, D.C.: American Society of International Law and Brookings Institution, 2008) (www.brookings.edu/reports/2008/spring_guiding_principles.aspx).

³ Fourth Geneva Convention, Article 49; First Protocol to the Geneva Conventions, Article 85(4)(a); Second Protocol to the Geneva Conventions, Article 17. See also *Guiding Principles*, Principle 6.2(b); See also First Protocol

to the Geneva Conventions, Article 87(1) and Second Protocol to the Geneva Conventions, Article 4(3)(e) for movement-related rights of children.

⁴ Fourth Geneva Convention, Article 49(3); Second Protocol to the Geneva Conventions, Article 17(1).

⁵ IRIN, “Uganda: New Homes for 50,000 at Risk from Disaster,” 11 April 2011 (www.irinnews.org/report.aspx?reportid=92432).

—Ensure the right of those affected to an effective remedy.⁶

When conflicts or natural disasters occur, people feel compelled to escape dangerous situations and to protect themselves by leaving their homes and communities. This is a natural (and often effective) strategy. Even so, displacement usually has devastating consequences for the individuals displaced. Their displacement also has impacts on the communities that they leave behind as well as the communities within which they live as IDPs, and it has important implications for the work of municipal and national governments, for civil society organizations, and for international humanitarian and development agencies. Many people flee a conflict or a disaster under the assumption that leaving is a temporary measure and that they will soon return to their homes once the fighting has shifted elsewhere or the immediate destructive effects of a disaster are over. But experience has shown that displacement has a tendency to become protracted, particularly in the case of conflict. About two-thirds of the world's conflict-induced IDPs (and a similar percentage of refugees) are now considered to be living in situations of protracted displacement.⁷ In the case of disasters, it tends to be assumed that displacement will be short-lived, but that is not necessarily true. In some cases the resulting devastation is so extensive that people simply cannot return

safely and alternative solutions can take time to find; this is a particular challenge for persons displaced due to climate change.

Therefore, measures to prevent displacement in the first place are extraordinarily important, and they require the involvement of a range of government authorities. In trying to prevent displacement in cases of conflict, governments must ensure the security of people in conflict. They must also ensure that people have access to basic services and to livelihoods so that they are not forced to leave their communities in order to survive. In the midst of armed conflict, governments are usually focused largely on military objectives. Preventing displacement in this context requires a government to make the protection of civilians a primary component of its policy and practice. At a minimum, it requires a government to hold its own military forces responsible for their obligation under international humanitarian law to protect civilians. However, displacement is often caused by non-state actors over whom the national authorities have little or no control.⁸

Perhaps more than any other benchmark, preventing displacement during conflict requires a high-level commitment by national authorities and the engagement of security forces. This is not a task that can be handed over to international humanitarian agencies or to domestic social service providers. Although other actors can raise awareness of mounting tensions and sound the alarm when conflict is imminent, they are rarely able to prevent displacement. That is a government responsibility. The role of other actors is to encourage and support the government in meeting its responsibility—and to call attention to situations in which displacement has not been prevented. At the same time, it is essential to

⁶ See also Brookings-Bern Project on Internal Displacement, *Addressing Internal Displacement: A Framework for National Responsibility*, 2005, pp. 12–13.

⁷ Brookings-Bern Project on Internal Displacement, *Expert Seminar on Protracted IDP Situations, Hosted by UNHCR and the Brookings-Bern Project on Internal Displacement, 21–22 June 2007, Geneva*, (www.brookings.edu/events/2007/0621_displacement.aspx); *Forced Migration Review*, Feature Issue: *Protracted Displacement*, no. 33 (2009) (www.fmreview.org); Elizabeth Ferris, ed., *Resolving Internal Displacement: Prospects for Local Integration*, Brookings-LSE Project on Internal Displacement, May 2011 (www.brookings.edu/idp); Brookings-LSE Project on Internal Displacement, Internal Displacement Monitoring Centre (IDMC), and Norwegian Refugee Council, *IDPs in Protracted Displacement: Is Local Integration a Solution? Report from the Second Expert Seminar on Protracted Internal Displacement, 19–20 January 2011, Geneva* (www.internal-displacement.org).

⁸ See, for example, Geneva Call and IDMC, *Armed Non-State Actors and the Protection of Internally Displaced People*, conference organized by Geneva Call and IDMC, 23–24 March 2011, Geneva, June 2011 (www.internal-displacement.org); *Forced Migration Review*, Feature Issue: *Armed Non-State Actors and Displacement*, no. 37 (March 2011) (www.fmreview.org); Geneva and Greta Zeender, “Getting Non-State Actors to Protect IDPs,” *Forced Migration Review*, Supplement: *Protection and Assisting the Internally Displaced: The Way Forward* (October 2005), pp. 22–23 (www.fmreview.org).

understand that in situations of armed conflict, governments (and non-state actors) actually have a responsibility under international humanitarian law and as reaffirmed in Principle 6 to evacuate civilians when their security is at risk or when imperative military reasons so demand.

Preventing displacement due to the effects of natural disasters is a different matter. Typically, prevention of natural disaster-induced displacement includes risk-reduction measures to mitigate the risk of disasters ever occurring and, when they do, to enable people to stay safely in their homes. For example, in earthquake-prone areas, construction of earthquake-resistant housing can prevent displacement. In areas of seasonal flooding, dykes can prevent flooding of residential areas, thus preventing displacement. Disaster risk-reduction measures are usually developed in the context of either national disaster or national development planning. They require awareness, resources, and planning, which often are difficult to generate before a disaster occurs, particularly in developing countries that face competing demands. Many governments have taken measures to reduce the risks of natural hazards,⁹ and the international community can play an important supportive role in this area. Taking measures to prevent displacement by natural disasters is usually less politically sensitive than preventing displacement by conflict. Although early warning systems to alert people to impending disasters are crucial to prevent the loss of life, often they do not prevent displacement. In the event of flooding, people may be warned to leave their homes for higher ground or temporary shelters. In the event of volcanic eruptions, people may be evacuated to safety. In other words, displacement is a protection strategy in such circumstances. Indeed, as Principle 6 affirms, governments have a responsibility to evacuate—and thereby to displace—people if their safety and health is at risk due to a disaster. However, early warning systems can provide governments with the opportunity to take measures to prevent displacement, for example, by issuing alerts and educating their populations on self-protection strategies. Other preventive measures may include ensuring adequate food supply to the population at risk

⁹ See UN International Strategy for Disaster Reduction (www.unisdr.org).

of displacement or developing alternative livelihood schemes for populations affected by crop failures.

As the research herein reveals, there are cases in which governments that are doing very little to prevent displacement by conflict have set up mechanisms to prevent displacement by natural disasters. While such disaster risk-reduction measures usually require an economic commitment, they are less politically sensitive. In conflict situations, it is especially difficult for governments to prevent displacement caused by non-state actors; at the same time, they typically do not consider it a priority to prevent displacement caused by their own military forces or paramilitaries.

Overview of research findings

Nearly half of the fifteen countries assessed in this study had adopted some preventive measures on paper. However, efforts to mitigate the adverse effects of displacement varied, and all fifteen fell short of actually preventing displacement in practice. Successive waves of conflict and the resulting internal displacement characterized nearly all of the countries surveyed. Moreover, many of the national authorities were themselves perpetrators of violence or human rights abuses that led to displacement, and many states fostered a culture of impunity for alleged perpetrators of serious human rights abuses that in some cases may amount to war crimes and crimes against humanity.

Lack of commitment to preventing displacement is not the main problem, of course. As conflicts often cause displacement, the best way of preventing displacement is to ensure that conflicts are resolved peacefully, without resorting to violence. Although beyond the scope of this study, it is important to recognize that a commitment to preventing displacement implies a commitment to preventing armed conflict and to resolving conflicts before people are displaced.¹⁰

¹⁰ Brookings-Bern Project on Internal Displacement, *Addressing Internal Displacement in Peace Processes, Peace Agreements, and Peace-Building*, September 2007 (www.brookings.edu/reports/2007/09/peaceprocesses.aspx).

Commitments on paper may take the form of laws and policies at the national level as well as legal instruments at the regional level. In an increasing number of countries, national legislation on internal displacement (see also Benchmark 5) contains specific provisions articulating the right of persons not to be arbitrarily displaced. The prevention element is most developed in the case of Colombia. Law 387 of 1997 affirms that “the Colombian people have a right not to be forcibly displaced” and that it is “the responsibility of the Colombian State to formulate policies and adopt measures for the prevention of forced displacement” as well as to protect, assist, and find solutions for people who are displaced.¹¹ The law spells out numerous commitments to prevent displacement, including the commitment to “neutralize and mitigate the effects of the processes and dynamics of violence that lead to displacement”; to promote and protect human rights and to abide by international humanitarian law; to integrate public and private efforts for the prevention of displacement by violence; to “guarantee timely and efficient management of all economic, administrative, technical, and human resources as they are essential for prevention”; and to “design and adopt safety, policy, legal, economic, and social measures for the prevention of and surmounting the causes that produce forced displacement.”¹² Among the specific measures spelled out in a section of Law 387 devoted to prevention are measures to form working groups to anticipate and prevent the risks that may cause displacement; to promote community mobilization efforts to encourage peaceful coexistence and to hold accountable those actors that cause displacement; to design and implement an international humanitarian law “plan”; to advise and support municipal and departmental authorities in developing prevention programs; and to coordinate with those authorities in the formation of “security councils” to be convened whenever there is reason to believe that forced displacement will occur.¹³ Law 387 prescribes a particular role in prevention for municipal authorities, which are to form committees

specifically charged with implementing preventive activities, including undertaking legal measures; supporting conflict resolution mechanisms; and providing assistance when “unmet needs of people or communities . . . may possibly accelerate a forced displacement.”¹⁴

Colombia has also set up mechanisms to both warn of and respond to situations that might lead to displacement. The National Plan for Assistance to the Population Displaced by Violence adopted in 2005 (Decree 250) includes many specific measures, such as strengthening local authorities, designing prevention plans, and promoting a culture of human rights.¹⁵ However, notwithstanding the extensive preventive measures provided for in national law and policy over the past nearly fifteen years, in practice, displacement has only continued to occur. The government has tended to emphasize actions that seek to fight the general conditions that give rise to arbitrary displacement, including military and security actions against illegal armed groups, neglecting the other components. A notable exception has been the Office of the Ombudsman’s early warning system (Sistema de Alertas Tempranas [SAT]), put in place in 2002 to protect populations under threat of displacement due to conflict. The Office of the Ombudsman monitors conditions that could lead to displacement, violence, or violations of human rights, and if an imminent risk is found it sends a report to the national-level Inter-Ministerial Committee for Early Warning (CIAT), which determines whether an early warning will be issued. However, CIAT has failed to respond effectively and quickly to warnings of attacks and displacement. It has declined to issue an early warning alert for about half of the Ombudsman Office’s reports; on various occasions, violence and displacement have followed.¹⁶

¹¹ Government of Colombia, Law 387 (1997), Articles 2(7) and 3.

¹² Government of Colombia, Law 387 (1997), Chapter I, Article 4; Chapter II, Section 1, Article 10.

¹³ Government of Colombia, Law 387 (1997), Chapter II, Section 3, Article 14.

¹⁴ Government of Colombia, Law 387 (1997), Chapter I, Article 8.

¹⁵ Government of Colombia, Decree 250, 7 February 2005 (www.brookings.edu/projects/idp/Laws-and-Policies/colombia.aspx).

¹⁶ On the SAT, see: Defensoría del Pueblo, “Informe de Seguimiento a la Sentencia T-025 y Autos 218 y 266,” December 2006 (www.defensoria.org.co/pdf/informes/informe_125.pdf); Defensoría del Pueblo, “Qué Es Sistema de Alertas Tempranas–SAT?” (www.defensoria.org.co/red/?_item=110201&_secc=11&ts=2&hs=1102). On the weaknesses of the CIAT, see: “Informe

In Sudan, government forces, militia, and rebel groups have committed egregious human rights violations, including against those already displaced, and have mounted attacks that have resulted in massive displacement. The investigation of the International Criminal Court (ICC) into the situation in Darfur has resulted in arrest warrants for Sudanese president Omar Al-Bashir for alleged crimes against humanity, war crimes, and genocide and specifically for the forcible transfer of the civilian population. The court also has issued warrants for the former minister of state for the interior and the former minister of state for humanitarian affairs, Ahmad Harun and the alleged leader of the Janjaweed, Ali Kushayb, for alleged war crimes and crimes against humanity.¹⁷ IDPs have faced repeated attacks since 1998 by government forces, including aerial bombings of relief centers and IDP camps. The government's forced displacement of civilians in oil-rich areas to allow for oil exploration has also been well documented by the UN Independent Commission of Inquiry for Darfur and by the Representative of the UN Secretary-General on

Internally Displaced Persons.¹⁸

In Pakistan, conflict and human rights abuses by all parties to the conflict over territorial control have caused displacement since 2001 in the northwestern provinces bordering Afghanistan—the Federally Administered Tribal Areas and Khyber Pakhtunkhwa, formerly known as the North-West Frontier Province. In 2009, a large-scale military offensive against insurgents in the region led to the displacement of some 3 million people. In some cases, the military forced people to leave their communities to allow for military action against the insurgents; in other cases, the military warned civilians of impending counterinsurgency operations but did not allow them sufficient time to flee. Moreover, human rights groups have characterized many of the military operations as indiscriminate or disproportionate in nature.¹⁹ By using tribal militias that commit human rights violations, national authorities pursue military objectives at the expense of the rights of IDPs and other citizens.

In many cases, governments have been too weak to prevent displacement and mitigate its effects. In Iraq, nearly 15 percent of the population had been newly displaced within and outside the country by 2007. Following the bombing of the al-Askari shrine in Samarra in February 2006, sectarian violence was perpetrated to “cleanse” areas, ultimately contributing to the ethnic and religious homogenization of neighborhoods.²⁰ In addition, the gov-

Alternativo al Consejo de Derechos Humanos,” pp. 99-100. (www2.ohchr.org/english/bodies/hrc/docs/ngos/CCJ_Colombia99.pdf). The UN Human Rights Committee, which monitors the implementation of the International Covenant on Civil and Political Rights, has expressed concern “at the increasing number of SAT risk reports which are not converted into early warnings by the Inter-Agency Early Warning Committee (CIAT) and notes that in some cases there are no responses or effective prevention measures, which at times continues to result in massive displacements.” The committee called on the government of Colombia to take various measures to address this, including to “monitor and follow up all risk reports issued, whether or not CIAT converts them into early warnings” and to “strengthen the Ombudsman’s presence in areas at high risk of violations and extend the scope of the programme of community defenders.” Cited in UN International Covenant on Civil and Political Rights, *Consideration of reports submitted by States parties under Article 40 of the Covenant: Concluding observations of the Human Rights Committee: Colombia* CCPR/C/COL/CO/6, 4 August 2010, para 13 (www2.ohchr.org/english/bodies/hrc/hrcs99.htm).

¹⁷ See International Criminal Court, “Situation in Darfur, Sudan,” ICC-02/05 (www.icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0205).

¹⁸ UN Security Council, *UN Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Pursuant to Security Council Resolution 1564 of 18 September 2004*, 25 January 2005, pp. 54, 64–69 (www.un.org/News/dh/sudan/com_inq_darfur.pdf); UN Economic and Social Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum*, February 2006, p. 6 (www.brookings.edu/~media/Files/Projects/IDP/UN%20Reports/Mission%20Reports/200602_rpt_Sudan.pdf).

¹⁹ See, for example, Amnesty International, *As If Hell Fell on Me: The Human Rights Crisis in Northwest Pakistan*, June 2010, pp. 13–14 (www.amnesty.org). Also see the International Crisis Group, “Pakistan’s IDP Crisis: Challenges and Opportunities,” June 2009 (www.crisisgroup.org).

²⁰ According to International Organization for Migration

ernment has failed to prevent the displacement of ethnic, religious, and linguistic minorities, some of which now face near-extinction due to the fact that many of their members have fled the country. Violence against minority groups was exacerbated by the political vacuum resulting from the lack of a formed government in Iraq for much of 2010 (between March and November).²¹ Further, the ability of national authorities in many instances to prevent displacement is severely constrained by the fact that they do not exercise full control over the entire state territory due to conflict and the presence of foreign military forces (for example, in Afghanistan and Iraq) or of non-state armed actors (for example, in Pakistan, Colombia, Sudan, Georgia, Democratic Republic of the Congo, the Central African Republic, Yemen and until 2009, Sri Lanka). For example, in Iraq, displacement slowed in 2007, with some 4,700 families displaced temporarily by the Multi-National Force—Iraq and Iraq Security Forces counterinsurgency campaigns and additional small-scale displacement due to sectarian, ethnic, or religious tensions in 2009 and 2010.²² In Pakistan, national authorities have failed to prevent displacement caused by militant groups, to provide sufficient protection to civilians from attacks by the Taliban and other insurgents, and to protect civilians when these groups purposefully station themselves amid civilian populations or prohibit civilians from fleeing. In addition, in the Democratic Republic of the

Congo (DRC), throughout numerous armed conflicts, national authorities have not taken measures to prevent displacement or to minimize the adverse effects of any unavoidable displacement; rather, they themselves have committed human rights violations, including the forced displacement of civilians. All parties to the conflicts—various regular national armies, rebels, and militias, including, for example, “at least eight national armies and 21 irregular armed groups”²³ operating in DRC between 1998 and January 2000—have committed human rights violations and impunity has been the norm.²⁴ Minorities such as some pygmy populations have been among those targeted and forcibly displaced in the Ituri district and in North Kivu province in the northeast.²⁵

While preventive measures are the most developed, at least on paper, in Colombia, by no means is it the only case study in which national authorities have underscored the importance of prevention. In Nepal, the government’s responsibility to prevent internal displacement is articulated in the National Policy on Internally Displaced Persons (2007). In Uganda, national authorities have taken measures to prevent arbitrary displacement and to minimize the adverse effects of unavoidable displacement, particularly with respect to disasters, although some efforts regarding conflict-induced displacement also are evident. Measures include those outlined in Uganda’s National Policy for Internally Displaced Persons (2004) as well as disaster risk-reduction efforts outlined in the Ugandan Disaster Preparedness Plan, which lists progress on the draft of the Uganda Disaster Risk Reduction and Management Policy as its first priority. The policy establishes “institutions and mechanisms to reduce Uganda’s vulnerability to disasters, effectively manage existing risks, and enhance preparedness and response capability

(IOM) assessments, almost 90 percent of post-2006 displacement originated in Baghdad, Diyala, and Ninewa governorates; see for example, IOM, *Monitoring and Needs Assessments - Assessment of Iraqi return*, 3 November 2009 (<http://reliefweb.int/node/331832>). For further analysis of this sectarian violence, see Elizabeth Ferris, *The Looming Crisis: Displacement and Security in Iraq*, Policy Paper 5, Brookings Institution, August 2008 (www.brookings.edu/papers/2008/08_iraq_ferris.aspx); Ashraf al-Khalidi and Victor Tanner, *Sectarian Violence: Radical Groups Drive Internal Displacement in Iraq*, 18 October 2006 (www.brookings.edu/papers/2006/1018iraq_al-khalidi.aspx).

²¹ Parliamentary elections were held in Iraq in March 2010. Joanna Hoare, *State of the World’s Minorities and Indigenous Peoples 2011: Events of 2010*, Minority Rights Group International, p. 210 (www.minorityrights.org).

²² IDMC, *Overview: Iraq: IRAQ: Little New Displacement but around 2.8 Million Iraqis Remain Internally displaced*, 4 March 2010, p. 5 (www.internal-displacement.org).

²³ UN General Assembly, *Report of the Special Rapporteur on the Situation of Human Rights in the DRC (A/55/403)*, September 2000, para. 15 (http://ap.ohchr.org/documents/alldocs.aspx?doc_id=5580).

²⁴ See: U.S. Department of State, *2008 Human Rights Report: Democratic Republic of the Congo* (www.state.gov).

²⁵ Minority Rights Group, *Erasing the Board: Report of the International Research Mission into Crimes under International Law Committed against the Bambuti Pygmies in the Eastern Democratic Republic of Congo* (www.minorityrights.org); U.S. Department of State, *2008 Human Rights Report: Democratic Republic of the Congo*.

to likely disasters.” However, given the displacement of 8,000 people following a mudslide that killed some 300 people in the Mount Elgon area in March 2010, much remains to be done to improve Uganda’s disaster response. Kenya’s March 2010 draft IDP policy, the National Policy on the Prevention of Internal Displacement and the Protection and Assistance to IDPs in Kenya, “aims to prevent future displacement.” In addition, Kenya’s 2009 draft National Policy on Disaster Management aims to prevent disaster-induced displacement in the context of disaster risk-reduction and management. By the end of 2010, disaster management had been mainstreamed in all government ministries and staff in 80 percent of the districts had been trained in disaster management.²⁶ In the Central African Republic, the government recently has been tasked with developing an IDP policy, which, in line with the government’s regional legal obligations (see below), should include provisions relating to preventing displacement due not only to conflict but also to disaster and to development projects. By contrast, in Georgia, where a national policy was developed in 2006–2007 after more than a decade of a protracted displacement, it was perhaps inevitable that the policy focused on durable solutions to displacement. However, renewed displacement in August 2008 underscored that greater attention to preventing and mitigating the effects of any new displacement would have been valuable.²⁷

In addition, a specific legislative measure that national authorities can take toward preventing arbitrary displacement is to criminalize it in national legislation. Colombia has done so and has prosecuted a handful of individuals on that basis. In Georgia, the criminal code likewise criminalizes displacement that takes the form of genocide or crimes against humanity. In the Central African Republic, the penal code as revised in 2010 contains a number of provisions criminalizing acts related to

arbitrary displacement, including by reaffirming that the deportation or transfer of populations constitutes a crime against humanity under international criminal law.²⁸

Conversely, both in Georgia and in the Central African Republic, national legislation prescribes the conditions under which it is not only legitimate but also an obligation of the state to evacuate populations precisely in order to safeguard them from danger. In Georgia, such provisions are found in the Law on State Emergency and the Law on State of Martial Law. In the Central African Republic, the responsibility of government authorities with respect to protection of persons and threats to public order is set out in the Constitution; responsibility with respect to environmental and natural disasters is set out in the Environmental Code.²⁹

The role of national authorities to prevent situations of mass internal displacement is affirmed in legally binding instruments in Africa, at subregional and regional levels. The International Conference on the Great Lakes Region Regional (ICGLR) Pact on Security, Stability, and Development, commits the eleven ICGLR member states, including the Central African Republic, the Democratic Republic of the Congo (DRC), Kenya, Sudan and Uganda, with respect to the countries surveyed in this study, to taking measures to prevent internal displacement. One of the pact’s ten protocols, the Protocol on the Protection and Assistance to Internally Displaced Persons, further emphasizes the responsibility of member states to protect individuals from displacement. An objective of the protocol is that member states shall “prevent and eliminate the root causes of displacement,” in addition to incorporating the Guiding Principles into domestic legislation. The protocol also obliges member states “to prevent arbitrary displacement and to eliminate the root

²⁶ Interview with a senior government official at the National Disaster Operations Centre, 20 January, 2011; training manuals were developed by a task force drawn from government ministries, the UN Office for the Coordination of Humanitarian Affairs (OCHA), the United Nations Development Plan, universities, and NGOs. See OCHA Kenya, *Humanitarian Update* 48, May 2009, p. 6.

²⁷ See further the Georgia case study in chapter 2 of this volume.

²⁸ Erin Mooney, *Examen du cadre normatif de la République centrafricaine relatif à la protection des personnes déplacées à l’intérieur de leur propre pays: Audit juridique* Brookings-Bern Project on Internal Displacement, February 2011, pp. 32–35 (www.brookings.edu/reports/2010/11_car_audit_juridique.aspx).

²⁹ Mooney, *Examen du cadre normatif de la République centrafricaine*, pp. 32–37. See also pp. 37–41 regarding the guarantees that must be met by authorities in order for any displacement due to development projects to be considered to be legal.

causes of displacement.”³⁰ Marking a watershed in IDP protection and jurisprudence, the first instrument intended to legally bind an entire region on matters related to preventing situations of internal displacement and to addressing the protection and assistance needs of IDPs, the AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), has been signed by thirty-two of fifty-three African Union (AU) member states, including three of the five surveyed in this study (Uganda, the Central African Republic and the DRC), since it was adopted in October 2009.³¹ Notably, the Kampala Convention prohibits internal displacement in situations of armed conflict and of generalized violence as well as due to natural and man-made disasters and development projects. As of August 2011, thirteen AU member states had ratified the convention: Uganda, the Central African Republic, Chad, Sierra Leone, Zambia, Gabon, Somalia, Djibouti,

Gambia, Togo, Rwanda, Mali and Guinea-Bissau.³² The convention enters into force upon ratification by fifteen member states.

Some countries have taken steps to prevent displacement due to natural disasters or development but not due to conflict. Turkish national authorities have taken measures to mitigate and manage natural disaster-induced displacement, particularly due to earthquakes. In Myanmar, national authorities adopted certain measures to prevent and mitigate the effects of disaster-induced displacement, but they did not even acknowledge the existence of internal displacement due to conflict. Disaster measures were introduced following the 2004 tsunami and significantly increased after Cyclone Nargis displaced more than 200,000 in 2008. Similarly, in Sri Lanka, prevention of conflict displacement is not a part of government programming; however, the government takes measures to prevent and mitigate the effects of disaster-induced displacement. Such efforts increased after the 2004 tsunami displaced more than half a million persons. Since June 2006, the Indian Ocean Tsunami Warning System has been active in Sri Lanka. The government conducts public awareness campaigns and periodic tsunami preparedness rehearsals that include evacuations to designated safety areas. In 2009, the Ministry of Disaster Management and Human Rights identified zones at risk of flood in the upcoming rainy season and constructed drainage systems to mitigate the risk.

In Pakistan, fourteen major floods between 1947 and 2006 caused economic losses and damages of about \$6 billion, in addition to the \$9.7 billion in damages caused by flooding in 2010.³³ Physical flood defense

³⁰ ICGLR, *Pact on Security, Stability and Development in the Great Lakes Region* (December 2006). ICGLR, *Protocol on the Protection and Assistance to Internally Displaced Persons* (November 2006), Article 3.1. Both available at Brookings-LSE Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Regional Instruments: Africa,” (www.brookings.edu/projects/idp/Laws-and-Policies/regional_policies.aspx). See further, an article by Chaloka Beyani, who drafted and negotiated the adoption of peace treaties by the eleven ICGLR member states as well as the Kampala Convention: “Introductory note on the Pact on Security, Stability and Development in the Great Lakes Region,” 2007, London: LSE Research Online (<http://eprints.lse.ac.uk/2429>), originally published in *International Legal Materials*, vol. 46, no. 1, pp. 173-175; Walter Kälin, “The Great Lakes Protocol on Internally Displaced Persons: Responses and Challenges,” 27 September 2007 (www.brookings.edu/speeches/2007/0927_africa_kalin.aspx).

³¹ See Andrew Solomon, “(Re)Introducing the African Union Convention on the Protection and Assistance of Internally Displaced Persons,” Brookings Institution, 17 February 2010 (www.brookings.edu/articles/2010/0217_african_union_solomon.aspx); Maria Stavropoulou, “The Kampala Convention and Protection from Arbitrary Displacement,” *Forced Migration Review* 36 (2011), pp. 62–63. Full text of convention available at Brookings-LSE Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Regional Instruments: Africa.”

³² African Union, “List of Countries Which Have Signed, Ratified/Accessed to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)” updated by UNHCR 11 August 2011. Copy on file with the authors.

³³ Complete analysis of the response of national authorities to Pakistan’s various natural disasters in recent years is beyond the scope of this study. For analysis of the 2005 earthquake and the 2010 floods in Pakistan, see Elizabeth Ferris and Daniel Petz, *A Year of Living Dangerously: A Review of Natural Disasters in 2010*, Brookings-LSE Project on Internal Displacement, April 2011, pp. 29–51 (www.brookings.edu/reports/2011/04_nd_living_dangerously).

systems are in place, but they were overwhelmed by the 2010 monsoon rains; flood warning systems are dated and unreliable. Further, as the National Disaster Management Authority (NDMA) and government of Pakistan admitted after the 2010 floods, Pakistan's pre-disaster capacity was limited in terms of capacity and financial resources—the NDMA had twenty-one staff and a budget of only \$0.74 million—and its efforts in disaster management were equally hampered by such factors.³⁴ According to initial reports, the floods affected up to 18 million people and some 6 million were in need of shelter; by September, 1.8 million were reported in IDP camps, with the number declining to slightly over 124,000 in January 2011.³⁵ Following the 2010 floods, the U.S. National Aeronautics and Space Administration launched a program for training and flood forecasting for Pakistan.³⁶ Pakistan's warning systems for tsunamis and other ocean-related hazards are weak, and the government has received assistance to develop systems, specifically a tsunami early warning system, from the UN Educational, Scientific, and Cultural Organization.

aspx).

³⁴ National Disaster Management Authority, Government of Pakistan, *Pakistan 2010 Flood Relief: Learning from Experience: Observations and Opportunities* (www.ndma.gov.pk/Documents/flood_2010/lesson_learned/Pakistan%202010%20Flood%20Relief-Learning%20from%20Experience.pdf). Damage estimates through 2006 from Government of Pakistan, *National Disaster Risk Management Framework for Pakistan*, February 2007, p. 14; figures for 2010 from the World Bank and Asian Development Bank, "ADB-WB Assess Pakistan Flood Damage at \$9.7 Billion," Press Release 2011/134/SAR, 14 October 2010 (http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:22733998~pagePK:34370~piPK:34424~theSitePK:4607,00.html?cid=ISG_E_WBWeeklyUpdate_NL)

³⁵ For the number of people affected by the floods, see Emergency Events Database EM-DAT, Centre for Research on the Epidemiology of Disasters, Université Catholique de Louvain, Brussels (www.emdat.be); for shelter and displacement numbers, see OCHA, *Pakistan Monsoon Floods, Situation Report No. 23*, 9 September 2010; see also OCHA, *Pakistan Humanitarian Bulletin No. 13*, 12–20 January 2011 (<http://reliefweb.int>).

³⁶ NASA, "NASA's Pouring Funds, Scientists, and Satellites into Pakistan Flood Warning," 28 October 2010 (<http://blogs.nasa.gov>).

Conclusion

Preventing displacement is the most important step that a government can take in exercising its responsibility to protect internally displaced persons. Yet it also is probably the most difficult and the least likely to be taken, both by national authorities and by the international community.³⁷

This study looked only at countries that already were experiencing internal displacement—and large-scale displacement at that. Hence, it likely excludes other—more successful—cases in which governments were able to effectively safeguard populations from being displaced. Some of the countries surveyed may have prevented further displacement, such as Kenya, or, through targeted interventions, Colombia, but that conclusion is difficult to draw. However, governments can and should be expected to take certain steps to prevent forced displacement. These include a range of actions, from preventing conflict to establishing early warning systems to criminalizing in national legislation (in particular, the penal code) the act of causing arbitrary displacement.

³⁷ See recommendations for international agencies, NGOs and government authorities to address this gap in Inter-Agency Standing Committee, *Handbook for the Protection of Internally Displaced Persons* (June 2010), pp. 141–43.



**IDP camp in Nakuru, Rift Valley, Kenya / IDP women start the day by preparing breakfast for their families, collecting water and washing dishes and clothes. This camp hosts 14, 500 people, mainly from the Kikuyu ethnicity, who left their farms following post-election violence at the end of December 2007 and in January 2008.
Photo: UNHCR/ H. Caux / 3 May 2008**

Benchmark 2

Raise National Awareness of the Problem of Displacement

Does the government (at the highest executive level, for example, that of president or prime minister) acknowledge the existence of internal displacement and its responsibility to address it as a national priority?

National authorities have a responsibility to raise awareness of the fact that people are displaced within their territory, that the rights of IDPs should be protected, and that the government itself is taking (or planning to take) measures to address displacement. Whenever displacement has occurred, the Framework for National Responsibility considers acknowledging that fact to be an important first step in responding to the needs of those displaced as well as in working toward solutions to displacement. Statements of concern by high-level government authorities on the existence of IDPs and the government's commitment to address their plight send a signal to other government officials—at both the national and municipal levels—that this is an important issue that needs to be taken seriously. Equally important is the message that such statements send to IDPs themselves. Too often, IDPs feel abandoned by their governments and invisible. Expressions of awareness and commitment by their governments can reassure them they have not been forgotten; those expressions also can be an important way to counteract the stigma and discrimination that IDPs often experience and instead promote solidarity with them.

But a government's acknowledgment of internal displacement is not necessarily a given. Governments, especially when they themselves are complicit in or condone displacement, may ignore or even outright deny the occurrence of internal displacement. Sometimes, governments will engage in semantic acrobatics, insisting on terms such as "migrant" or "homeless" to avoid the term "internally displaced person" and the notion of

involuntary displacement that the term, by definition, conveys. In some cases, only those displaced by the actions of insurgent forces are considered by the authorities to be "IDPs," while those displaced by the actions of government forces merely have "migrated."

Moreover, raising awareness of internal displacement—particularly when it occurs on a large scale—can have political costs that governments are reluctant to incur. In cases in which the government is anxious to demonstrate to its own population and to the international community that a conflict situation is improving and that it is in control of the situation, drawing attention to large-scale internal displacement may undermine the image that it wishes to project. As discussed below, the governments of Turkey, Iraq, Afghanistan, Pakistan, Sri Lanka and Nepal have been reluctant at certain points to highlight the fact that their military operations had displaced large numbers of people or that they had been unable to prevent other armed actors from displacing people. When a government is engaged in a conflict and eager to show that it is in control and that the situation is improving, drawing attention to IDPs can be counterproductive. Sometimes, as in the case of Myanmar, to the government does not acknowledge the existence of conflict-induced displacement. At the same time, there are cases in which governments highlight the presence of IDPs as a way of drawing attention to the human consequences of external aggression, as in Georgia, where the government has used the existence of IDPs as evidence of the human harm suffered due to the conflicts concerning Abkhazia and South Ossetia, in which Russia also has played a part.

In other cases governments have been reluctant to acknowledge internal displacement, either because it was seen as reflecting poorly on their own policies or because of a reluctance to acknowledge that IDPs have rights. Thus, the United States government resisted referring to those displaced by Hurricane Katrina as IDPs, preferring the terms "homeless" or "evacuees,"¹

¹ Chris Kromm and Sue Sturgis, *Hurricane Katrina and the Guiding Principles on Internal Displacement: A Global*

and the Japanese government has similarly avoided referring to those displaced by the 2011 tsunami as IDPs. Governments of most Pacific island countries do not refer to people displaced by natural disasters as IDPs, primarily due to a lack of awareness of the Guiding Principles on Internal Displacement.²

Raising awareness of the existence, situation and rights of IDPs is an essential first step in taking measures to address their needs and to work toward finding solutions for their displacement. However, undertaking some actions in line with a benchmark is not sufficient, as the results of this benchmark analysis demonstrate (and, indeed, as the evaluation of the other 11 benchmarks reveals). Political leaders can make sweeping statements of support for IDPs without taking the necessary—and sometimes costly—steps to improve the lives of IDPs. When governments make promises that they cannot keep (and may have no intention of keeping), they raise IDPs’ expectations, which, when not met, may lead to IDPs’ further disenchantment with and distance from the government. As analysis on Benchmark 9b on political participation reveals, IDPs tend to participate in political life at lower rates than non-displaced citizens. That means that there is usually not strong domestic political pressure for national political leaders, even in democratic regimes, to take displacement seriously.

Further, acknowledging and raising awareness of the situation of IDPs should not be a one-off occurrence. While the examples below provide evidence that most governments—at least at some point in time—did exercise their responsibility to IDPs by drawing attention to IDPs’ plight, it is difficult to determine the consistency and level of commitment of such awareness-raising

efforts. Sometimes, attention is paid to IDPs but then subsides or dissipates when the domestic or international political climate changes and attention shifts to other issues. Sustained political attention by the highest authorities is a necessary—but not sufficient—condition for taking responsibility for IDPs.

Overview of research findings

The government at the highest level has acknowledged the existence of internal displacement and its responsibility to address it as a national priority in twelve of the fifteen countries surveyed (Afghanistan, Central African Republic, Colombia, Georgia, Iraq, Kenya, Nepal, Sri Lanka, Sudan, Turkey, Uganda and Yemen). In two of the countries surveyed (Myanmar and Pakistan), the government did not seem to engage in awareness raising or openly recognize its responsibility for conflict-induced displacement. In several of the countries surveyed, a government’s acknowledgment in public speeches and on paper—whether in peace accords or in national laws and policies on IDPs—of its responsibility to address internal displacement did not guarantee that it did so in practice. Many, if not most, IDPs are unaware of their rights or of the programs intended to serve them. They often face enduring and evolving needs for protection and assistance—whether in situations of fresh, multiple, or protracted displacements—which often are caused by the very government charged with their protection.

Even when acknowledgment of IDPs and frameworks to help them do exist, “trickle down” awareness can be lacking throughout the different levels of government; as a result, the officials most likely to have a direct impact on the lives of IDPs may not be well informed of the measures that they are supposed to take in accordance with national laws or policies. For example, the government of Nepal has acknowledged the existence of internal displacement in the Comprehensive Peace Accord, its National Policy on Internally Displaced Persons (2007), and in government press releases, reports (particularly the National Peace Trust Fund reports), and ministerial

² Brookings-LSE Project on Internal Displacement, *Regional Workshop on Internal Displacement Caused by Natural Disasters and Climate Change in the Pacific—Synthesis Report*, Pacific Island Forum Secretariat, Suva, Fiji, 4–6 May 2011 (www.brookings.edu/events/2011/0506_idp_fiji_workshop.aspx); OHCHR, “Protecting the Human Rights of Internally Displaced Persons in Natural Disasters: Challenges in the Pacific,” discussion paper, 2011 (http://pacific.ohchr.org/docs/IDP_report.pdf).

speeches. However, the Nepalese authorities have not met their obligations, under the national IDP policy, to conduct awareness-raising programs for IDPs regarding their fundamental rights, to disseminate information related to IDP issues, and to regularly communicate with all relevant stakeholders regarding displacement. Even government officials responsible for addressing internal displacement are largely or completely unaware of the policy. According to an assessment conducted by the Nepal IDP Working Group, “none of [the] government’s district level agencies (other than CDOs [Chief District Officers], LDOs [Local Development Officers], and [the] Police) are aware” of the National Policy on Internally Displaced Persons and “it is unfortunate that VDCs [Village Development Committee] Secretaries, who are the primary implementers at the grass root level, have little or no knowledge” of the policy. It only follows that IDPs themselves are also ill-informed. While 61 percent of surveyed IDPs knew that return and rehabilitation package existed, only 33 percent of respondents had received state relief and assistance from this program. In addition, only 35 percent were aware of the national IDP policy—due to NGO efforts, not government—and none could identify any of its elements.³

Human Rights Perspective on A Natural Disaster (Durham, N.C.: Institute for Southern Studies), vol. xxvi, nos. 1–2, a special report by the Institute for Southern Studies and Southern Exposure, produced in collaboration with the Brookings-Bern Project on Internally Displaced Persons], January 2008 (www.southernstudies.org/ISSKatrinaHumanRightsJan08.pdf); Roberta Cohen, “An Institutional Gap for Disaster IDPs,” *Forced Migration Review*, no. 32 (April 2009), pp. 58–59 (www.fmreview.org/FMRpdfs/FMR32/58-59.pdf); Roberta Cohen, “Human Rights at Home,” statement at the Kennedy School of Government at Harvard University, 1 November 2006 (www.brookings.edu/speeches/2006/1101humanrights_Cohen.aspx).

³ IDP Working Group, *Distant from Durable Solutions: Conflict Induced Internal Displacement in Nepal*, June 2009, pp. 34, 37–38 (www.internal-displacement.org); citations from p. 38. The IDP Working Group in Nepal is composed of seven international and national agencies: the Norwegian Refugee Council (NRC), International Rescue Committee, Save the Children, International Relief

While acknowledging internal displacement and/or a government’s responsibility to address it on paper or in speeches may be better than not acknowledging it at all, significant gaps in implementation remain. Those gaps may point to the need to draft policies and laws that provide more realistic ways and means for governments to fulfill their obligations in light of their often limited resources and the political constraints that they must deal with while still respecting a rights-based approach to protection and assistance of IDPs in line with international standards. From the research conducted for this study, it appears that the motives of presidents, prime ministers, and other high-level officials in calling attention to the phenomenon of internal displacement and their initiatives to address it are primarily political—for example, to garner support from IDPs and other national groups and possibly to keep their countries on the radar of the international system to secure funding. It also is likely that in some cases international pressure has led governments to adopt policies or make statements on the importance of addressing displacement when the governments were unable or unwilling to translate their stated commitments into effective action on the ground. That may be due to a lack of capacity, but it also may be due to lack of will to do more than pay lip service to the importance of the issue.

The government of Uganda has recognized its national responsibility to address internal displacement politically, legally, and operationally. It was the first country in the world to request and receive, in March 1999, training on the Guiding Principles on Internal Displacement, which was co-organized by the Norwegian Refugee Council (NRC) and the Office of the UN High Commissioner for Human Rights (OHCHR) at the request of and in collaboration with the Office of the Prime Minister. Lasting acknowledgment is most evident in the National Policy for Internally Displaced Persons (2004), which recognizes IDPs’ specific protection and assistance

and Development, Caritas, Informal Sector Service Center (INSEC) and Inhured International. The assessment was led by NRC and included direct interviews with 234 IDPs and returnees from 19 districts.

needs, in particular the need for food security in camps, livelihood development for returnees, and improved infrastructure and basic services in both camps and return areas. The policy designates the Department of Disaster Preparedness and Refugees as the conduit for IDP-related information and obligates the Ministry of Information to provide “free broadcasting of information relating to assistance to IDPs.”⁴ However, the International Organization for Migration (IOM) predicted in 2005 that the demanding technical and maintenance requirements of such a system would encumber its implementation.⁵ Uganda has demonstrated regional leadership on the issue of IDPs through its hosting of the first Africa Union summit focused on refugees and IDPs in Africa in October 2009 and through its key role in negotiations that led to the adoption in 2009 of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).

The government of Iraq at the highest level has acknowledged the existence of conflict-induced internal displacement and its responsibility to address it as a national priority. This is evident in Iraq’s National Policy on Displacement (2008) which addresses pre- and post-2003 displacement and which includes provisions for promoting dialogue for national reconciliation and for ensuring IDPs’ access to information on humanitarian assistance, social assistance and durable solutions. The policy specifies channels of communication: local and national government offices, local and national media, community-based organizations, nongovernmental organizations (NGOs), mosques, and information centers.⁶ The government’s commitment to addressing the internal displacement of Iraqis in 2006 and 2007 is also

evident in Council of Ministers Decree 262 and Prime Minister Order 101 to facilitate property recovery in the Baghdad governorate, and Order 58, which extends those measures to the Diyala governorate (most IDPs originate from these two governorates). In addition, the prime minister and high-level officials have made public statements recognizing the issue of IDPs and their responsibility to address it. For example, in a joint statement issued in November 2009 by Ambassador Sadiq Rikabi, political adviser to the prime minister of Iraq and Iraqi coordinator for refugees and IDPs, and high-level U.S. administration officials, the officials recognized that Iraq is responsible for matters pertaining to its citizens and agreed to cooperate with one another and with other relevant actors, including IOM and UNHCR, on a series of steps to assist Iraqi IDPs and refugees.⁷ More recently, in January 2011 Iraq’s deputy minister of migration and displacement spoke of a plan to resolve the problem of internally displaced persons within a year and to create durable conditions for the return and reintegration of IDPs and refugees. However, a predecessor of the deputy minister observed that while the plan “looks good on paper,” there had not been an effort to involve other relevant ministries and security agencies.⁸

In Georgia, the government at the highest levels acknowledges the occurrence of internal displacement resulting from conflicts concerning Abkhazia and South Ossetia and its responsibility to address displacement as a national priority. The subject of IDPs and related government initiatives are regularly highlighted in the president’s annual state of the union address, and the government has promoted the issue of IDPs at international and regional forums. However, as the case study in this

⁴ Uganda’s National Policy for IDPs, § 5.1

⁵ International Organization for Migration, *Uganda: Internally Displaced Persons in the 2006 National Elections*, IOM Project on Political Rights and Enfranchisement System Strengthening (PRESS), May 2005, p. 38 (www.geneseo.edu/~iompress/Archive/Outputs/Uganda_Action%20Plan_PRESS_May_05.pdf).

⁶ Article 6(8) (www.brookings.edu/projects/idp/Laws-and-Policies/iraq.aspx).

⁷ The U.S. officials were Eric Schwartz, U.S. Assistant Secretary of State for Population, Refugees, and Migration, and Samantha Power, senior director at the National Security Council and White House coordinator for Iraqi refugees and IDPs.

⁸ Radio Free Europe/Radio Liberty, “Iraq Drafts Plan To Help IDPs, Refugees,” 26 January 2011 (www.rferl.org/content/iraq_plan_help_idp_refugees/2287542.html).

report notes,⁹ internal displacement due to conflict is a highly politicized issue in Georgia, taken up particularly in the run-up to elections, with promises made, including by the president, to restore the territorial integrity of Georgia and thereby enable IDPs to exercise their right to return.¹⁰ Indeed, until very recently, the government's advocacy and efforts on the part of IDPs were single-minded, focused only on the solution of return, while impeding through national legislation and policy IDPs' access to their rights and alternative solutions in the place of displacement. While the government has focused on conflict-induced IDPs, it has also sought to draw attention to natural disaster-induced internal displacement in Georgia.¹¹

In Sri Lanka, government acknowledgment often has been framed in terms of providing for assistance to and return of IDPs (often called "resettlement" in the Sri Lankan context). But since the end of the conflict in May 2009, the government's public acknowledgment and response has focused on "new" IDPs, those displaced since 2008, effectively excluding from formal and official assistance and protection about 200,000 of the "old" cases of people internally displaced by the conflict before 2006. In September 2009 the Sri Lankan prime minister stated that "the Government reiterates its firm resolve to resettle the IDPs expeditiously." In September 2009, at the Sixty-Fourth Session of the UN General Assembly, the prime minister stated, "One of our highest priorities thereafter [after the defeat of the Liberation Tigers of Tamil Eelam in May 2009] has been to meet the immediate humanitarian needs of these displaced civilians, and to ensure their long-term safe, voluntary and dignified return to their homes."¹²

⁹ See Georgia case study, Ch. 3.

¹⁰ See, for example, "Georgia: Saakashvili Vows to Secure IDPs' Return to Abkhazia in Months," 28 November 2007 (<http://reliefweb.int/node/250451>).

¹¹ Erin Mooney, "Georgia: Case Study of National Responsibility in Addressing Internal Displacement."

¹² Address by Honourable Ratnasiri Wickramanayaka, Prime Minister and the Head of Delegation of the Democratic Socialist Republic of Sri Lanka at the Sixty-Fourth Session of the United Nations General Assembly, New York, 26

The Central African Republic, Democratic Republic of the Congo, Kenya, Sudan and Uganda—all of which are signatories to the legally binding International Conference on the Great Lakes Region (ICGLR) Regional Pact on Security, Stability and Development (2006) and its ten protocols, two of which deal with IDPs—recognize the existence of internal displacement and their responsibility to address it in national IDP policies.¹³

The government of Sudan has acknowledged its responsibility to address internal displacement, including within the language of its policies pertaining to internal displacement. Both the National Policy on Internally Displaced Persons (2009) and the Policy Framework for the Return of Displaced Persons in a Post-Conflict Sudan (2004) acknowledge that primary responsibility for the protection of internally displaced persons rests with the state of Sudan. The National Policy also lists "raising public awareness on the policy, vulnerabilities and the problems that might result [in] displacement" as one of the state's obligations to IDPs. However, the National Policy has, generally speaking, yet to be implemented.

In the Democratic Republic of the Congo the government has acknowledged the existence of IDPs in its meetings with international actors; it also is a signatory to the ICGLR Regional Pact on Security, Stability and Development and its ten protocols, including the Protocol on the Protection and Assistance to Internally Displaced Persons. The Model Legislation on the Implementation of the Protocol on Protection and Assistance to Internally Displaced Persons annexed to the Protocol envisages awareness-raising efforts conducted by member states. However, there is no direct evidence of awareness-raising by the government at the highest levels on IDP issues. At a regional

September 2009 (www.un.org/ga/64/generaldebate/pdf/LK_en.pdf).

¹³ The two protocols on IDPs are the Protocol on the Protection and Assistance to Internally Displaced Persons and the Protocol on the Property Rights of Returning Populations.

intergovernmental conference on internal displacement, the government openly discussed its efforts and the bureaucratic challenges that it has faced in coordinating its response to internal displacement.¹⁴

In Kenya, the government's recognition of internal displacement and its responsibility for awareness-raising are reflected in the draft National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya, as well as in press releases, statements, and reports and in the development of ministerial institutions focusing on internal displacement.¹⁵ The draft policy, developed in partnership with the Office of the Representative of the UN Secretary-General on the Human Rights of IDPs, includes provisions for raising awareness among IDPs (including illiterate IDPs) of their rights, entitlements, and judicial remedies and of the policy itself; it also calls for informing all actors involved of the rights of IDPs, including in particular law enforcement and state security agencies.¹⁶ The government states as one of the policy's objectives "the raising of awareness of their [IDPs'] rights" and states its commitment "to

prevent and avoid conditions that are conducive to or have the potential of resulting in the displacement of persons," including by "promoting an understanding among the public at large of the phenomenon of internal displacement and its social, economic, political and legal consequences for the individual, the community and the country."¹⁷ The policy also includes provisions concerning public awareness of evacuations, preventing the spread of contagious and infectious diseases such as HIV/AIDS and malaria among displaced populations, environmental awareness-raising to protect water resources, and the prevention of natural disasters through environmental destruction.

In the Central African Republic, where in 2010 the government began the process of developing a draft IDP law, the National Standing Committee for IDPs established by the president is charged with conducting activities to raise awareness of displacement, including by holding training sessions on the issue, on humanitarian law, and on the Guiding Principles as well as by mounting broader public campaigns.¹⁸ These provisions are in line with the Model Legislation on the Implementation of the Protocol on Protection and Assistance to Internally Displaced Persons annexed to the ICGLR Protocol on the Protection and Assistance to Internally Displaced Persons (2006).¹⁹ Information on any such activity of the Standing Committee could not be identified. Before the establishment of the Standing Committee, the gov-

¹⁴ Brookings-Bern Project on Internal Displacement, *Regional Seminar on Internal Displacement in the Southern African Development Community (SADC) Region, Gaborone, Botswana, 24–26 August 2005* (www.brookings.edu/events/2005/0826_southern_africa.aspx).

¹⁵ "National Policy for Protecting and Assisting Internally Displaced Persons in Kenya," speech of Minister of State for Special Programmes at the Workshop on the National Internally Displaced Persons Policy, 17 March 2010 (www.sprogrammes.go.ke/index.php?option=com_content&task=view&id=321&Itemid=117); "National Policy for Protecting and Assisting Internally Displaced Persons in Kenya," Speech of Permanent Secretary, Ministry of Justice, National Cohesion and Constitutional Affairs, Workshop on the National Internally Displaced Persons Policy, 17 March 2010 (www.sprogrammes.go.ke/index.php?option=com_content&task=view&id=322&Itemid=96).

¹⁶ Government of the Republic of Kenya, *National Policy on the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya*, final consolidated draft (24 March 2010), chapters IV, VIII, and IX. Draft on file with the authors.

¹⁷ *Ibid.*, "Objectives," p. 9; *Ibid.*, Chapter IV, 3(i).

¹⁸ In French, the committee is called *Comité National Permanent de Concertation et de Coordination pour la Gestion de la Protection des Droits des Personnes Déplacées*. It was established by the Central African Republic's High Commissioner for Human Rights and Good Governance in 2009 to coordinate the national response to internal displacement.

¹⁹ Article S.6(10) and (11) of the Model Legislation, discussed in Erin Mooney's legal audit of laws in the Central African Republic relating to IDPs, *Examen du cadre normatif de la République Centrafricaine relatif à la protection des personnes déplacées à l'intérieur de leur propre pays* (available in French only), Brookings-Bern Project on Internal Displacement, February 2011, p. 20 (www.brookings.edu/idp).

ernment office charged with coordinating assistance to IDPs, the Ministry of Social Affairs, lacked visibility as well as the funds and capacity to respond to the needs of IDPs. Financial and institutional capacity remains a constraint for the committee.

National authorities in Myanmar do not recognize the existence of conflict-induced internal displacement and hence do not acknowledge their responsibility to address it. However, displacement due to natural disasters, while initially ignored by the government after devastating Cyclone Nargis in 2008, has been acknowledged as an issue in a government plan developed with regional and international partners, the Post-Nargis Recovery and Preparedness Plan.

The vice president of the government of Southern Sudan (GoSS) admitted during the visit of the Representative of the Secretary-General on Internally Displaced Persons (RSG) in 2005 that there was a lack of sensitivity to IDPs' rights among military, police, and administrative structures within the GoSS. He acknowledged that more advocacy was needed on behalf of the human rights of IDPs.²⁰ Information about any subsequent government efforts to rectify these issues was not available, but the government's Ministry of Humanitarian Affairs and Disaster Management implemented an "emergency repatriation" program with the slogan "Come Home to Choose" to assist 1.5 million Southern Sudanese returning from the North and Egypt in time for the January 2011 referendum on secession from the North.²¹ Given

reservations expressed by international actors and lack of funding, the GoSS revised the program, launching its Accelerated Returns and Reintegration Initiative in late October 2010. The revised program foresaw a longer period for return and a total of about half a million returnees before the January 2011 referendum.²² Returns were fewer in number than the government had anticipated, however, and there was evidence that a lack of information has hindered IDPs' return and reintegration in the South. For example, as the Internal Displacement Monitoring Centre (IDMC) reported in May 2011: "Neither the GoSS nor state governments have formulated or publicised a clear policy on who is entitled to land where, forcing people to try to keep their options open." IDMC explains further:

The GoSS has provided little or no information to IDPs on what they can expect upon returning. Several returnees told IDMC that no information was made available to them before they decided to return to their homes in the south. They emphasised that they were invited to return by their governments and so expected to be either able to return to their land or given alternative land on which to settle.²³

The results of the lack of policy and communication have been seen on the ground. According to some humanitarian agencies, adequate information was "not systematically made available to IDPs [in Khartoum] about organised or spontaneous returns." In November and December 2010, only 120,000 Southern Sudanese returned from Khartoum to the South. Many IDPs on the move from Khartoum have not yet made it to their villages; they are instead displaced in areas around their villages. Some returnees, such as the 16,000 displaced in

²⁰ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin: Addendum: Mission to the Sudan*, E/CN.4/2006/71/Add.6, 13 February 2006, para. 57 (www2.ohchr.org/english/issues/idp/visits.htm).

²¹ Refugees International, "Statement by Refugees International on the Government of Southern Sudan's Mass Repatriation Plans," 27 August 2010 (www.refugeesinternational.org/press-room/press-release/government-southern-sudan%E2%80%99s-mass-repatriation); BBC, "South Sudan Plans Mass Return ahead of Referendum," 24 August 2010 (www.bbc.co.uk/news/world-africa-11073919); Hannah Entwisle, *The End of the Road?* A

Review of UNHCR's Role in the Return and Reintegration of Internally Displaced Populations, UNHCR, Evaluation Reports, 1 July 2010 (www.unhcr.org/4c4989e89.html).

²² IDMC, NRC, "Briefing paper on Southern Sudan: IDPs return to face slow land allocation, and no shelter, basic services or livelihoods," 30 May 2011, p. 1 (www.internal-displacement.org/briefing/south-sudan)

²³ *Ibid.*, p. 2.

Northern Bahr el Ghazal, were in transit sites in April 2011—some had been there for months.²⁴

In some contexts, it is not in the government's national interest to admit that there is an internal displacement problem and the flow of displacement-related information is controlled by the state. This had historically been the practice of the government of Yemen until February 2010 following the cease-fire, at which point the government publicly began to acknowledge the issue of internal displacement and call for resolution of their displacement. President Ali Abdullah Saleh reportedly ordered local authorities in Sa'ada and Amran governorates to facilitate the safe return of IDPs and the reconstruction of affected areas. In April 2010, Minister Ahmed Al-Kohlani, chief of the Executive Unit for IDPs, stated that some 350,000 people remained displaced by the conflict—a figure higher than UN estimates at the time. Moreover, shortly after a subsequent reconciliation agreement signed in June 2010, the government called on Houthi rebels to facilitate the return of IDPs.

For many years the government of Turkey had a similar reluctance to acknowledge internal displacement.²⁵ It was not until the mission to Turkey in 2002 of Francis Deng, the Representative of the Secretary-General on Internally Displaced Persons, that the government officially acknowledged the existence of internal displacement. In its Law on Compensation and in its Return to Village and Rehabilitation Program, the government acknowledges internal displacement as a national issue, due to “terrorism” or the fight against it. While the Turkish government has acknowledged the existence of internal displacement and its responsibility to address it, most notably in its Integrated Strategy Document, adopted by the Council of Ministers on 17 August

2005,²⁶ it is worth noting that it has “never formally acknowledged its responsibility for forcibly evicting its citizens from their homes and for the human rights violations committed by its security forces during the displacement.”²⁷ However, more generally, the government has admitted that it made mistakes vis-à-vis the Kurds; this admission is part of its effort to raise national awareness of the problem of internal displacement. In 2005, Prime Minister Recep Tayyip Erdoğan gave a historic speech in the Kurdish-dominated city of Diyarbakir in which he made a rare acknowledgment that the state had mistreated the Kurds and would work to solve the Kurdish issue. However, as Dilek Kurban highlights, this peaceful rhetoric belied actual circumstances, which were that the government was increasing police authority and penalties for the crime of terrorism under the new Turkish Criminal Code and was expanding the scope of its Counterterrorism Law.²⁸

Further, until recently, there were no official statistics or efforts to account for the internally displaced population

²⁴ IDMC, NRC, “Briefing paper on Southern Sudan: IDPs return to face slow land allocation, and no shelter, basic services or livelihoods.”

²⁵ See Roberta Cohen, “‘Tough Nuts to Crack’: Dealing with Difficult Situations of Internal Displacement,” working paper, Brookings Institution, 1998 (www.brookings.edu/events/1999/0128_displacement.aspx).

²⁶ For full text in English, see the Brookings-LSE Project on Internal Displacement collection of national and regional laws and policies on internal displacement (www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx).

²⁷ Deniz Yüksek and Dilek Kurban, *Permanent Solution to Internal Displacement? An Assessment of the Van Action Plan for IDPs*, Turkish Economic and Social Studies Foundation (TESEV), May 2009, p. 9 (www.tesev.org.tr/UD_OBJS/PDF/DEMP/TESEV_VanActionPlanReport.pdf).

²⁸ Also referred to in English as the Anti-Terror Law: Anti-Terror Law No. 3713, 12 April 1991. “TESEV’s Kurban: Solving Kurdish Problem Would Bring More Votes to AK Party,” *Today’s Zaman*, 28 June 2010 (www.todayszaman.com/tz-web/news-214399-tesevs-kurban-solving-kurdish-problem-would-bring-more-votes-to-ak-party.html); Helena Smith, “PKK Declares Ceasefire after Erdogan Offers Olive Branch,” *The Guardian*, 20 August 2005 (www.guardian.co.uk/world/2005/aug/20/turkey.helenasmith); Emrullah Uslu, “AKP Prepares a Comprehensive Plan to Address the Kurdish Question,” *Eurasia Daily Monitor*, vol. 6, no. 142, 24 July 2009 ([www.jamestown.org/programs/edm/single/?tx_ttnews\[tt_news\]=35317&cHash=a453f2be82](http://www.jamestown.org/programs/edm/single/?tx_ttnews[tt_news]=35317&cHash=a453f2be82)).

in Turkey. One of the main recommendations of Francis Deng during his mission to Turkey in 2002 was to collect data on the nature and scale of the problem of internal displacement. In 2005, the Turkish government commissioned a survey conducted by the Institute of Population Studies at Hacettepe University to assess the size and needs of the internally displaced population. Begun in 2004 and launched in 2006, the Turkey Migration and Internally Displaced Population Survey found that there were an estimated 950,000 to 1,200,000 conflict-induced IDPs between 1986 and 2005 in fourteen provinces during a declared state of emergency. The survey examined the socioeconomic characteristics of IDPs before and after migration/displacement, their reasons for migration/displacement, and their intentions regarding return and future migration. The survey also asked IDPs whether they were aware of the Return to Village and Rehabilitation Program and compensation laws and whether they had filed for compensation. The government's delay in releasing the results of the Hacettepe survey was criticized by NGOs such as TESEV and the immediate release of the results was one of RSG Walter Kälin's recommendations following his working visit to Turkey in September 2006. The minister of foreign affairs, discussing the survey, said that "Turkey's sole priority is not to come up with a figure of IDPs, but rather to correctly identify them and devise policies to remedy the problems of these people." He added that a "holistic approach should be taken towards the issue" to ensure that the social, economic and cultural needs of IDPs are comprehensively addressed.²⁹ It is worth noting that the results of the qualitative component of the study had yet to be released at the time of writing.

Even in countries where the government's recognition of internal displacement and its will to address it have been evident over the course of several or more years, that will does not necessarily translate to tangible action

²⁹ Republic of Turkey, Ministry of Foreign Affairs, "Internally Displaced Persons (IDPs) and the 'Return to Village and Rehabilitation Program' in Turkey" [date unknown, but after December 2006]. (www.mfa.gov.tr/internally-displaced-persons-_idps_-and-the-_return-to-village-and-rehabilitation-program_-in-turkey.en.mfa).

to benefit IDPs. This is true for Colombia, where significant progress has been made since 1994, when the government was taking an ad hoc approach to IDPs. Following the first visit of RSG Deng in 1994, the government began to recognize the existence of internal displacement and its responsibility to address it as a national priority at all levels of government through policies, laws, national plans of action and ministerial/municipal/departmental institutions adopted since 1995. However, Colombia's Constitutional Court, in its landmark Decision T-025 of 2004, concluded that the state of assistance to and protection of IDPs in Colombia constituted an "unconstitutional state of affairs"³⁰ reflected in part in the government's lack of implementation of the public policy for assisting IDPs contained in Law 387 of 1997, including the policy's provision for awareness-raising activities for civil society about the magnitude of internal displacement. The Court also found that "the displaced population lacks timely and complete information about its rights, the institutional offer, the procedures and requirements to gain access to it, and the institutions in charge of its provision."³¹

Pakistan has become more engaged in raising national awareness of natural disaster-induced internal displacement in recent years, but it has been inconsistent in the way in which it has raised awareness of those displaced by conflict. Throughout much of 2009, for example, the government referred to many of those displaced in the fighting in South Waziristan as "dislocated" rather than displaced persons³² and there has been a reluctance to

³⁰ Republic of Colombia, Colombian Constitutional Court, Decision T-025 of 2004, adopted by the third chamber of the Court, composed of Manuel José Cepeda-Espinosa, Jaime Córdoba-Triviño and Rodrigo Escobar-Gil.

³¹ *Ibid.*, 6.3.1.v.b, d. For full text of Decision T-025 and for further analysis, see Rodolfo Arango Rivadeneira, *Judicial Protection of Internally Displaced Persons: The Colombian Experience* (Washington, D.C.: Brookings-Bern Project on Internal Displacement, November 2009) (www.brookings.edu/papers/2009/11_judicial_protection_arango.aspx).

³² See, for example, People's Daily Online, "12,700 families in NW Pakistan dislocated as troops advance on Taliban," 19 October 2009 (<http://english.people.com.cn/90001/90777/90851/6787316.html>).

acknowledge displacement in Balochistan. However, on other occasions, Prime Minister Syed Yusuf Raza Gilani has been very active in raising national awareness of those displaced by conflict in 2009 and by the flooding in Pakistan in 2010, including by reaching out to Pakistanis, including the Pakistani diaspora, for financial support for the affected populations. For example, at political and economic conferences in 2009 in the wake of what was at the time the largest population movement in the country since the 1948 partition, the prime minister called attention to the plight of IDPs and stressed the government's commitment to assist them as well as to fight terrorism. At the All Parties Conference in May 2009, Gilani said that "the displaced people of Swat are the guests of the entire country. They should not consider themselves as dejected, because the government honours their sacrifice."³³ In June he stressed that assisting IDPs was "of the highest priority," reportedly stating: "We must plan now and set aside resources for the rehabilitation of IDPs, reconstruction of affected infrastructure and revival of economic activities on their return and hope this will happen in near future."³⁴ Despite these positive developments, there are questions as to the government's intentions to pursue a rights-based approach to IDPs.

In Afghanistan, the government's record over the past several years on acknowledging the existence of internal displacement and its responsibility to address it as a national priority is mixed. President Karzai has "repeatedly emphasized that reducing IDP caseload is a national priority," but that claim was made by an international adviser to the Ministry of Rural Development

and Rehabilitation (MRRD).³⁵ Moreover, the statement seemingly has not been translated to concrete action or public awareness campaigns. In 2003, a report by the MRRD and the Ministry of Refugees and Repatriation stated that "the State of Afghanistan is responsible for protection and durable solutions for the IDP population in the country with support from specialised agencies such as UNHCR, IOM and with financial assistance by the international community."³⁶ In the Refugees, Returnees and IDP Sector Strategy of the Afghanistan National Development Strategy 1387–1391 (2008–2013), the government acknowledges its responsibility for IDPs but also calls on international actors to complement government efforts.³⁷ In 2010, the UN Assistance Mission in Afghanistan and the Afghanistan Independent Human Rights Commission called on the government of Afghanistan to "raise public awareness about procedures for civilians affected by the conflict, including on compensation and accountability,"³⁸ a population that would include IDPs.

³³ Government of the Islamic Republic of Pakistan, Ministry of Defence, "APC: Political Leadership Resolves to Unite Nation against Terrorism," 18 May 2009 (www.defence.pk/forums/pakistans-war/26869-apc-political-leadership-resolves-unite-nation-against-terrorism.html).

³⁴ TTKN NewsDesk, "Prime Minister Syed Yusuf Raza Gilani – Talk about Internally Displaced Persons," 5 June 2009 (www.ttkn.com/politics/prime-minister-syed-yusuf-raza-gilani-talk-about-internally-displaced-persons-353.html).

³⁵ Pete Spink, "A Closing Window? Are Afghanistan's IDPs Being Forgotten?" *Forced Migration Review*, no. 21 (September 2004), p. 36 (www.fmreview.org/FMRpdfs/FMR21/FMR2113.pdf).

³⁶ Islamic Republic of Afghanistan, Ministry of Rural Development and Rehabilitation and Ministry of Refugees and Repatriation, "Towards Definite Solutions for IDPs in the South: A Regional Operation Plan," October 2003 ([www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/B057C8B9AB7B8DC5802570B8005A6F8D?OpenDocument#1.11.5](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/B057C8B9AB7B8DC5802570B8005A6F8D?OpenDocument#1.11.5)).

³⁷ Islamic Republic of Afghanistan, Afghanistan National Development Strategy Secretariat, *Afghanistan National Development Strategy 1387–1391 (2008–2013): A Strategy for Security, Governance, Economic Growth and Poverty Reduction* (www.undp.org.af/publications/KeyDocuments/ANDS_Full_Eng.pdf).

³⁸ UN Assistance Mission in Afghanistan and the Afghanistan Independent Human Rights Commission, *Afghanistan: Annual Report on Protection of Civilians in Armed Conflict 2010*, Kabul, March 2011 (<http://unama.unmissions.org/Portals/UNAMA/human%20rights/March%20PoC%20Annual%20Report%20Final.pdf>), p. ix.

Conclusion

When displacement occurs, a government's public acknowledgment of its existence and of the government's responsibility to address it is an important first step in protecting and assisting IDPs. In comparison with the eleven other benchmarks, raising awareness of IDPs appears to be a relatively easy measure to take. Even so, it is a step that not all of the countries surveyed have managed to take, at least not in response to conflict-induced displacement. The case of Myanmar illustrates how a government's refusal to acknowledge displacement, in this case of conflict-induced IDPs, ensures that for any such ignored group of IDPs, government action on all of the other benchmarks also is a non-starter.

In cases in which internal displacement was acknowledged, whether or not the government admitted responsibility for causing it, government efforts to raise awareness of internal displacement through public statements was not always a useful indicator of the government's commitment to upholding the basic human rights of IDPs, as in the cases of Pakistan and Sri Lanka. Across the countries surveyed, governments at different times and in very different situations have tried to raise awareness of internal displacement within their

countries. Sometimes their efforts have been belated, getting off the ground only several years after displacement first occurred or only as a response to political developments or external pressure; sometimes efforts have been sporadic, with government engagement ebbing and flowing over the years. In cases such as Colombia, Kenya, Turkey, Yemen and others, the influence of the Representative of the UN Secretary-General on Internally Displaced Persons on national authorities seeking to address internal displacement through policies cannot be underestimated.

While there is always a risk in raising expectations with promises that may not be kept, acknowledgment of the problem of internal displacement by a high-level government official is an essential first step to addressing it. Moreover, by raising awareness that IDPs have rights that must be respected, governments can send a strong message recognizing their national responsibility to IDPs to IDPs themselves, communities and government officials at all levels; that, in turn, can help to trigger more concrete measures to address internal displacement. But governments have different motivations and levels of sincerity in acknowledging internal displacement, if they do, which are reflected in their subsequent actions.



Eastern Province, Sri Lanka / An internally displaced woman and baby, Sahanagama site, Pulmoddai, Trincomalee.
Photo: UNHCR/ I. Colijn / May 2009

Benchmark 3

Data Collection on Internally Displaced Persons

Do the national authorities collect data on the number and conditions of IDPs?

Collecting data on the number, location, condition, needs and vulnerabilities of IDPs is essential to developing programs to assist IDPs, to facilitate durable solutions and to assess the extent of displacement. Data collection should begin at the moment of displacement and should continue, as systematically as possible, until sustainable, durable solutions have been achieved. Data collection is not identical to registration, but registration may serve as one source of information among others.

“IDP Profiling serves many purposes. It is a tool to enhance delivery of humanitarian goods and humanitarian services. It is a tool that may help to enhance protection and is an important element of protection. It is a tool that helps to enhance prospects for durable solutions. In other words, profiling—well done—is a tool that can facilitate comprehensive and holistic approaches to IDP situations.”

—Walter Kälin, former Special Representative to the Secretary-General on the Human Rights of IDPs (2004–10), speaking at the first international conference on IDP profiling, “Needs beyond Numbers,” hosted by Joint IDP Profiling Service, 23 May 2011, Geneva

The Framework for National Responsibility emphasizes the importance of collecting data that are disaggregated by age, gender and other key indicators so that the specific needs of particular groups of IDPs—such as women heads of household, unaccompanied minors, the elderly, persons with disabilities, ethnic minorities and indigenous persons—are assessed and addressed.

Data collection efforts also must encompass all IDPs whether they have been uprooted by conflict, disaster or other causes and cover IDPs whether they are in camps or non-camp settings. Efforts must be made to collect data and profile the needs of IDPs in all areas of a country, including any areas controlled by nonstate actors. Benchmark 3 emphasizes that efforts to collect data on IDPs must not in any way jeopardize their security, protection and freedom of movement. The Framework further notes that while government authorities bear primary responsibility for compiling information on IDPs, it often can be valuable to enlist international organizations, local NGOs and researchers to contribute to data collection efforts.

The importance of disaggregating data by age, gender and other key indicators of potential vulnerability has been increasingly recognized by UN agencies and NGOs and incorporated into assessment tools, as discussed below. The interagency Joint IDP Profiling Services—an interagency service initiated by the Danish Refugee Council, the International Office for Migration, NRC-IDMC, OCHA, UN Population Fund (UNFPA) and UNHCR and currently hosted at UNHCR—serves as a model of international efforts to improve data collection on IDP situations; its work on providing disaggregated data on internally displaced populations is to be lauded and supported.

In practice, collecting data can be a difficult enterprise, particularly in the midst of a conflict or when IDPs are dispersed within a community rather than being housed in a camp or temporary shelter. Data collection and monitoring requires acknowledging the occurrence of displacement, safe and unimpeded access—which may be difficult or impossible, particularly in conflict situations particularly—to the displaced as well as considerable resources and technical expertise. Sometimes, due to concerns about their security, IDPs may not want to identify themselves or to be counted as such or draw attention to themselves by participating in assessments or registration efforts. Estimating the number and the needs of IDPs living in non-camp settings, including urban areas, is especially daunting and complex, and

methodologies for doing so are still being developed. The need for improved data collection and monitoring is evident in an observation of IDMC relating to the countries that it monitors: “In 2010, IDPs’ needs were consistently assessed in only 40 per cent of countries monitored.”¹ Yet without data on the number, location, conditions and needs of IDPs, it is very difficult to ensure that programs target and are relevant to IDPs. Even when estimates of the total number of IDPs are made, such data are rarely complete and adequately disaggregated. IDP data also are not usually updated frequently enough to reflect changes in a situation; at best, data are updated yearly, where annual IDP registration exercises may take place.

Other complications to data collection and monitoring methods include that the situation and needs of IDPs often change over time. IDPs may be displaced multiple times by external events; moreover, IDPs may move from place to place as a way of coping with the challenges that they face. For example, they may go back to their communities for a while and then return to their place of displacement, or they may test various locations before deciding to stay a while in a given area. Less often, governments set up temporary camps to house IDPs; in those cases, counting or estimating the number of IDPs is usually easier than when they are dispersed among the population. But often camp populations also are dynamic: IDPs move in and out in response to perceived security, livelihood possibilities and government policies.

Unlike the term “refugee,” the term “internally displaced person” does not denote a legal status; it is only a descriptive term. A person is “recognized” as a refugee if he or she is found to meet certain criteria specified in the 1951 Refugee Convention and its 1967 protocol, in particular, a “well-founded fear of persecution” or being outside of their country and unable to access the protection of their government. Being outside of their country, such persons require international protection.

¹ IDMC, *Internal Displacement: Global Overview of Trends and Developments in 2010*, March 2011, p. 9 (www.internal-displacement.org).

There is no corresponding need to confer IDPs with a special status under international law because they remain within their country, under the sovereignty of their state, and in principle they should benefit from the state’s protection. Even so, many governments have developed systems to “register” IDPs and in some cases to confer them with a special status under national legislation. As the analysis below illustrates, registration has been central to efforts to collect data on IDPs. But registration systems are necessary only when they are used to determine eligibility for assistance. When there is no assistance, or when assistance is given in a discriminatory manner, there is little incentive for IDPs to register. Reluctance to come forward to be registered is especially acute in conflict situations and in areas where the government is perceived as contributing to the conditions causing displacement. Therefore, under-registration is a common phenomenon. When assistance is provided to IDPs registered with the government or in some cases with an international actor, IDPs are more likely to register. In such cases, there may be an incentive for people to register as IDPs in a camp in order to receive assistance even though they may be staying in another location or to register in multiple locations. There may also be cases where over-registration serves political purposes, as in Serbia or Azerbaijan.

In order to facilitate government, humanitarian and development planning and assistance and advocacy efforts to improve the situation of internally displaced populations, profiling should take place during all phases of displacement. IDP profiling is a collaborative exercise consisting of identification of internally displaced groups or individuals through data collection (including counting) and analysis in order to take action and advocate on behalf of the IDPs, to protect and assist them and eventually, to help bring about a solution to their displacement. Profiles of internal displacement situations should include the following core data:

—Number of IDPs disaggregated by age and sex, even if the numbers are only estimates; in many cases data are available only in certain locations.

—Current location and location of habitual residence, as methodology allows.

Whenever possible additional data could be collected—for example, on the following:

- Cause(s) of displacement
- Patterns of displacement
- Protection concerns
- Humanitarian Needs
- Potential durable solutions

The need for comprehensive guidance on collection and analysis of IDP-related information was realized by the Inter-Agency Standing Committee (IASC) in 2004 when a decision was taken to develop an interagency framework for these activities. As a result, *Guidance on Profiling Internally Displaced Persons* was published, following a development process led by the Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council (NRC) and Displacement and Protection Support Section of the UN Office for the Coordination of Humanitarian Affairs (OCHA), with support from the UN High Commissioner for Refugees (UNHCR). The Danish Refugee Council, which has for a number of years been engaged in profiling IDPs and other displacement-affected communities that it works with, created an IDP profiling “toolbox” in 2008 used by individuals and agencies that conduct profiling activities worldwide. At the time of writing, the Joint IDP Profiling Service was in the process of consolidating a “kit” of additional best practices in profiling.²

² IDMC and OCHA, *Guidance on Profiling Internally Displaced Persons*, April 2008. Danish Refugee Council, *Internal Displacement Profiling Toolbox*, January 2008. For the JIPS kit, see www.idp-profiling.org.

Overview of research findings

None of the governments surveyed has a completely reliable and inclusive system of data collection. Moreover, analysis of the fifteen countries surveyed reveals great variation in data collection practices. It must be acknowledged at the outset that baseline population data are often inadequate or markedly outdated in many of these countries. For example, in Yemen, the national authorities only recently (late 2009–2010) began to collect data on the number and conditions of IDPs. However, that must be seen in the context of the larger gaps in information about the situation in conflict-affected areas, where the government reported no information regarding civilian casualties, humanitarian needs, number of IDPs or property damage.³ In Sudan, census data on IDPs from 2008 are flawed and there are no comprehensive statistics available from the national authorities on the total number and conditions of IDPs.

With some notable exceptions, it appears that the countries whose governments have made the greatest effort to collect information on IDPs are those where displacement is both large scale and protracted and where the government has developed some capacity to carry out registration exercises.

In most countries, data collection and the provision of assistance are tied to registration of IDPs and there is significant variation in the extent to which registration accurately reflects the number of people displaced—which affects IDPs’ ability to receive protection and assistance. When data are collected by national authorities solely or in concert with international assistance, data often fall short of capturing the entire IDP population and usually fail to account for the fluid nature of displacement, including returns and secondary and multiple displacements. Even in countries with a robust registration system, such as Georgia, it has proven difficult

³ Human Rights Watch, “Invisible Civilians: The Challenge of Humanitarian Access in Yemen’s Forgotten War,” 19 November 2008, p. 14 (www.hrw.org/en/reports/2008/11/18/invisible-civilians-0).

to keep track of the more than 50 percent of IDPs who live in private residences instead of in collective accommodations and to obtain information on their needs, vulnerabilities and capacities.⁴

In Yemen, while some registration of IDPs was completed in accessible areas, it often neglected to take family size into account, leaving larger families with inadequate food supplies.⁵ Loss of IDPs' documentation during flight also hampered registration.⁶ According to UNICEF, by July 2009 only 22 percent of IDPs were registered as such due to various impediments, leaving those who were not designated as IDPs unable to access camps or aid.⁷ A comprehensive needs assessment, which was to be conducted by the international community in areas affected by the conflict, was requested by the Yemeni government in September 2008, but actual undertaking of the assessment was effectively blocked by the authorities until July 2009.⁸ A turning point was reached with the launch in February 2010 of a uniform national IDP registration system in Sana'a and the governorates of Amran and Hajjah.⁹ With the help of UNHCR and the cooperation of the central and regional authorities, training and capacity-building programs were undertaken to support the rollout of an IDP registration system.¹⁰ If fully implemented, the system would focus on those uprooted by the conflict and would provide reliable data on IDPs and their living conditions for the first time. However, in March 2010, the government decided to stop registering new arriv-

als, in particular due to a lack of resources for providing them with humanitarian assistance; currently it is verifying existing registers, while a number of IDPs remain unregistered.¹¹

The general registration of IDPs without having a specific purpose for registration entails the possibility of overlooking IDPs while creating an IDP status through registration.¹² In Sri Lanka,¹³ enumeration of IDPs is tied to registration, and the government generally registers the conflict-induced "new IDP" caseload. However, data collection is neither systematic nor uniform. The Government Agent is responsible for IDP registration at the district level. IDPs are registered whether they are living in camps, with host families or in emergency transit sites; this is considered to result in relatively efficient and accurate district-wide enumeration of IDPs. But the government has been accused of misrepresenting reality by using incorrect terminology that suggests that IDPs in transit and living with host families have achieved a durable solution.

In instances in which national authorities do recognize internal displacement and collect data, the provision of assistance is usually based on registration, which in turn is based on official recognition of "IDP status" under national legislation. That means that registration is often politicized, but often it also is flawed for other reasons because of the lack of capacity of government agencies to collect data. The politicization of who is granted IDP status and/or who is registered is evident in the exclusion of people whose displacement is caused by particular events. For example, in Colombia, the definition of "IDP" contained in Article 1 of Law No. 387 on displacement caused by violence is narrower than the definition in the Guiding Principles as it excludes those displaced by natural disasters or development projects. The government of Colombia excludes from

⁴ See further the Georgia case study in chapter 2 of this volume.

⁵ IDMC, *Yemen: Constrained Response to Protection Needs of IDPs and Returnees*, July 2009, p. 89 (www.internal-displacement.org).

⁶ IRIN, "Yemen: No ID, No Registration as an IDP," 4 April 2010 (www.irinnews.org/Report.aspx?ReportId=88742).

⁷ IDMC, *Yemen: Constrained Response to Protection Needs of IDPs and Returnees* p. 100.

⁸ UNHCR, "Yemen Fact Sheet: June," 30 June 2009 (www.internal-displacement.org) and UNHCR, "UNHCR-IDMC Correspondence," July 2009.

⁹ UNHCR, "Yemen Fact Sheet: February 2010," March 2010, p. 2 (www.internal-displacement.org).

¹⁰ Ibid.

¹¹ IDMC, *Yemen: IDPs Facing International Neglect*, August 2010, p. 11 (www.internal-displacement.org).

¹² E-mail message from UNHCR official, August 2010.

¹³ See further the Sri Lanka case study in chapter 2 of this volume.

its registration rolls intra-urban IDPs and those internally displaced by anti-narcotic crop fumigations and by agribusiness and mining megaprojects, and it places temporal limitations on who is eligible to register as an IDP, which also exclude many IDPs from assistance.¹⁴ The Office of the Inspector General for Colombia (Procuraduría General de la Nación) has acknowledged that there is a high rate of under-registration overall and that it had in fact worsened since the Constitutional Court issued Decision T-05 in 2004 recognizing the issue.¹⁵ A national survey by the court-mandated Civil

Society Follow-up Commission on the Public Policy for Internal Displacement (Comisión de Seguimiento a la Política Pública sobre el Desplazamiento Forzado) revealed that 34.3 percent of IDPs were not included in the government registry (Registro Único de Población Desplazada, or RUPD), as some IDPs did not declare their displacement due to lack of information or fear of coming forward or were rejected when attempting to register.¹⁶ The above-mentioned reasons are among those accounting for the significant disparity between government and NGO reports on the number of IDPs in the country, but other reasons include differences in starting date—government figures are cumulative since 2000 for the RUPD and since 1985 for the Observatory on Human Rights and Displacement (Consultaría para los Derechos Humanos y el Desplazamiento, or CODHES)—and the way in which multiple displacements are counted. As of the end of 2010, while the government of Colombia reported a total of 3.6 million individuals, the principal Colombian human rights organization, the Observatory on Human Rights and Displacement, reported nearly 5.2 million IDPs.¹⁷ The

¹⁴ See further UN Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Mission to Colombia, A/HRC/4/38/Add.3*, 24 January 2007, paras. 30–33, pp. 10–11 (http://ap.ohchr.org/documents/dpage_e.aspx?m=71); Rodolfo Arango Rivadeneira, ed., *Judicial Protection of Internally Displaced Persons: The Colombian Experience* (Washington, D.C.: Brookings-Bern Project on Internal Displacement, November 2009) (www.brookings.edu/papers/2009/11_judicial_protection_arango.aspx); Analysis and reporting by the Comisión de Seguimiento based on its Second National Verification Survey (2008), in *Comisión de Seguimiento a la Política Pública sobre el Desplazamiento Forzado, El Reto ante la Tragedia Humanitaria del Desplazamiento Forzado: Garantizar la Observancia de los Derechos de la Población Desplazada*, vol. 2, April 2009, and its III National Verification Survey (2010), in *El Reto ante la Tragedia Humanitaria del Desplazamiento Forzado: Garantizar La Observancia de Los Derechos de la Población Desplazada II*, vol. 9, June 2011. For these reports, see “Comisión de seguimiento a la política pública sobre desplazamiento forzado,” (www.codhes.org/index.php?option=com_content&task=view&id=39&Itemid=52).

¹⁵ Annex 5, Decision T-05 of 2004. Reporting on the government’s fulfillment of Decision T-05 of 2004 and Awards 176, 177 and 178 of 2005 and Awards 218 and 266 of 2006, the Office of the Inspector General of Colombia noted: “Obstacles persist in the displaced population’s access to the Single Registration System. It is alarming for [Acción Social] to reject declarations made by population which has been displaced as a consequence of opposing the national government’s policies, or because it has been forced to abandon its residence by paramilitary groups which, according to [Acción Social] have already been demobilized. Likewise, the persistence of the high rates of rejection for ‘belatedness’ [is alarming]” (Conclusion

9 of the Inspector General’s Sixth Report, submitted to the Constitutional Court on 27 October 2006). Cited and translated in Clara Elena Reales, “Design and Implementation of the Orders Issued in Decision T-025 of 2004: An Assessment of the Process,” in *Judicial Protection of Internally Displaced Persons: The Colombian Experience*, p. 59. For the full report by the Office of the Inspector General in the original Spanish see Procuraduría General de la Nación, *Sexto informe de la Procuraduría General de la Nación sobre cumplimiento de las órdenes contenidas en la Sentencia T-025 de 2004 y los autos 176, 177 y 178 del 29 de agosto de 2005 y 218 y 266 de 2006 de la Corte Constitucional*, Bogotá, 2006.

¹⁶ As reported in the Second National Verification Survey (II Encuesta Nacional de Verificación) in 2008: Comisión de Seguimiento a la Política Pública sobre el Desplazamiento Forzado, *El Reto ante la Tragedia Humanitaria del Desplazamiento Forzado: Garantizar la Observancia de los Derechos de la Población Desplazada*, vol. 2, April 2009, p. 50, available under “Comisión de Seguimiento” at www.codhes.org.

¹⁷ IDMC, *Internal Displacement Global Overview of Trends and Developments in 2010*, pp. 71–72 (www.internal-displacement.org). See also slightly lower figures reported

situation is further complicated by the fact that there is no mechanism to re-register in the case of repeated displacements or to de-register when people are no longer displaced. Authorities also do not record the number of rejections, the reasons for rejection, the number of appeals or the number of responses to appeals.¹⁸

In many cases governments have worked with UN agencies on specific initiatives in data collection and capacity building. IDP data collection is often hindered because it is undertaken by ministries that are considered to be among the weakest in terms of political clout and funding and in countries that are experiencing ongoing conflict or generalized violence. Hence, in many of these countries, UN or other international agencies are involved in assisting the relevant institutional focal points with data collection. For example, in Sudan, available estimates of and information on IDPs are developed by UN agencies and international organizations, including the UN High Commissioner for Refugees, the UN Office for the Coordination of Humanitarian Affairs and the International Organization for Migration, while certain data on returnees to Southern Sudan are collected jointly by IOM and the Southern Sudan Relief and Rehabilitation Commission of the Government of Southern Sudan. Since 2003, IOM has provided technical and financial assistance to the government of Iraq and the Kurdish Regional Government for regular data collection on a range of disaggregated characteristics for conflict IDPs.¹⁹ In June 2008 the government of Kenya collaborated with the UN High Commissioner for Refugees (UNHCR) to conduct a profiling exercise to

determine the number of IDPs, and it has worked with the UN Office for the Coordination of Humanitarian Affairs (OCHA) on disaster management and information sharing and with the United Nations Development Program (UNDP) on early recovery initiatives.²⁰

Humanitarian access problems for international actors assisting national authorities complicate the collection of accurate data, as in Yemen, where the government began to collect data on IDPs in only 2009, in cooperation with UNHCR. Access barriers point to the inability of national authorities to fulfill their obligations to protect and assist IDPs and to facilitate international assistance under international humanitarian law, as recognized in the Guiding Principles. In Sri Lanka, UN agencies, namely UNHCR, aggregate data collected from district levels in various displacement areas to track displacement patterns.²¹

The case of Afghanistan²² further illustrates access issues that impede accurate and comprehensive data collection, in addition to a whole host of other challenges affecting national and international efforts to count and profile IDPs. However, it also serves as an example of the government's efforts to work with international organizations to improve IDP data collection and reporting. The Ministry of Refugees and Repatriation (MoRR), including its various provincial departments (Department of Refugees and Repatriation, or DoRRs), collects data on and profiles IDPs through its position as co-chair, with UNHCR, of the National IDP Task Force. The ministry relies on its DoRRs, relevant ministries, local authorities, UN agencies, the Afghanistan Independent Human Rights Commission and NGOs for data collection and reporting. Established in 2008 as a subgroup of the Afghanistan Protection Cluster, the National IDP Task Force includes other national and international partners and undertakes monitoring

earlier in 2010 by the government and by CODHES: Government of Colombia, *Informe del Gobierno Nacional a la Corte Constitucional*, 31 July 2010 (www.internal-displacement.org); and CODHES, *Salto Estratégico o Salto al Vacío?* Boletín Informativo, no. 76, 27 January 2010 (www.codhes.org).

¹⁸ Andrés Celis, "Protection of the Internally Displaced by Constitutional Justice: The Role of the Constitutional Court in Colombia," in *Judicial Protection of Internally Displaced Persons: The Colombian Experience*, pp. 131–32.

¹⁹ In addition, IOM has provided legal and technical expertise to Iraqi property restitution mechanisms, including the Commission for Resolution of Real Property Disputes.

²⁰ See further, Kenya case study in chapter 2 of this volume.

²¹ See further, Sri Lanka case study in chapter 2 of this volume.

²² See further, Afghanistan case study in chapter 2 of this volume.

and profiling of three types of IDPs in Afghanistan: conflict-induced, natural-disaster induced, and protracted-displacement IDPs. While task force data are used for planning purposes, it is commonly accepted that the data do not accurately reflect the displacement situation in Afghanistan. There are various challenges to ensuring that data are both accurate and comprehensive, including the temporary nature of displacement; insecurity and the lack of access to IDPs, particularly in the southern provinces of Helmand, Kandahar and Uruzgan; and the various methodologies applied to determine who is an internally displaced person and who is an economic migrant and when displacement begins and ends. The National IDP Task Force has sought to redress problems and discrepancies in data collection and reporting on IDPs in order to provide them with greater protection and assistance—including by establishing the ad hoc Working Group on IDP Data Reconciliation and Harmonization with technical staff from UNHCR and the MoRR which has sought to streamline data collection and reporting methodologies.²³ However, the MoRR, DoRRs and UNHCR continue to face serious challenges in data collection.

Some governments do not appear to collect data on IDPs, as in Myanmar and the Democratic Republic of the Congo (DRC). In the Central African Republic, while the government does not collect IDP data it does facilitate the collection of data by international actors and is working with UNHCR on a pilot registration project in some areas.²⁴ The government of Uganda collects data on IDPs, but there is no standardized system

for data collection across districts—a problem that has also been reported in Nepal and Sri Lanka. In some cases, as in DRC and Sudan, current IDP figures are provided by international agencies. In still other cases, as in Iraq, registration of IDPs may be suspended and restarted in response to particular policies.²⁵

Government authorities may discriminate against certain populations of IDPs for political reasons, as evident in their data collection or registration procedures. Until the adoption of the National Policy on Internally Displaced Persons (2007), the government of Nepal registered only IDPs displaced by Maoist violence, while those displaced by government security forces were not recognized as IDPs.²⁶ With the adoption of the 2007 policy, the government began to register IDPs displaced by both government security forces and Maoists, although it does not officially recognize as IDPs those displaced due to ethnic conflict in Terai. Similarly, the Pakistani government registers IDPs in the National Database and Registration Authority but does not register IDPs from areas not recognized as conflict areas or those from tribes that it considers to be associated with insurgents. In Afghanistan, politics affects the accuracy of the number of IDPs reported and the provision of protection and assistance, illustrating the complexity of the IDP issue in the country. According to UNHCR in 2006, “there is much at stake for IDP leaders when determining the numbers of people in their settlements” because aid distribution amounts are dependent on those figures. In addition, poor individuals often have presented themselves as IDPs, especially in the “less official camps” in Panjwayi and Maywand, “and received equal benefits as the ‘genuine’ Kuchi IDPs.”²⁷ Another politicized factor

²³ IRIN, “Afghanistan: Little Relief for Growing Number of Conflict IDPs,” 14 October 2010 (www.irinnews.org/report.aspx?reportid=90768).

²⁴ One of the objectives of the National Standing Committee in the Central African Republic is to collect data on the number and profile of IDPs in the country; however, there was no evidence at the time of writing that it had done so. See Erin Mooney, *Examen du cadre normative de la République centrafricaine relatif à la protection des personnes déplacées à l'intérieur de leur propre pays : Audit juridique*, Brookings-Bern Project on Internal Displacement, February 2011, pp. 21–23 (www.brookings.edu/reports/2010/11_car_audit_juridique.aspx).

²⁵ In Iraq, IDP registration was stopped in 2009 and restarted in 2010 to enable people to register as IDPs so that they could subsequently register as returnees.

²⁶ IDMC, *Nepal: Failed Implementation of IDP Policy Leaves Many Unassisted*, January 2010 (www.internal-displacement.org).

²⁷ Asia Consultants International, *Durable Solutions for Kuchi IDPs in the South of Afghanistan: Options and Opportunities*, commissioned for UNHCR Kandahar,

hindering the collection of data and profiling of IDPs is discrimination on the basis of sectarian, ethnic or tribal affiliation, as in Iraq in 2008 and 2009, where such discrimination has been documented as preventing IDPs from registering.²⁸ Registration of new arrivals has also been restricted. For example, in Iraq new arrivals were blocked from entering some areas because of security concerns or strained resources, and in Yemen registration was suspended due to lack of resources for providing humanitarian assistance. Most countries that collect data on IDPs focus on IDPs displaced by conflict, and few have systems in place to collect data on IDPs displaced by disasters.

In all the cases in which IDP registration occurs, some of the obstacles to registration point to the failure of national authorities to fulfill their other responsibilities recognized in the UN Guiding Principles on Internal Displacement. For example, in some of the countries studied, IDPs do not want to self-identify as such for fear of being recognized or identified by the very authorities who had a hand in their displacement. IDPs also are often uninformed of registration procedures and/or government assistance schemes for IDPs; they may be subject to a heavy burden of proof to register; they may be unable to register or receive assistance owing to state requirements that they return to their place of origin to do so or that they possess documentation that has been lost or left behind in the place of origin; or they may not believe that the government will assist them or provide them with sufficient aid. IDPs' rights to protection and assistance are violated as a result of such obstacles to registration.

November 2006 (www.unhcr.org/46c993942.pdf).

²⁸ IOM, *Iraq Return and Displacement: 2008 Mid-Year Review*, 17 July 2008, pp. 5–6 (<http://reliefweb.int/node/273534>); IOM, *Iraq Displacement 2007: Mid-Year in Review*, p. 4 (www.iom.int/jahia/webdav/shared/shared/mainsite/published_docs/studies_and_reports/midyear_review_iraq_2007.pdf); IOM, *Iraq Displacement 2007: Year in Review*, p. 5 (<http://reliefweb.int/node/254120>); IDP Working Group, *Internally Displaced Persons in Iraq: Update, 24 March 2008*, 24 March 2008 (<http://reliefweb.int/node/261077>).

The role of the Representative of the UN Secretary-General on Internally Displaced Persons (human rights of internRSG) in influencing governments to establish or work to improve IDP data collection and reporting methods must be acknowledged. For example, despite recognizing the severity of the problem, the Colombian government did not register IDPs or have data on them until after 1994, following the engagement of the RSG. Until recently in Turkey, after more than one decade of inaction on IDPs on the part of the government, there were no official statistics or efforts to account for IDPs, who are mostly Kurds. One of the main recommendations of RSG Francis Deng during his mission to Turkey in 2002 was that the government collect data on the nature and scale of the problem of internal displacement. In 2005, the Turkish government commissioned the Institute of Population Studies at Hacettepe University to conduct a survey to assess the size and needs of the internally displaced population. Conducted between December 2004 and June 2006, the Turkey Migration and Internally Displaced Population Survey found that an estimated 950,000 to 1,200,000 conflict-induced IDPs were displaced between 1986 and 2005 in fourteen provinces during a declared state of emergency.²⁹ The survey also examined the socioeconomic characteristics of IDPs before and after migration/displacement, reasons for migration/displacement, and intentions regarding return and future migration as well as whether they were aware of the Return to Village and Rehabilitation Project and compensation laws and whether they had filed for compensation.³⁰ The Hacettepe study, by documenting the large scale of displacement, seemed to open the door to development of policies to assist IDPs.³¹ In 2007, RSG Walter Kälin recommended that

²⁹ IDMC, *Turkey: Need for Continued Improvement in Response to Protracted Displacement: A Profile of the Internal Displacement Situation*, 26 October 2009, p. 42 (www.hips.hacettepe.edu.tr/eng/press_release.pdf).

³⁰ Hacettepe University, "Turkey Migration and Internally Displaced Population Survey," press release, 6 December 2006 (www.hips.hacettepe.edu.tr/eng/press_release.pdf).

³¹ However, it is worth noting that the quantitative portion of the study had yet to be released at the time of writing.

the government of Afghanistan undertake the comprehensive national assessment and profiling of IDPs. On the basis of the RSG's recommendation, UNHCR, under the auspices of the National IDP Task Force and in close cooperation with the Ministry of Refugees and Repatriation, profiled IDPs based on surveys that had been undertaken, in particular those by UNHCR offices in the field, by provincial Departments of Refugees and Repatriation, and by the UN Assistance Mission in Afghanistan (UNAMA). The MoRR endorsed the report, entitled the *National Profile on Internally Displaced Persons (IDPs) in Afghanistan*, in November 2008. The profile identified the number of IDPs, cause of displacement, location of displacement and assessed protection and assistance needs. The report did not profile IDPs displaced by recent droughts or "battle-affected" IDPs displaced by fighting between the National Army and antigovernment groups.³² However, given the challenges described above, the figures in the profile are not fully comprehensive and accurate.

While not a focus of the research, it is worth noting that civil society groups often play an important role in the collection of data on IDPs—and often discrepancies exist between their data and the data of national authorities. For example, as noted above, the Observatory on Human Rights and Displacement in Colombia collects data that are much broader in scope than those of the government as it includes those displaced by government counterinsurgency operations and anti-narcotic crop fumigations and uses a different temporal cut-off point than the government. In the case of Myanmar, civil society organizations have collected and reported data on conflict-induced IDPs annually since 2002. The

figures on IDPs reported by Kenyan NGOs are different from those of the government.³³

Conclusion

It is interesting that most governments seem to rely on international actors to collect data on internal displacement, or perhaps it is just that international data are more likely to be publicly available than data collected by national governments. Generally speaking, in all of the countries surveyed, the lack of accurate figures on IDPs outside of camps and of data on returns—especially on the conditions of IDPs upon return—and multiple displacement is also striking.

As this analysis shows, most governments recognize the importance of collecting data on IDPs, even when they are not in a position to do so themselves. IDPs have benefited from the efforts of international actors to work with governments to collect and report data to inform protection and assistance responses. In some cases, civil society actors have contributed to data collection efforts. However, in all of the countries surveyed, challenges to data collection and reporting abound, including lack of resources and capacity, insecurity inhibiting access to displaced populations, discrimination, the politicization of IDP data reporting, fear of registering on the part of IDPs and differences in the definitions "IDP" that often are more restrictive than the definition in the Guiding Principles—for instance, the definition may include only conflict-induced IDPs and sometimes only certain groups of such IDPs. Despite these and other challenges, data collection seems to be an area in which governments should be able to fulfill their responsibilities through cooperation with international and civil society actors.

³² OHCHR, "UN Expert Concerned about Growing Problem of Internal Displacement in Afghanistan," 20 August 2007; UNHCR, "Joint Press Release: Ministry of Refugees and Repatriation and UNHCR, First National IDP Report Reveals Complex Challenges for IDPs," 15 December 2008 (www.unhcr.org/49b8e91c2.html); UNHCR, *National Profile on Internally Displaced Persons (IDPs) in Afghanistan*, December 2008 (www.unhcr.org/49ba33a02.html).

³³ See further, Kenya case study in chapter 2 of this volume.



Colombia / A boy plays on the street near the Pacific coast of Colombia. Located on a clandestine trade route used by cocaine dealers and smugglers (of humans, arms and money), the once already displaced Afro-Colombian communities who live near the city of Buenaventura are in danger of being displaced again due to their strategic location and find themselves in the middle of a war between various armed groups fighting for the control of the region and the route to extend their influence.
Photo: UNHCR / B. Heger / July 2010

Benchmark 4

Training on the Rights of IDPs

Are competent authorities adequately trained on their responsibilities to protect the rights of IDPs?

Ensuring that relevant government officials at all levels are trained on internal displacement issues is a key element of the exercise of national responsibility and can contribute to the effectiveness of all aspects of the government's response. That government officials undergo training related to IDPs or to human rights more generally is a positive step that, although it is not a panacea for displacement, is part and parcel of sensitizing officials so that they are in a better able to protect and assist IDPs and, ideally, to prevent displacement. Nevertheless, despite training, even when it is based on the UN Guiding Principles on Internal Displacement, significant challenges remain for governments to prevent displacement, to provide protection and assistance during displacement and to ensure that IDPs achieve durable solutions in accordance with the Guiding Principles.

The Framework for National Responsibility calls for training specific groups of government officials, including

—government policymakers at the national level

—government officials at the regional and local levels who are in direct contact with the displaced and are responsible for implementing government policy and programs in the field

—members of the military and the police who are expected to play a key role in ensuring IDPs' protection

—IDP camp administrators as well as official responsible for humanitarian assistance and the protection of human rights

—commissioners and staff of national human rights institutions

—Parliamentarians, who play a leading role in the development of legislation

—civil society groups and most important, IDPs themselves, who are entitled to know their rights.

For more than a decade, training has been carried out by international agencies and nongovernmental organizations, civil society groups, and national actors trying to raise awareness of internal displacement and to support governments in exercising their responsibility for protecting and assisting people displaced within their borders. The Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council (NRC) has played a leading role in developing training materials and conducting training for different groups of stakeholders.¹ Other training materials on internal displacement have been developed by the UN High Commissioner for Refugees (UNHCR), International Organization for Migration (IOM), the United Nations Children's Fund (UNICEF), Office of the High Commissioner for Human Rights (OHCHR), the Representative of the UN Secretary-General on Internally Displaced Persons (RSG), the Brookings Institution's Project on Internal Displacement and other actors.

For governments that are aware of internal displacement and committed to addressing it but lack the necessary capacity, training of government officials is an important first step. But given staff turnover in government ministries (not to mention among parliamentarians, staff of national human rights institutions, and camp administrators), training is not a one-off initiative but something that needs to be repeated with different groups of stakeholders. Even for staff who remain, training is not a single event but a continuous process of professional development that should become increasingly specialized and tailored to the context and to the particular competencies of different officials. Moreover, training needs to extend beyond the national-level staff

¹ IDMC was formerly known as the IDP Project (www.internal-displacement.org).

of ministries responsible for IDPs to include provincial and municipal authorities as well as others who come into contact with IDPs. It would be helpful in that regard for governments to include a section or module on IDPs in any standard training curricula for government officials, police, social service agencies and other key actors. By doing so, they could reduce their reliance on external actors for training material, adapt generic material to a specific context, and institutionalize their commitment to strengthening their capacity to address internal displacement.

Overview of Research Findings

To varying degrees, all of the fifteen countries surveyed have received—and in several cases actually sought out—training for their authorities on the rights of IDPs and on other issues related to internal displacement. The research reveals that the bulk of the training is conducted by international actors, but this may be a reflection of the fact that the available materials describing these trainings are in English; the research also indicates that national human rights institutions often undertake training as one of their principal activities regarding internal displacement (see Benchmark 8) and that often civil society groups also are active.

The focus of the research was on identifying training that specifically addressed internal displacement. When examples were found of displacement issues being integrated into broader training programs on disaster preparedness and response, this type of training also was included in the analysis.

Authorities from all of the case study countries have received some training on various specific issues related to internally displaced persons. Of all of the countries surveyed, authorities from various branches of government from the Central African Republic, Colombia, the Democratic Republic of the Congo, Georgia, Iraq, Kenya, Nepal, Sudan, Turkey, Uganda and Yemen have been trained specifically on the UN Guiding Principles on Internal Displacement. Uganda was the first country in the world to receive such training, after having requested it in 1998, the same year that the Guiding Principles were presented by RSG Francis Deng to the

United Nations. Discussed below are some examples of training conducted for national and local authorities over the past several years. Evidence of documented follow-up to training was generally not available.

Various UN agencies and international organizations have been involved in conducting training and workshops for government authorities on internal displacement, often including training on the Guiding Principles. These entities include the RSG, the Brookings Project on Internal Displacement, UNHCR, the Internal Displacement Monitoring Centre of the Norwegian Refugee Council (NRC), OHCHR, the UN Development Programme (UNDP), UN peacekeeping missions and the International Organization for Migration. IDMC has played a leadership role in providing training on internal displacement, particularly on the Guiding Principles, in many different countries for more than a decade. Indeed, it was in response to a request from the government of Uganda's Department of Disaster Preparedness and Refugees for training on the Guiding Principles that IDMC began to provide training, in that case in collaboration with OHCHR, in 1999. The training modules developed for that workshop for government officials, including police and camp administrators, as well as IDP representatives, civil society groups, UN agencies and NGOs, provided the foundation for a training program that now has been provided in more than twenty-five countries around the world. IDMC often provides such training in response to a request from and in collaboration with a UN agency or NGO working in the country. For example, in the Democratic Republic of the Congo (DRC), the UN Office for the Coordination of Humanitarian Affairs (OCHA) and NRC/IDMC organized workshops and training sessions on the Guiding Principles in 2003 and 2004, both jointly and individually, for government and nonstate actors in areas affected by displacement.² OCHA's Training Program on Internal Displacement Principles aimed to review the

² In Goma, Kalemie, Masisi, Kinshasa, Gbadolite, Bukavu, Kasongo, Beni and Bunia. OCHA, *Democratic Republic of the Congo 2004: Consolidated Appeals Process*, 2004, pp. 9–10 ([http://ochadms.unog.ch/quickplace/cap/main.nsf/h_Index/CAP_2004_DR Congo/\\$FILE/CAP_2004_DR Congo_SCREEN.PDF?OpenElement](http://ochadms.unog.ch/quickplace/cap/main.nsf/h_Index/CAP_2004_DR Congo/$FILE/CAP_2004_DR Congo_SCREEN.PDF?OpenElement)).

actions of DRC authorities and nongovernment actors in the field of IDP rights and to disseminate the Guiding Principles.³ The Norwegian Refugee Council's Training on IDP Guiding Principles, Counseling and Legal Assistance to IDPs on Return program sought to raise awareness among local authorities and humanitarian actors on the protection and assistance needs of IDPs.⁴ At times, IDMC training is conducted in partnership with national human rights institutions. For example, in 2003, IDMC organized a workshop in partnership with the Nepal Human Rights Commission to promote and disseminate the Guiding Principles and to analyze the country's internal displacement situation through the lens of the Guiding Principles. Representatives from government ministries, the police and the army participated in the workshop.

Often training workshops or seminars on the Guiding Principles also are organized during or recommended as a result of a country mission by the RSG. In May 2000, as part of the first visit by RSG Francis Deng to Georgia, the government hosted a regional workshop on internal displacement to raise awareness of the Guiding Principles among relevant government officials from Armenia, Azerbaijan and Georgia as well as international and local stakeholders. Various training sessions on the Guiding Principles followed in subsequent years in Georgia for government officials at the central and local levels, for national human rights institutions and for local NGOs at workshops organized in particular by NRC/IDMC, UNHCR, the Council of Europe and local NGOs. During RSG Walter Kälin's working visit to Turkey in May 2005, IDMC and UNDP provided a training workshop on the Guiding Principles to the subprovincial governors of the fourteen provinces affected by internal displacement. Cooperation between Turkish authorities and the United Nations also has led to the training of Interior Ministry officials on the use of the Guiding Principles. In Yemen, where overall there is a substantial lack of capacity for dealing with IDP issues at the central and local levels of government, RSG Kälin, following his visit in April 2010, recommended increasing capacity-building efforts. IDMC and UNHCR conducted training on the Guiding Principles in April 2010, which included national

UNHCR staff as well as government officials, particularly from local levels. UNHCR also conducted a series of protection workshops open to local officials, while IDMC was planning a "train-the-trainers" workshop on IDP protection in late 2010. In the Central African Republic, where governmental capacity also is limited, IDMC has facilitated a number of workshops on IDP issues for government officials as well as NGOs, which have included awareness-raising and training on the Guiding Principles and on the subregional and regional standards that have been developed based on the principles. In July 2010, UNHCR and IDMC organized a workshop at which the RSG participated to discuss the development of national legislation reflecting international and regional standards on IDPs. Moreover, in a potential good practice, in the Central African Republic the legal mandate establishing the national institutional focal point for addressing internal displacement (see also Benchmark 7) specifically gives this institution responsibility for initiating training sessions regarding the problem of displacement, based on human rights, international humanitarian law and the Guiding Principles.⁵

Of particular interest to this study, are a number of examples of training provided to government authorities on the Framework for National Responsibility itself. Indeed, the benchmarks outlined in the Framework were first developed as part of guidance materials on internal displacement developed for the International Organization for Migration's global training and capacity-building program on migration management for government policymakers and practitioners as well as IOM staff.⁶ IDMC

³ Ibid., p. 91.

⁴ Ibid., p. 93.

⁵ See Erin Mooney, *Examen du cadre normative de la République Centrafricaine relatif à la protection des personnes déplacées à l'intérieur de leur propre pays: audit juridique* (Brookings Institution–University of Bern Project on Internal Displacement, February 2011), pp. 20–21.

⁶ IOM, *Essentials of Migration Management: A Guide for Policy-Makers and Practitioners* (2005), also available in Arabic, Bosnian, Korean, Spanish and Russian. With respect to benchmarks of national responsibility, the IOM guidance is consistent with that provided by the Framework. The displacement module in the IOM guide was drafted by the researcher at the Brookings Institution's Project on Internal Displacement which authored the Framework.

since has incorporated the Framework and the guidance provided on specific benchmarks into its training material.⁷ The Framework also figures as has the RSG and the Brookings-Bern Project on Internal Displacement in the Sanremo IDP Law Course, which began in 2005. The Framework and twelve benchmarks also are emphasized in the *Handbook for the Protection of Internally Displaced Persons* published in 2007 and 2010 by the Inter-Agency Standing Committee (the coordination forum on humanitarian action for the United Nations and NGOs), which serves as a guidance and training tool.⁸ At the country level, humanitarian and human rights agencies have made use of the Framework in providing training on the rights of IDPs. For instance, in Sierra Leone, OHCHR has used the Framework in its training program for police. In Uganda, OHCHR partnered with the Ugandan Human Rights Commission to organize seminars in collaboration with UNHCR and OCHA to raise awareness and train international agencies, NGOs and IDP communities about IDPs' rights and the responsibilities of the authorities toward IDPs. In Georgia, UNHCR has provided training on the Framework to local NGOs, the national human rights commission and government authorities.

Beyond the Guiding Principles, the rights of IDPs and issues of national responsibility, training programs on internal displacement for government authorities and other stakeholders increasingly are covering a wide range of other issues. For instance, NRC/IDMC has provided training on the Framework for Durable Solutions to Displacement to the authorities and other relevant actors in Georgia; IDMC currently is developing a training package on this topic for global use. Also in Georgia, USAID, in partnership with UNHCR and other international stakeholders, undertook from 2009 to 2010 a technical assistance program for the government on IDP issues. The challenges that the authorities experienced in mounting a humanitarian response following the unexpected massive displacement crisis due to the outbreak of

armed hostilities in August 2008 have led the Georgian Ministry of Refugee Affairs to seek training in emergency preparedness and response, including in the case of sudden onset disasters. The assistance placed an emphasis on strengthening the government's capacity in terms of communication and coordination on IDP issues, including with the international community.⁹ Following the adoption of the Great Lakes Pact and its protocols on internal displacement as well as the adoption of the African Union Convention for the Protection and Assistance of Internally Displaced Persons (Kampala Convention), IDMC and other NGOs such as Oxfam have organized training workshops in African countries, including the Central African Republic and Kenya, on this legally binding instrument. Training on the *Operational Guidelines on Protection of Persons Affected by Natural Disasters* has been carried out by the Brookings-Bern Project on Internal Displacement through regional workshops in Africa, Central America, Asia and the Pacific with the participation of government and nongovernment representatives from several of the countries included in this study. For example, the NGO Mingalar Myanmar offers extensive training at the village level on disaster risk reduction that is intended to reduce displacement resulting from natural disasters.¹⁰

Training and capacity building by international organizations also takes the form of institutional support, at times on a continuous basis, in some of the countries surveyed, including support to develop or improve implementation of internal displacement laws and policies. For example, since 2003 the government of Iraq has received significant support from the International Organization for Migration to strengthen its capacity to assist migrants, including IDPs and returnees, manage borders and address property-related disputes.¹¹ In Turkey, UNDP and other actors supported capacity-building efforts of the Ministry of Interior between June and October 2006 to improve the implementation of the Law on Compensation. UNDP organized

⁷ See, for instance, IDMC, "National Human Rights Institutions and Internally Displaced Persons," reproducing the guidance provided in Benchmark 8 of the Framework (www.internal-displacement.org).

⁸ Inter-Agency Standing Committee (IASC), *Handbook for the Protection of Internally Displaced Persons*, June 2010 (www.unhcr.org/42355229).

⁹ See further the Georgia case study in chapter 2 of this volume.

¹⁰ Mingalar Myanmar (<http://mingalarmyanmar.org/index.html>).

¹¹ IOM, "Technical Cooperation and Capacity Building" (www.iomiraq.net/tccb.html).

the provision of technical support to the Ministry of Interior. Technical expertise was provided by IOM and the Brookings-Bern Project on Internal Displacement. UNDP also provided technical support and advice to the Ministry of the Interior, particularly the General Directorate of Provincial Administration, to establish a secretariat charged with reviewing decisions of the Damage Assessment Commissions. In 2008, the United Nations developed a training program on Nepal's National Policy on Internally Displaced Persons (2007) and the related IDP policy directives for local officials and civil society groups at the district level.

Following the visit of RSG Francis Deng and UN Emergency Relief Coordinator Jan Egeland to northern Uganda in mid-2003, several training workshops on IDP rights were held in Uganda. In November 2003, OCHA's IDP unit held two seminars on IDP rights for representatives of authorities at the district level and representatives of the Ugandan army as well as humanitarian personnel of international and national humanitarian organizations.¹² The Norwegian Refugee Council held training one week later for IDPs and local authorities on IDPs' rights in order to complement the seminars for national and international actors.¹³ These training sessions were influential in developing the National Policy on Internal Displacement in 2004 and building support for its adoption. In 2005, NRC held a workshop to train trainers on the application of the Guiding Principles and on the National Policy for Internally Displaced Persons.¹⁴ Further, in July 2006, the government hosted a two-day workshop, organized by the RSG Walter Kälin and the Brookings-Bern Project on Internal Displacement, focusing on the challenges of implementing the National Policy for Internally

Displaced Persons. The workshop brought together representatives of the government of Uganda, military and police forces, the United Nations, the Uganda Human Rights Commission, donor governments, local and international NGOs, internally displaced persons, and experts from research institutions.¹⁵ While representatives of the Department of Disaster Preparedness and Refugees as well as representatives from the Uganda Human Rights Commission have been active participants in these workshops on internal displacement, it is unclear whether these institutions themselves conduct training on the rights of IDPs for government officials.

In the Central African Republic, IDMC and UNHCR have jointly organized workshops with government officials, parliamentarians and legal-focused local NGOs to evaluate the existing legal and institutional framework in light of the country's responsibilities under the Great Lakes Pact and its protocols.¹⁶ In 2010 this series of workshops was capped off with a special workshop, attended by the RSG, to discuss the preliminary findings and recommendations of a "legal audit" to assess how well national legislation conformed with the Guiding Principles. The audit was undertaken in 2010 by the Brookings-Bern Project as part of technical assistance provided by the RSG and UNHCR to the CAR government.¹⁷ At least since 2007, the United Nations has trained the armed forces of the Democratic Republic of the Congo and the Congolese National Police on human rights and civil-military relations as part of its objective to "find sustainable solutions for target populations (return, local integration, rehabilitation)."¹⁸

¹² NRC and OXFAM, *Training on the UN Guiding Principles on Internal Displacement, Gulu and Kitgum Districts, Uganda*, November 2003 (<http://reliefweb.int/node/142963>).

¹³ Ibid.

¹⁴ IDMC, *Application of the UN Guiding Principles on Internal Displacement, and the National Policy on Internal Displacement: Report of a Training of Trainers Workshop for NRC-ICLA, Gulu, 10th–12th May 2005* ([www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/AA9E1AE8F82FE73E80257091004BA45A/\\$file/TOT_GP_workshop_report.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/AA9E1AE8F82FE73E80257091004BA45A/$file/TOT_GP_workshop_report.pdf)).

¹⁵ Brookings-Bern Project on Internal Displacement, *Workshop on the Implementation of Uganda's National Policy for Internally Displaced Persons, Kampala, Uganda, 3–4 July 2006*, p. 1 (www.brookings.edu/events/2006/0704_uganda.aspx).

¹⁶ IDMC, "Training Workshops: Central African Republic" (www.internal-displacement.org).

¹⁷ Mooney, *Examen du cadre normative de la République Centrafricaine relatif à la protection des personnes déplacées à l'intérieur de leur propre pays: audit juridique*.

¹⁸ UNHCR, "Global Report 2009: Democratic Republic of the Congo," 1 June 2010, p. 3; OCHA, "Democratic Republic of the Congo Mid-Year Review: Humanitarian Action Plan 2007," p. 16.

In Sri Lanka, the government generally permits training of its personnel by national and international humanitarian organizations and some small-scale trainings have been conducted over the past decade. Much of the Northern Province, where displacement is most extensive, was formerly governed and administered by the LTTE; in the conflict and post-conflict period, it has been, in effect, under the administration of the military. Only recently have many areas in the North transitioned to civil administration. The primary obstacle to training government officials during this time has been the lack of consistent humanitarian access.

Trainings conducted since 2002 include a series of training and assessment workshops conducted by the Sri Lankan NGO the Consortium of Humanitarian Agencies (CHA) with support from the Brookings-Bern Project on Internal Displacement. Since its establishment in 2002, the Human Rights Commission of Sri Lanka (HRC) has trained government officials, government security forces, NGOs, IDPs and host communities, HRC staff and other actors on the rights of IDPs through its National Protection and Durable Solutions for Internally Displaced Persons Project.¹⁹

In addition, CHA, with support from the Brookings-Bern Project and UNHCR, operationalized the Guiding Principles through the development of training materials, including the *Guiding Principles on Internal Displacement: A Toolkit for Dissemination Advocacy and Analysis*—which targeted and was disseminated to IDPs and relevant actors, including politicians, military officers from the Sri Lankan armed forces and the Liberation Tigers of Tamil Eelam—as well as the *Practitioners' Kit for Return, Resettlement and Development*, which focused specifically on Guiding Principles 28, 29 and 30 relating to return, resettlement and reintegration.

In Colombia, a workshop held in 1999 on the application of the guiding principles on internal displacement in Colombia brought IDP representatives and government officials together for the first time in formal discussion.²⁰ The workshop was cosponsored by the

Colombian NGO, Support Group for Displaced Persons Organizations (Grupo de Apoyo a Organizaciones de Desplazados), the Brookings-Bern Project on Internal Displacement and the U.S. Committee for Refugees. The Colombian government has since recognized, most notably in Presidential Directive No. 6 of 2001, the need for training authorities on the Guiding Principles. In response, the government's Ombudsman's Office, together with IDMC, organized a three-day training workshop targeting municipal ombudsmen that focused on the Guiding Principles and national IDP legislation. Training emphasized the particular role and responsibilities of the municipal ombudsmen in relation to prevention, protection, assistance, return and resettlement. Participants also identified obstacles to implementation and ways of overcoming them.

In Kenya²¹, the government and the National Commission on Human Rights (KNCHR) have seemingly been active in promoting the sensitization of relevant authorities to the Guiding Principles. While it is not within the mandate of the Ministry for Special Programs, the ministry charged with IDPs, to conduct training on the rights of IDPs, it partners with human rights NGOs to conduct training. In May 2008, the government deployed thirty-five district officers trained on IDP issues and peace-building to areas affected by post-election violence. Since June 2008, the KNCHR has conducted training on the Guiding Principles for various authorities, including district officers, judicial authorities, and law enforcement authorities, including the army, the police, prison authorities, and the national intelligence service. The National Protection Working Group on Internal Displacement, which was transformed from the UN Protection Cluster in 2009 and was involved in the drafting of the *Draft National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya*, is co-chaired by the Ministry of

¹⁹ See further the Sri Lanka case study in chapter 2 of this volume.

²⁰ Brookings Institution Project on Internal Displacement,

Internal Displacement In Colombia: Summary Report of the Workshop on Implementing the Guiding Principles on Internal Displacement, Bogota, Colombia, May 27-29, 1999, (www.brookings.edu/events/1999/0527_colombia.aspx).

²¹ See further the Kenya case study in chapter 2 of this volume.

Justice, National Cohesion and Constitutional Affairs and the Kenya National Commission on Human Rights. The working group trains government officials on the Guiding Principles to strengthen the capacity of the government to protect the rights of IDPs.

In Sudan, which as of 2010 was the top recipient of humanitarian aid for at least the previous six consecutive years and which has one of the largest displacement situations in the world, numerous training sessions for Sudanese government authorities on the rights of IDPs have been conducted since 2002 by national and international organizations and, following the Comprehensive Peace Agreement, by the government of Southern Sudan (GoSS) for government officials in conflict and peace-building. Training of Sudanese government officials and nonstate actors has been conducted by the Brookings–School of Advanced International Studies (SAIS) Project on Internal Displacement, by RSG Francis Deng, who is himself Sudanese, and by UN agencies since at least 2002. In September 2002, the IDP unit of OCHA, with assistance from the Brookings Project on Internal Displacement, held a training workshop on the Guiding Principles for the Sudan People’s Liberation Movement/Army (SPLM/A), the Sudan Relief and Rehabilitation Association (SRRA) and the Relief Association of Southern Sudan in Rumbek. That training, in addition to similar training with the government of Sudan in August 2002 facilitated by OCHA’s IDP unit, led to the formulation of a draft policy based on the Guiding Principles that addresses the needs of IDPs in areas controlled by the SPLM/A. Participants submitted the draft policy to Elijah Malok, executive director of the SRRA, for review and presentation to the SPLM/A leadership.²² That was followed by additional

training on the Guiding Principles in a seminar convened by the RSG, the Brookings-School of Advanced International Studies (SAIS) Project on Internal Displacement and UNICEF with the Sudan Relief and Rehabilitation Association, civil society groups, host communities and IDPs, international organizations and NGOs operating in South Sudan as well as representatives from Sudan People’s Liberation Movement/Army and Sudan People’s Democratic Front.²³ At the time, many international NGOs were reluctant to work with the SPLM/A on its IDP policies, given that it was a nonstate actor.²⁴ Training has also been conducted on specific operational matters concerning IDPs in Sudan. IOM has worked since at least 2004 to train government and nongovernment actors on protection issues related to returnees and relocated individuals in Darfur and in Southern Sudan.²⁵

Notwithstanding all of these and other training initiatives in the country, the RSG’s 2006 mission report on Sudan stressed the continuing need for increased human rights training for national and international humanitarian and administrative personnel in the country.²⁶ The RSG pointed out that human rights

²² See further UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Summary Report of the Seminar on Internal Displacement in Southern Sudan (Held at Rumbek, Sudan, on 25 November 2002)*, 10 January 2003, E/CN.4/2003/86/Add.6, (http://ap.ohchr.org/documents/dpage_e.aspx?m=71); See also the full, original version of the summary report: Brookings–SAIS Project on Internal Displacement, *Seminar on Internal Displacement on Southern Sudan, Rumbek, Sudan, November 25, 2002*, February 2003 (www.brookings.edu/reports/2003/02humanrights_idp.aspx).

²³ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Summary Report of the Seminar on Internal Displacement in Southern Sudan*.

²⁴ *Ibid.* See also the full, original version of the summary report: Brookings–SAIS Project on Internal Displacement, *Seminar on Internal Displacement on Southern Sudan*.

²⁵ In 2009, IOM held training for government authorities from the Humanitarian Aid Commission (HAC) and Sudan Liberation Army/ HAC on such issues. By the end of 2009, IOM had also trained over 1,400 enumerators from the Southern Sudan Relief and Rehabilitation Commission and the Voluntary Return and Reintegration Committee in southern Kordofan to track returning IDPs since February 2007. IOM, “IOM Sudan Annual Report 2009,” pp. 15, 17 (www.iom.ch/jahia/webdav/shared/shared/mainsite/activities/countries/docs/sudan_annual_report2009.pdf).

²⁶ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Mission to the Sudan (3–13 October 2005)*, 13 February 2006, E/CN.4/2006/71/Add.6, p. 23 (<http://www.unhcr.org/refugees/4d4d4d4d.html>).

training for military and police personnel was one of the priorities of the UN Country Team in supporting the government of Southern Sudan. UNHCR, as chair of the Protection Cluster Working Group, since has held training sessions on the Guiding Principles and on international refugee law for high-ranking officers of the Chad-Sudan military force deployed along the common border. UNHCR has also trained other high-level law enforcement officials on IDP rights and protection, including security officials and as well as Humanitarian Aid Commission and Southern Sudan Relief and Rehabilitation Commission officials working with the IDP communities in Khartoum.²⁷ The UN Mission in Sudan (UNMIS) training program for local police has received verbal support from the Police Development Committee, which is chaired by the Police Director General of Sudan.²⁸ As part of its program, UNMIS conducts community policing courses with a focus on IDP camps in northern Sudan.²⁹

More than 100 government officials dealing with internal displacement from various countries throughout the world have participated in the Annual Course on the Law of Internal Displacement in Sanremo, Italy, since it was initiated in 2005, along with several officials from national human rights institutions and regional organizations. The course is held on an invitation basis by the Representative of the UN Secretary-General

on Internally Displaced Persons in collaboration with the International Institute of Humanitarian Law, UNHCR and the Brookings-Bern Project on Internal Displacement. Since 2005, government officials from all fifteen countries surveyed in this study have participated in the course, in some instances in addition to officials from national human rights commissions.

In other instances, international actors have trained national authorities on human rights generally. During his visit to the Central African Republic in 2007, RSG Kälén was informed by the government that the “High Commissioner for Human Rights and Good Governance was devising a plan to improve training, education and awareness-raising on human rights and international humanitarian law among the defence and security forces,” although no specific reference was made to IDPs.³⁰ In October 2008, a government committee was established by interministerial decree to oversee the integration of international humanitarian law into armed forces training, doctrine and operations. The International Committee of the Red Cross has since supported the committee by providing teaching materials and legal advice and in 2008 held a two-day workshop with eighteen armed forces officers to determine how to standardize training curriculum and operational procedures.³¹

The government of Southern Sudan’s UNDP-supported Southern Sudan Peace Commission (SSPC) has participated in various training sessions on peace-building and human rights and has held peace conferences throughout Southern Sudan. Both the SSPC and the GoSS Community Security and Arms Control (CSAC) Bureau have received capacity-building training to address conflicts. In 2010 the SSPC held workshops on rights and conflict. State directors of the SSPC and CSAC inspectors at the state level were to receive training in

ap.ohchr.org/documents/dpage_e.aspx?m=71).

²⁷ UNHCR, “Sudan,” *Global Appeal 2009–2009*, December 2007 (www.unhcr.org/publ/PUBL/474ac8cb0.pdf); UNHCR, *Sudan Operations: Sudan/Chad Situation Update 68*, 17 December 2006, p. 6 (<http://reliefweb.int/node/222022>); UNHCR, “UNHCR Delivers Humanitarian Training to the Chad/Sudan Joint Military Force,” 6 December 2010 (<http://reliefweb.int/node/377046>).

²⁸ UN Commission on Human Rights, *Mass Exoduses And Displaced Persons—Report of the Representative of the Secretary-General on internally displaced persons, Mr. Francis Deng, submitted pursuant to Commission on Human Rights resolution 2002/56—Addendum: Summary Report Of The Seminar On Internal Displacement In Southern Sudan (Held at Rumbek, Sudan, on 25 November 2002)*.

²⁹ UNMIS, “UNMIS Police Fact Sheet,” 11 April 2010 (<http://unmis.unmissions.org/LinkClick.aspx?fileticket=64j6f6eAmEo%3D&tabid=567>).

³⁰ UN Human Rights Council, *Report of the Secretary General on the Human Rights of Internally Displaced Persons, Walter Kälén—Addendum: Mission to the Central African Republic*, 18 April 2008, A/HRC/8/6/Add.1 (http://ap.ohchr.org/documents/dpage_e.aspx?m=71).

³¹ International Committee of the Red Cross, *Annual Report 2008* ([www.icrc.org/Web/eng/siteeng0.nsf/htmlall/annual-report-2008-car/\\$File/icrc_ar_08_car.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/annual-report-2008-car/$File/icrc_ar_08_car.pdf))

February 2010; one outcome of the training was to be the development of action plans to be implemented with the support of the SSPC and state line ministries, UN agencies and NGOs. While a direct link between these activities and IDPs could not be ascertained, the SSPC was established under the Comprehensive Peace Agreement (CPA) and aims to promote peace-building, good governance and participatory democracy in all of Southern Sudan, in line with the peace agreement. The Government of South Sudan's Ministry of Peace and CPA Implementation has a proposed 2011 budget of 5.4 million Sudanese pounds (estimated \$2.3 million) envisaging training of trainers on similar issues for SSPC staff and Peace Committees and Councils, the police and the military.³²

Conclusion

The report on this benchmark has yielded an impressive listing of training initiatives carried out in each of the fifteen surveyed. The overall tendency was for governments to participate in human rights-related training, but seemingly that was often at invitation of others, especially UN agencies and other international actors. However, no public information appeared to be available on what training programs governments may have initiated and conducted themselves. Training programs identified were not necessarily conducted regularly, but they were relatively easy to track down because it seemed that the government and/or the international organization was keen to publicize the fact that training workshops were held.

Less obvious, however, were what levels of state officials were trained, what the selection process was, how IDP-specific the training was, whether those trained found the training useful, and, as is usually the case, what if any impact the training had. For example, if training was conducted within a country over time, taking turnover and the protracted nature of conflict into consideration, it would be interesting to know whether training impacted the culture or operations of government or military officials in their approach to human rights or international humanitarian law.

The analysis also fails to capture—primarily because of the limited information available—the extent to which training has become part and parcel of the government's ongoing activities. For example, has training on IDPs or the Guiding Principles become a routine component of staff training or staff development? Moreover, although there is tendency to assume that participation in a training course leads to changed behavior and to enhanced responses, that assumption generally is unproven and is not supported by the survey of the cases in this study. Certainly, there have been cases in which participants in training courses subsequently took important initiatives, such as supporting the development of laws or policies on internal displacement. In a significant number of cases training has been combined with other policy initiatives. It could be useful, therefore, to look at the relationship between participation in training courses and outputs such as increased advocacy or advocacy that is more focused on protection or new policy initiatives. The experience in this study, however, suggests that such data would be difficult to collect, all the more so from a distance.

³² Government of Southern Sudan, "Capacity Building of Southern Sudan Commission and CSAC Bureau (States and GoSS levels); TOT in Conflict Transformation and Participatory Rural Appraisals Training 15th–26th February 2010" (www.goss-online.org/magnoliaPublic/en/Independant-Commissions-and-Chambers/Peace-Comission/mainColumnParagraphs/0/content_files/file/Peace%20comm-Capacity%20Bldg.pdf). For 2011 budgetary information, see Government of South Sudan, *Social and Humanitarian Affairs Sector, Budget Sector Plan 2011–2013*, August 2010, Section 5.4 (www.goss-online.org/magnoliaPublic/en/ministries/Finance/2011-APP.html). Exchange rates calculated based on 15 February 2010 rate (www.oanda.com/currency/converter).



Central African Republic / The skeletons of burned houses are the result of recent violence by herdsmen in Bamatará.
Photo: UNHCR/ J-M Baba / March 2010

Benchmark 5

Ensure a Legal Framework for Upholding IDPs' Rights

Does national legislation address the specific needs arising in situations of internal displacement and support IDPs to realize their rights?

Experience shows that an effective response to displacement almost always requires legislative action, typically because current laws pose unintended obstacles to the ability of IDPs to realize their rights or because they do not, on their own, provide a sufficient basis for addressing the needs of IDPs. Existing laws may unintentionally discriminate against IDPs. For example, a requirement that children present their educational records in order to register for school may discriminate against IDP children who have lost their documents in the course of displacement or who, because they are displaced, are unable to return home, even temporarily, to obtain them. In some cases, such shortcomings can be addressed through an executive order or policy; in other cases, legislation may be required.

As the Framework for National Responsibility emphasizes, there are different ways of addressing internal displacement and protecting the rights of IDPs through national legislation. In some instances, governments have adopted legislation to address a specific phase of displacement, such as return and resettlement; in other cases, governments have adopted comprehensive laws. In addition, it is important to review and analyze existing national legislation in terms of its compatibility with international standards, including the Guiding Principles on Internal Displacement (the Guiding Principles), and to introduce any amendments required. *Protecting Internally Displaced Persons: A Guide for Law and Policy Makers*, developed by the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons (RSG on IDPs) and the Brookings-Bern Project on Internal Displacement, recommends that the legal framework for addressing displacement include at least two elements:

—a review and analysis of existing national legislation to identify and change provisions that are incompatible with international human rights law and the Guiding Principles;

—national laws regulating the response to internal displacement specifically, including the prevention of arbitrary displacement.¹

As a former legal adviser to the Brookings-Bern project observed, “the process of developing a comprehensive law or policy presents an opportunity for all relevant stakeholders to share perspectives on the best practices for addressing internal displacement.” Such laws should take into account the particular conditions of displacement, national legal frameworks and particular vulnerabilities of the displaced.²

To date, fourteen countries have developed laws on or pertaining to internal displacement, many of them based on the Guiding Principles.³ A few other countries have drafted legislation on internal displacement (Nigeria and the Philippines) or are currently drafting legislation (Central African Republic). These developments reflect the growing realization that internal displacement must be addressed at the national level, as a matter of both legal obligation and national interest. Based on analysis of information available online and the work of the Office of the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, several of

¹ Brookings-Bern Project on Internal Displacement, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers*, October 2008 (www.brookings.edu/papers/2008/1016_internal_displacement.aspx).

² Jessica Wyndham, “A Developing Trend: Laws and Policies on Internal Displacement,” *Human Rights Brief*, 2006, p. 8 (www.brookings.edu/articles/2006/winter_humanrights_wyndham.aspx).

³ Angola, Liberia, Sri Lanka, Tajikistan, Colombia, Peru, United States, Armenia, Azerbaijan, Bosnia-Herzegovina, Georgia, Russia, Turkey, and Iraq. See the Brookings Project on Internal Displacement laws and policies database for a summary and the full text of IDP-related laws and policies (www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx).

the fifteen countries surveyed had laws or policies pertaining specifically to internally displaced persons.

Benchmark 5 concerns the provision of a legal framework for addressing the needs and upholding the rights of IDPs. But experience suggests that in order to be effective, such laws must be reinforced in policies and actions (see Benchmark 6) and reflected in clearly defined institutional responsibilities for addressing internal displacement (see Benchmark 7).

Overview of research findings

Of the fifteen countries surveyed, five had a law on internal displacement specifically or on an issue related to internal displacement: Afghanistan, Colombia, Georgia, Iraq and Turkey. Legislation may be quite comprehensive in scope, as in the case of Colombia, covering all phases of displacement including prevention and durable solutions, or it may be narrow, addressing specific rights of IDPs, as in Iraq, Turkey and Afghanistan. Other countries lacked a national legislative framework on IDPs but had generic legislation relevant to IDPs. Still others had laws that violated or could violate the rights of IDPs. Some African countries surveyed had signed or ratified regional instruments that protect the rights of IDPs and legally bind signatories to adopt national legislation in line with the Guiding Principles on Internal Displacement. The Central African Republic, for example, is in the process of developing and amending national legislation to that end.

The laws of Georgia and Colombia on internal displacement pre-date the Guiding Principles on Internal Displacement. As is the case with most national legislation on internal displacement, the laws in both countries define the term “IDP” more narrowly than it is defined in the Guiding Principles by focusing on conflict-induced IDPs and failing to address IDPs due to other causes, such as disasters.

The Law of Georgia on Forcibly Displaced Persons—Persecuted Persons (1996) provides a definition for

“conflict-induced IDPs,” which is a recognized status under national law, and spells out the rights of IDPs and the responsibilities of the authorities to them. From 2000 to 2002, a comprehensive study carried out by local lawyers with the support of the Brookings Project on Internal Displacement examined not only the IDP law but also more than 200 other legislative acts to assess the degree to which Georgian legislation upheld the international standards reflected in the Guiding Principles.⁴ The study found that while much of Georgian legislation was in conformity with—and sometimes even offered a higher degree of protection than—the Guiding Principles, there also were a number of areas in which legislation could be improved or clarified vis-à-vis the Guiding Principles; the government subsequently adopted several of the study’s recommendations. Other efforts to strengthen the national legal framework for protecting the rights of IDPs in Georgia include a ruling of the Constitutional Court recognizing the rights of IDPs to purchase property without losing their IDP status or in any way jeopardizing their right to return, revisions to the Electoral Code and the adoption of a property restitution law for IDPs from South Ossetia.⁵

Colombia’s law on internal displacement, Law 387 of 1997, takes a comprehensive approach to addressing all phases of displacement: prevention of displacement; protection and assistance during displacement; and conditions for return. It also designates responsible institutional and ministerial agencies. As mentioned, its definition of “IDP” is narrower in scope than that of the Guiding Principles, as it does not recognize IDPs displaced by natural or man-made disasters, for instance. Law 387 defines IDPs as “individuals who have forcibly migrated because of internal armed conflict, civil

⁴ A similar study was also carried out by local lawyers in Armenia and Azerbaijan. See Roberta Cohen, Walter Kälin, and Erin Mooney, *The Guiding Principles on Internal Displacement and the Law of the South Caucasus: Georgia, Armenia, and Azerbaijan* (Brookings Institution and the American Society of International Law, 2003) (www.asil.org).

⁵ See further the Georgia case study in chapter 2 of this volume.

tension and disturbances, general violence, massive human rights violations, and infringement of international humanitarian law.”⁶ However, while national legislation addresses the specific needs of IDPs and supports their efforts to realize their rights, implementation remains a problem in many instances.

Colombia’s Constitutional Court has actively sought to ensure better protection for and assistance to IDPs. The Colombian constitutional order has incorporated the Guiding Principles as “mandatory criteria for interpreting the scope of IDPs’ fundamental rights.”⁷ The court used the Guiding Principles and its own previous case law in the landmark Decision T-025 of 2004 and in its subsequent rulings and awards (*autos*) on IDP-related issues, which have greatly expanded the legal framework for addressing a range of IDP issues.⁸ In Decision T-025, the court, after reviewing over 100 claims (*tutelas*) of IDPs, ruled that an “unconstitutional state of affairs” existed due to the gap in policy—as reflected in Law 387—and the government’s resources and capacity to protect and assist IDPs.⁹

While Article 10 of Law 387 stipulates the right of IDPs to compensation and restitution, the government has not done enough to establish measures enabling them to realize that right. The Constitutional Court’s

Decision T-821 in October 2007 ordered the government to ensure respect for victims’ right to reparation and property restitution. In January 2009, the Constitutional Court ordered the government to comprehensively address land rights issues and to establish mechanisms to prevent future violations. The “Victims’ Law” (Law of Victims and Land Restitution), which would have fulfilled those requirements, was defeated in Colombia’s House of Representatives in June 2009 during the presidency of Alvaro Uribe.¹⁰ However, the landmark law was passed by Congress on 24 May 2011 under the administration of Juan Manuel Santos. In the law the government acknowledges for the first time ever the existence of an internal armed conflict in Colombia, and recognizes as “victims” those individuals or communities whose rights were violated under international humanitarian law or international human rights law.¹¹ The law regulates reparation for all victims of the armed conflict, including through land restitution or compensation for IDPs, aiming to give back two million hectares of land to IDPs by 2014 (see further, Benchmark 10). The government has reportedly set aside \$1.2 billion for the 2011 budget to begin to fund restitution efforts and claims can be filed until 2025.¹² As some parts of Colombia’s Civil Code prevent the restitution of land in conflict-affected areas, it is unclear how or whether that will be an issue with the newly passed Law of Victims and Land Restitution.¹³

⁶ Government of Colombia, Law 387 of 1997, Brookings-LSE Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Colombia” (www.brookings.edu/projects/idp/Laws-and-Policies/colombia.aspx).

⁷ Federico Guzman Duque, “The Guiding Principles on Internal Displacement: Judicial Incorporation and Subsequent Application in Colombia,” in *Judicial Protection of Internally Displaced Persons: The Colombian Experience* (Washington, D.C.: Brookings-Bern Project on Internal Displacement, November 2008), p. 175, (www.brookings.edu/idp).

⁸ Rulings include Decision T-821 of 2007, *Auto* 092 of 2008, and *Autos* 004, 005, and 008 of 2009.

⁹ Constitutional Court of Colombia, Decision T-025 of 2004, Brookings-LSE Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Colombia.”

¹⁰ “Ley de Víctimas se hunde ante presión del Gobierno,” *El Espectador*, 18 June 2009 (www.elespectador.com/noticias/politica/articulo146500-ley-de-victimas-se-hunde-presion-del-gobierno).

¹¹ Government of Colombia, Ley 1448 del 10 junio de 2011 [Law 1448 of 10 June 2011], available at Brookings-LSE Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Colombia,” (www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx).

¹² Dan Molinski, “Colombia Finance Minister Promises Funding for War Victims,” Dow Jones Newswires, published in *Colombia Reports*, 27 May 2011 (<http://colombiareports.com/colombia-news/news/16546-finance-minister-promises-funding-for-war-victims.html>).

¹³ See further IDMC, *Building Momentum for Land*

Turkey's Law No. 5233 on Compensation of Damages That Occurred Due to Terror and the Fight against Terror (27 July 2004) does not specifically focus on internal displacement, but it does benefit IDPs among other affected populations. The law and its related amendments and regulations compensate for "material damages suffered by persons due to terrorist acts or activities undertaken during the fight against terror" between 1987 and 2004. Compensation is provided for three types of damage: loss of property; physical injuries, disabilities, medical treatment, death and funerals; and inability to access property due to measures taken during "the fight against terrorism." According to the law, compensation is to be determined by damage assessment commissions (DACs) at the provincial level, with funding provided by the Ministry of the Interior.¹⁴ From 2004 to August 2009, the commissions received just over 360,000 applications. Of those, over 190,000 claims were decided: 120,000 were approved and the claimants awarded compensation; the remaining 70,000 were denied. Around \$1.4 billion in compensation was awarded, of which close to \$1.1 billion has been paid.¹⁵

While Turkish authorities have made improvements to the law to respond to criticisms, problems are still outstanding. It has been criticized for ineffective implementation, including lack of independence of DACs; the

unreasonable burden of proof placed on IDPs; lack of effective appeals procedures; lack of information about the claims process; and inconsistent and inequitable application of the law. Walter Kälin, the RSG on IDPs, called attention to these and other issues and offered related recommendations in March 2006.¹⁶

In Iraq, various decrees and orders on displacement exist, and the Transitional Administrative Law—which was valid from June 2004 until the adoption of the Constitution in 2005—as well as the Constitution protects Iraqis against forced displacement.¹⁷ The Constitution also protects Iraqis' right to return. Notably, since 2004 the Iraqi authorities have taken measures to

Restoration: Towards Property Restitution for IDPs in Colombia, September 2010 (www.internal-displacement.org).

¹⁴ The provisions discussed in this paragraph can be found in Articles 1, 4-7, Law No. 5233 on the Compensation of Damages That Occurred due to Terror and the Fight against Terror, published in the *Official Gazette*, 27 July 2004, and in the law's subsequent regulations and amendments, available at Brookings-Bern Project on Internal Displacement, "National and Regional Laws and Policies on Internal Displacement: Turkey" (www.brookings.edu/projects/idp/Laws-and-Policies/turkey.aspx).

¹⁵ IDMC, *Turkey: Need for Continued Improvement in Response to Protracted Displacement: A Profile of the Internal Displacement Situation*, 26 October 2009, p. 12, citing correspondence with the government of Turkey, 17 September 2009 (www.internal-displacement.org).

¹⁶ Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Mr. Walter Kälin, Letter to Permanent Mission of Turkey to the United Nations, March 2006, pp. 2-4, on file with the authors. See also IDMC, *Protracted Displacement in Europe*, Geneva, May 2009, pp. 16-18; Dilek Kurban, Ayşe Betül Celik, and Deniz Yüksek, *Overcoming a Legacy of Mistrust: Toward Reconciliation between the State and the Displaced. Update on the Implementation of the Recommendations Made by the UN Secretary-General's Representative on Internally Displaced Persons Following His Visit to Turkey*, IDMC/Turkish Economic and Social Studies Foundation (TESEV), June 2006 (www.internal-displacement.org).

¹⁷ Forced displacement and other oppressive and discriminatory practices of the Saddam Hussein regime were addressed in the Law of Administration for the State of Iraq for the Transitional Period, also called the Transitional Administrative Law (TAL). Signed by the Coalition Provisional Authority (CPA) and the Iraq Governing Council, 8 March 2004, the TAL was in effect during the transitional period in Iraq between 28 June 2004 and December 2005 just prior to Iraq's first elections for a constitutionally elected government. The TAL mandated the government to prevent, address, and protect Iraqis from displacement: "The Iraqi Transitional Government shall take effective steps to end the vestiges of oppressive acts of the previous regime arising from forced displacement, deprivation of citizenship, expropriation of financial assets and property, and dismissal from government employment for political, racial, or sectarian reasons." Article 6, Law of Administration for the State of Iraq for the Transitional Period (www.cpa-iraq.org/government/TAL.html).

address property issues, which abound in a country affected by successive waves of forced displacement.

The recognition of the forced displacement of Iraqis carried over to the 2005 Iraqi Constitution, which replaced the Transitional Administrative Law. The preamble of the Constitution portrays the establishment of “a nation of law,” or a “new Iraq,” as a break from the violence and repression of the past, which included the “displacement of . . . skilled individuals.” Article 44(2) of the 2005 Constitution stipulates that “[n]o Iraqi may be exiled, displaced, or deprived from returning to the homeland.”¹⁸

Iraq has taken legal measures to recover property for those displaced before 2003, although significant gaps and challenges remain. Iraq’s Commission on the Resolution of Real Property Disputes (CRRPD), established by Order No. 2 (2006), seeks to provide restitution or compensation for property seized between 1968 and 2003.¹⁹ However, the commission does not address property destruction, leaving many without legal redress. Nearly 160,000 claims had been issued as of February 2010; while nearly 80,000 claims had been resolved at the first instance level, final decisions had been issued for only some 43,000 claims, or a quarter of the total number. As the International Organization for Migration (IOM) notes, at the rate the commission is resolving claims, it will take twenty years to finalize all of them. A high appeals rate—nearly 50 percent nationwide and up to 80 percent in Kirkuk Province—is

in part to blame.²⁰ Legislation was passed in February 2010 replacing the CRRPD with the Property Claims Commission, which retains the mandate for providing restitution or compensation for immovable property expropriated under the former regime.²¹

While current policies do not address all land and property rights violations that have occurred since 2003, the Iraqi government has taken some legal measures to address post-2006 internal displacement. Iraq’s Council of Ministers Decree 262 (2008) and Prime Ministerial Order 101 (2008) seek to provide property restitution for registered IDPs displaced between 2006 and January 2008 to give them an incentive to return and to facilitate their return to the Baghdad governorate, the origin of the majority of post-2006 IDPs and the location of the majority of post-2006 returnees.²² Decree 262 provides a return grant of around \$850 to an IDP in exchange for annulment of his or her IDP status, while Order 101 provides an administrative mechanism to facilitate recovery of property for returnees. Order 101 tasks the Ministry of Displacement and Migration (MoDM) with establishing return centers to assist returning IDPs and refugees in recovering their property and tasks MoDM, the Ministry of Justice, the Follow-up Committee for

¹⁸ Constitution, Para. 2; Article 44(2) (www.uniraq.org/documents/iraqi_constitution.pdf).

¹⁹ In 2006 the Iraqi Transitional National Assembly replaced the Iraq Property Claims Commission, established under the Coalition Provisional Authority in January 2004, with the CRRPD. For unofficial translations by the Reparations Unit of the International Organization for Migration (IOM) of Order No. 2; the Law of the Commission of Property Disputes No. 13; and the Law of Property Compensation for Those Who Were Affected by the Former Regime (2010), see Brookings-LSE Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Iraq” (www.brookings.edu/projects/idp/Laws-and-Policies/iraq.aspx).

²⁰ Peter Van der Auweraert, *Land and Property Issues in Iraq: Present Challenges and Future Solutions— Discussion Points*, p. 29, in Brookings-Bern Project on Internal Displacement, *Resolving Iraqi Displacement: Humanitarian and Development Perspectives, 18–19 November 2009, Doha, Qatar*, April 2010, (www.brookings.edu/idp); Deborah Isser and Peter Van der Auweraert, *Land, Property, and the Challenge of Return for Iraq’s Displaced*, USIP Special Report 221, April 2009 (www.usip.org/files/resources/1.pdf).

²¹ See further, Peter Van der Auweraert, “Iraq Updates Its Approach to Former Regime-Related Land and Property Claims,” TerraNullius: The Housing, Land and Property Weblog (<http://terra0nullius.wordpress.com/2010/03/11/iraq-updates-its-approach-to-former-regime-related-land-and-property-claims>).

²² Government of Iraq, Council of Ministers Decree Number 262 of 2008, 17 July 2008; Government of Iraq, Prime Minister’s Order 101/S, 3 August 2008. See Brookings-LSE Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Iraq.”

National Reconciliation, the Baghdad governorate and Baghdad Operations Command with facilitating its implementation. According to the Internal Displacement Monitoring Centre (IDMC), as of January 2010, the two MoDM centers in Baghdad had processed over 3,000 property restitution cases, restoring property in nearly 1,900 cases and rejecting the rest. The low numbers of claims are due to a variety of factors. Approximately 60 percent of IDPs interviewed in 2009 did not seek government assistance to retrieve their property due to lack of necessary documentation, lack of trust in government institutions, fear of retribution or the cost involved.²³

In July 2009, the prime minister issued Cabinet Order 54 to extend the measures adopted in Baghdad to Diyala governorate, which was also significantly affected by internal displacement, recording the second-highest number of IDP (and of refugee) returnees. Order 54 is more integrated in its approach than Decree 262 and Order 101. Order 54 established a Higher Committee to assist the Diyala governorate, in partnership with international organizations, in creating durable conditions for the return of the displaced through provision of basic services and interventions in agriculture, shelter and infrastructure.²⁴

National authorities in Afghanistan have yet to adopt a comprehensive law on internal displacement or any other legislative acts specific to the prevention of internal displacement and mitigation of its effects.²⁵ Nor have they legally defined or adopted the concept of “internally displaced person.” However, property and land rights of IDPs are either specifically addressed or generally implicated in substantive and procedural

provisions found in a series of executive acts that have been issued since 2001, including the most IDP-specific of them, Presidential Decree No. 104 on Land Distribution for Settlement to Eligible Returnees and Internally Displaced Persons (2005).²⁶ This decree sets forth a basic framework for distributing government land to IDPs as well as returnees as a means of addressing their needs for shelter. However, this decree requires IDPs seeking access to land to provide their national identity cards (*tazkera*) and documentation proving their internal displacement status; moreover, it does not recognize other fundamental rights or needs of the internally displaced; it is valid only in areas of origin; and its implementation has been marred by inefficiency and corruption within the very weak ministry that is tasked with its implementation.²⁷ The documentation requirements prevent most IDPs from asserting their rights and participating in the land allocation scheme that the decree envisages because they do not have the necessary documentation. Implementation of these and other decrees related to property, including Decree (Circular Letter) No.4035 on Establishment of the Land Property Dispute Court, has been inconsistent. As a result, they have not proven effective in promoting and protecting the land and property rights of IDPs.²⁸

²³ IDMC, *Iraq: Little New Displacement but around 2.8 Million Iraqis Remain Internally Displaced: A Profile of the Internal Displacement Situation*, 4 March, 2010, p. 240 (www.internal-displacement.org).

²⁴ IOM, *IOM Emergency Needs Assessments—February 22, 2009: Three Years of Post-Samarra Displacement in Iraq*, 22 February 2009, p. 3 (<http://reliefweb.int/node/298489>); UNHCR, “Diyala Initiative” (www.unhcr.org.iq/02%20Return/diyala.html).

²⁵ See the Afghanistan case study in chapter 2 of this volume.

²⁶ For a comprehensive, in-depth discussion of Afghan property and land rights, see Conor Foley, *Guide to Property Law in Afghanistan*, Norwegian Refugee Council, 2005. See also Sheila Reed and Conor Foley, *Land and Property: Challenges and Opportunities for Returnees and Internally Displaced People in Afghanistan*, Norwegian Refugee Council, June 2009; Liz Alden Wily, *Policy Brief: Land and the Constitution*, Afghan Research and Evaluation Union, August 2003.

²⁷ See further, Brookings-Bern Project on Internal Displacement and Norwegian Refugee Council, *Realizing National Responsibility for the Protection of Internally Displaced Persons in Afghanistan: A Review of Relevant Laws, Policies, and Practices* (November 2010) pp. 13, 23–24, 28–29 (www.brookings.edu/idp); Ingrid Macdonald, “Landlessness and Insecurity: Obstacles to Reintegration in Afghanistan,” Middle East Institute, 9 February 2011 (www.refugeecooperation.org/publications/Afghanistan/04_macdonald.php).

²⁸ See Reed and Foley, *Land and Property: Challenges and*

It is encouraging to note that in Africa, states have recognized the importance of addressing internal displacement by incorporating the Guiding Principles on Internal Displacement into domestic legislation and policy. In fact, this is an obligation for the eleven member states of the International Conference on the Great Lakes Region (ICGLR) that are signatories to the Pact on Security, Stability and Development in the Great Lakes Region and to its Protocol on the Protection and Assistance to Internally Displaced Persons as well as the states parties to the African Union Convention on the Protection and Assistance to Internally Displaced Persons in Africa (Kampala Convention). Uganda, the Central African Republic, the Democratic Republic of the Congo (DRC), Kenya and Sudan have ratified the Great Lakes Pact and its protocols. Uganda played a leading role in the Kampala Convention negotiations and hosted the African Union Special Summit at which the convention was signed in 2009. Of the countries surveyed for this report, only Uganda and the Central African Republic had ratified the Kampala Convention at the time of writing; the DRC had signed it and Kenya had initiated an internal process to prepare for ratification. At the time of writing the Central African Republic was in the process of developing and amending its national legislation to conform to the Principles and Kenya had developed a draft national IDP policy based on the Principles, the ICGLR Protocol on IDPs, the Kampala Convention and existing domestic legislation.

Sri Lanka has no national law addressing internal displacement although a draft bill on protection of internally displaced persons was submitted to the Ministry of Disaster Management and Human Rights in August 2008 by the Sri Lankan Human Rights Commission.²⁹ The draft bill has not been introduced in Parliament and “there appears to be no urgency on the part of the Government to consider this Bill as it has made no public comment on it nor listed it on the Order Paper

of Parliament for debate.”³⁰ The bill, if passed, would be known as the Protection of Internally Displaced Persons Act.³¹ It would cover all phases of displacement due to conflict, disasters, and development. The draft bill includes specific provisions to protect extremely vulnerable populations among the displaced, such as children, persons with disabilities, and so forth. The draft bill establishes the Internally Displaced Persons Authority as the lead agency for issues related to displacement and designates other responsible institutions.³² As of July 2011 it did not appear that the government had followed up on the draft.

Other countries surveyed had yet to adopt national legislation specifically addressing internal displacement: Democratic Republic of the Congo, Nepal, Myanmar and Yemen. At a regional meeting on internal displacement held in Botswana in August 2005, a representative of the Ministry for Social Affairs of the Democratic Republic of the Congo noted that in addition to coordination problems, lack of a legislative framework based on the Guiding Principles was hindering progress in mounting an effective national response.³³ In the spirit of the Great Lakes Pact and the Protocol on the Protection and Assistance to Internally Displaced Persons, RSG on IDPs Walter Kälin called on the government of the Democratic Republic of the Congo to

Opportunities for Returnees and Internally Displaced People in Afghanistan, p. 6.

²⁹ See further the Sri Lanka case study in chapter 2 of this volume.

³⁰ B. Skanthakumar, “Window-Dressing? The National Human Rights Commission of Sri Lanka,” *LST Review* 262 (August 2009) (www.lawandsocietytrust.org/web/images/PDF/NHRC%20Report%202009.pdf).

³¹ National Protection and Durable Solutions for Internally Displaced Persons Project, Protection of Internally Displaced Persons Bill (www.idpsrilanka.lk/html/SpecialProgrammes/IDP-Bills.htm).

³² Draft Bill of Protection of Internally Displaced Persons (www.idpsrilanka.lk/html/SpecialProgrammes/IDP%20Bill/2008%20Aug%2008%20-%20Draft%20IDP%20Bill.pdf).

³³ Brookings-Bern Project on Internal Displacement, “Regional Seminar on Internal Displacement in the Southern African Development Community (SADC) Region, Gaborone, Botswana, 24–26 August 2005” (www.brookings.edu/events/2005/0826_southern_africa.aspx and www.brookings.edu/fp/projects/idp/SADC_rpt.pdf).

incorporate the Guiding Principles into its legal system and to develop “a legislative framework, a strategy and a plan of action for the implementation of the obligations stemming from those Principles.” Kälin and other UN experts reiterated that recommendation in their reports on the situation in the DRC in 2009 and 2010. There is no national legislation specifically addressing internal displacement and the rights of internally displaced persons in Yemen.³⁴ No data are available to support an analysis of the adequacy of existing laws in Yemen to address issues arising in internal displacement or to protect the rights of IDPs.

In addition to considering legislation specific to internal displacement and regardless of whether any such legislation has been adopted, it is important to examine how general national legislation that is not specific to displacement can impact the rights of IDPs. Such legislation ranges from constitutions to presidential decrees, electoral laws, laws on education and criminal codes. For example, in Georgia the above-mentioned study of the compatibility of national legislation with the Guiding Principles was required to consider not only the Law on Forcibly Displaced Persons–Persecuted Persons but also the Constitution and more than 200 normative acts adopted between 1992 and 2002 that had provisions relevant to IDPs’ enjoyment of their rights. Any update of this study would also need to consider all subsequent relevant legislation. Similar “legal audits” of national legislation undertaken in 2010 in Afghanistan and the Central African Republic likewise needed to examine a wide range of legislative acts; in the case of the Central African Republic, for example, the list included the Nationality Code, the Family Code, the Penal Code, the Electoral Code, the Environment Code, the Forestry Code, the Mining Code, and the Petroleum Code.³⁵

³⁴ IDMC, “Internal Displacement: Global Overview of Trends and Developments in 2009,” May 2010, p. 24 (www.internal-displacement.org).

³⁵ Erin D. Mooney, *Examen du cadre législatif en République Centrafricaine relatif à la protection des personnes déplacées à l’intérieur de leur propre pays: Audit Juridique*

Conducting such an extensive legal review for all fifteen countries was not possible within the scope of this study. Nonetheless, some preliminary findings warrant a mention. For example, a cursory review of Turkey’s Criminal Code did not reveal any provisions—as do exist, for instance, in the Central African Republic and Colombia—for the criminalization of forced or arbitrary displacement, with the potential exception of Article 109.1, which may guarantee IDPs’ right to the freedom of movement. It states: “Any person who unlawfully restricts the freedom of a person by preventing him from traveling or living in a place is sentenced to imprisonment from one year to five years.”³⁶ In Nepal, under the Interim Constitution (2007), the government has the responsibility “to conduct special programs to rehabilitate the displaced, to provide relief for damaged private and public property and to reconstruct the infrastructures destroyed during the course of the conflict.”³⁷ While electoral legislation in Nepal (as in Georgia) was amended to address discrimination against IDPs in exercising their voting rights, there have been no amendments to account for the specific residency and documentation needs of IDPs. South Sudan’s Land Act recognizes the right to restitution and compensation for those forcibly displaced after 1983, guaranteeing that “[a] person may be entitled to restitution of a right in land if he or she lost her or his right after an involuntary displacement as a result of the civil war starting from May 16, 1983,” regardless of whether the person’s land was taken by an individual or the government. The Land Act also extends the right of restitution to individuals other than the primary owner, including family members at the time of displacement, spouses and legal heirs; however,

(Washington, D.C.: Brookings-Bern Project on Internal Displacement, February 2011) (www.brookings.edu/reports/2010/11_car_audit_juridique.aspx); Brookings-Bern Project on Internal Displacement and the Norwegian Refugee Council, *Realizing National Responsibility for the Protection of Internally Displaced Persons in Afghanistan: A Review of Relevant Laws, Policies, and Practices* November 2010 (www.brookings.edu/reports/2011/11_afghan_national_responsibility.aspx).

³⁶ International Criminal Court, *Criminal Code of the Republic of Turkey*, Legal Tools–Database Record No. 117120, June 2010 (www.legal-tools.org/doc/dbffd5/).

³⁷ Interim Constitution of Nepal 2063 (2007), 3.33(r).

claimants are limited to filing requests within three years from the date that the act entered into force.³⁸ Traditional procedures and customary law and practices are also accepted as restitution mechanisms. Compensation in cash or in kind is available in instances in which the government was not able to grant restitution “for some obvious reasons as the Commission [Southern Sudan Land Commission] finds appropriate.”³⁹

In surveying legislation that is not specific to displacement, special attention must be paid to legislation put in place to address the security situation in conflict areas and to assessing whether it violates the rights of IDPs or could do so. In Turkey, Village Law No. 442 of 1924 and its subsequent amendments brought forth a “village guard” paramilitary system in 1985, under which serious human rights violations, including displacement, have been committed and the return of Kurds displaced from their villages during the 1990s has been impeded. Further, it has impeded achievement of an overall resolution to the problem of internal displacement in the country.⁴⁰ While the government of Turkey has promised since 2002 to abolish the system, recruitment of village guards has continued. For example, In June 2007, an amendment to the Village Law came into effect permitting the recruitment of up to 60,000 village guards; recruitment continued in 2010.⁴¹ Moreover,

while the 2001 Constitution of the Republic of Turkey guarantees that “[e]veryone has the right to freedom of residence and movement,” “freedom of residence may be restricted by law for the purpose of,” among other things, “preventing offences, promoting social and economic development, ensuring sound and orderly urban growth, and protecting public property.”⁴² In Myanmar, the subjugation of minority groups has been an objective of the Burman majority since negotiations for independence, with cleavages evident since British rule and during World War II. Matters were exacerbated by the 1947 Constitution of the Socialist Republic of the Union of Burma, which gave unequal rights to different ethnic groups. While the 2008 Constitution of the Republic of the Union of Myanmar provides the potential for limited ethnic autonomy, it ensures the domination by the military of the national government.⁴³

At least two of the countries surveyed, Colombia and Kenya, had mechanisms in place by which IDPs can file legal cases or complaints about respect for their rights. In Colombia, the constitutional complaint process—the *acción de tutela* petition procedure—has made the government accountable to IDPs and has influenced government policy toward IDPs, including the policy

³⁸ Government of Southern Sudan, Land Act, 2009, Chapter XIII, 78(1), (2), (3), (4); copy on file with the authors.

³⁹ *Ibid.*, Chapter XIII, 80 (1), (2).

⁴⁰ See further, Kurdish Human Rights Project, *Turkey's Village Guard System: Still in Place, Still an Obstacle*, March 2011 (www.khrp.org); Dilek Kurban and others, *Coming to Terms with Forced Migration: Post-Displacement Restitution of Citizenship Rights in Turkey*, Turkish Economic and Social Studies Foundation (TESEV), August 2007, p. 18 (www.tesev.org.tr/UD_OBJS/PDF/DEMP/ENG/comingto termswithforcedmigration.pdf).

⁴¹ Kurdish Human Rights Project, *Turkey's Village Guard System: Still in Place, Still an Obstacle; Official Gazette, Köy Kanununda ve Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun* [Law Concerning Amendments Brought to the Law on Villages and Some Other Laws], No. 5673, 27 May 2007 (<http://rega.basbakanlik.gov.tr/Eskiler/2007/05/20070527-2.htm>), cited in Dilek Kurban

and others, *Coming to Terms with Forced Migration*, p. 18. According to TESEV, “the position of provisional village guards was created on 26 March 1985 through a clause added by Law no. 3175 to the 1924 Village Law (Law no. 442)”; see Dilek Kurban, Ayşe Betül Celik, and Deniz Yüksek, *Overcoming a Legacy of Mistrust: Toward Reconciliation between the State and the Displaced. Update on the Implementation of the Recommendations Made by the UN Secretary-General's Representative on Internally Displaced Persons Following His Visit to Turkey*, Internal Displacement Monitoring Centre/Turkish Economic and Social Studies Foundation, June 2006, p. 20. See also Council of Europe, Commissioner for Human Rights, “Letter from the Council of Europe Commissioner for Human Rights to Mr. Beşir Atalay, Minister of Interior of the Republic of Turkey,” 8 June 2010, CommHR/SG/sf 132-2010 (www.coe.int/t/commissioner/default_en.asp).

⁴² Article 23, as amended on October 17, 2001.

⁴³ See, for example, Amnesty International, *The Repression of Ethnic Minority Activists in Myanmar*, February 2010 (www.amnesty.org).

of allocation of government assistance such as housing subsidies.⁴⁴ This judicial defense mechanism has led the Constitutional Court since 1997 to address *tutela* cases invoking specific human rights such as access to basic services, the right to life, and freedom of movement. *Tutela* petitions gave rise to a landmark decision by the Constitutional Court in 2004, Decision T-025, in which the court recognized the extent of violations of the fundamental rights of the country's internally displaced population and declared that "unconstitutional state of affairs" had arisen due to insufficient government capacity and allocation of funds. That finding compelled the government to increase its budgetary allocation for IDPs (see also Benchmark 11) significantly—by a factor of 8 in fixed dollars.⁴⁵ Over 1,200 *tutelas* had been filed by 2009.⁴⁶ The Kenya National Human Rights

Commission receives complaints of human rights violations, including from IDPs, through petitions to the commission or the relevant department of government; the petitions point to provisions in the law that, due to gaps or gray areas, undermine IDPs' access to their rights and therefore may require revision.⁴⁷

In recognition of the importance of developing national legal frameworks for internal displacement, for several years now the UN General Assembly and UN Human Rights Council (formerly the Commission on Human Rights) as well as regional organizations as examined above have encouraged governments to develop laws based on the Guiding Principles to protect the rights of IDPs.⁴⁸ International actors—in particular RSGs on IDPs Francis Deng and Walter Kälin and the RSG's successor, UN Special Rapporteur on the Human Rights of IDPs Chaloka Beyani, UNHCR, and the Brookings Project on Internal Displacement—have provided technical assistance to support such efforts. Given the number of countries experiencing internal displacement and the time and technical expertise required to review and recommend amendments to legal frameworks to ensure IDPs' access to their rights, much more attention to and support for implementation of this benchmark are required.

⁴⁴ As Colombian Constitutional Court Judge Manuel José Cepeda-Espinosa explains, "Among the constitutional mechanisms to ensure the effective exercise of human rights is the *acción de tutela*, a petition procedure, which enables any person whose fundamental constitutional rights are being threatened or violated to request judicial protection of their fundamental rights. Citizens may file informal claims without an attorney, before any judge in the country with territorial jurisdiction. That judge is legally bound to give priority attention to the request over any other case. Judges have a strict deadline of ten days to reach a decision and, where appropriate, to issue a mandatory and immediate order." Citation from Manuel José Cepeda-Espinosa, "The Constitutional Protection of IDPs in Colombia," in Rodolfo Arango Rivadeneira, *Judicial Protection of Internally Displaced Persons: The Colombian Experience*, p. 8, (Washington, D.C.: Brookings-Bern Project on Internal Displacement, November 2008) (www.brookings.edu/idp).

⁴⁵ Manuel José Cepeda-Espinosa, Constitutional Court of Colombia, "The Judicial Protection of IDPs in Colombia: The Importance of the Guiding Principles," statement presented at the conference "Ten Years of the Guiding Principles on Internal Displacement," Oslo, Norway, 16 October 2008.

⁴⁶ Figure is from the court's information system. Cited in Rodolfo Arango Rivadeneira, *Judicial Protection of Internally Displaced Persons: The Colombian Experience*, p. 250, (Washington, D.C.: Brookings-Bern Project on Internal Displacement, November 2008) (www.brookings.edu/idp); Manuel José Cepeda-Espinosa, "How Far

May Colombia's Constitutional Court Go to Protect IDP Rights?" *Forced Migration Review*, Special Issue (December 2006), pp. 21–23 (www.fmreview.org).

⁴⁷ See further the Kenya case study in chapter 2 of this volume.

⁴⁸ See, for example, UN General Assembly Resolution 60/168; UN HRC Resolution 2005/46.

Conclusion

One of the most encouraging signs of governments taking seriously their responsibility to address internal displacement has been the development, adoption and implementation in all regions of the world of numerous IDP-specific laws and decrees that respect the rights of IDPs. These developments reflect a growing realization that internal displacement must be addressed at the national level, both as a matter of legal obligation and national interest. Further, as RSG Walter Kälin remarked, “With the adoption of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), the demand for the elaboration of national policies and legislation relating to internal displacement is expected to increase.”⁴⁹ While this development would be commendable, as witnessed elsewhere in Africa and throughout the world it is important that legislation be translated into tangible action that respects the basic human rights of IDPs.

The legislation of the countries surveyed for this study tends to protect a specific right of the internally displaced (as in Georgia, Turkey, Afghanistan, and Iraq); in others, legislation seeks to comprehensively address all causes and stages of displacement (laws in Georgia and Colombia, both of which passed some of the earliest legislation on IDPs, most closely approximate this). In all of the countries there are notable limitations to the scope of the laws and gaps in implementing them, but nonetheless it is important that states have taken legal measures to recognize internal displacement and their responsibilities to protect and assist internally displaced persons. However, laws on internal displacement must also be viewed in the context of other (non-IDP specific) national laws applicable to their populations, including IDPs, which this study, including the four expanded case studies, has sought to examine to the extent possible.

⁴⁹ UN General Assembly, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, A/65/282, 11 August 2010, para. 24 (www.brookings.edu/projects/idp/rsg_info.aspx).



Nyala, South Darfur, Sudan / A South Sudan Referendum Commission (SSRC) staff member controls the queue to the Giyada polling center in the first day of the referendum on the self-determination of Southern Sudan.
Photo: Albert González Farrzn

Benchmark 6

Develop a National Policy on Internal Displacement

Has the national government adopted a policy or plan of action to address internal displacement?

While legislative action on internal displacement, as addressed in Benchmark 5, is encouraged, laws alone are usually insufficient to meet the needs of IDPs. Legislation should therefore be accompanied by national policies, strategies, or plans of action that support timely responses to internal displacement crises through measures requiring neither legal amendment nor the passage of new legislation. Such measures may be appropriate in lieu of formal legislation, or they may be used to elaborate and implement legislation already adopted.

While the content of policies or strategies will vary depending on the cause and phase of displacement, they should uphold and reflect the Guiding Principles on Internal Displacement and provide a clear overall framework for organizing the response to internal displacement. In particular, such policies or strategies should

- be based on and consistent with relevant international, regional and national legal standards, while identifying priorities for drafting and amending national legislation to ensure compatibility with international and regional standards

- identify priority objectives and planned actions by the government for addressing internal displacement and indicate the timeline for doing so, which should be further detailed in a plan of action for implementing the policy or strategy

- specify the responsibilities of national and local government departments or agencies for implementation of policy

- designate, or reconfirm, an institutional focal point for national coordination of the response to displacement and thus for overseeing and coordinating implementation of the national policy or strategy

- specify the source of funds to be used for implementation

- indicate measures for periodic review and, as necessary, revision of the national policy or strategy and plan of action.

A comprehensive national policy on internal displacement should encompass the various causes of displacement and address all phases of displacement, including actions to prevent arbitrary displacement, to ensure protection and assistance during displacement and to secure durable solutions to displacement. It should also address the needs of specific groups, such as children or indigenous groups.

National policies or strategies are more effective when developed in consultation with IDPs and civil society actors. However, the findings of this study suggest that notwithstanding a few notable exceptions, meaningful consultation with IDPs in the policy development process rarely has been implemented in any systematic way.

In addition, there are several cases in which dissemination of such policies has been limited, not only to IDPs but also in many cases to government officials, especially at the local level, who have responsibilities related to the implementation of these policies.

Overview of research findings

Nine of the countries surveyed had developed at some point a specific policy, strategy or plan on internal displacement: Afghanistan, Colombia, Georgia, Iraq, Pakistan, Sri Lanka, Sudan, Turkey and Uganda. In Pakistan and Turkey, the policy is a regional, not a national, policy; in both of these cases, the development

of a national policy has been recommended. Two countries currently have such policies in draft form: Kenya and Yemen. The policies of Georgia, Kenya, Iraq, Nepal, Yemen, Sudan and Uganda explicitly indicate that they are based not only on national legislation but also on relevant international standards, including the Guiding Principles.

In Colombia, recognition by the government of its responsibilities toward the internally displaced has been reflected in a number of policy documents since 1995, which form part of its sophisticated legal and policy framework on IDPs. The government has made remarkable progress in addressing internal displacement, especially since 1994 when Representative of the Secretary-General on Internally Displaced Persons (RSG) Francis Deng undertook his first mission to Colombia and found the government to be lacking any “collective willingness” to deal with the problem. However, it has fallen short in implementation. The government’s shortcomings in implementation have been noted to varying degrees by RSG Deng and RSG Walter Kälin following their missions to Colombia in 1999 and 2006, respectively.¹

An executive branch body, the National Council for Economic and Social Policy (Consejo Nacional de Política Económica y Social, CONPES) adopted in 1995 the National Program for Comprehensive Assistance to the Population Displaced by Violence. However, various structural problems hampered its effectiveness, prompting CONPES to develop a second policy

in May 1997, the National System for Comprehensive Assistance to the Population Displaced by Violence, which was adopted by the Ministry of the Interior, the Presidential Adviser for the Displaced, the Presidential Adviser on Human Rights, the Presidential Adviser for Social Policy and the National Department of Planning. The national “system” was to address the problem of internal displacement and set forth a strategy of prevention, immediate assistance, and “consolidation and socioeconomic stabilization.” These two CONPES initiatives together with other policy initiatives outlined in various decrees were formalized and consolidated in the National Plan for Comprehensive Assistance to the Population Displaced by Violence, outlined in Law 387 and adopted by Congress on 18 July 1997. The plan was to be designed within six months.²

As envisioned, in January 1998, Colombia adopted by decree the National Plan for Comprehensive Assistance to the Population Displaced by Violence to implement Law 387.³ The plan established strategies to address internal displacement, including provisions for prevention, humanitarian assistance, “socioeconomic consolidation and stabilization,” and durable solutions. It identified authorities responsible for implementing the plan,

¹ UN Commission on Human Rights, *Internally Displaced Persons: Report of the Representative of the Secretary-General, Mr. Francis Deng, Submitted Pursuant to Commission on Human Rights Resolution 1993/95–Addendum: Profiles in Displacement: Colombia*, E/CN.4/1995/50/Add.1, 3 October 1994, p. 33 (http://ap.ohchr.org/documents/dpage_e.aspx?m=71); UN Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin–Addendum: Mission to Colombia*, A/HRC/4/38/Add.3, 24 January 2007 (http://ap.ohchr.org/documents/dpage_e.aspx?m=71).

² Government of Colombia, National Department of Planning, *Documento CONPES 2804: Programa Nacional de Atención Integral a la Población Desplazada por la Violencia*, 13 September 1995; citation from Government of Colombia, National Department of Planning, *Documento CONPES 2924: Sistema Nacional de Atención Integral a la Población Desplazada por la Violencia*, 28 May 1997. See also: UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons Submitted in accordance with Commission Resolution 1999/47–Addendum: Profiles in Displacement: Follow-up Mission to Colombia*, E/CN.4/2000/83/Add.1, 11 January 2000, paras. 40–41, p. 11 (www.brookings.edu/projects/idp.aspx).

³ Decree 173 of 26 January 1998 adopting the National Plan for Comprehensive Assistance to the Population Displaced by Violence, available at Brookings-LSE Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Colombia” (www.brookings.edu/projects/idp/Laws-and-Policies/colombia.aspx).

which include the National Council for Comprehensive Assistance to the Population Displaced by Violence (Consejo Nacional para la Atención Integral de la Población Desplazada por la Violencia), the Office of the Special Administrative Unit for Human Rights of the Ministry of the Interior, the Social Solidarity Network, and the Ministry of Agriculture and Rural Development. Responsibilities of local authorities are not specifically outlined. However, the plan does call for the design of committees to assist displaced populations at the district and municipal levels.⁴ In March 1998, another decree provided for the allocation of 40 billion pesos (\$30.7 million) to address the problem of internal displacement in accordance with Law 387.⁵

In 2004, the Constitutional Court declared that the gap between the rights guaranteed to IDPs and the government's capacity to protect those rights was an "unconstitutional state of affairs" and ordered the government to redress the situation (see Benchmark 5).⁶ In 2005, Decree 250 was adopted, creating a new version of and replacing the 1998 plan. This new plan, also named the National Plan for Comprehensive Assistance to the Population Displaced by Violence, includes provisions on IDP participation, different treatment based on needs, attention to extremely vulnerable groups, recognition of the role of the Ombudsman's Office, and the strengthening of the Inter-Institutional Committee for Early Warnings.⁷ While there have been improvements

in meeting the needs of IDPs through the National Plan, the majority of local authorities continue to lack sufficient resources, training and budget allocations to fully implement it.⁸ Indeed, RSGs Deng and Kälin have commended the government of Colombia's progress in adopting laws and policies on IDPs over the years, but they have also stated that the government has fallen short of fully implementing them; accordingly, they have issued a series of recommendations to improve implementation.⁹

The government of Uganda adopted the National Policy for Internally Displaced Persons in 2004. Based explicitly on the Guiding Principles, the policy covers all phases of displacement due to conflict as well as displacement caused by man-made and natural disasters. The policy recognizes the right of safe and voluntary return or resettlement. For planning and coordination, the policy established the Inter-Agency Technical Committee, composed of the Office of the Prime Minister, relevant ministries, the private sector, UN agencies, NGOs and donors. The Department of Disaster Preparedness and Refugees is identified as the lead institution for implementation of the policy; it is to be "responsible for monitoring, supervising and evaluating activities of sectoral lead agencies, national and international humanitarian and development agencies in all matters related to management of Internal Displacement."¹⁰ The policy does not include provisions for its regular review or revision.¹¹ While the policy is otherwise rather com-

⁴ Government of Colombia, Decree 172 of 1998, available at Brookings-LSE Project on Internal Displacement, "National and Regional Laws and Policies on Internal Displacement: Colombia."

⁵ Decree 501 of 13 March 1998, available at Brookings-LSE Project on Internal Displacement, "National and Regional Laws and Policies on Internal Displacement: Colombia."

⁶ See further, Rodolfo Arango Rivadeneira, *Judicial Protection of Internally Displaced Persons: The Colombian Experience* (Washington, D.C.: Brookings-Bern Project on Internal Displacement, November 2009) (www.brookings.edu/papers/2009/11_judicial_protection_arango.aspx).

⁷ Government of Colombia, *Decreto 250, Plan Nacional Atención Integral a la Población Desplazada*, 7 February 2005, available at Brookings-LSE Project on Internal Displacement, "National and Regional Laws and Policies

on Internal Displacement: Colombia."

⁸ Elizabeth Ferris, "The Role of Municipal Authorities in Addressing Internal Displacement," *Forced Migration Review*, no. 33, February 2010 (www.fmreview.org).

⁹ See RSG reports from 2000 and 2007 and for comparison, from 1994, available at the OHCHR website (www2.ohchr.org/english/issues/idp/visits.htm) and the Brookings-Bern Project on Internal Displacement website (www.brookings.edu/idp).

¹⁰ Republic of Uganda, *National Policy for Internally Displaced Persons*, August 2004, § 4.1.1.

¹¹ Government of Uganda, Office of the Prime Minister, Department of Disaster Preparedness and Refugees, *National Policy for Internally Displaced Persons*, August 2004, available at Brookings-LSE Project on Internal

prehensive, closely resembling the Guiding Principles on Internal Displacement and often even restating specific principles verbatim, implementation has been insufficient.

A workshop organized in 2006 by the Brookings-Bern Project on Internal Displacement on the implementation of Uganda's national IDP policy identified security, law and order, political will and government participation, coordination and communication, resources and fiscal management, social services, land, and amnesty as key challenges to implementing the policy.¹² These findings were reiterated in a joint report of the Refugee Law Project of Uganda and the Internal Displacement Monitoring Centre (IDMC) in 2006, which found that inadequate funding, coordination and accountability were obstacles to proper implementation.¹³

Ugandan authorities have taken some steps to improve implementation of the policy since 2006; however, in terms of the present post-displacement phase, full and effective implementation continues to be hindered by limited funding and coordination between districts and the central government.¹⁴ In 2006, the government replaced the Inter-Agency Technical Committee with the Joint Monitoring Committee to develop and oversee

the implementation of the Emergency Humanitarian Action Plan for the National Policy. In 2007, the Joint Monitoring Committee developed a transition strategy at the parish level, the "Parish Approach." Endorsed by the IASC country team in August 2007, this approach shifted the focus on humanitarian assistance in IDP camps to the provision of basic services in all parishes for original villagers, returnees and IDPs. Clusters assisted in the implementation of the Parish Approach.¹⁵

In February 2007 the government of Georgia adopted the State Strategy for Internally Displaced Persons—Persecuted.¹⁶ Given the protracted nature of internal displacement in the country, dating back to the early 1990s, the focus of the strategy is on durable solutions to displacement. More specifically, it has two main objectives: to facilitate the safe return, when conditions allow, of IDPs to their pre-war homes; and, in a significant departure from the government's long-time emphasis on return only, to support improved living conditions and local integration of IDPs in their place of displacement or in other parts of Georgia, without undermining IDPs' right to return, whenever conditions allow.¹⁷ The state strategy designates the Ministry for Refugees and Accommodation (MRA), the existing IDP institutional focal point, with the responsibility for coordinating implementation of the strategy and the action plan.¹⁸ In March 2009, a steering committee on IDPs, chaired by the Minister for Refugees and Accommodation working with the Ministry of Justice, Ministry of Finance, the Municipal Development Fund, international partners, NGOs and civil society groups, was established to assist the MRA in performing its role.

Displacement, "National and Regional Laws and Policies on Internal Displacement: Uganda," (www.brookings.edu/projects/idp/Laws-and-Policies/uganda.aspx); citation from § 4.1.1.

¹² Brookings-Bern Project on Internal Displacement, *Workshop on the Implementation of Uganda's National Policy for Internally Displaced Persons*, Kampala, Uganda 3–4 July 2006 (www.brookings.edu/fp/projects/idp/conferences/Uganda_Workshop2006_rpt.pdf).

¹³ IDMC and Refugee Law Project, "Only Peace Can Restore the Confidence of the Displaced": Update on the Implementation of the Recommendations Made by the UN Secretary-General's Representative on the Internally Displaced Persons Following His Visit to Uganda," 2nd ed., October 2006 (www.refugeelawproject.org/others/RLP.IDMC2.pdf).

¹⁴ IDMC, *Uganda: Returns Outpace Recovery Planning: A Profile of the Internal Displacement situation*, 19 August 2009 (www.internal-displacement.org).

¹⁵ Julia Steets and François Grünewald, *IASC Cluster Approach Evaluation, 2nd Phase, Country Study: Uganda*, April 2010 (<http://reliefweb.int/node/356858>).

¹⁶ For further analysis on the policies discussed herein and other relevant policies, see the Georgia case study in chapter 2 of this volume.

¹⁷ Government of Georgia, Decree No. 47 of 2 February 2007 on Approving of the State Strategy for Internally Displaced Persons—Persecuted, available at Brookings-LSE Project on Internal Displacement, "National and Regional Laws and Policies on Internal Displacement: Georgia" (www.brookings.edu/projects/idp/Laws-and-Policies/georgia.aspx).

¹⁸ State Strategy for IDPs, Chapter VII.

An action plan called for in the State Strategy was adopted in July 2008—just weeks before renewed conflict—but it was not as comprehensive in scope as outlined in the State Strategy in that it focused almost entirely return. However, the government revised the plan and in May 2009 adopted the more comprehensive State Action Plan for Implementation of the National Strategy on Internally Displaced Persons, which was revised in May 2010 to expand the housing strategy and the focus on livelihoods support.

In February 2007, the government of Nepal adopted the National Policy on Internally Displaced Persons. The policy, following a recommendation by RSG Walter Kälin following his 2005 mission to the country,¹⁹ explicitly refers to the Guiding Principles on Internal Displacement; it is correspondingly comprehensive scope, recognizing displacement due to conflict and natural and man-made disasters and covering all phases of displacement.²⁰ Prior to the policy the government recognized as IDPs only people uprooted by the actions of Maoist insurgents and therefore did not recognize as IDPs those displaced by the government and its security forces; as a result, assistance was restricted to those displaced by Maoists. However, that discriminatory and politically motivated approach now has been corrected with the more inclusive definition of IDP adopted in the national IDP policy. An ongoing problem, however, is that while the policy contains provisions for safe and voluntary return, reintegration, or resettlement, government assistance is available only to those seeking to return.²¹

¹⁹ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Mission to Nepal*, E/CN.4/2006/71/Add.2, 7 January 2006, para. 67 (www.brookings.edu/projects/idp/rsg_info.aspx#Kalin).

²⁰ Government of Nepal, *National Policy on Internally Displaced Persons, 2063 (2007)*, Brookings-LSE Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Nepal” (www.brookings.edu/projects/idp/Laws-and-Policies/nepal.aspx).

²¹ IDMC, *Nepal: Failed Implementation of IDP Policy*

The national policy is generally considered to be a solid policy; the primary problem is its implementation. To a certain extent, the government of Nepal has taken steps to address the problem. In July 2007, representatives of the Ministry of Peace and Reconstruction (MoPR) and other line ministries formed a task force to develop a set of procedural guidelines for proper policy implementation (IDP Policy Directives) with support from the UN High Commissioner for Refugees (UNHCR), the High Commissioner for Human Rights (OHCHR), the Office for the Coordination of Humanitarian Affairs and the Norwegian Refugee Council.²² The directives clarify the procedures to be followed by all service providers, facilitate program implementation by incorporating and systematizing institutional mechanisms, and set out clear and consistent procedures for IDPs to acquire their entitlements and to access services. They include regulatory mechanisms for registration and de-registration of IDPs and provisions to give every IDP an informed choice vis-à-vis all three durable solutions.²³ At the end of 2007, MoPR submitted the IDP Policy Directives to the Cabinet for approval, but as of July 2011 they had not been approved. In early 2010, MoPR reviewed and revised the IDP Policy Directives to resubmit to the Cabinet. At the time of writing, the process of revising both the National Policy on Internally Displaced Persons and the IDP Policy Directives is reportedly making little progress as it is stuck at the MoPR. Moreover, according to a field assessment by the Nepal IDP Working Group, few government officials were even aware of the national policy or its contents, including many of those directly responsible for its implementation, and only 35 percent of IDPs and returnees surveyed were aware of the national IDP policy.²⁴

Leaves Many Unassisted, January 2010 (www.internal-displacement.org).

²² Nepal IDP Working Group, *Distant from Durable Solutions: Conflict-Induced Internal Displacement in Nepal*, June 2009 (www.internal-displacement.org).

²³ Ibid.

²⁴ Ibid, pp. 34-38.

In terms of policy development, Afghanistan²⁵ was seemingly more active on the issue of internal displacement at a national level several years ago than it has been in recent times. In 2003, the government of Afghanistan committed itself to the Guiding Principles through its Regional Operational Plan (2003) for the south of the country, which states that “the UN Guiding Principles on Internal Displacement are to be adhered to by the Afghan State to promote and seek permanent solutions for IDPs.” In 2005, the Consultative Group on Returnees, Refugees, and IDPs endorsed the National IDP Plan and Policy, which emphasized durable solutions and affirmed the government’s responsibility to address internal displacement. This group was reportedly the mechanism that facilitated coordination between the government and the United Nations as of April 2003. The National IDP Plan and Policy was an initiative of the Ministry of Rural Rehabilitation and Development, the Ministry of Refugees and Repatriation, and the Ministry of Frontiers and Tribal Affairs, which was supported by UNHCR, the UN Development Programme, the World Food Programme, and the UN Assistance Mission in Afghanistan. The Consultative Group also agreed to respect the Guiding Principles. However, both the Regional Operational Plan and the National IDP Plan and Policy are defunct.²⁶

Within the Afghanistan National Development Strategy, the Afghan government adopted the Refugee Return and IDP (RRI) Sector Strategy, thereby committing itself to ensuring durable return and reintegration for the displaced. Accordingly, the relevant ministries commit to incorporate returnee requirements into their national development programs. The RRI Strategy was also affirmed in Kabul at an International Conference on Return and Reintegration in November 2008.

The government of Sudan adopted the National Policy on Internally Displaced Persons in January 2009, which refers to and generally incorporates the UN Guiding

Principles on Internal Displacement. While the policy focuses in large measure on South Sudan, as follow-up to implementation of the Comprehensive Peace Agreement, it was intended to apply to all levels of government throughout the entire country. The national policy recognizes the civil and political as well as economic, social and cultural rights of the country’s IDPs. It strives to promote voluntary settlement and reunification of IDP families and to involve affected groups and communities in planning programs and projects that seek to respond to their needs. By promoting reintegration, the government seeks to establish sustainable peace and development programs that reduce relief dependency and encourage self-reliance.²⁷ Nevertheless, the policy’s implementation as of 2011 has been largely stalled.

In July 2008, the government of Iraq adopted the National Policy on Displacement, which creates a framework focused on protection during displacement, but also includes some elements that could support durable solutions (for example, with respect to property and compensation.) The policy covers those displaced before 2003—“‘transferred/relocated populations,’ i.e., those who were forced to leave their homes as a result of state policies”—and those displaced after 2003.²⁸ Notably, the policy defines IDPs in accordance with the Guiding Principles and states that assistance, monitoring and pursuit of durable solutions are to be undertaken in accordance with the principles. Included in the policy are provisions outlining government responsibilities to address displacement. The Ministry of Displacement and Migration is responsible for coordinating, monitoring, and overseeing the implementation of the policy. The role of local authorities, however, is

²⁵ See further, Afghanistan case study in chapter 2 of this volume.

²⁶ Key informant interview, July 2011.

²⁷ For full text, see Brookings-Bern Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Sudan” (www.brookings.edu/projects/idp/Laws-and-Policies/sudan.aspx).

²⁸ Sections 2.1.1, 2.1.2; see full text of policy at Brookings-Bern Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Iraq” (www.brookings.edu/projects/idp/Laws-and-Policies/iraq.aspx).

not specified.²⁹ To date, the policy's implementation has been largely inadequate. A detailed national action plan to facilitate the plan's implementation was to be developed after its adoption; however, as of July 2011 no such plan had been completed.³⁰

The government has also sought to resolve internal displacement, either directly or indirectly, through other national strategies. At the time of writing, the Ministry of Displacement and Migration was in the process of developing a national shelter strategy, focusing on IDPs and returnees. Also of relevance to resolving internal displacement is the Iraq National Development Plan (2010–2014) which recognizes “displaced families” as among the vulnerable as well as, more specifically, the effect displacement and migration have had on women and youth, and sets forth some broad measures to improve their socioeconomic standing.³¹

The government of Turkey has not developed a comprehensive national policy, but it has developed a series of policies on IDPs since the 1990s. The government launched the Return to Village and Rehabilitation Project (RVRP) in 1994 (although implementation did not really commence until 1999) to provide social and economic infrastructure and income assistance for returnees. However, the RVRP falls short of being in line with the Guiding Principles. The project has been criticized on many grounds, including for lack of transparency, reflected in the dearth of any official written

material explaining it, and for not truly envisioning “return” but rather the resettlement of former village guards to “central villages” to control the Kurdish population. In addition, Human Rights Watch has criticized the RVRP’s “arbitrary” and “inconsistent” assistance, which, when provided, has been inadequate.³²

Representative of the Secretary-General on Internally Displaced Persons Francis Deng recommended following his 2002 mission to Turkey the “clarification and dissemination of government policy on internal displacement.” In December 2004, the government established a commission to develop a framework document on internal displacement. The commission was composed of representatives from the Interior Ministry, the Foreign Ministry, the State Planning Organization, the South-Eastern Anatolia Project and the State Institute of Statistics. The commission consulted with the provincial governors of Eastern and South-Eastern Anatolia, the United Nations and the European Commission’s delegation to Turkey. The government first publicly indicated its intent to put forth a national strategy on internal displacement during RSG Walter Kälin’s working visit to Turkey in May 2005. In August 2005, the Council of Ministers adopted a framework document on IDPs entitled “Measures on the Issue of IDPs and the Return to Village and Rehabilitation Project in Turkey” (or the Integrated Strategy Document), which

²⁹ Government of Iraq, Ministry of Displacement and Migration, *National Policy on Displacement*, July 2008.

³⁰ See further: Brookings-Bern Project on Internal Displacement, *Resolving Iraqi Displacement: Humanitarian and Development Perspectives*, February 2010, (www.brookings.edu/~media/Files/rc/reports/2010/0216_iraqi_displacement/0216_iraqi_displacement.pdf); IDMC, *Iraq: Little New Displacement but around 2.8 Million Iraqis Remain Internally Displaced*, March 2010 (www.internal-displacement.org/); Refugees International, *Field Report: Humanitarian Needs Persist*, March 2010 (www.refintl.org).

³¹ Government of Iraq, Ministry of Planning, Iraq National Development Plan 2010–2014 (<http://iq.one.un.org/documents/83/NDP%20English.pdf>).

³² Human Rights Watch (HRW) has long monitored IDP issues in Turkey and has long criticized the RVRP. For a survey of government return initiatives prior to 1996, see HRW/Helsinki, “Turkey’s Failed Policy to Aid the Forcibly Displaced in the Southeast,” *A Human Rights Watch report*, vol. 8, no. 9, June 1996. For an evaluation of the 1999 Return to Village and Rehabilitation Project, see HRW, “Displaced and Disregarded: Turkey’s Failing Village Return Program,” *A Human Rights Watch Report*, vol. 14, no. 7, October 2002. Citation from HRW, *Still Critical: Prospects in 2005 for Internally Displaced Kurds in Turkey*, 6 March 2005, p. 24 (www.hrw.org). On the central villages issue specifically, see the above-cited HRW October 2002 report as well as International Federation of Human Rights Leagues, *Human Rights in the Kurdish Southeast: Alarming Situation Despite Extensive Legal Reforms: Release of an International Investigative Mission Report*, July 2003 (www.fidh.org).

sought to improve on the RVRP. The document is technically a special Decision of Principle (Prensip Kararı) and therefore is not published in the *Official Gazette*. It contains a framework of principles to shape an action plan with NGO participation, as the Return to Village and Rehabilitation Project was criticized for not consulting NGOs.³³ The Ministry of the Interior instructed deputy governors to use the Integrated Strategy Document to inform all decisions made regarding the RVRP and the Law on Compensation, but the document does not detail how to address IDP issues. In a letter to the Permanent Mission of Turkey to the UN in March 2006, RSG Walter Kälin called for a plan of action to be developed.³⁴

Drafted with technical assistance from the United Nations Development Programme and adopted by the Turkish government in 2006, the Van Province Action Plan for Responding to IDP Needs (hereafter, Van Action Plan) reflects the Guiding Principles on Internal Displacement. The Van Action Plan outlines the basic principles pertaining to assistance of IDPs during return, resettlement or reintegration.³⁵ It was developed in consultation with various sectors of civil society, including IDPs, and it is intended to be a pilot project or “blueprint” to be later implemented in the thirteen other provinces affected by internal displacement.³⁶ Begun in 2006, implementation of the Van Action Plan

is administered by the Van governorate, where IDP figures are some of the highest in the country. According to the government, the Van Action Plan included eighty-four proposed projects worth \$72 million by December 2007, over forty of which were still being negotiated in 2009.³⁷ Ultimately, a comprehensive national plan is to be developed once all thirteen other action plans are finalized. While progress on the thirteen provincial plans was made in 2009, there appeared to be no major developments in this direction as of mid-2011.

Like Turkey, Pakistan does not have a national policy on internal displacement; nonetheless, it does have a policy specific to IDPs for one of the main provinces affected by internal displacement. In Pakistan, at the provincial level, the government of the North-West Frontier Province (NWFP) signed with the United Nations a return policy framework document in July 2009.³⁸ This policy is in line with the Guiding Principles on Internal Displacement in that it stresses that returns will be voluntary, safe and conducted in dignity and recognizes that while return is preferred, local integration also is an option. Further, in this document the government committed itself to upholding international standards, to “provide respectful treatment of IDPs,” and to ensure that vulnerable IDPs are properly consulted through all stages. The policy also recognizes that the international community, with the support of the UN Office for the Coordination of Humanitarian Affairs, is responsible for assisting the NWFP government.³⁹

³³ Dilek Kurban, Ayşe Betül Celik and Deniz Yüksek, *Overcoming a Legacy of Mistrust: Toward Reconciliation between the State and the Displaced: Update on the Implementation of the Recommendations Made by the UN Secretary-General’s Representative on Internally Displaced Persons following his Visit to Turkey* (www.internal-displacement.org).

³⁴ Walter Kälin, letter sent to the Permanent Mission of Turkey to the United Nations, 31 March 2006. On file with the authors.

³⁵ Deniz Yüksek and Dilek Kurban, *Permanent Solution to Internal Displacement? An Assessment of the Van Action Plan for IDPs*, Turkish Economic and Social Studies Foundation (TESEV), May 2009, p. 6, (www.tesev.org.tr).

³⁶ Full text available at Brookings-Bern Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Turkey” (www.brookings.edu/projects/idp/Laws-and-Policies/turkey.aspx).

³⁷ Latest available data at the time of writing. Government of Turkey, Permanent Mission of Turkey to the United Nations, Geneva (GoT/UN Mission), 27 July 2007, “Information Note on Developments Regarding the Situation of Internal Displacement Provided to IDMC, cited in IDMC, *Turkey: Need for Continued Improvement in Response to Protracted Displacement: A Profile of the Internal Displacement Situation*, October 2009, p. 150 (www.internal-displacement.org). For a discussion of the projects, see Yüksek and Kurban, *Permanent Solution to Internal Displacement? An Assessment of the Van Action Plan for IDPs*.

³⁸ The name of the province was officially changed in April 2010 to Khyber Pakhtunkhwa.

³⁹ Government of NWFP, Emergency Response Unit,

In 1999, the government of Sri Lanka initiated a process under the Relief, Rehabilitation, and Reconciliation Framework to “address the challenges of ensuring effective programming for the conflict-affected population.”⁴⁰ In June 2002, after an extensive consultative process with multiple stakeholders, including IDPs, the government adopted the National Framework for Relief, Rehabilitation and Reconciliation. This framework established a set of policies and strategies related to human rights, specific rights of the displaced, relief, and reconciliation/peace-building, to be followed up by relevant actors. Policy recommendations include adopting the Guiding Principles on Internal Displacement as official policy for assisting internally displaced persons affected by the conflict; conducting regular surveys and assessments with a view to accelerating and expanding opportunities for resettlement and reintegration; and establishing an independent humanitarian ombudsman system.⁴¹ Since the adoption of the national framework, the government passed the Resettlement Authority Act (2007), which established the Resettlement Authority, charged with formulating a “national policy and to plan, implement, monitor, and co-ordinate the resettlement of the internally displaced and refugees.”⁴² As of July 2011, there is no such national policy.⁴³

Kenya’s draft National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons (2010) is fully consistent with the Guiding Principles; the International Conference on the Great Lakes Region Protocol on the Protection and Assistance to Internally Displaced Persons and Protocol on the Property Rights of Returning Persons; and the African Union Convention for the Protection and Assistance of Internally Persons in Africa. Kenya’s draft national policy criminalizes acts leading to arbitrary displacement and calls for measures guarding against factors conducive to internal displacement.

In Yemen, following a visit and recommendations in April 2010 from Representative of the UN Secretary-General on the Human Rights of IDPs Walter Kälin, the government reportedly began drafting a national IDP strategy.⁴⁴ However, at the time of writing, the policy only existed in preliminary draft form, still to be reviewed and adopted by the government—and the country was undergoing political upheaval.

In the Democratic Republic of the Congo, a draft strategy on return reportedly was drafted sometime within the past few years by the government with the assistance of Danish Refugee Council; however, no evidence of the strategy could be confirmed.⁴⁵

In Myanmar, while there is no national policy or plan of action to address internal displacement, two strategy documents address post-Nargis displacement: the Action Plan on Disaster Risk Reduction 2009–2015 and the Post-Nargis Recovery and Preparedness Plan. The government, through a task force comprising representatives of the Ministry of Social Welfare, Relief and Resettlement and eleven other ministries together with representatives from the Myanmar Red Cross Society,

Peshawar, *Return Policy Framework: Official Statement*, 11 July 2009 (<http://reliefweb.int/node/316752>).

⁴⁰ Brookings-Bern Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Sri Lanka,” (www.brookings.edu/projects/idp/Laws-and-Policies/sri_lanka.aspx).

⁴¹ Government of Sri Lanka, *National Framework for Relief, Rehabilitation, and Reconciliation*, June 2002, available at Brookings-Bern Project on Internal Displacement, “Sri Lanka: Laws and Policies.”

⁴² “Resettlement” in the Sri Lanka context refers to return. Government of Sri Lanka, Parliament, *Resettlement Authority Act*, No. 9 of 2007, available at Brookings-Bern Project on Internal Displacement, “Sri Lanka: Laws and Policies.”

⁴³ Government of Sri Lanka, Ministry of Resettlement and Disaster Services, Resettlement Authority (www.resettlementmin.gov.lk/resettlement-authority.html).

⁴⁴ OHCHR, “Internally Displaced Persons in Yemen Threatened by Lack of Humanitarian Funding,” 12 April 2010 ([www.brookings.edu/projects/idp/~link.aspx?_id=C664612845424E5788C489079C3B3E3D&_z=z](http://www.brookings.edu/projects/idp/~/link.aspx?_id=C664612845424E5788C489079C3B3E3D&_z=z)).

⁴⁵ According to correspondence with the Internal Displacement Monitoring Centre.

the UN Development Programme, the UN Office for the Coordination of Humanitarian Affairs, the Association of South East Asian Nations (ASEAN) and the Asian Disaster Preparedness Center and NGOs, developed the Myanmar Action Plan on Disaster Risk Reduction 2009–015 in 2009. While the plan does not discuss displacement, it aims to make Myanmar more disaster resilient, articulating projects to meet the commitments under the Hyogo Framework for Action and ASEAN Agreement on Disaster Management and Emergency Response. One of the core components of the action plan is community-based disaster risk reduction, which was identified as an immediate need in the Myanmar Action Plan on Disaster Risk Reduction 2009–2015 and is recognized in the plan as being key to any disaster management strategy: “Communities are not only first responders to disasters but also understand local hazards and resources and are in the best position to execute immediate rescue and relief actions.”⁴⁶ Among related initiatives are development of a community-based disaster risk-reduction policy in a process led by the Ministry of Social Welfare, Relief and Resettlement (MoSWRR) with an interministerial task force; developing a national program on community-based disaster risk reduction led by the MoSWRR; promoting community volunteerism and establishing “community-based disaster risk-reduction resource centers” in a process led by the Planning Department under the Ministry of National Planning and Economic Development with the Department of Social Welfare, the Department of Health, Fire Services, the Relief and Resettlement Department, Myanmar Red Crescent Society and local disaster preparedness committees. The other components of the action plan are policy, institutional arrangements and further institutional development; hazard, vulnerability and risk assessment; multi-hazard early warning systems; preparedness and response programs at national, state/division, district and township levels; mainstreaming of disaster risk reduction into

development work; and public awareness, education and training.

The Post-Nargis Recovery and Preparedness Plan includes strategies to address displacement caused by the cyclone, including through shelters and relocation settlements, livelihoods, and land tenure security, noting that “[t]hose who have been displaced following the cyclone need support and protection.” The plan notes that for the displaced who are unable to return, relocation settlements require careful planning and adequate investment in order “to minimize risks associated with their resettlement.” “Displaced persons” are recognized as a priority for the shelter and settlement sector: “activities [of the sector] include the identification of vulnerable groups (including displaced persons) and prioritization for shelter assistance (and durable solutions for the displaced).”

Conclusion

Particularly since the Guiding Principles on Internal Displacement were published in 1998, there has been a proliferation of government policies on IDPs, including national policies. The analysis conducted for this benchmark has found that most of the fifteen governments surveyed have adopted policies or action plans to respond to the needs of IDPs. In some cases in which national policies have been lacking, regional/provincial policies or plans of action have been developed, as in Turkey and Afghanistan. Indeed, as the countries surveyed reveal, various models of policies can be adopted, including policies addressing a particular phase of displacement.

As evident in this analysis, even when a policy is adopted, often it is neither adequately disseminated nor implemented. Dissemination and awareness raising on IDP policies—especially to IDPs and to government officials, particularly those responsible for implementation—are, of course, essential elements in translating policies into practice. Political will, capacity and funding are also relevant to policy implementation. The

⁴⁶ Government of the Union of Myanmar, Ministry of Social Welfare, Relief and Resettlement Department *Myanmar Action Plan on Disaster Risk Reduction 2009–2015*, (www.adpc.net).

challenges in the implementation of policies on IDPs underscore the importance of monitoring and reporting mechanisms, such as national human rights institutions (NHRIs), civil society groups, UN agencies and international organizations; in addition to the provision

of technical assistance to governments to implement national laws, strategies and policies on IDPs, and legal assistance programs to ensure that IDPs are both aware of their rights and entitlements and able to have them fulfilled.



Yemen / UNHCR and the Yemeni Red Crescent demarcate a camp and erect tents in Khalwan, Amrran governorate, in Northern Yemen.

Photo: UNHCR/ L. Chedrawi / September 2009

Benchmark 7

Designate an Institutional Focal Point on IDPs”

Has the government designated a national institutional focal point for addressing internal displacement?

For a government to meet its responsibilities in situations of internal displacement, it must have a clear sense of exactly which government actors are responsible for doing what. If it does not, it runs the risk, as the saying goes, that “if everyone is responsible, then no one is responsible” and little to nothing gets done. Designating a government focal point for addressing internal displacement is important not only for clarifying institutional responsibilities but also for increasing government accountability. The Framework for National Responsibility points out that having a national institutional focal point on internal displacement also can be essential to ensuring sustained national attention to the issue. International guidance on the development of law and policies relating to internal displacement considers designating an institutional focal point for IDP issues at the national level and, when appropriate, at the subnational level among the “minimum essential elements” of state regulation of internal displacement.¹

Certainly, addressing internal displacement is a shared responsibility that almost certainly will require the collective efforts of a range of government offices and agencies. Government actors need first of all to be made aware of their responsibilities. Moreover, given that a number of different actors are sure to be involved in the response, someone needs to be in charge of coordinating their efforts. The national institutional focal point for IDP issues is not expected to assume and implement all

the responsibilities of the government regarding internal displacement; rather, as the term “focal point” suggests, this body should play a leading role, mobilizing and coordinating the efforts of all other relevant government actors. For example, in the development and implementation of national law, policies and strategies on internal displacement, the institutional focal point typically is expected to steer such efforts. It also should serve as the primary coordinating and implementing actor within government and as the main interlocutor on IDP issues with external stakeholders, including international actors, donors, civil society groups and IDPs.

As the Framework for National Responsibility sketches out, a number of different institutional options exist. The designated focal point on IDP issues may be an existing government agency, which then adds this function to its responsibilities; in countries where there is a ministry or department dealing with refugee issues, it is common for responsibility for IDPs to be added to its portfolio. Or a new government office, department, or even ministry may be created for this purpose. Another option, one which may supplement the work of a focal point institution, is to establish an interagency government committee or working group on IDPs.

Regardless of the form that the national institutional focal point takes, the Framework specifies that it should have several essential characteristics. Its mandate and responsibilities should encompass protection and assistance. Staff should be trained on IDP issues, in particular on the Guiding Principles on Internal Displacement and on how to operationalize the principles in practice (see Benchmark 4). The Framework also stresses that in order to carry out its mandate effectively, the institution must enjoy a certain political authority and be equipped with adequate resources (see also Benchmark 11). Close collaboration with NGOs is encouraged; indeed, it can be a means of reinforcing the capacity of the institution.

As a comprehensive national response to internal displacement requires the engagement of various ministries or offices of government—including justice, security, education and health and the electoral

¹ Brookings-Bern Project on Internal Displacement, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers* (October 2008), p. 263 (www.brookings.edu/~media/Files/rc/papers/2008/1016_internal_displacement/10_internal_displacement_manual.pdf).

management body, to name a few—the institutional focal point has an important role to play in coordinating the government response. Its role must not be limited to state-level institutions but should extend to all relevant levels of government authority, including regional or provincial and, especially, municipal authorities, which often are the first and main point of contact between IDPs and government. Intragovernment coordination is not always easy; municipal authorities often complain that bureaucrats in national capitals are removed from the day-to-day realities facing local governments and that financial support for action at the local level is inadequate.² If the institutional focal point is to be truly national, it is important that its relationship with all relevant government actors at all levels of government be strong, supportive and collaborative.

Less clear has been whether it is common, useful, or even essential for there to be a single national institutional focal point dealing with all forms of internal displacement in a country irrespective of the cause of displacement—conflict or other violence, natural disasters or—though this was not considered in this study—development-induced displacement.

Overview of research findings

The case studies suggest that action in line with this benchmark is a concrete step that many governments are in fact ready to take. Of the fifteen countries reviewed for this study, all but two (Myanmar and Sri Lanka)

have designated a national institutional focal point for addressing internal displacement (see Figure 1-1). As to the implications of the lack of a government focal point, it is important to note that whereas in Myanmar there appears to be no institution with assigned responsibility for IDP issues and essentially no government engagement with respect to conflict-induced IDPs, in Sri Lanka a variety of ministries have been involved in addressing internal displacement for many years, but there is no single government institution with lead responsibility.³ The lack of an institutional focal point does not necessarily connote the absence of government engagement with the IDP issue.

In any case, designating a focal point is just the first step; the institution also should meet the various criteria mentioned above. The discussion below compares the ways in which governments have established and supported these institutions in terms of timing of the designation; modalities of the decision; profile of the institution; responsibilities; coordination issues; capacity; and communication with IDPs.

Timing of designation of the focal point institution

While a national institutional focal point on IDP issues exists in almost all of the case study countries, the case studies also show that the decision to establish the institution tends to be rather late in coming. In the vast majority of cases, the institution was named only several years after internal displacement first occurred (for example, in Afghanistan, Colombia, Democratic Republic of the Congo, Georgia, Iraq, Kenya, Nepal, Sri Lanka, Sudan, Turkey and Yemen). It also is important to note that the designated institutional focal point may change over time. Sri Lanka, for instance, has undergone numerous changes of focal point institution. However, this is not necessarily the case. In other cases of protracted displacement—namely in Georgia, Iraq, Sudan and Uganda—the duration of displacement does

² See, for example, Brookings-Bern Project on Internal Displacement, *Protecting the Displaced in Colombia: The Role of Municipal Authorities: A Summary Report* (July 2009) (www.brookings.edu/reports/2009/07_colombia.aspx); *Workshop on the Implementation of Uganda's National Policy for Internally Displaced Persons*, Kampala, Uganda, 3–4 July 2006, hosted by the Government of Uganda and convened by the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, and the Brookings-Bern Project on Internal Displacement, in consultation with the IASC Country Team (http://www.brookings.edu/fp/projects/idp/conferences/Uganda_Workshop2006_rpt.pdf)

³ See further the Sri Lanka case study in chapter 2 of this volume.

not necessarily influence such changes; Georgia and Uganda have had the same national institutional focal point for IDPs since 1996 and 1998 respectively.

Modality of the decision

In most of the case studies, the institutional focal point for IDPs is designated as such by law. That may be done as part of a specific national law on IDPs (for example, as in Colombia and Georgia) or a national policy or strategy on IDPs (as in Iraq, Nepal, Sudan and Uganda as well as Kenya, which has a draft policy, and Yemen, which has a draft national IDP strategy). In fact, the appointment of a national focal point often seems to be propelled by an initiative to draft a law or policy on IDPs. In the absence of a specific national IDP law or policy, there may be a separate administrative directive designating a national body with lead responsibility for IDP issues (as in the Central African Republic). When a national institutional focal point for IDPs predates the adoption of a national law, policy or strategy on IDPs (in which case the focal point usually plays a central role in the drafting process), the law, policy or strategy on IDPs usually simply reaffirms its role or may provide an opportunity to revise its designation (as in Colombia and Yemen). In some cases, namely in Afghanistan, the Democratic Republic of the Congo, Pakistan and Turkey, it is not clear from the information available how and when the state institution playing the leading role in responding to internal displacement was formally designated as such.

Institutional profile

In the majority of cases, the institutional entity assigned responsibility for IDP issues is a state ministry or at least a government department headed by an official with ministerial rank. Usually, the designated entity is an existing ministry or government office rather than one created for this purpose. More specifically, lead responsibility for IDPs often is assigned to the ministry responsible for refugees and migration issues (as in Afghanistan, Georgia, Iraq and South Sudan) or to the ministry responsible for humanitarian and/or social affairs (as in the Central African Republic until June 2009, Colombia, the Democratic Republic of the Congo and

Sudan). In some cases, the government entity responsible for disaster management leads the national response to internal displacement, with responsibility for responding not only to displacement caused by disaster but also, notably, to conflict-induced displacement (as in Pakistan and Uganda). In other cases, it is the Ministry of Interior (in Turkey and Colombia from 1994 to 1997). In a few countries, an entirely new state office has been established to lead the national response on internal displacement, as in Yemen, where the Executive Office for IDPs replaced the Ministry of Health as the focal point institution (very little information on the new office is available, however). Responsibility for addressing the situation of IDPs sometimes becomes clear only after a conflict is officially over. In Nepal, responsibility is assigned to the Ministry for Peace and Post-Conflict Reconstruction; in Kenya, responsibility falls to the seemingly catch-all Ministry of State for Special Programs.

It is noteworthy that in some cases the designated focal point institution is linked formally to the executive office, most notably in Colombia, with the Presidential Adviser on IDPs; in Uganda, with the focal point institution being part of the Office of the Prime Minister; and in Yemen, with the Executive Office for IDPs. Such a link could be interpreted as a reflection of the national priority given to the IDP issue by the government (see Benchmark 2). At least, it presumably should translate into the focal point enjoying significant political leverage, though it is not clear from the evidence available whether that is in fact the case.

Changes in the designation of institutional focal point are perhaps inevitable over time. The case studies suggest that change can occur because of various factors, including the duration of displacement, changes in the magnitude of displacement, differences in the institutional competences required at different phases of displacement (for example, emergency assistance at the beginning and assistance with return or resettlement and reintegration later), capacity issues, funding, the degree of prominence given to the issue of displacement by the government, and broader initiatives of

Figure 1-1. National institutional focal points on internal displacement

Afghanistan	For conflict-induced IDPs: Ministry of Refugees and Repatriation (MoRR) For disaster-induced IDPs: Afghanistan Natural Disaster Management Authority (ANDMA)
Central African Republic	Comité National Permanent de Concertation et de Coordination pour la Gestion de la Protection Déplacées à l'Intérieur du Territoire de la République Centrafricain (June 2009–present) Previously: Ministère de la Famille, des Affaires Sociales et Solidarité Nationale (2006–2009)
Colombia	Agencia Presidencial para la Acción Social y la Cooperación Internacional (2005–present) (incorporating the RSS and SNAIPD and working with the Presidential Adviser on IDPs) <ul style="list-style-type: none"> ■ Red de Solidaridad Social (RSS) (1999-present) ■ Sistema Nacional de Atención Integral a la Población Desplazada por la Violencia (SNAIPD) (1997-2005) ■ Presidential Adviser for the Displaced (1994–present) ■ Previously: Ministry of Interior (1994–97)
Democratic Republic of the Congo	Ministère des Affaires Sociales, Action Humanitaire et Solidarité Nationale
Georgia	Ministry of Refugees and Accommodation (MRA)
Iraq	Countrywide: Ministry of Displacement and Migration (MoDM) Kurdish Regional Government: Directorate of Displacement and Migration (DDM)
Kenya	Ministry of State for Special Programs (MoSSP), Department of Mitigation and Resettlement
Myanmar	None
Nepal	Ministry of Peace and Reconstruction (MoPR)
Pakistan	National Disaster Management Authority (NDMA)
Sri Lanka	No focal point institution. However, the Presidential Task Force for Resettlement, Development and Security in the Northern Province is the current primary coordinating mechanism for government and international assistance to IDPs. Established in May 2009, the task force, which is chaired by Basil Rajapaksa, a member of Parliament and brother of the president, comprises some twenty ministerial and military officials.
Sudan	Countrywide: Humanitarian Aid Commission (HAC) South Sudan (prior to independence in July 2011): Southern Sudan Relief and Rehabilitation Commission (SSRRC)
Turkey	For conflict-induced displacement: Ministry of Interior For development-induced resettlement: General Directorate of State Hydraulic Works, General Directorate of Rural Services, and GAP Regional Development Administration
Uganda	Office of the Prime Minister, Department for Disaster Preparedness and Refugees (DDPR)
Yemen	Executive Unit for IDPs, headed by a minister Previously: Ministry of Health

government reform. In Colombia, for instance, since 1994 the institutional framework for addressing internal displacement has evolved considerably. There was no national institutional focal point on IDPs until the post of Presidential Adviser for the Displaced was created (a post, initially assigned to the Vice Minister of the Interior, that remains today), followed by the

designation in 1999 of the Red de Solidaridad Social (Social Solidarity Network) as the focal point agency. The Red de Solidaridad Social was later incorporated under the Agencia Presidencial para la Acción Social y la Cooperación Internacional (Presidential Agency for Social Action and International Cooperation), which is now the official designated focal point state entity.

Institutional mandate and responsibilities

When a national law, policy or strategy on IDPs has been adopted or at least drafted (see Benchmarks 5 and 6), it typically reconfirms the focal point designation or, when a focal point has not yet been designated, it clarifies the assignment of institutional responsibility for leading the national response to internal displacement (as in Colombia, Georgia, Kenya, Nepal, Turkey and Uganda). The Uganda National Policy for Internally Displaced Persons (2004) spells out the responsibilities of the national-level focal point institution as well as of central and local coordination mechanisms in considerable detail. Similarly, in Kenya the draft national IDP policy and in Yemen the draft national IDP strategy both devote considerable attention to defining the role and responsibilities of the focal point institution.

When there is a national institutional focal point for addressing internal displacement, in many cases the mandate of the body is concerned mostly with and in some cases explicitly restricted to IDPs due to conflict or violence (as in the Central African Republic, Colombia, Nepal, Sudan and Turkey).⁴ Moreover, in some cases, the mandate for conflict-induced IDPs is limited to certain groups of such IDPs. For instance, in Kenya the mandate of the focal point ministry (Ministry of State for Special Programs) with respect to conflict-induced IDPs is restricted to IDPs resulting from the post-election violence of 2007, excluding IDPs resulting from other forms of conflict or violence.⁵ In some of the cases studied, the lead government agency for IDPs has a mandate that covers displacement due to conflict as well as disasters (as in Georgia, Kenya and Uganda). In other cases, separate government agencies cover IDPs due to

conflict and IDPs due to disasters (as in Afghanistan) or IDPs due to conflict and IDPs due to development (as in Turkey). In one case, Yemen, the mandate of the previous national focal point for IDPs officially was restricted to camp-based conflict-induced IDPs, leaving aside the many IDPs who found temporary refuge with host families or in informal settlements. Reportedly that restriction was not strictly observed in practice and it has been lifted in the new draft national strategy on IDPs.

The tasks and functions assigned to the national institutional focal point for addressing internal displacement vary, both within each individual case as well as across the case studies. In a number of the countries reviewed, the mandate of the lead agency explicitly states that its responsibilities include protection and assistance (for example, the Central African Republic, Georgia, Iraq, Nepal and Uganda) and in some cases refers to “protection of rights” of IDPs (the Central African Republic and Georgia). Key functions and activities may include registration of IDPs (as in Colombia, Georgia, Nepal and Yemen); provision and coordination of humanitarian assistance (as in Afghanistan, the Central African Republic, Colombia, Georgia, Kenya and Sudan); the management of IDP camps and/or collective settlements (as in Georgia); coordination with other government institutions and with the international community; and the development of national legislation and policy on IDPs (as in the Central African Republic, Georgia, Kenya and Yemen). When a national policy on internal displacement does exist (see Benchmark 6), the designated national institutional focal point tends to be assigned responsibility for coordinating and monitoring implementation of the policy (as in Georgia, Nepal, Uganda and Yemen).

Beyond responsibilities relating to protection and assistance during displacement, in many cases the formal mandate of the institutional focal point refers explicitly to supporting “durable solutions” for IDPs (as in Kenya). This responsibility may refer to the broad range of possible solutions—that is, to return, local integration or resettlement elsewhere in the country—and to reintegration assistance (as in Iraq, Sri Lanka and Yemen). Or

⁴ In Myanmar, the situation is the reverse: the only government agency for responding to internal displacement mentioned was the Ministry of Social Welfare, Relief and Resettlement (MoSWRR), which is responsible for disaster risk-reduction activities; it coordinated the relief efforts in response to Cyclone Nargis of 2008. Even so, it appears that the MoSWRR activities were not specifically focused on displaced persons but on relief and recovery of the affected population in general.

⁵ See the Kenya case study in chapter 2 of this volume.

the focal point institution's mandated responsibilities may refer only to supporting a specific solution, usually return (as in Afghanistan, Colombia, Georgia, Nepal and Sudan). With regard to prevention, in a few cases, the mandate also refers specifically to giving the institutional focal point a role in and responsibility for preventing arbitrary displacement (as in Kenya, Uganda and Yemen).

Coordination functions and mechanisms

That many different government actors will need to be engaged in addressing internal displacement is evident given the nature and scope of the needs of IDPs, and challenges inevitably arise in coordinating efforts, avoiding duplication of efforts and closing gaps in service provision. The very act of designating a national institutional focal point for addressing internal displacement has been instrumental in several cases in clarifying often overlapping government responsibilities and catalyzing better organization of the national response to internal displacement. In Afghanistan, for example, UNHCR has observed that while a number of government organs "claim[ed] some jurisdiction" over IDP issues, it was only with the designation in 2008 of a single institutional focal point with lead responsibility for IDPs that the "institutional response is better organized."

In all of the cases in which a national institutional focal point exists, coordination among all relevant state institutions counts among its main functions. In some cases, the importance of coordination with regional, district and local levels of government also is emphasized. The Uganda national policy on IDPs sets out the role and responsibilities of regional and district coordination mechanisms in considerable detail. The Kenya draft national policy on IDPs specifies that among the primary functions of the focal point ministry is

coordination of implementation efforts with its branches and other relevant government stakeholders at the regional and local level, and other relevant ministries and government entities in accordance with their respective

ministerial responsibilities, the Kenya National Commission on Human Rights (KNCHR), IDPs, civil society and the international level.

Even in advance of the adoption of the policy, coordination has been a major aspect of the focal point institution's work; the policy simply recognizes that fact. In addressing internal displacement, the Ministry of State for Special Programs (MoSSP) works with a number of other ministries, including human rights, justice, security, foreign affairs, lands, education, environment, social protection and support, health, disaster management and relief, and reconciliation. For example, MoSSP works with the Ministry of Lands to identify and purchase land for the resettlement of IDPs and with the Ministry of Home Affairs to address child protection issues related to IDPs. Together with MoSSP, these two ministries are key players in the international coordination mechanisms (UN clusters) for addressing protection and humanitarian issues, including internal displacement.⁶

In several cases, coordination is supported and structurally provided for through the establishment of some sort of centralized IDP task force or committee that brings together the various relevant government actors and, in some cases, international and local stakeholders. In Colombia, a national system for ensuring that comprehensive attention is paid to IDPs was established in 1997 with the Sistema Nacional de Atención Integral a la Población Desplazada, which brings together twenty-seven different state ministries and agencies, backed by the institutional capacity of one of the members, the Red de Solidaridad Social.

In Sri Lanka, only after the end of active hostilities was such a body established, in May 2009, with the creation of the Presidential Task Force for Resettlement, Development and Security in the Northern Province (PTF). Comprising some twenty ministerial and military officials, the PTF is chaired by Basil Rajapaksa, the president's brother and a member of Parliament. According to the government of Sri Lanka, the responsibilities of

⁶ See the Kenya case study in chapter 2 of this volume.

this body include preparing “strategic plans, programs and projects to resettle IDPs, rehabilitate and develop economic and social infrastructure of the Northern Province,” where most of the conflict was concentrated. Its main role is

to coordinate activities of the security agencies of the Government in support of resettlement, rehabilitation and development and to liaise with all organization in the public and private sectors and civil society organizations for the proper implement of programs and projects.

The PTF is involved in, and must approve, all humanitarian and reconstruction projects undertaken in the North. It is a temporary entity, and its mandate must be renewed every year.

Variations on this theme are found in several of the other cases. In Afghanistan, there is a national IDP task force co-chaired by Ministry of Refugees and Repatriation (MoRR) and UNHCR.⁷ In the Central African Republic, a committee on IDPs is the focal body for addressing internal displacement, but as an amalgam of different institutional actors, the committee has little to no institutional capacity of its own. In Sudan, the High-level Committee on Internally Displaced Persons and Returns was formed in July 2007, but no information could be found pertaining to its activities. In Georgia,⁸ the State Commission for Elaborating a State Strategy on IDPs was established in 2006 with the specific task, as its name indicates, of drafting and finalizing a state strategy for addressing the country’s crisis of protracted internal displacement; the strategy was adopted in 2007. Chaired by the focal point ministry, the Ministry of Refugees and Accommodation (MRA), the State Commission included among its members the Ministry of Justice; the Ministry of Labor, Health and Social Policy; the Ministry of Economic Development;

the Ministry for Territorial Reintegration; and representatives of the Abkhaz Government-in-Exile. In 2009, a steering committee on IDPs, also chaired by MRA, was established to oversee implementation of the state strategy and, in particular, of its action plan. Members of the steering committee include all relevant government ministries as well as the main international agencies, including UNHCR and the World Bank, and the main donors that have contributed funds for implementation of the action plan.

In other cases, IDP issues are to be addressed through national inter-ministerial coordination forum on humanitarian affairs (e.g. DRC) or on coordination on broader issues (Nepal, Uganda). These broader mechanisms are not necessarily chaired by the line ministry for IDPs, which may participate only as a member of the committee (as in Nepal and Uganda). In Uganda, there is the Inter-Ministerial Policy Committee on Internal Displacement, chaired by the Minister of the Department for Disaster Preparedness (DDPR) in the Office of the Prime Minister (the national focal institutional point for IDPs), and an Inter-Ministerial Technical Committee, chaired by the Permanent Secretary in the Office of the Prime Minister.

Irrespective of the committee’s scope and structure, in a number of cases, the established committees appear to be nonfunctional or at least not very active. There is little to no information easily available about their work, in particular in the cases of the Democratic Republic of the Congo, Nepal and Sudan. Alternatively, some have been very slow to begin meeting following their establishment (for example, the Central African Republic). Irrespective of the existence of such committees, coordination between the institutional focal point and other relevant government entities generally tends to be sub-optimal across the case studies.

Compounding coordination challenges among state organs is the fact that the state institutional focal point for addressing internal displacement often enjoys little political clout and leverage compared with other state entities, especially with regard to protection issues (as

⁷ See further the Afghanistan case study in chapter 2 of this volume.

⁸ See further the Georgia case study in chapter 2 of this volume.

in Afghanistan and Georgia). Conversely, a number of focal point institutions have a direct link to the executive office (as in Colombia, Uganda and Yemen), which presumably should enhance their standing and political clout, though whether that is in fact the case or the link to the president is simply “window dressing” is difficult to establish based on the information available. A particular challenge arises regarding coordination with the military; in certain cases, most notably Pakistan, reports are that the national and provincial disaster management authorities “are dominated by the military,”⁹ raising serious concerns about encroachment on not only international but national “humanitarian space.”

Moreover, it is noteworthy that in two of the cases (Democratic Republic of the Congo and Turkey), even when a state agency is designated to lead the response to internal displacement, advocates nonetheless have found the need to recommend “the establishment of clear government focal points on internal displacement” at the central and local levels. Presumably there has been either a lack of clarity or a lack of awareness among local stakeholders about the designation of the focal point and/or need for focal points to be designated within the other government entities with which the focal point ministry needs to coordinate.¹⁰

⁹ IDMC, *Still at Risk: Internally Displaced Children’s Rights in North-West Pakistan*, 15 June 2010, p. 1 (www.internal-displacement.org); Refugees International, *Pakistan: Protect People First*, October 2009 (www.refintl.org).

¹⁰ UN Human Rights Council, *Report Submitted by the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Mission to the Democratic Republic of Congo, A/HRC/8/6/Add.3*, 18 May 2008, p. 5, paras. 10–11 (www.brookings.edu/projects/idp/rsg_info.aspx). On Turkey, see UNDP, “Working Visit by the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons to Turkey, 28 September–1 October 2006: Conclusions and Recommendations,” 2006 (www.undp.org.tr/Gozlem2.aspx?WebSayfaNo=726); and IDMC, *Turkey: Need for Continued Improvement in Response to Protracted Displacement: A Profile of the Internal Displacement Situation*, 26 October 2009, pp. 150, 153 (www.internal-displacement.org).

Coordination between the state-level focal point for IDPs and local authorities is observed to be especially weak in almost all cases. This observation applies with respect to the regional suboffices or subcommittees of the state-level focal point (as in Georgia, Kenya and Uganda), although in Georgia a recent technical assistance project designed to strengthen institutional coordination in particular has in fact made headway.¹¹ Coordination gaps also arise and tend to be even greater with coordination between the institutional focal point (whether the national or regional and local offices) and local authorities such as provincial/regional governors or municipal authorities. Compounding coordination gaps are the capacity gaps experienced by these institutions.

As noted above, the national focal point institution for addressing internal displacement typically counts among its core functions coordination with relevant international actors. Moreover, where a national interministerial coordination committee on internal displacement exists, it also often serves as the forum for the government and international organizations as well as local groups engaged in responding to internal displacement (as in Afghanistan, the Central African Republic, Georgia and Uganda). Notwithstanding the existence of a mandate for coordination and of mechanisms for doing so, in practice insufficient coordination between the focal point institution and other government actors is a common problem that hinders not only the effectiveness of the focal point institution in fulfilling its mandate but also reduces the comprehensiveness of the overall national response.¹²

Institutional capacity

In many cases, the national institutional focal point has an office not only in the capital but also at the provincial/regional or district levels (as in Afghanistan, Colombia, Georgia, Iraq, Nepal, Pakistan, Uganda and, since mid-2010, Kenya). When that is not the case, the

¹¹ See the Georgia case study in chapter 2 of this volume.

¹² See, for example, the case studies on Georgia and Kenya in chapter 2 of this volume.

lead state agency may turn to other state-level ministries present in the field. For instance, in Kenya, until the ministry in charge of IDPs, the Ministry of State for Special Programs, established a number of regional offices, it was dependent on the Ministry for Provincial Administration to carry out resettlement program activities at the local level. Or the state-level institution may rely heavily on the provincial/regional administrations for implementation of its mandate at the local level (as in Pakistan and Yemen).

When regional or district offices of the state-level institution exist, they tend to suffer from significant gaps in capacity, both human and financial, to carry out their operational responsibilities. A common gap observed in many of the case study countries (for example, Georgia, Nepal and Uganda) was lack of adequate financial support from the central government to help local authorities discharge their responsibilities towards IDPs. There also exist significant knowledge gaps; for example, often local offices are not adequately informed or even aware of national laws, policies and programs for IDPs. In a number of cases, regional and district administrative authorities, rather than central government institutions, are the key actors in efforts to address internal displacement (as in Afghanistan, Central African Republic, Kenya and Yemen).

Indeed, a common observation across the case studies is that the institutional focal point suffers from lack of sufficient capacity to address the challenge of internal displacement in the country. Specific capacity gaps identified include insufficient staff; inadequate resources; knowledge, skills and attitudes gaps; and general institutional development issues that compromise the efficiency of the institution's work. For example, assessments of the Southern Sudan Relief and Rehabilitation Commission are that it "is extremely weak, has failed to develop key policies and lacks resources to implement projects."¹³ In Georgia, following the new displacement

crisis of August 2008, long-standing criticisms of the state ministry responsible for IDPs as weak and ineffective were so sharp and widely held as to lead the government and many in the international humanitarian community to seriously consider reassigning this responsibility to other state organs (see the Georgia case study in chapter 2).

In addition to training activities (see Benchmark 4), in a number of cases (for example, Afghanistan, Georgia, Iraq and Turkey), UNHCR and other international actors, including the UN Development Programme, International Organization for Migration, Norwegian Refugee Council, Swiss Agency for Development Cooperation, and U.S. Agency for International Development (USAID), have supported capacity-strengthening programs specifically designed to address these gaps.

Communication with IDPs and Other Stakeholders

IDPs should be able to petition the focal point ministry either directly or through human rights NGOs. That is in keeping with standard governance practices and, more specifically, with Guiding Principle 3, which affirms that IDPs have the right to request and to receive protection and assistance from the authorities and shall not be persecuted or punished for making such a request.

Additional, more deliberate, channels for communication and dialogue with IDPs about their views and concerns have been established by the focal point institution in some cases (see also Benchmark 9a). Georgia presents an especially interesting case. Several different channels of communication by IDPs to the ministry have been established—for instance, through the creation of an IDP telephone hotline to the ministry and the liberal dissemination by ministry staff, including the minister, deputy minister and chief of staff, of their cell phone numbers so that IDPs can bypass the hotline and reach them directly. As of mid-2009, following a recommendation by USAID for the ministry to develop a

¹³ Refugees International, *South Sudan: Urgent Action Needed to Avert Collapse*, Field Report, 26 March 2009, p. 2, (www.refintl.org).

better system for handling queries from IDPs, reception centers were established that IDPs can visit in order to obtain information and register their concerns through a case management system. In addition, regular “town-hall meetings” of the minister with IDP communities, visits by the minister to IDP collective centers, and regular participation by senior ministry officials in forums for dialogue with IDP representatives provide further access.¹⁴ In Afghanistan, a national IDP committee (no longer in existence), with which ministry officials and even the president consulted, was established by the ministry together with UNHCR with a view to facilitating and enhancing dialogue, consultations and joint planning of the return process.

When a central or district coordinating committee exists for relevant government entities and other partners, in some cases representatives of civil society groups are included as members of the committee (as in the Central African Republic, Georgia, Nepal and Uganda). However, it is important to note that in several cases the selection of the participating civil society representatives is to be done by the government (as in the Central African Republic, Nepal and Uganda). For instance, in Uganda, the District Disaster Management Committee, which serves as “the lead agency for the protection and assistance of internally displacement persons” at the district level, includes two IDPS, one woman and one man, who are resident in the camps in the district; selection of the IDP representatives is determined by the committee.

Conclusion

Designating an institutional focal point for IDPs should be a relatively straightforward task for governments. It appears that this is an easier step for a government to take than to draft a law on displacement, devise a mechanism for collecting data on IDPs or support durable solutions for IDPs. Moreover, once an institutional focal point has been named, the office can take on responsibility

for these and all other actions to protect and assist IDPs as outlined in the benchmarks. Thus, the designation of a national institutional focal point can be an important propeller of progress in other areas of national responsibility for addressing internal displacement.

The research indicates that all but two governments of the fifteen surveyed had designated a national institutional focal point. On one level, that suggests that this is, indeed, among the easier steps for governments to take (though typically, they do so only several years into a crisis). But scratch the surface a little, and the picture is less encouraging: these institutions tend to be “third-tier” bodies that are under-resourced and located within low-priority, low-prestige ministries or offices having limited political leverage, creating problems of leadership and coordination. Simply designating a focal point therefore is not necessarily a clear indication of a government’s commitment to addressing internal displacement; a clearer, more nuanced indication would be provided by a measure of the priority and support given to the focal point.

While our research seems to support the value of having a focal point at least in the initial stages of displacement, the question arises of whether having a national IDP focal point facilitates or frustrates efforts to integrate IDP issues into the broader government framework. This issue becomes more critical as displacement becomes protracted. After a decade of displacement, for example, it may be more important that the Ministry of Education has incorporated measures to ensure the access of IDP children to public schools than it is that a focal point has been charged with interministerial coordination.

Further, the experience in the case studies also shows that designating an institutional focal point is just the first step. Governments must also ensure that this body has access to all the required support—technical, financial, operational and political—to carry out its functions. Moreover, it is often, though not always, the case that separate institutional entities are given responsibility for internal displacement due to different causes, with

¹⁴ See the Georgia case study in chapter 2 of this volume.

a division of functions being made between conflict-induced displacement, disaster-induced displacement and development-induced displacement. While the nature of the response will differ with the cause of displacement and the particular needs that it entails, the basic standards in terms of IDPs' rights are the same, underscoring the need of a degree of institutional consistency

and coordination. In general, capacity gaps and inadequate coordination—especially among different ministries and among different levels of government—tend to be significant and common challenges that must be addressed in order for the government's institutional framework to be fully effective in practice.



Uganda/ Children at a camp for internally displaced children in northern Uganda. More than three-quarters have gone home.
Photo: UNHCR/ H.Coussidis / July 2009

Benchmark 8

Support NHRIs to Integrate Internal Displacement into Their Work

Is there a national human rights institution (NHRI) that gives attention to the issue of internal displacement?

“Building strong human rights institutions at the country level,” UN Secretary-General Kofi Annan observed in 2002, “is what in the long run will ensure that human rights are protected and advanced in a sustained manner.”¹ Establishing and strengthening national human rights institutions (NHRIs) therefore are among the most important ways to improve the national protection response, including for internally displaced persons.

NHRIs are administrative bodies established and funded by governments, through legislative or executive action, that are intended to serve as independent mechanisms for advancing human rights in a country. Over the past thirty years, there have been efforts, often with the support of the UN Office of the High Commissioner for Human Rights (OHCHR), to establish and strengthen NHRIs around the world. At present, 110 countries have established NHRIs, which vary significantly by country; for example, their names differ—some are called commissions, others office of the ombudsman, still others office of the public defender.

Whatever they are called, NHRIs are expected to operate independently of the government. In reality, while some are completely independent of their governments, others are quasi-governmental institutions and still others are arms of the state. To be internationally accredited, NHRIs must meet the criteria for independence spelled out in the Principles Relating to the Status and Functioning of National Institutions for the Protection and Promotion of Human Rights (Paris Principles),

¹ United Nations, *Strengthening of the United Nations: An Agenda for Further Change*, A/57/387 (2002), para. 50 (www.un.org/largerfreedom).

which were endorsed by the UN Commission on Human Rights in 1992 and by the General Assembly and Vienna World Conference in 1993.² NHRIs are individually ranked according to their compliance with the Paris Principles, with category A being the highest ranking. That NHRIs can play a valuable role in promoting and protecting the rights of IDPs has been recognized by various UN resolutions.³

The document, *Addressing Internal Displacement: A Framework for National Responsibility* identifies a number of ways for NHRIs to engage with internal displacement issues, including the following:

- monitoring IDP conditions to ensure that IDPs enjoy the same rights as others in the country, that they do not face discrimination in seeking to access their rights, and that they receive the protection and assistance they require
- conducting inquiries into reports of serious violations of IDPs’ human rights, including individual complaints by IDPs, and working to ensure an effective response by the authorities
- following up on early warnings of displacement and ensuring that authorities take necessary actions to prevent displacement
- advising the government on the development of national laws and policies to ensure protection of the rights of IDPs
- monitoring and reporting on the government’s implementation of national laws and policies regarding internal displacement.

² See Anna-Elina Pohjolainen, *The Evolution of National Human Rights Institutions: The Role of the United Nations*, Danish Institute for Human Rights, 2006 (www.nhri.net/pdf/Evolution_of_NHRIs.pdf).

³ See, for example, UN Commission on Human Rights, Resolution 2004/55 (20 April 2004), paras. 18 and 21; and UN Commission on Human Rights, Resolution 2003/51, 23 April 2003, paras. 18 and 21.

—undertaking educational activities and training programs, especially for government officials, including those in military and law enforcement agencies, on the rights of IDPs

—ensuring that IDPs are informed about and consulted in the development of government initiatives on their behalf

—establishing a monitoring presence in areas where IDPs' and other civilians' physical security is at grave risk and monitoring the return and resettlement of IDPs to ensure that it is voluntary and occurs in conditions of safety.⁴

By acknowledging that internal displacement is a human rights issue that falls within the mandate of national human rights institutions, governments can encourage (and financially support) the institutions' efforts to promote the human rights of the internally displaced.

In recent years, an increasing number of NHRIs around the world have begun to integrate attention to internal displacement into their work. To encourage and support such efforts, a number of capacity-strengthening programs have been implemented. For example, the Asia Pacific Forum of National Human Rights Institutions, together with the Brookings Project on Internal Displacement, undertook an assessment of the capacity to engage with IDPs of all of the NHRIs that were forum members and offered country-specific as well as forum-wide recommendations to enhance their efforts.⁵

⁴ Brookings-Bern Project on Internal Displacement, *Addressing Internal Displacement: A Framework for National Responsibility*, April 2005, pp. 19–20 (www.brookings.edu/projects/idp/20050401_nrframework.aspx).

⁵ For further information on the Asia Pacific Forum and the Brookings-Bern Project on Internal Displacement partnership, see the forum's website (www.asiapacificforum.net/partners/project-partners/brookings-institute). See also Asia Pacific Forum–Brookings-Bern Project on Internal Displacement, *Regional Workshop on National Human Rights Institutions and Internally Displaced Persons, Colombo, Sri Lanka* (October 2005) (www.brookings.edu/projects/idp/contents.aspx).

Other regional networks of NHRIs, such as the African Network of National Human Rights Institutions, have considered ways of supporting each other to increase their activities on behalf of IDPs. The Internal Displacement Monitoring Centre (IDMC) has supported training on IDP issues for a number of NHRIs worldwide (see Benchmark 4).

Overview of research findings

Figure 1-2 below provides an overview of the national human rights institutions in the fifteen countries included in this study. Six of the countries surveyed have an internationally accredited NHRI: Afghanistan, Colombia, Georgia, Kenya, Nepal and Uganda.⁶ In South Sudan, a regional human rights commission was established in accordance with the Comprehensive Peace Agreement of 2005; presumably this institution will become an NHRI following the transformation of South Sudan into an independent country in July 2011. At least four countries (Myanmar, Pakistan, Turkey and Yemen) do not have an NHRI, while in four other countries (the Central African Republic, the Democratic Republic of the Congo, Iraq and Sudan) there were indications that an NHRI was to be established. However, from the information available, it appears that these bodies had not yet been established and become functional; at the very least, their status at the time of writing was unclear.

Although NHRIs generally have broad mandates to monitor, investigate and report on a range of human rights issues in their countries, several NHRIs have been very actively engaged, at least at different points in time, on internal displacement.

The case of Colombia provides an early example and indeed a potential model of the ways in which an NHRI

⁶ Sri Lanka's NHRI was accredited in the past but has been downgraded, as noted further into the discussion.

can play an active and invaluable role in promoting and working to ensure protection by the authorities of the rights of IDPs. The national human rights institution in Colombia is the Ombudsman's Office (Defensoría del Pueblo), which, under the 1991 Constitution, is mandated to promote and defend the human rights of all Colombians. The office is financially and administratively autonomous from the government.⁷

For more than a decade now, IDP issues have been a high priority of the Ombudsman's Office. Already in 1999, when Francis Deng, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons (RSG on IDPs), undertook a mission to Colombia, the office was very actively engaged on issues of internal displacement, having undertaken a wide range of activities including the following:

—raising public awareness of IDP issues through television and other public awareness campaigns

—monitoring and reporting on the rights of IDPs in terms of the Guiding Principles

—publishing, with the support of the UN High Commissioner for Refugees (UNHCR), a booklet reproducing the Guiding Principles (which had been introduced only in 1998) for broad dissemination to officials as well as to IDPs

—issuing early warnings of displacement—a critical function given that in Colombia at the time an estimated 50 percent of displacements were announced in advance of armed conflicts, forcing entire communities from their homes

—developing a nation-wide early-warning capacity with the support of the United Nations Development Programme (UNDP)

—reporting on the needs of specific groups of IDPs, such as children

—providing advice on the development of national laws and policies on internal displacement.⁸ The Ombudsman's Office has regional offices throughout the country. That its staff were undertaking all these activities on behalf of IDPs (and human rights generally) in a climate of severe personal insecurity—several staff members had been targeted for attack and even killed—was all the more impressive but also tremendously disconcerting.⁹

Currently, the Ombudsman's Office maintains a focus in its specialized thematic program, Assistance to Displaced Persons.¹⁰ The office investigates human rights violations, hears individual complaints, carries out public awareness campaigns, and issues early-warning reports.¹¹ Lack of security in certain areas as well as threats and attacks on ombudsman officials has hindered the office's ability to fully carry out its mandate.¹² Moreover, because the office is, as noted above, legally

⁷ Government of Colombia, Constitución Política de Colombia 1991, Article 282.

⁸ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons Submitted in Accordance with Commission Resolution 1999/47—Addendum: Profiles in Displacement: Follow-Up Mission to Colombia*, E/CN.4/2000/83/Add.1, 11 January 2000, paras. 15, 23, 25, 32, 60, 64, 67, 72, 91, and 115 (http://ap.ohchr.org/documents/dpage_e.aspx?m=71).

⁹ *Ibid.*, paras. 68 and 77.

¹⁰ Defensoría del Pueblo, "Atención a la población desplazada," (www.defensoria.org.co/red/?_item=1105&secc=11&ts=2).

¹¹ Defensoría del Pueblo, *Strategic Plan 2009–2012*, (www.defensoria.org.co/red/pe/pe.swf).

¹² UNHCR, "UNHCR Briefing," 22 May 2009 ([www.internal-displacement.org/8025708F004CE90B/\(httpD ocuments\)/6D6272F5830AC54AC12575E100325008/\\$file/UNHCR+briefing,+death+threats.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpD%20ocuments)/6D6272F5830AC54AC12575E100325008/$file/UNHCR+briefing,+death+threats.pdf)); Colombian Caravana UK Lawyers Group and Lawyers Without Borders, *Colombia: The Legal Profession Still Under Attack—Report of the Second International Lawyers' Delegation to Colombia*, 25 May 2011 (www.colombiancaravana.org.uk/reports/Caravana2010FinalReportENGLISH.pdf).

required to be financially independent of the government—in general and in its critically important work on internal displacement—it has relied significantly on support from international donors, including OHCHR, UNDP and UNHCR.

In response to both international and domestic pressures, Sri Lanka established the Human Rights Commission of Sri Lanka (HRC)¹³ under the Human Rights Commission Act No. 21 of 1996, and the commission became constitutionalized in the 17th Amendment. During its first few years of operation, the Human Rights Commission, which took over from the Human Rights Task Force, kept a low profile and “had only a marginal impact on the advancement of human rights in the country,” according to Mario Gomez, who worked actively to develop its IDP program while he was a member of the HRC. In 2001, the commission carried out a study on internal displacement in the country and began to consider how it might take steps in this area. The study found that IDPs were extremely vulnerable owing to their displacement and that “every single right spelled out in the Guiding Principles on Internal Displacement was not being fully complied with in Sri Lanka.” In addition, the study noted that one of the primary obstacles to the effective protection of IDPs was the fact that the government lacked a coherent IDP policy and legal framework. The study also examined the role of the network of regional offices of the HRC and found that lack of capacity and resources as well as threats to the personal security of regional coordinators impeded them from addressing the problems of IDPs. Further, while many NGOs were well connected to IDPs, the regional coordinators often failed to engage with these NGOs.¹⁴

¹³ For further discussion of the HRC, see the Sri Lanka case study in chapter 2 of this volume.

¹⁴ Mario Gomez, “National Human Rights Commissions and Internally Displaced Persons Illustrated by the Sri Lankan Experience,” Occasional Paper, Brookings–SAIS Project on Internal Displacement, July 2002, pp. 15–17 (www.brookings.edu/papers/2002/07/humanrights_gomez.aspx).

In response to these findings, in June 2002, the HRC launched the National Protection and Durable Solutions for Internally Displaced Person’s Project (NPDS for IDPs project) to “protect and promote [the] rights [of] persons under threat of displacement, internally displaced, and returned.”¹⁵ In addition to publishing advocacy materials and handbooks on the rights of IDPs, the NPDS for IDPs project investigated complaints, conducted protection monitoring visits; held training programs for military agencies, NGOs, community-based organizations, IDPs, host communities and government officials and worked with the Register General Department to issue documents to IDPs.¹⁶ In 2006, the NPDS for IDPs project began drafting the Bill to Protect the Rights of the Internally Displaced Persons, which was submitted to the Minister of Disaster Management and Human Rights in August 2008.¹⁷ However, at the time of writing the bill had not been introduced in Parliament and its status was unclear.

In particular in recent years, the HRC has been criticized for its lack of independence from the executive branch. In 2007, the international body that regulates national human rights institutions, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, downgraded the HRC to the status of “observer” because of its lack of independence and credibility.

The Uganda Human Rights Commission (UHRC) was established by law in 1997 as an independent body under Article 51 of the 1995 Constitution. The UHRC has a broad mandate to promote and protect human rights, including by monitoring and reporting on the government’s respect for human rights standards,

¹⁵ Human Rights Commission of Sri Lanka, NPDS for IDPs Project, “About Us” (www.idpsrilanka.lk).

¹⁶ Human Rights Commission of Sri Lanka, NPDS for IDPs Project, *Monthly Report*, November 2009 (www.idpsrilanka.lk).

¹⁷ Human Rights Commission of Sri Lanka, NPDS for IDPs Project, Protection of Internally Displaced Persons Bill (www.idpsrilanka.lk/html/SpecialProgrammes/IDP-Bills.htm).

investigating human rights violations, resolving complaints of human rights violations through mediations and tribunal hearings, providing human rights education, and engaging in research. At a conference on internal displacement in the Intergovernmental Authority on Development sub-region in 2003, it was noted that the UHRC had been visiting IDP camps in northern Uganda and reporting back to Parliament and other government officials on the conditions of IDPs. These visits “gave the IDPs a sense of hope that someone in the government was concerned with their plight” while the UHRC’s annual reports and recommendations to Parliament had served to generate national awareness and interest in addressing internal displacement.¹⁸ That interest led to consideration of a draft national policy on internal displacement, which was adopted in 2004. The UHRC advocated for and provided input into the draft national policy, in particular by stressing that the policy should be based on IDPs’ rights and that the budgetary allocation for implementation of the policy should include funds to address IDP protection issues specifically. Overall, the UHRC’s activities “underlined that the state’s duty to protect and assist IDPs was not merely moral but legal and a matter of rights.”¹⁹

Over the years, the UHRC has continued to keep a strong focus on IDP issues, as evidenced in its annual reports and recommendations to Parliament, which for more than a decade have included a specific section on IDP issues. In recent years, the commission’s IDP work has concentrated in particular on the government’s Return, Resettlement and Reintegration Program (see Benchmark 10).²⁰ The commission conducts visits to IDP camps and return sites to monitor the progress of IDPs and the extent to which their rights are being respected. The findings are compiled in the UHRC’s annual reports to Parliament, with recommendations

for improved government action. In addition, the commission conducts outreach campaigns, training workshops and roundtable discussions on IDPs, targeting primarily security forces, local and district government officials, and IDPs.

While the UHRC plays an active role in promoting and working to safeguard the human rights of IDPs, it points out that inadequate funding and an inadequate number of field offices located near vulnerable populations hinder it from fulfilling its mandate.²¹ UHRC has taken advantage of external support to strengthen its capacity to address such gaps. For example, the Internal Displacement Monitoring Centre held training workshops on IDP issues in 2009 and 2010 for the commission in northern Uganda. UNHCR, together with other partners in the Protection Cluster, have been providing capacity-strengthening support to the UHRC.²²

In Georgia, the Office of the Public Defender, which was established by law in 1996,²³ has been recognized since October 2007 as an internationally accredited national human rights institution.²⁴ Its mandate is “to oversee observance of human rights and freedoms on the territory of Georgia and within its jurisdiction.”²⁵ The Office of the Public Defender has been monitoring and

¹⁸ Conference on Internal Displacement in the IGAD Sub-Region, *Report of the Experts Meeting, Khartoum, Sudan, 30 August–2 September 2003* (Brookings Institution–SAIS Project on Internal Displacement, the Intergovernmental Authority on Development, and OCHA, 2003), p. 17.

¹⁹ *Ibid.*, pp. 16–17.

²⁰ See the annual reports of the UHRC (www.uhrc.org).

²¹ Uganda Human Rights Commission, *Annual Report 2008*, p. 22 (www.uhrc.org/index.php?option=com_docman&Itemid=138).

²² UNHCR, “2011 UNHCR Country Operations Profile: Uganda” (www.unhcr.org). The cluster phase-out process has seen the handover of Protection Cluster leadership from UNHCR to the UHRC.

²³ Public Defender of Georgia, “Organic Law of Georgia on the Public Defender,” 16 May 1996 (www.ombudsman.ge/index.php?page=777&lang=1&n=7).

²⁴ For accreditation, see OHCHR, Chart of the Status of National Institutions Accredited By The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, Accreditation status as of August 2011 (www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf).

²⁵ Public Defender of Georgia, “Organic Law of Georgia on the Public Defender,” 16 May 1996 (www.ombudsman.ge/index.php?page=777&lang=1&n=7).

reporting on IDP issues since at least 2004, as evidenced by its 2004 report to Parliament (the earliest such report available on the office's website), which included a chapter on IDPs and refugees.²⁶ Since then, the office has continued to report on IDP issues; in fact, it has intensified its efforts in recent years, including by submitting to Parliament in 2010 a special report devoted entirely to internal displacement.²⁷ Yet, as the public defender himself has pointed out, the office's efforts to monitor and report on internal displacement have been limited nonetheless by the number and diversity of IDPs and the limited capacity of the office.²⁸

Strengthening the capacity of the Office of the Public Defender to address issues related to internal displacement was the specific aim of a 2010 project entitled Support to Public Defender's (Ombudsman's) Office in Solving the Problems Related to IDPs and Persons Affected by Conflict, which was funded by the Council of Europe's High Commissioner for Human Rights. Six new staff members were hired, including five monitors stationed in regional offices. Following training on the Guiding Principles and IDP issues provided by the Council of Europe together with UNHCR and other partners, the monitors began to conduct regular visits to IDP collective centers and other IDP settlements, undertaking a survey of 10 percent of IDP households in the collective settlements. They also began to provide on-site legal consultations and, in cooperation with the regional offices of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees (previously known as the Ministry of Refugees and Accommodation), to work to resolve specific problems and rights issues identified. The Office

of the Public Defender prepared a special report on the human rights of IDPs based on data provided by monitors from January to June 2010 and an analysis of existing national legislation, policies and programs, in which it made a number of recommendations for improving the national response.²⁹ In reports addressing IDP issues, the Public Defender typically makes reference to the Guiding Principles on Internal Displacement.³⁰

The Office of the Public Defender also has become increasingly active, especially since the second half of 2010, in advocating for IDP rights. It has issued several public statements and press releases specifically on IDP issues, in particular concerning the process for privatizing and rehabilitating collective centers and related concerns about the eviction of IDPs.³¹ The office's IDP project team also has undertaken a survey on the situation of IDPs in private accommodations, thereby helping to address an important gap in data collection.³²

As of January 2011, the IDP project in the Office of the Public Defender was co-funded by the Council of Europe, together with UNHCR.³³ The IDP project team thus relies, at present, entirely on extra-budgetary funds

²⁶ Public Defender of Georgia, *Report on Conditions of Human Rights in Georgia in 2004*, pp. 66–73 (www.ombudsman.ge/files/downloads/en/szounjmrncjpcwcvdgn.pdf).

²⁷ For a summary of how and the extent to which IDP issues have been addressed in the reports of the Public Defender's Office, see the Georgia case study in chapter 2 of this volume.

²⁸ Public Defender of Georgia, *The Situation of Human Rights and Freedoms in Georgia: Second Half of 2009*, p. 174 (www.ombudsman.ge).

²⁹ Public Defender of Georgia, *Report on the Human Rights Situation of Internally Displaced Persons and Conflict-Affected Individuals in Georgia* (September 2010), pp. 5–7 (www.ombudsman.ge/files/downloads/en/njyyccudreysvwtqszj.pdf).

³⁰ See, for example, See, for example, Public Defender of Georgia, *Human Rights in Georgia: Report of the Public Defender of Georgia: Second Half of 2006, 2007*, p. 149; Public Defender of Georgia, *Report of the Public Defender of Georgia: The Situation of Human Rights and Freedoms in Georgia: Second Half of 2009, 2010*, p. 177; both available at Public Defender of Georgia, "Reports," (www.ombudsman.ge/index.php?page=21&lang=1); and Public Defender of Georgia, *Report on the Human Rights Situation of Internally Displaced Persons and Conflict-Affected Individuals in Georgia*.

³¹ See, for example, "Statement of Public Defender of Georgia Regarding Eviction of Internally Displaced Persons," 17 August 2010; and "Statement of the Public Defender," 21 January 2011 (www.ombudsman.ge).

³² See also the Georgia case study in chapter 2 of this volume.

³³ Ibid.

from donors rather than on funds in the office's regular annual budget.

The Kenya National Commission on Human Rights (KNCHR) was established in 2002 through the Kenya National Commission on Human Rights Act, which became operational in July 2003 when the president appointed nine commissioners.³⁴ KNCHR's mandate is to enhance the promotion and protection of human rights. The commission's activities are independent of government direction, although it draws its finances from the Treasury.³⁵

The KNCHR focused on the human rights situation of IDPs before and after the 2007-2008 election violence. In 2009, the commission recognized IDPs as an important human rights concern and designated a focal point and staff dedicated to IDP issues. It established regional offices and a network of field monitors and is also working in concert with other organizations concerned with IDPs.³⁶ Its activities include monitoring the government's response to IDPs, investigating cases of human rights violations, advising government institutions, and promoting rights awareness among IDPs and government authorities.³⁷ It visits IDPs in camps and other settings as well as at return sites to monitor their progress and to determine whether their rights are being respected. In 2009, the KNCHR released a report showing that millions of shillings from the Humanitarian Fund meant for IDPs had been embezzled.³⁸ Following investigations

into the Kenya situation by the International Criminal Court in 2010, the KNCHR advocated for an effective witness protection program to protect witnesses, some of whom are IDPs.³⁹ KNCHR plays a large and important role in protecting and promoting the human rights of IDPs and holding the government accountable through its advocacy work.⁴⁰

The KNCHR is obligated to submit an annual report to the National Assembly that includes an "overall assessment of the performance of the government in the field of human rights" and of KNCHR's achievements and challenges.⁴¹ In its 2009–13 strategic plan, KNCHR reported that among its main challenges in carrying out its mandate is limited physical access across the country and adequate staffing.⁴² From 2009, it began to boost its internal capacity to address internal displacement through engagement of permanent staff and a network of field monitors, and it moved away from ad hoc to sustained activities. IDP issues are now an established part of the work of the commission.⁴³ While its initial focus was on those displaced by the election violence of 2007, its broader response under the Economic, Social and Cultural Rights Programme is looking at all the causes of displacement as articulated in the draft national IDP policy.⁴⁴ The KNCHR was an important actor in the development of the government's draft IDP policy, and

³⁴ KNHRC, "Public Accountability Statement for 2006–2008: Statement of Successes and Challenges" (www.knchr.org/index.php?option=com_docman&Itemid=&task=doc_download&gid=21).

³⁵ See the case study on Kenya, in chapter 2 of this volume.

³⁶ Interview with a KNCHR commissioner, 26 January 2011.

³⁷ KNCHR, *Strategic Plan 2009–2013*, launched 28 January 2010 (www.knchr.org/index.php?option=com_docman&Itemid=&task=doc_download&gid=41).

³⁸ KNCHR, "Outcome of KNCHR Assessment of GOK Resettlement Program of IDPs and Corruption Allegations," press release, *Daily Nation*, 2 December 2009; also see South Consulting, *December 2009 Status of Implementation Report*, p. 29 (www.kenyadialogue.org).

³⁹ Interview with a KNCHR commissioner, 26 January 2011.

⁴⁰ IDMC, *Kenya: No Durable Solutions for Internally Displaced Yet*, December 2008 (www.internal-displacement.org).

⁴¹ KNCHR produces two reports, the *Status of Human Rights Report* and an accountability report, the *Annual Report of the Commission*. Since its inception, the KNCHR has produced three status of human rights reports and submitted an annual report to the Minister for Justice, who is supposed to present it to the National Assembly for debate. No annual report has ever been discussed by the National Assembly. The KNCHR does not know why the reports have not been discussed, but it has continued to submit its reports. Interview with deputy secretary of the KNCHR, 21 January 2011.

⁴² KNCHR, *Strategic Plan 2009–2013*.

⁴³ Interview with human rights officer, KNCHR, 26 January 2011.

⁴⁴ *Ibid.*

it co-chairs the National Protection Working Group, under whose auspices the policy was developed.

In Nepal, the National Human Rights Commission (NHRC) was established in 2000 as an independent and autonomous constitutional body.⁴⁵ According to the NHRC, “Since the Commission has significant responsibility to work for the guarantee of the rights of IDPs, the issues of the IDPs are taken with the highest priority.”⁴⁶ A specified person within the Protection and Monitoring Division is the IDP focal point, whose “objective [is] to pay attention towards the protection and promotion of human rights of IDPs.”⁴⁷

The Comprehensive Peace Accord (CPA) mandates the NHRC to monitor the government’s adherence to its human rights commitments under the accord.⁴⁸ The commission investigates incidents of human rights violations,⁴⁹ monitors and reports on IDP conditions, coordinates with NGOs and INGOs, monitors the activity of government authorities working on IDP issues, reports on implementation of national laws and policies on IDP issues, and conducts public awareness campaigns. In 2008, NHRC published a pamphlet to educate the public on IDPs and the government’s response.⁵⁰ A national seminar on national IDP policy was organized by the NHRC in July 2008.⁵¹

⁴⁵ NHRC, “About Us” (http://nhrcnepal.org/about_us.php). The commission was established as a statutory body under the Human Rights Commission Act in 2000 and became a constitutional body under the Interim Constitution of Nepal 2007.

⁴⁶ NHRC, *Internally [sic] Displacement Information Booklet*, December 2008 (www.nhrcnepal.org).

⁴⁷ Ibid.

⁴⁸ Government of Nepal, Comprehensive Peace Accord, Article 9.4 (<http://mofa.gov.np>).

⁴⁹ See Benchmark 10.

⁵⁰ See National Human Rights Commission Nepal, *Internally Displacement Information Booklet*, December 2008 (www.nhrcnepal.org/publication/doc/books/IDPs_Eng_Booklet.pdf).

⁵¹ The policy is called the National Policy on Internally Displaced Persons 2063 (2007). Suresh Pandit, *National Policy on Internally Displaced Person[s], 2063–Implementation for*

The United Nations has recognized and contributed to the important work of the NHRC. In 2004 the commission was the subject of two separate agreements on capacity development between the government of Nepal and United Nations Development Programme and the Office of the High Commissioner for Human Rights.⁵² The government of Nepal also has publicly recognized the UN’s support for strengthening the NHRC as well as the commission’s work in protecting and promoting human rights in Nepal. Speaking in 2005, Ramesh Nath Pandey, the Minister for Foreign Affairs and leader of the Nepalese delegation to the UN, addressed the sixty-first session of the UN Commission on Human Rights in Geneva, stating:

Equally important is HMG’s [His Majesty’s Government’s] commitment to strengthen the independence of National Human Rights Commission, an independent statutory body, to carry out its mandated tasks of promoting and protecting human rights, including investigations and monitoring the cases of human rights violations. We are committed to ensuring its independence, impartiality and continuity. We firmly believe that the Commission plays a significant and constructive role in the protection and promotion of human rights of the people.⁵³

The NHRC seems to have significant potential to carry out its IDP-related activities. The government allocates money and resources to the NHRC, but most funds and

Rehabilitation, Resettlement and Reintegration [of] Internally Displaced Persons in Nepal: I/NGOs Perspective: Initiation, Present Situation and Way Forward, NHRC, 31 July 2008 (www.internal-displacement.org).

⁵² OHCHR, “Statement by UN Resident Coordinator, Mr. Matthew Kahane, Human Rights Day, 10 December 2004,” (www2.ohchr.org/english/events/day2004/nepal.htm).

⁵³ Government of Nepal, Ministry of Foreign Affairs, “Statement by Hon. Ramesh Nath Pandey, Minister for Foreign Affairs and Leader of the Nepalese Delegation at the Sixty-First Session of the UN Commission on Human Rights, Geneva, 15 March 2005” (www.mofa.gov.np/news/metadata.php?ID=131&bread=Speeches/Statements).

support come from international donors and agencies.⁵⁴ The capacity development project of NHRC, funded by the UNDP and bilateral partners, has been influential in increasing the commission's capacity through the provision of technical assistance, in-kind contributions and expert advisory services.⁵⁵ Walter Kälin, the RSG on IDPs, who met with several of the NHRC commissioners in Kathmandu as well as with the staff of the NHRC regional office in Biratnagar during his 2005 mission to the country, noted in his mission report that the NHRC "has considerable potential to provide a response to human rights concerns in the context of displacement, including through prevention of displacement, protection during displacement and monitoring of return or resettlement after displacement." However, he also drew attention to the fact that several human rights NGOs had "questioned the Commission's capacity in the present political context to fully implement its mandate," and he expressed his hope that the commission would be able to function as an independent human rights institution able to promote and protect the rights of IDPs.⁵⁶

The Afghanistan Independent Human Rights Commission (AIHRC) monitors and reports on the situation of vulnerable groups, including IDPs, refugees and returnees.⁵⁷ In fact, IDPs constituted a significant segment of the population used in human rights field monitoring research for the commission's 2008–09 annual report on economic and social rights, which indicated that the majority of IDPs living in urban slums and informal settlements lacked adequate food, water, health care, and education.⁵⁸ The report also revealed

that the majority of IDPs were unable to return to their homes and communities due to insecurity, lack of housing, and disputes over land and property. In addition to monitoring and reporting on the situation of IDPs, the commission has engaged municipal authorities on behalf of IDPs in matters related to the issuance of national identity cards (*tazkera*), registration of displaced children in schools, access to water, and disputes over land and property. The AIHRC has also worked with the National Task Force on IDPs, but largely on an ad hoc basis and only on specific cases. The commission has stated that one of its main institutional challenges—as in the case in other national human rights institutions—has been the "lack of State funding towards AIHRC's overall budget [and that] this lack of sustainable funding and our ongoing dependency on donor contributions continues to undermine the future stability of the AIHRC."⁵⁹

Among the other countries surveyed that have NHRIs, several seem to also have been active on IDP issues—at least at different points in time—but there is insufficient information on the effectiveness of their efforts or of any ongoing work with IDPs.

While Pakistan does not have a national human rights institution, an NGO called the Human Rights Commission of Pakistan (HRCP) reports that it draws attention to the issue of internal displacement through its fact-finding missions, monitoring of IDP returns, and statements and reports on IDP issues with recommendations to the government. The HRCP, an independent and nongovernmental body, has publicized the human rights violations of armed forces that have caused the death and displacement of civilians.⁶⁰

⁵⁴ NHRC, "About Us" (http://nhrcnepal.org/about_us.php).

⁵⁵ NHRC, "Capacity Development of the National Human Rights Commission of Nepal" (www.nhrcnepal.org/project1.php?ProjNo=1).

⁵⁶ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Mission to Nepal*, E/CN.4/2006/71/Add.2, 7 January 2006, para. 29 (http://ap.ohchr.org/documents/dpage_e.aspx?m=71).

⁵⁷ See further the Afghanistan case study in chapter 2 of this volume.

⁵⁸ Afghanistan Independent Human Rights Commission

(AIHRC), *Report on the Situation of Economic and Society Rights in Afghanistan—IV* (2008/9), November–December 2009, p. 21 (www.aihrc.org).

⁵⁹ AIHRC, *Strategic Action Plan 2010–2013*, March 2010 (www.aihrc.org).

⁶⁰ "HRCP Stands" (www.hrcp-web.org/showprel.asp); Asma Jahangir, *A Tragedy of Errors and Cover-ups: The IDPs and Outcome of Military Actions in FATA and Malakand Division*, HRCP, June 2009 (www.hrcp-web.org).

In five of the fifteen countries surveyed, there were seemingly no national human rights institutions: Myanmar, the Central African Republic, the Democratic Republic of the Congo, Sudan and South Sudan. There have been indications that the process of creating an NHRI had begun in each country except Myanmar; nonetheless, it appears from the information available that no such body has yet come into being despite years having passed in some cases since an announcement that an NHRI would be established.

Myanmar does not have an NHRI. Its human rights body was established in November 2007 but it does not meet the UN Paris Principles as the United Nations Country Team has noted.⁶¹ The government explained in its 2010 national report submitted for the Universal Periodic Review process that “[t]he current Human Rights Body...is an initial body which is hoped to emerge eventually as the Human Rights Commission in accord with the Paris Principles,” but this seems unlikely to occur in the near future.⁶² In Turkey, the government has made three attempts since 2004 to create a Turkish human rights council. However, the process has been criticized for violating the Paris Principles for its lack of transparency and lack of consultation with human rights and civil society organizations. A draft law on a national human rights organization prepared by the government was referred to Parliament on 28 January 2010.⁶³ In Yemen, the president has named a minister of

state for human rights,⁶⁴ but there is minimal information available regarding the ministry’s mandate and its activities.⁶⁵

In 1991 the government of the Central African Republic established in law the National Human Rights Commission, whose mandate includes promoting human rights, advising the government on all matters and all draft legislation affecting human rights, and receiving individuals’ complaints of violations of their human rights.⁶⁶ In 2006, the government adopted a law reaffirming that law and slightly modifying the mandate of the NHRC to include promoting and protecting the rights of vulnerable groups.⁶⁷ In 2009, the government reported to the UN Human Rights Council that it was committed to setting up a national human rights commission by the end of 2010.⁶⁸ However, in 2011, now twenty years since the

org/default.asp).

⁶¹ See UN Human Rights Council, Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1: Myanmar, A/HRC/WG.6/10/MMR/2, 15 November 2010, para. 10 (www.ohchr.org/EN/HRBodies/UPR/PAGES/MMSession10.aspx).

⁶² UN Human Rights Council, *National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: Myanmar*, A/HRC/WG.6/10/MMR/1, 10 November 2010, para. 24 (www.ohchr.org/EN/HRBodies/UPR/PAGES/MMSession10.aspx).

⁶³ Human Rights Joint Platform, “The Draft Law on the Establishment of Human Rights Council of Turkey Must

Be Withdrawn Immediately!” 21 May 2009 (www.ihop.org.tr/english); Human Rights Joint Platform, “Joint Opinion on Law Draft on National Human Rights Organization,” 19 February 2010 (www.ihop.org.tr/english).

⁶⁴ IRIN, “Yemen: New FGM/C Law Possible ‘within Four Years’—Minister,” 10 February 2010 (<http://irinnews.org/Report.aspx?ReportId=88058>).

⁶⁵ Yemen Ministry of Human Rights, “Annual Report on Human Rights 2004: Chapter 4—Government and Non-Government Organizations,” p. 20 (www.mhryemen.org/reports/ch4_government_and_nongovernment_organizations.pdf).

⁶⁶ *Loi No. 91.0009 portant création d’une commission nationale des droits de l’homme*. The decision to establish the national commission was reconfirmed and its mandate further elaborated in 2006 by *Loi No. 96.003*. See Erin D. Mooney, *Examen du cadre législatif en République Centrafricaine relatif à la protection des personnes déplacées à l’intérieur de leur propre pays: Audit juridique*, pp. 26–27 (Washington, D.C.: Brookings-Bern Project on Internal Displacement, February 2011) (www.brookings.edu/reports/2010/11_car_audit_juridique.aspx).

⁶⁷ IDMC, *State of Neglect: Displaced Children in CAR*, November 2008 (www.internationaldisplacement.org); UN Human Rights Council, *Preliminary Note by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions on His Mission to the Central African Republic*, 2 June 2008 (A/HRC/8/3/Add.5).

⁶⁸ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Central African*

law providing for its establishment was passed, the commission still exists only on paper.⁶⁹ And while the High Commissioner for Human Rights and Good Governance has existed in the country since January 2004 and in fact serves as the national institutional focal point for IDPs (see Benchmark 7), it was established by and is directly linked to the Office of the President and is unable to operate free of political influence.⁷⁰

In the Democratic Republic of the Congo, the Senate adopted a draft basic law in March 2008 on which a national human rights institution could be established, but the law was still pending before Parliament according to the latest information available at the time of writing.⁷¹ Other institutional structures for human rights do not exist; the National Human Rights Monitoring Centre, which existed under the Transitional Constitution, was abolished and has not been replaced.⁷²

Republic, A/HRC/12/2, 4 June 2009, para. 77(a); OHCHR, “Impunity: A Major Challenge to Peace and Democracy in Central African Republic,” 19 February 2010 (www.ohchr.org).

⁶⁹ Observation based on a fact-finding and technical assistance mission to CAR in June 2010.; see Erin Mooney, *Examen du cadre normatif de la République Centrafricaine relatif à la protection des personnes déplacées à l'intérieur de leur propre pays*, Brookings-Bern Project on Internal Displacement, November 2010, p. 27 (www.brookings.edu/reports/2010/11_car_audit_juridique.aspx).

⁷⁰ *Ibid.*

⁷¹ ICG, *Congo: A Stalled Democratic Agenda*, Africa Briefing No. 73, 8 April 2010, p. 21 (www.crisisgroup.org/en/regions/africa/central-africa/dr-congo/b073-congo-a-stalled-democratic-agenda.aspx); UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Democratic Republic of the Congo*, A/HRC/13/8, 4 January 2010, para. 8 (www.ohchr.org/EN/HRBodies/UPR/PAGES/ZRSession6.aspx).

⁷² UN Human Rights Council, *Combined Report of Seven Thematic Special Procedures on Technical Assistance to the Government of the Democratic Republic of the Congo and Urgent Examination of the Situation in the East of the Country*, A/HRC/10/59, 5 March 2009, p. 7 (www2.ohchr.org/english/issues/idp/visits.htm).

While the Constitution (2005) of Iraq mandates the establishment of an independent national human rights institution, as of July 2011 the NHRI was not yet operational.⁷³ From 2006 to 2008, OHCHR and the UN Assistance Mission for Iraq (UNAMI) worked closely with the Iraqi government to build consensus on the technical aspects of such an institution and assisted the Council of Representatives and the Ministry of Human Rights in preparing a draft law establishing an NHRI. In November 2008, the Council of Representatives adopted the Law on the Establishment of an Independent National Human Rights Commission. As OHCHR has stressed, the Independent Human Rights Commission will be the “essential institution for the promotion and protection of human rights in Iraq.”⁷⁴ Despite an announcement in 2009 that a human rights commission was to be established in the Kurdistan Region, as of July 2011, such a commission had not been established.⁷⁵

The government of Sudan has been urged by the UN Human Rights Council to establish an independent NHRI.⁷⁶ In April 2009, the government did adopt the National Human Rights Commission Act, providing for the establishment of such a commission. However, in 2010 both the UN Committee on the Rights of the Child (CRC) and the Independent Expert on Human Rights in the Sudan expressed concern that this body had still not been established.⁷⁷ The CRC emphasized the impor-

⁷³ Iraqi Constitution, 2005, Article 102 (www.uniraq.org/documents/iraqi_constitution.pdf).

⁷⁴ “OHCHR in Iraq 2006–2007” (www.ohchr.org/EN/Countries/MENARegion/Pages/IQSummary.aspx); UN Assistance Mission for Iraq, *Human Rights Report, July-December 2008* (www.uniraq.org/documents/UNAMI_Human_Rights_Report_July_December_2008_EN.pdf).

⁷⁵ See Kurd Net, “Iraqi Kurdistan’s Human Rights Commission Still Not Established,” 18 July 2011 (www.ekurd.net/mismas/articles/misc2011/7/state5271.htm).

⁷⁶ United Nations, Human Rights Council Resolution 7/16 of 27 March 2008, para. 12; Resolution 15/27, 7 October 2010, para. 6.

⁷⁷ UN News Centre, “Sudan: UN Rights Expert Reports Positive Steps, but Lack of Progress in Key Areas,” 11 February 2010 (www.un.org/apps/news/story.asp?NewsID=33743&Cr=sudan&Cr1); OHCHR, “Statement of the

Figure 1-2. National human rights institutions (NHRIs) in the fifteen countries surveyed^a

Country and Status of NHRI*	Name of NHRI	Year established	Activities on behalf of IDPs
Afghanistan ¹	Afghanistan Independent Human Rights Commission (AIHRC)	2004	Through human rights field monitoring, looks at human rights and protection needs of the vulnerable, including IDPs; investigates complaints; monitors and reports on human rights abuses; advises the government; and provides training for government staff and civil society.
Central African Republic	National Human Rights Commission	Established by law in 1991 but not yet established in practice.	
Colombia ¹	Ombudsman's Office	1991	The IDP focal point within the Ombudsman's Office has taken an active role with respect to promotion and protection of IDP rights for more than a decade. Main activities include monitoring the rights of IDPs; early warning of displacement; public awareness campaigns on IDP issues; dissemination and advocacy of the Guiding Principles; receiving and working to address individual complaints by IDPs of violations of their rights; monitoring IDP children's rights; and advising on the drafting of national legislation and policies for addressing internal displacement.
Democratic Republic of the Congo		No evidence that the draft law establishing a national human rights commission has been adopted by the National Assembly.	
Georgia ¹	Office of the Public Defender	Established in 1996; recognized since 2007 as the internationally accredited national human rights institution for Georgia	The office has monitored and reported on IDP issues since at least 2004, but with difficulty because of limited capacity (there are 7 staff members, including six staff members hired in 2010 with funding from the Council of Europe).
Iraq	In development	Iraq's 2005 constitution mandates the establishment of an independent national human rights commission.	
Kenya ¹	Kenyan National Commission on Human Rights (KNCHR)	Established in 2002; became operational in 2003	Focused on human rights of IDPs before the 2007 constitutional crisis and has continued to do so since. In 2009 designated a focal point and staff dedicated to IDP issues; set up regional offices and a network of field monitors. Activities include monitoring; investigating cases of human rights violations; advising government institutions; promoting rights awareness; and conducting visits to IDP camps and return sites
Myanmar	No NHRI		.

Continues

Figure 1-2. Cont.

Country and Status of NHRI*	Name of NHRI	Year established	Activities on behalf of IDPs
Nepal ⁱ	National Human Rights Commission of Nepal (NHRC)	2000	Specified IDP focal point. The Comprehensive Peace Accord mandates the NHRC to monitor the government's adherence to its human rights commitments under the accord. Investigates violations; monitors and reports on IDP conditions; monitors government authorities; reports on laws and policies; conducts awareness-raising campaigns; High capacity.
Pakistan	No NHRI		
Sri Lanka ⁱⁱ	Human Rights Commission of Sri Lanka	1997	In June 2002, launched a unit on national protection and durable solutions for IDPs. Investigates complaints; conducts monitoring visits; conducts training programs for the military, NGOs/CBOs, IDPs and host communities; works with the Register General Department to issue documents to IDPs. Was very active in monitoring and reporting on displacement in the post-2004 tsunami period. In 2006 drafted a bill to protect the rights of IDPs. While IDP issues were one of its main priorities in the 2002–2006 period, attention has diminished. There is no evidence that it has done much work on these issues since 2009. Criticized for lack of independence. The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights downgraded the HRC to Grade B—the status of “observer”—in late 2007.
Sudan	Southern Sudan Human Rights Commission	The 2005 Interim Constitution of Southern Sudan provides for establishment of the commission.	
Turkey	No NHRI	Government has made three attempts since 2004 to create a human rights council; criticized for violating Paris Principles	
Uganda ⁱ	Uganda Human Rights Commission		IDP issues appear to be a high priority. Conducts visits to IDP camps and return sites to monitor returns; compiles annual reports; organizes training workshops.
Yemen		There is a Minister of State for Human Rights, but the office lacks accreditation from OHCHR.	

a. UN General Assembly, *The Role of the Ombudsman, Mediator and Other National Human Rights Institutions in the Promotion and Protection of Human Rights*, A/65/340, 1 September 2010, pp. 18–25 (http://ap.ohchr.org/documents/alldocs.aspx?doc_id=18040).

* Status refers to compliance with the Paris Principles, which is required for accreditation with the Office of the High Commissioner for Human Rights.

i. NHRIs that are in full compliance.

ii. NHRIs in partial compliance.

tance of having an independent national mechanism to monitor the implementation of human rights and urged the government to ensure establishment of a human rights commission that “is vested with the competence to receive and follow up complaints of violations of child rights and is provided with sufficient human and financial resources to ensure its independence and efficacy.”⁷⁸ There were no new developments at the time of writing.

The Interim Constitution of Southern Sudan (2005) provided for the establishment of the Southern Sudan Human Rights Commission (SSHRC) and the commission is just beginning to address the issue of internal displacement. But capacity is lacking.⁷⁹

Independent Expert on the Situation of Human Rights in the Sudan” (www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9813&LangID=e); UN Committee on the Rights of the Child, *Consideration of reports submitted by States parties under article 8 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict: Concluding Observations: Sudan*, CRC/C/OPAC/SDN/CO/1, 6 October 2010, para. 9 (hereafter, “UN Committee on the Rights of the Child: *Concluding Observations: Sudan*”, (www.ohchr.org/EN/Countries/AfricaRegion/Pages/SDIndex.aspx).

⁷⁸ UN Committee on the Rights of the Child, *Concluding Observations: Sudan*, para. 10.

⁷⁹ The Interim Constitution of Southern Sudan, 2005, Chapter IV, Articles 149, 150. See also, Government of South Sudan, “Southern Sudan Human Rights Commission” (www.goss-online.org/magnoliaPublic/en/Independent-Commissions-and-Chambers/Human-Rights-Commissions.html#structure). Also note that in

Conclusion

As is evident from this description, in a number of countries national human rights institutions have played an important role in raising awareness of internal displacement, monitoring displacement situations and returns, investigating individual complaints, advocating for and advising the government on the drafting of national policies to address internal displacement, and monitoring and reporting on the implementation of national policies and legislation. In particular, the NHRIs of Afghanistan, Colombia, Georgia, Kenya, Nepal and Uganda stand out for their efforts to promote the rights of IDPs in their countries. Interestingly, almost all of their work with IDPs is funded by international sources, raising the question of whether national governments themselves should not be doing more to increase their funding of NHRIs in order to support their engagement with and invaluable contribution to improving national responses to internal displacement.

November 2010, after the period covered by this survey, the Brookings-Bern Project on Internal Displacement commissioned a consultant to work with SSHRC to determine its interest in monitoring IDP issues. The assessment mission was carried out in conjunction with IDMC, which provided training on the Guiding Principles for staff of the commission. As a result of those initiatives, the SSHRC established an IDP focal point within the commission, mapped out a plan of work focusing on internal displacement and agreed to send a staff member to the Brookings-Bern Project’s course on IDP law in Sanremo, Italy, in June 2011.

Benchmark 9

Facilitate IDPs' Participation in Decisionmaking

(a) Do the national authorities encourage and facilitate the participation of IDPs in the planning and implementation of policies and programs for addressing internal displacement?

IDPs have the right to have a say in the decisions affecting their lives. As affirmed in the Guiding Principles on Internal Displacement, authorities in fact have a responsibility to facilitate the participation of IDPs in the planning and implementation of policies and programs concerning internal displacement. That responsibility pertains to all phases of displacement and to different elements during each phase.

Principle 3(1) affirms that IDPs have the right to request and to receive protection and humanitarian assistance from the national authorities and that they shall not be persecuted or punished for making such a request. Principle 7 specifies that outside of the emergency states of armed conflict or disaster, any decision requiring displacement must meet several guarantees in order to comply with international law, including that the displaced have access to full information on the reasons and procedures for their displacement and, when applicable, on compensation and relocation programs; that free and informed consent is sought of the persons to be displaced; and that the authorities endeavor to involve affected persons, particularly women, in the planning and management of their relocation. Principle 22 affirms that during displacement, regardless of the cause of displacement, no IDPs shall be discriminated against as a result of their displacement in the enjoyment of their rights, including the right to freedom of thought, conscience, belief, opinion and expression; the right to associate freely and to participate equally in community affairs; the right to vote and to participate in government and public affairs; and the right to communicate in a language that they understand. Principle 28(2)

affirms that authorities are expected to make “special efforts” to ensure the full participation of IDPs in the planning and management of their return or resettlement (including the option of local integration) and reintegration. Moreover, Principle 29 affirms that upon their return, resettlement or local integration, IDPs have the right to participate fully and equally in public affairs at all levels.

While the Guiding Principles emphasize that IDPs, like all persons, have the right to advocate for and participate in and thereby shape decisions affecting their lives, it is a right that is all too easy to affirm in laws, policies and public statements but that is seldom implemented in a meaningful way. In fact, establishing effective mechanisms to encourage and enable substantive participation of IDPs in decisionmaking is not easy as a previous study by the Brookings-Bern Project on Internal Displacement found.¹ For example, it can be difficult to identify genuine representatives of IDP communities, to ensure that women’s voices are heard, to manage expectations about consultation and participation, and to ensure that the safety of IDPs is not jeopardized by their participation in consultative mechanisms.

Moreover, the terms “consultation” and “participation” tend to be used interchangeably, yet there are important differences. Broadly defined, “consultation” is the process of soliciting and listening to people’s opinions and perceptions. “Participation” refers to deeper engagement that may imply a degree of control over decision-making and/or the contribution of labor, skills or material inputs. Consultation and participation are part of a process through which stakeholders influence and share control over initiatives and decisions that affect them.

¹ Brookings-Bern Project on Internal Displacement, *Moving beyond Rhetoric: Consultation and Participation with Populations Displaced by Conflict or Natural Disasters*, October 2008 (www.brookings.edu/reports/2008/10_internal_displacement.aspx); Brookings-Bern Project on Internal Displacement, *Consulting IDPs: Moving Beyond Rhetoric*, summary report of conference held 15–16 November 2007 in Geneva, February 2008 (www.brookings.edu/papers/2008/02_displacement.aspx).



Doha, Qatar / 28 May 2011: Talks were briefly held up on this day at the All Darfur Stakeholders Conference after representatives of internally displaced persons and civil society initially refused to participate. The refusal was brought on by delays in the arrival of a number of their delegations leaders.

The discussions later resumed and reviewed the delegates' positions on a number of key elements including justice and reconciliation, human rights, peaceful coexistence and power and wealth sharing.

The Doha negotiations led to the signing in July 2011 of the Doha Darfur Peace Document between the government of the Republic of the Sudan and the Liberation and Justice Movement.

Photo: UNAMID - Olivier Chassot

The process of participation is generally understood to follow a spectrum of increasing levels of engagement (see Figure 1-3 below).² There are also the established

participation and consultation mechanisms provided by the political process, through exercise of the right to vote in elections and referenda.

² Brookings-Bern Project on Internal Displacement, *Moving Beyond Rhetoric: Consultation and Participation with Populations Displaced by Conflict or Natural Disasters*,

October 2008 (www.brookings.edu/reports/2008/10_internal_displacement.aspx).

Figure 1-3: The participation spectrum³

Participation Level	Modalities	Outcome
Passive participation or information sharing	For example, dissemination of documents and public briefings by officials.	Affected populations are informed but are not heard.
Information transfer	For example, field visits and interviews with the affected population.	Selected members of the affected population supply information in response to questions but do not make decisions or influence the process, at least not directly.
Consultation	For example, focus group discussions and interviews.	Selected members of the affected population are asked to offer their opinions, suggestions, and perspectives but are not involved in decisionmaking or implementation and do not influence the process, at least not directly.
Collaboration	Participatory needs assessment and project implementation (for example, IDPs supply labor for the construction of their new houses in an agency-led project).	Selected members of the affected population are directly involved in needs analysis and project implementation. They may also contribute, with labor and other skills, to implementation of projects led by other actors.
Decisionmaking and control of resources	For example, joint committees or working groups of authorities or agencies and representatives of the affected populations.	Selected members of the affected population are involved in project assessment, planning, evaluation and decisionmaking.
Local initiative and control	For example, a community-based organization (ideally an organization made up of members of the affected population itself) may organize vocational training classes that receive financial support from an agency.	Affected populations take the initiative; a project is conceived and run by the community, potentially with the support of agencies or the authorities.

³ The Participation Spectrum was adapted from the following: P. Robson, *The Case of Angola*, Active Learning Network for Accountability and Performance in Humanitarian Action (ALNAP) (London: Overseas Development Institute, 2003); B. G. Sokpoh and K. Levy-Simancas, *The Case of Guinea*, ALNAP (London: Overseas Development Institute, 2004); Asian Development Bank, *Strengthening Participation for Development Results: A Staff Guide to Consultation and Participation*, (April 2006);

African Development Bank, *Handbook on Stakeholder Consultation and Participation in ADB Operations* (2001); Department for International Development (DFID), *Tools for Development: A Handbook for Those Engaged in Development Activity*, version 15.1 (March 2003); ALNAP, *Participation by Crisis-Affected Populations in Humanitarian Action: A Handbook for Practitioners* (London: Overseas Development Institute, 2003), p. 22.

In keeping with the Guiding Principles on Internal Displacement, the Framework on National Responsibility emphasizes that IDPs' participation should be encouraged and facilitated in all phases of displacement—for example, in making decisions about the relocation of communities, in establishing programs for humanitarian assistance and protection during displacement, and in making decisions about durable solutions to displacement. The following analysis considers two categories of IDP participation: first, participation in a general sense, including in policymaking and decisionmaking in program design and implementation; and second, political participation, in particular, the right to vote.

Overview of research findings

Overview of research findings: (a) Participation in a broad sense

The country studies illustrate that in quite a few cases, the importance of the participation of IDPs has been affirmed in public statements or policies. In some cases, participation is prescribed in law; in others the responsibility to facilitate consultation with IDPs forms part of the official mandate of the focal point institution. Evidence of whether government statements are simply aspirational affirmations or concrete commitments will be found in practice. In fact, a number of examples from the case studies show that IDPs have participated in particular discussions, for instance by providing input to the preparation of a national law or policy on internal displacement. However, it is very difficult, especially in the desk studies, to determine whether such cases have amounted to meaningful participation. Was it a one-off meeting or a regular consultation? Were IDPs' views welcomed and their questions and concerns addressed? Was there meaningful dialogue between the IDPs and the authorities or was IDPs' presence in such discussions seemingly just "for show"? Perhaps more than with other benchmarks, it is difficult to tell without talking with IDPs whether Benchmark 9 is being met.

Colombia, Georgia and Kenya seem to be the three cases in which significant attempts have been made to include IDPs in policy discussions, although even then, participation has not been entirely satisfactory.

In Colombia, Law 387 of 1997 establishes the right of IDPs to participate in the national program for addressing internal displacement, the Sistema Nacional de Atención Integral a la Población Desplazada por la Violencia (SNAIPD). There in fact have been some consultations by government authorities with IDP associations on the SNAIPD, although it is hard to determine whether the consultations were regular, much less whether they have had an impact on policy. Tellingly, the Constitutional Court has ruled on more than one occasion that government efforts to facilitate the participation of IDPs have been inadequate. In 2004, the court called for "spaces where such participation can be made concrete" and set basic conditions allowing for participation, including adequate, understandable, accessible and timely information and the systematization and evaluation of the observations made by the displaced population.⁴ The following year, civil society groups engaged in IDP advocacy met, reportedly "on a basis of equality" with Cabinet ministers tasked with submitting reports on progress in complying with the court's various demands regarding the government's response to internal displacement.⁵ However, in 2009, the Constitutional Court reported that IDPs' right to participate was still far from being realized, noting that "the day-to-day participation by IDPs both in decision-making processes and as a passive source of information is extremely low."⁶

⁴ Internal Displacement Monitoring Centre (IDMC), *Colombia: New Displacement Continues, Response Still Ineffective: A Profile of the Internal Displacement Situation*, 3 July 2009 (www.internal-displacement.org).

⁵ Manuel Jose Cepeda-Espinosa, "How Far May Colombia's Constitutional Court Go to Protect the Rights of IDPs?" *Forced Migration Review*, Special Issue: Ten Years of the Guiding Principles on Internal Displacement, December 2008, p. 24.

⁶ See Comisión de Seguimiento a la Política Pública sobre el Desplazamiento Forzado, *El Reto Ante La Tragedia*

Georgia represents an especially interesting case because there have been attempts to incorporate IDP participation into policy, and, as in Colombia, there are strong IDP associations.⁷ For example, representatives of IDP associations were guaranteed 25 percent of the membership of the technical committees that provided analysis and recommendations for development of the State Strategy on Internally Displaced Persons (government officials made up half of the membership of each committee, while international agencies and NGOs made up the remaining quarter). Further, the resulting state strategy calls for the greater involvement of IDPs in decisionmaking. IDP associations also have been actively involved in developing the action plans for implementation of the strategy and are represented in the steering committee charged with monitoring the implementation of the strategy and action plan. While there are several well-established IDP NGOs that play an active role, for instance in advocating for and providing input in national law and policy development, that does not mean that all IDPs can be said to be participating. A distinction must be drawn between the active engagement of established IDP NGOs and meaningful participation by the IDP community at large, whose members generally are unfamiliar with the state strategy and related policy documents.

In Kenya, consultation mechanisms were established at least for IDPs displaced by post-election violence, and IDPs had input into preparation of the draft policy on internal displacement.⁸ During the emergency phase, IDPs were represented in all UN clusters in which op-

erational decisions were made. There were opportunities for participation through the National Protection Working Group and the Kenya National Network of IDPs. The Kenyan Human Rights Commission has facilitated some meetings, and the Kenyan government hosted a consultation with 100 IDPs in March 2010. However, decisions on IDP policy are ultimately made by a Cabinet subcommittee, and IDPs complain that their participation is for the most part token participation. But there are potential future avenues for the active participation and consultation of IDPs, including the most disadvantaged, as reflected in the draft National Policy on the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya (March 2010). The draft policy recognizes that participation and consultation “in all processes in matters affecting them [IDPs] contributes to a more effective response to their needs, reduces their dependency and facilitates reintegration”; therefore it envisages the establishment of a permanent forum for dialogue with IDPs—with separate mechanisms for consulting with women, children and others with special needs—in concert with national and international stakeholders.⁹ The government’s first stakeholders’ meeting to discuss the draft national IDP policy had over 100 participants, including representatives from the IDP community from all affected districts, as well as NGOs, international organizations and the United Nations.¹⁰ At the meeting, the Minister of State for Special Programs expressed the government’s hope that the policy “espouses the virtues of inclusiveness, consultation and participation.”¹¹

Humanitaria del Desplazamiento Forzado: Aplicar Políticas Públicas Idóneas y Eficientes, vol. 4, April 2009, available: CODHES, “Comisión de seguimiento a la política pública sobre desplazamiento forzado,” (www.codhes.org/index.php?option=com_content&task=view&id=39&Itemid=52).

⁷ For a more detailed analysis of Benchmark 9 in the context of Georgia, see the Georgia case study in chapter 2 of this volume.

⁸ For a more detailed analysis of Benchmark 9 in the context of Kenya, see the Kenya case study in chapter 2 of this volume.

⁹ Government of Kenya, Ministry of State for Special Programs, *National Policy on the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya, Final Consolidated Draft, March 2010*, Chapter 1, Article 1.2.; on file with the authors.

¹⁰ Office for the Coordination of Humanitarian Affairs (OCHA), *Kenya Humanitarian Update*, vol. 59, 9 March–7 May 2010 (<http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1164181>).

¹¹ Government of Kenya, Ministry of State for Special Programs, “Speech of Minister of State for Special Programs at the Workshop on the National Internally

There have been policy statements in other countries about the importance of IDP participation, but little information exists on whether the statements have translated into meaningful participation or simply pay “lip service” to the principle of participation. In countries where a national policy on internal displacement has been adopted, it is noteworthy that most of the national policies do include provisions regarding IDP participation. Uganda presents an especially interesting case because the National Policy on Internal Displacement (2004) includes extensive provisions promoting and guaranteeing the participation of IDPs in its implementation. In each district, the District Disaster Management Committee (DDMC), which is the lead mechanism for protection of and assistance to IDPs, includes in its membership two IDPs, one man and one woman, who reside in one of the IDP camps in the district and who “shall represent all IDPs of the district in the DDMC”; the same is true for the Disaster Management Committee. Additional measures are planned to facilitate the participation of women and youth: “In order to ensure the full participation of IDPs, in particular that of women, in the planning and management of responses to their protection and assistance needs, representatives of displaced women shall be consulted and may be invited to participate in the meetings of the DDMC.” The chief administrative officer of the district also is to “ensure that special measures are made to ensure that internally displaced women and youth are consulted on matters relating to their welfare.” The National Policy on Internal Displacement places special emphasis on consultation with and participation of IDPs in the search for durable solutions. DDMCs are obliged to include IDP representatives in the planning and management of return and resettlement, and representatives of IDPs, along with the DDMCs and other local authorities, are to ensure that the return and resettlement of IDPs is voluntary. Further, IDPs are to be consulted on the design of the resettlement assistance kits, in particular concerning “the most appropriate

inputs to meet their food security needs under prevailing conditions.”¹²

Implementation of these provisions and of the national policy overall is another matter. In 2006, two years after its adoption, the policy was still little known among IDPs as well as local officials and camp commanders.¹³ Moreover, a review workshop emphasized the need for “greater involvement and more extensive consultation of stakeholders in planning humanitarian interventions and activities.” Particular importance was placed on consulting with and providing information to IDPs regarding issues of voluntary return, resettlement and reintegration. Overall, the workshop recommended that “IDPs and their communities . . . be integrated more fully into the implementation of the IDP policy.”¹⁴

The experience in Uganda is by no means unique. In Nepal, consultation with IDPs is called for in the National Policy on Internally Displaced Persons (2007),¹⁵ but there is no evidence that this provision has been implemented; the majority of IDPs surveyed by the Nepal IDP Working Group did not even know

Displaced Persons Policy,” 17 March 2010 (www.sprogrammes.go.ke/index.php?option=com_content&task=view&id=321&Itemid=117).

¹² Government of Uganda, “National Policy on Internally Displaced Persons (2004),” sections 2.4, 2.5.1, 3.4(4)-(5), and 3.14(1).

¹³ Refugee Law Project and Internal Displacement Monitoring Centre, *Only Peace Can Restore the Confidence of the Displaced*, March 2006 (www.internal-displacement.org).

¹⁴ “Workshop on the Implementation of Uganda’s National Policy for Internally Displaced Persons,” Kampala, Uganda, 3–4 July 2006, hosted by the government of Uganda and convened by the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons (RSG on IDPs), the Brookings Institution-University of Bern Project on Internal Displacement, and the Inter-Agency Standing Committee Country Team, pp. 4, 13–14, 20 (www.brookings.edu/fp/projects/idp/conferences/Uganda_Workshop2006_rpt.pdf).

¹⁵ Government of Nepal, Ministry of Home Affairs, National Policy on Internally Displaced Persons (IDPs) 2063 [2007]. Full text available at: Brookings-LSE Project on Internal Displacement, “National Laws and Policies on Internal Displacement: Nepal,” (www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx).

about the national policy.¹⁶ Sudan's National Policy on Internally Displaced Persons (2009) includes a provision on recognition of the right of IDPs to equal participation in public affairs; however, it is unclear whether there has been more than token IDP participation.¹⁷ The record also has been mixed in Turkey. The Van Action Plan, adopted in 2006, provides for the involvement of IDPs and emphasizes the importance of a participatory approach. However, implementation of the action plan has been criticized for its lack of transparency, exclusion of IDPs from the consultation process, exclusion of the views of some organizations from the final action plan, and the "involvement of government-oriented organizations in the workshops under the guise of 'civil society.'"¹⁸ According to Iraq's National Policy on Displacement (2008), consultations with key stakeholders contributed to development of the policy; however, specifics are not available.

Beyond the context of national policies on internal displacement, there have been occasional efforts to consult with IDPs on specific programs or policies, but it is hard to determine whether the efforts involved genuine involved participation. For example, efforts were made to involve IDPs in Uganda in drafting the Peace, Recovery and Development Plan for Northern Uganda in 2005.

¹⁶ According to the Nepal IDP Working Group, while 61 percent of surveyed IDPs and returnees knew of the existence of return and rehabilitation packages, only 35 percent were aware of the policy and none could identify the rights and entitlements specified (Nepal IDP Working Group, 15 June 2009, p. 34).

¹⁷ National Policy on Internally Displaced Persons (2009), Section 5(a)20.

¹⁸ According to Turkish Economic and Social Studies Foundation, which relayed the concerns of civil society organizations to the Van Governorship and the UNDP; see Deniz Yüksek and Dilek Kurban, *Permanent Solution to Internal Displacement? An Assessment of the Van Action Plan for IDPs*, Turkish Economic and Social Studies Foundation, May 2009, pp. 16–18 (www.tesev.org.tr/UD_OBJS/PDF/DEMP/TESEV_VanActionPlanReport.pdf).

In Pakistan, meanwhile, there is no evidence that the national authorities encourage participation of IDPs. However, at the provincial level, the government of North-West Frontier Province (NWFP) developed the Return Policy Framework with the UN Office for the Coordination of Humanitarian Affairs in 2009. In this return policy, the provincial government commits to ensuring that vulnerable IDPs are properly consulted through all stages of the national response to displacement.¹⁹ But again, there is no evidence that such consultations have taken place. In the Democratic Republic of the Congo (DRC), research did not reveal any evidence that national authorities encourage and facilitate the participation of IDPs in the planning and implementation of policies and programs addressing their displacement even though the government has signed protocols, such as the Dar-el-Salaam Declaration on Peace, Security, and Democracy and Development in the Great Lakes Region (2004) to protect vulnerable groups, including displaced persons, and to include them in peace efforts.²⁰

As the Framework for National Responsibility points out, ensuring that IDPs play a strong role in camp management is a component of governments' responsibility to encourage and facilitate the participation of IDPs in the planning and management of programs to address their needs and protect their rights. The establishment of IDP committees in camps or other IDP settlements can be an important mechanism for facilitating consultation with IDPs and their participation in the design and implementation of programs. In Uganda, IDP committees were established in each of the camps. In Georgia, UNHCR found there to be "well-functioning IDP committees in collective centers";²¹ however, that

¹⁹ The name of the province was officially changed in April 2010 to Khyber Pakhtunkhwa.

²⁰ International Conference for Peace, Security, Democracy and Development in the Great Lakes Region, First Summit of Heads of state and Governments, *Dar-es Salaam Declaration on Peace, Security and Democracy and Development in the Great Lakes Region, Draft 2*, Article 27 (www.grandslacs.net/doc/3211.pdf).

²¹ UNHCR, "Input to Universal Periodic Review," 16 July 2010, para. 12.

finding varied among centers and mechanisms often were informal. In many countries, ensuring that such mechanisms include and enable the participation of IDP women has been especially difficult. Illustrating these challenges, a 2007 report on a fact-finding mission to Sri Lanka found that

in camp situations the men were better positioned to negotiate with authorities and were more likely to be consulted in decisionmaking or asked to assist with camp matters. There was no definitive mechanism in place to ensure that women were also part of decisionmaking processes in relation to camp administration and in relation to decisions with regard to the well-being of the displaced.²²

In Georgia, notwithstanding the existence of a very active national IDP Women's Association and some strong women leaders, UNHCR found that "women still tend to take the back seat to men." Further, few IDP children and youth are involved in decisionmaking concerning IDPs.²³

The formation by internally displaced persons themselves of IDP associations, groups or NGOs seems to make a difference in strengthening consultation with and participation of IDPs. In Colombia and Georgia, in particular, IDP associations have actively advocated for IDPs' rights and have been engaged in developing and monitoring laws and policies. Governments should support—or at the very least not obstruct—the establishment and functioning of such IDP associations. In

Afghanistan²⁴, the Displaced Persons Council (DPC) was established in 2003 by the Afghan Ministry of Refugees and Repatriation, with the support of UNHCR. Comprising groups of IDPs and refugees originally from five northern provinces who were displaced elsewhere in Afghanistan as well as to the Balochistan region of Pakistan, the DPC was intended specifically to complement and inform the work of the Northern Return Commission and increase the participation of displaced populations in the return process. The DPC provided recommendations on how best to address obstacles to return, which were shared with the president (with whom the DPC met in October 2003 at the Presidential Palace), relevant government ministries, the Afghan Independent Human Rights Commission, governors in the places of origin, and the international community. However, by 2005, after the return of most DPC members to their places of origin, the DPC had ceased to function.²⁵ In some cases but very few (at least very few of those for which information is available), IDP associations have participated in UN humanitarian coordination mechanisms, including "cluster" meetings, as at times in Kenya and Georgia.

Consultation with IDPs is especially important in the context of durable solutions. In Kenya²⁶, the government's inadequate consultation with and involvement of IDPs ahead of the government's resettlement program led to forcible closure of camps and IDPs who protested against delays in assistance were often violently dispersed during the initial phase of the program. Communities to which IDPs were returning or integrating were also not consulted, which resulted in IDPs being rejected in these communities.

As the Framework for National Responsibility points out, peace processes and peace building involve IDPs

²² South Asians for Human Rights, "Report on the Fact-Finding Mission to the North and East of Sri Lanka to Assess the State of Displaced Persons," 8 August 2007 ([www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/7B3BA7B8C19443E8C12573460046F130/\\$file/SAHR+Report.doc](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/7B3BA7B8C19443E8C12573460046F130/$file/SAHR+Report.doc)).

²³ UNHCR, *Protection of Internally Displaced Persons in Georgia: A Gaps Analysis* (UNHCR and European Union, July 2009), p. 24. See also the Georgia case study in chapter 2 of this volume.

²⁴ See further, Afghanistan case study in chapter 2 of this volume.

²⁵ UNHCR, *Report of the Displaced Persons Council Meeting, 19–21 October 2003*, 15 November 2003; and IDMC, *Country Profile on Afghanistan*.

²⁶ See further the Kenya case study in chapter 2 of this volume.

and reinforce durable solutions.²⁷ In the peace process for resolving the conflict in Darfur, Sudan, there was some involvement of IDPs in the civil society group consultations held in Qatar in 2010 and 2011 between the Liberation and Justice Movement (LJM) and the government of Sudan; moreover, many of the representatives, both women and men, of the opposition groups participating in the talks were IDPs themselves.

Perhaps more than any other benchmark, the participation of IDPs in decisionmaking is difficult to assess. Some governments have made an effort to organize meetings with IDPs and to work with IDP associations, but whether that constitutes meaningful participation of IDPs in decisions that affect their lives remains unknown. At the most fundamental level, participation is about sharing power. Governments have a responsibility to protect and assist IDPs; to involve IDPs in making decisions is to share that responsibility.

9(b) Are IDPs able to exercise their right to vote without undue difficulties related to their displacement?

As the Framework for National Responsibility notes, national responsibility for encouraging and facilitating IDPs' participation also entails safeguarding IDPs' right to political participation, as affirmed in Guiding Principle 22(d) cited above. However, the Framework also recognizes that "frequently IDPs face obstacles in exercising their right to vote and thereby to having

a say in the political and economic decisions affecting their lives." In countries with democratic traditions, the national constitution usually guarantees the rights of all citizens to vote. However, many IDPs face specific obstacles to exercising that right: they do not fulfill the residency requirements for electoral registration; they often lack documentation because it was lost, destroyed or confiscated in the course of displacement; they may be required to return to their community of origin in order to register to vote; and they may face intimidation or threats to their security related to their displacement when trying to vote.²⁸ When such obstacles exist, governments are expected to take special measures to ensure that IDPs can exercise their right to vote.

Overview of research findings: (b) Political participation, in particular, the right to vote

The case studies illustrate a number of examples in which governments have taken measures to address such obstacles and thereby enable IDPs to participate in the political process, in particular by exercising their right to vote. Yet they also show that even when such obstacles are removed, additional efforts are required to promote IDPs' political participation if it is to be on par with that of nondisplaced populations.

Legal obstacles to IDPs' electoral participation often arise in relation to residency requirements for registration, which almost inevitably affect IDPs. National legislation in Georgia restricted the voting rights of IDPs in parliamentary and local elections in two main ways.²⁹ First, it extended indefinitely the mandate of the parliamentary deputies from Abkhazia, who also were displaced and were serving their electoral term at the time of displacement. Second, the combined effect of

²⁷ Brookings-Bern Project on Internal Displacement, *IASC Framework on Durable Solutions for Internally Displaced Persons*, April 2010, p. 24 (www.brookings.edu/reports/2010/04_durable_solutions.aspx). See further, Gerard McHugh and others, *Integrating Internal Displacement in Peace Processes and Agreements*, Peacemakers' Toolkit (Washington: Brookings Institution and United States Institute for Peace, February 2010) (www.brookings.edu/reports/2010/0216_internal_displacement_mchugh.aspx); Brookings-Bern Project on Internal Displacement, *Addressing Internal Displacement in Peace Processes, Peace Agreements and Peace-Building*, September 2007 (www.brookings.edu/reports/2007/09_peaceprocesses.aspx).

²⁸ Erin Mooney and Balkees Jarrah, "Safeguarding IDP Voting Rights," *Forced Migration Review*, no. 23 (2005), p. 55.

²⁹ For more detailed analysis of Benchmark 9(b) in the context of Georgia, see the Georgia case study in chapter 2 of this volume.

the Electoral Code and the law on IDPs meant that IDPs could not register their residence in the location of their displacement—and thereby be entitled to vote in that electoral district—without losing their IDP status and the entitlements it entails under national law. In other words, IDPs were doubly disenfranchised: they were unable to vote for deputies from their area of origin and for those representing the locality where they resided during their displacement. NGOs brought the issue before the Constitutional Court. Francis Deng, the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons (RSG on IDPs), OHCHR, and the OSCE also undertook advocacy on the issue, which NGOs raised in the UN Human Rights Committee and UN Commission on Human Rights (now UN Human Rights Council). In 2001 and 2003, the Election Code was amended to remove the restrictions preventing IDPs from exercising their right to vote in their current place of residence. Moreover, in 2003, a decision of Parliament ended the mandate of the Abkhaz parliamentary deputies, last elected in 1992, with their seats to be left vacant until such time that parliamentary elections can be held again in Abkhazia.³⁰ However, there still are practical difficulties—for example, in registering IDPs on electoral lists—and there is a certain disenchantment among IDPs with the political process and their resulting disengagement from it.

In Iraq, legal and practical obstacles have impeded IDPs' exercise of their voting rights, though a number of the issues have now been addressed. The nonregistration of IDPs and returnees “remains a significant humanitarian concern,” according to RSG Walter Kälin's report following his visit to Iraq in 2010, as it inhibits or precludes access to basic services and government assistance, impedes the transfer or recognition of certain documents and the rental or purchase of land, and impedes exercise of the right to vote. During his visit, however, Kälin was informed of the government's willingness and intention

to reopen registration procedures for all IDPs.³¹ Many of the more than 200,000 people who had recently been displaced from Fallujah were unable to register before the deadline to vote in the 2005 elections; other IDPs were unable to register due to a lack of documentation; and there were no provisions for absentee voting.³² Security concerns also made it difficult for IDPs to travel to polling stations. To address that issue, in the January 2005 election in Iraq, polling stations were set up in the camps, at least for IDPs who had been displaced from Fallujah.³³ By the March 2010 parliamentary elections, an amendment to Law No. 16 (2005) on elections meant that IDPs were able to register at the location of displacement to vote in elections in their electoral districts in their place of origin—that is, through absentee voting.³⁴ A displaced voter was defined as an Iraqi who was forcibly displaced from his/her permanent place of residence to another place inside Iraq after 9 April 2003, for whatever reason. While only 97,000 IDPs—around 5 percent of the total figure for IDPs displaced since 2003—registered to vote as absentees during the voter registration updates that occurred in 2008 and 2009, all Iraqis registered in the public distribution system for food rations were automatically registered to vote. According to the UN Assistance Mission in Iraq (UNAMI), there were 1,100 polling stations for IDPs registered for absentee voting; in addition, 541 polling stations were set up for conditional absentee voting for voters registered as IDPs with the Ministry of Trade or the Ministry of Displacement and Migration who did not register with the Independent High Electoral Commission for absentee voting.³⁵ Total voting turnout

³⁰ Erin Mooney and Balkees Jarrah, *The Voting Rights of Internally Displaced Persons: The OSCE Region* (Brookings-SAIS Project on Internal Displacement, November 2004), pp. 33–41.

³¹ UN Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Visit to Iraq*, A/HRC/16/43/Add.1, para. 52, 16 February 2011 (http://ap.ohchr.org/documents/dpage_e.aspx?m=71).

³² Erin Mooney and Balkees Jarrah, “Iraq's Displaced Voters,” *New York Times*, Letter to the Editor, 25 January 2005.

³³ Mooney and Jarrah, “Safeguarding IDP Voting Rights,” p. 55.

³⁴ Amendment passed by the Council of Representatives in November 2009 and approved by the Presidency Council of Iraq in December 2009.

³⁵ UNAMI Electoral Assistance Office, *Fact Sheet: Voting for*

was 12 million, or 62 percent of the registered population of around 18 million.³⁶

In both Georgia and Iraq as well as the other countries that have a national policy on IDPs, the policy tends to include provisions reaffirming IDPs' right to political participation, including the right to vote. In Colombia, the right of IDPs to vote in national and local elections is reaffirmed in Law 387 (1997) and the Constitutional Court's Decision T-025 (2004).³⁷ However, in practice, the fact of displacement, registration issues, and insecurity are major obstacles for many IDPs to participating in elections.³⁸

In Nepal, IDPs' entitlement to vote in elections in accordance with the law is affirmed in the National Policy on Internally Displaced Persons (2007),³⁹ but they must vote in their original place of residence; however, IDPs

rarely return to their original residence, as the RSG on IDPs noted following his 2005 mission to Nepal.⁴⁰ Moreover, IDPs face many other disenfranchising conditions, including lack of documentation, discrimination, insecurity, acts of intimidation, lack of awareness and financial constraints. Further compounding their difficulties, IDPs in Nepal tend to be from rural areas and to be only semi-literate and, in many areas, the government itself was displaced and was therefore "unable to provide documentation or proofs of citizenship to local residents who may have been displaced subsequently."⁴¹ Sudan's National Policy on Internally Displaced Persons (2009) provides that IDPs have a right to equal participation in public affairs.⁴² However, a flawed census in 2008, on which electoral representation was based, meant that many were excluded from voter lists in the most recent national elections, the general elections held in 2010. For example, most of the estimated 2.6 million IDPs in Darfur living in camps and the people living in areas under rebel control were among those not enumerated.⁴³ IDPs in the North were also under-represented in the census and under-registered for the 2010 general elections, including in Khartoum.⁴⁴ For

Internally Displaced Persons (Absentee Voting) (www.ihec-iq.com/en/factsheets.html); UNAMI, *Iraq Election 2010*, bi-annual magazine, June 2010 (www.uniraq.org/FileLib/misc/For_Iraq_August_2010_EN.pdf); U.S. Embassy of Iraq, *Iraqi National Election 2010: FAQ* (<http://iraq.usembassy.gov/root/pdfs/electionsfaq.pdf>).

³⁶ UNAMI, "Electoral Support," (www.uniraq.org/electoral/ElectoralSupport.asp).

³⁷ Government of Colombia, Law 387 of 1997; Constitutional Court of Colombia, Third Review Chamber, Decision T-025 of 2004, Both are available in Spanish and English at Brookings-LSE Project on Internal Displacement, "National and Regional Laws and Policies on Internal Displacement: Colombia," (www.brookings.edu/projects/idp/Laws-and-Policies/colombia.aspx) Both are also available in English in: Rodolfo Arango Rivadeneira, ed., *Judicial Protection of Internally Displaced Persons: The Colombian Experience* (Washington, DC: Brookings-Bern Project on Internal Displacement, November 2009), Annexes (www.brookings.edu/papers/2009/11_judicial_protection_arango.aspx).

³⁸ CODHES, "Desplazados de la democracia. Garantías políticas y riesgos electorales," 5 March 2010 (<http://reliefweb.int/node/347221>).

³⁹ Section 8.1.11. Full text of the policy in English, available at Brookings-LSE Project on Internal Displacement, "National and Regional Laws and Policies on Internal Displacement: Nepal," (www.brookings.edu/projects/idp/Laws-and-Policies/nepal.aspx).

⁴⁰ UN General Assembly, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, A/60/338, 7 September 2005 (http://ap.ohchr.org/documents/dpage_e.aspx?m=71).

⁴¹ Citation from Anita Ghimire, "Enfranchising IDPs in Nepal," *Forced Migration Review*, iss. 28, July 2007, p. 48 (www.fmreview.org). See also, Norwegian Refugee Council, "IDPs Excluded from Voting in their Place of Displacement," April 2008 (www.nrc.no/?did=9262093).

⁴² Government of the Sudan, Ministry of Humanitarian Affairs, National Policy on Internally Displaced Person (IDPs), 2009, Article 6. Full text available in English at Brookings-LSE Project on Internal Displacement, "National and Regional Laws and Policies on Internal Displacement: Sudan," (www.brookings.edu/projects/idp/Laws-and-Policies/sudan.aspx).

⁴³ International Crisis Group, "Rigged Elections in Darfur and the Consequences of a Probable NCP Victory in Sudan," 30 March 2010 (www.crisisgroup.org); IDP Action, "IDPs and Elections in Sudan," 11 March 2010 (<http://reliefweb.int/node/347883>).

⁴⁴ IDP Action, "IDPs and Elections in Sudan," 11 March 2010 (<http://reliefweb.int/node/347883>).

the referendum, held in January 2010, on the status of South Sudan, hundreds of thousands of IDPs returned from the North to cast their vote. In the North, 69,597 of 116,857 registered voters cast their vote, for a 60 percent turnout. Given that over 47,000 of those votes were absentee votes (but not votes from out of country, which were tabulated separately), there was about a 40 percent rate of absenteeism.⁴⁵

Uganda's National Policy on Internally Displaced Persons does not contain any specific reaffirmation of IDPs' right to vote, as enshrined in the Constitution for all citizens, although it does expressly state that all national, regional and local authorities shall take into account international and regional conventions and other standards, including the Guiding Principles on Internal Displacement (which do reaffirm this right). Nonetheless, an assessment report issued in 2005, in advance of the 2006 national elections, recommended various measures to be taken by the government as well as by other actors to ensure that IDPs could exercise their right to vote in practice.⁴⁶

Sri Lanka's government has developed a strong framework ensuring the electoral participation of IDPs in principle,⁴⁷ but there have been many obstacles in practice, as seen in the presidential and parliamentary elections held over the past decade. For example, in the 2010

presidential elections, while temporary camp cards were to have been used as voter registration cards, there was considerable uncertainty as to whether they would be accepted at the polling stations. Moreover, transportation problems made it difficult for IDPs to return to vote in their district; only 25,541 of 45,542 displaced voters in the North took part.⁴⁸

In Afghanistan, the Elections Law (2010) affirms the right of all Afghan citizens to participate in elections, prohibits restriction of this right on the basis of "social status,"⁴⁹ and states that the Independent Election Commission "shall provide special voting facilities for nomads, refugees, internal displaced people" and other groups.⁵⁰ In 2005, the Joint Electoral Management Body created an election operational plan for the Constituent Assembly elections. The plan specifically mentions preparing and promoting materials that help to "encourage the participation of minorities, internally displaced persons (IDPs) and refugees, nomads and disabled persons."⁵¹ In Kenya, the National Accord gave priority to the replacement of documents lost in the post-election violence, and in May 2008, the government began facilitating the issuance of new or replacement documents for those lost or destroyed in the course of

⁴⁵ See the detailed data report, Southern Sudan Referendum Commission, *Southern Sudan Referendum Final Results Report*, 7/2/2011 (http://southernsudan2011.com/sites/default/files/Final_Results_Report_20110206_1512.pdf).

⁴⁶ *Uganda: Internally Displaced Persons in the 2006 National Elections: Action Plan*, IOM Project on Political Rights and Enfranchisement System Strengthening (PRESS), May 2005 (www.geneseo.edu/~iompress/Archive/Outputs/Uganda_Action%20Plan_PRESS_May_05.pdf).

⁴⁷ See further the Sri Lanka case study in chapter 2 of this volume. See, for example, IOM's 2006 report, which notes that "with the exception of some important technical flaws and localized problems of inadequate implementation, the legal framework governing IDP voting could serve as an example of best practices for other countries with substantial numbers of IDPs" (www.geneseo.edu/~iompress/Archive/Outputs/Sri_Lanka_Final.pdf).

⁴⁸ CaFFE, "About 700,000 Did Not Vote in North," 1 February 2010 (www.caffe.lk/About_700,000_did_not_vote_in_North-5-1743.html).

⁴⁹ Article 5, *Decree of President of the Islamic Republic of Afghanistan on Promulgation of the Election Law (Election Law 2010)*, 18 February 2010. See further, *Realizing National Responsibility for the Protection of Internally Displaced Persons in Afghanistan: A Review of Relevant Laws, Policies, and Practices*, Brookings-Bern Project on Internal Displacement and the Norwegian Refugee Council, November 2010, p. 27 (www.brookings.edu/idp).

⁵⁰ Article 14, *Decree of President of the Islamic Republic of Afghanistan on Promulgation of the Election Law (Election Law 2010)*.

⁵¹ Joint Electoral Monitoring Body, 2005 Afghanistan Constituent Assembly, "Election Operational Plan Outline," 8 March 2004 (www.iec.org.af/Public_html/Main%20Documents/Draft%20for%202005%20Constituent%20Assembly.pdf).

displacement.⁵² In the run-up to the August 2010 referendum, the Interim Independent Electoral Commission set up voter registration centers near camps and urged IDPs to register.⁵³ The commission carried out a fresh registration of voters countrywide; hence IDPs did not need to return to the regions from which they were displaced to obtain documentation or to vote. During the referendum period, security was judged adequate for voters.

In the Central African Republic, important legislative amendments to the Electoral Code were introduced in 2010, which should address several potential obstacles to IDPs' electoral participation. The amendments address concerns such as lack of documentation, voter registration, and change of residence regulations. Even so, the fact that the Election Code does not allow for the possibility of absentee voting is certain to have a negative impact on IDPs' ability to exercise their right to vote. Moreover, to change the electoral district in which a voter is registered requires the voter to return to his or her place of previous residence to obtain a certificate of removal from the list for that district. Most IDPs are unlikely to be able to make the trip because of insecurity, lack of funds, or means of transport; in any case, the presence of administrative agencies of the state in these areas is weak. To better take into account the obstacles that IDPs face, further amendments to the Election Code are required.⁵⁴

Sometimes IDPs do not participate in elections because of the same problems facing all voters; it is hard therefore to determine to what extent low turnout rates

are the result of displacement. Many of the countries in this study are not democracies (Yemen, Myanmar) while others are beset by serious problems with security (Afghanistan, Colombia, Iraq and Central African Republic).

Governments are often seen by citizens as corrupt, and close relationships between government officials and armed groups may inhibit citizens from participating in a process that they consider illegitimate or irrelevant. When IDPs perceive governments and armed groups as having caused their displacement, IDPs may decide not to participate in the electoral process.

The electoral participation of women and of minority groups—who often make up large numbers of the IDP population in any given situation—generally is especially low. In Afghanistan, the UN Assistance Mission for Afghanistan (UNAMA) and national and international observers reported significant irregularities in the general elections in August 2009 and, noting the prevailing insecurity in much of the country, “relatively low participation of women and voters in general, especially in conflict-affected areas.”⁵⁵ Language also was an issue in Afghanistan, where the lack of public announcements in local languages about the campaign process prompted complaints from civil society representatives.⁵⁶ Language has also been an issue in Turkey, where prohibitions against the use of the Kurdish language as well as of the registration of minority political

⁵² South Consulting, *Status of Implementation Report*, August 2008.

⁵³ “Commission Calls on IDPs to Register,” *The Standard*, 5 April 2010 (www.standardmedia.co.ke/InsidePage.php?id=2000007034&catid=159&a=1).

⁵⁴ Erin Mooney, *Examen du cadre normatif de la République Centrafricaine relatif à la protection des personnes déplacées à l'intérieur de leur propre pays* (Washington, D.C.: Brookings-Bern Project on Internal Displacement, February 2011), pp. 66–70 (www.brookings.edu/reports/2010/11_car_audit_juridique.aspx).

⁵⁵ AIHRC/UNAMA, *AIHRC-UNAMA Joint Monitoring of Political Rights: Presidential and Provincial Council Elections, Third Report*, 1 August–21 October 2009, p. 1 (<http://unama.unmissions.org/Portals/UNAMA/human%20rights/3rd%20PRM%20report%2022%20oct%20ENG.pdf>); See also, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, A/64/705–S/2010/127, UN General Assembly/UN Security Council, 10 March 2010, Annex, p. 16 (www.un.org/Docs/sc/sgrep10.htm).

⁵⁶ *Islamic Republic of Afghanistan, Presidential and Provincial Council Elections, 20 August 2009, OSCE/ODIHR Election Support Team, Final Report*, OSCE, p. 33 (www.osce.org/odihr/elections/40753); Article 16, Constitution of the Islamic Republic of Afghanistan, 2004.

parties have inhibited the participation of the Kurdish population, who make up the overwhelming majority of IDPs in the country.⁵⁷

In the Democratic Republic of the Congo, some of the identified obstacles to IDP participation include lack of documentation, lack of legislation or policies enabling IDPs to vote in their community of origin, difficulties in transport, or even outright intimidation. In DRC's 2006 general elections, millions of voters elected Joseph Kabila as the country's first democratically elected president.⁵⁸ However, according to the DRC's electoral law, citizens had to vote in the place of registration. The majority of the country's 1.7 million IDPs at the time could not participate in the elections, particularly those in Ituri district, North Kivu province and Katanga province, according to the Office for the Coordination of Humanitarian Affairs. Most had left their voter registration cards behind or lost them in flight from armed groups. But insecurity also limited IDPs' freedom of movement to register; some IDPs refused to return home to vote due to fear of armed groups.⁵⁹ Looking ahead to the general elections tentatively scheduled for November 2011, IDPs who remain displaced may be unable to exercise their right to vote or the right to register on the electoral rolls.⁶⁰

⁵⁷ See the chapter on Turkey in Mooney and Jarrah, *The Voting Rights of Internally Displaced Persons in the OSCE Region*, pp. 61–64.

⁵⁸ The Carter Center, "Background: The Carter Center and the Historic 2006 Democratic Republic of the Congo Elections," 27 October 2006 (www.cartercenter.org/news/pr/drc_122606.html).

⁵⁹ See for example, Tim Cocks, "RPT: Congo's Displaced Struggle to Vote," Reuters, 28 October 2006 (www.alertnet.org/thenews/newsdesk/L28881924.htm).

⁶⁰ This was recognized by the RSG for IDPs with respect to the elections scheduled at the time for 2008; see UN Human Rights Council, *Report Submitted by the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Mission to the Democratic Republic of the Congo, A/HRC/8/6/Add.3*, 16 May 2008, paras. 56–57 (http://ap.ohchr.org/documents/dpage_e.aspx?m=71).

Even when there are no administrative obstacles to participation, there can be "self-censorship" of political participation. In Kenya,⁶¹ IDPs displaced by the 2007–2008 post-election violence face undue difficulties because of the trauma from the last elections. Many IDPs associate voting with violence and displacement: "I am in the tent because I voted; why should I vote if it means this?"⁶² Reluctance to participate in the electoral process is not a new phenomenon. The UN Fund for Women (UNIFEM) reported that there was low IDP voter turnout during the 1997 general elections due primarily to trauma from the previous election cycle, which caused displacement.⁶³ Aside from a fear of violence, some IDPs felt that the government had neglected them;⁶⁴ threatening not to vote was a strategy to draw attention to their plight as a constituency of voters.⁶⁵ Lack of confidence in the electoral system also led some IDPs to consider boycotting the whole electoral process.⁶⁶

Overall, the lack of systematic and detailed data on IDP participation in elections is striking. It is ironic that despite a solid architecture and tradition of international election monitoring globally and in the countries surveyed, the internally displaced—who not only have so much at stake in elections but also tend to be among those who lose out the most—are not a core component of all efforts to monitor and report on elections. A detailed analysis of OSCE election monitoring over several years in all IDP-affected countries shows that even in those cases, monitoring of IDPs' ability to exercise their right to

⁶¹ See further the Kenya case study in chapter 2 of this volume.

⁶² From an interview with a displaced woman at the Pipeline IDP Camp in Nakuru, 20 November 2010. See the Kenya case study, in chapter 2 of this volume.

⁶³ Prisca Mbura Kamungi, *The Lives and Life-Choices of Dispossessed Women in Kenya*, UNIFEM–African Women in Crisis Programme (UNIFEM/AFWIC), January 2002.

⁶⁴ "IDPs Shun Voter Registration, Claim Neglect," *The Standard*, 24 March 2010.

⁶⁵ South Consulting, *Status of Implementation Report*, October 2010.

⁶⁶ "Kenya: IDPs to Boycott Voter Registration," AfricaNews.com, 25 March 2010 (www.africanews.com/site/Kenya_IDPs_to_boycott_voter_registration/list_messages/30828).

vote is by no means consistent (for example, monitoring is active in Georgia but altogether lacking in Turkey).⁶⁷ While the lack of any information on IDPs' electoral participation in the Central African Republic, Myanmar and Pakistan is perhaps understandable given the political landscape in those countries, there are other cases in which one could expect more reporting on IDP participation. For example, in countries such as Nepal, Iraq and Afghanistan, there has been tremendous political interest in elections, with attention focused on electoral laws, systems, monitoring teams and the substantial international resources allocated to them; each country also has a UN agency (UN Mission in Nepal or UNMIN; UN Assistance Mission for Iraq or UNAMI); and UN Assistance Mission in Afghanistan or UNAMA, respectively) dedicated to it to assist with elections and to strengthen the rule of law and the justice system through other measures. Nonetheless, there appears to have been no collection of data on the extent to which IDPs participate in elections even in high-profile cases such as Afghanistan and Iraq. It also is surprising that in countries such as Colombia and Sri Lanka, where there has long been awareness of IDP issues and strong interest in the democratic process, there also has been so little effort to monitor the participation of IDPs in elections.

There may be a broader vicious cycle at play in the issue of political participation of IDPs in elections. Even when there are no political or administrative obstacles, IDPs may not vote because they consider national politics to be irrelevant to their lives. But when they do not participate, politicians do not have to respond to their concerns or their displacement seriously. Perhaps the reason that political leaders have not given priority to

IDP issues—to being more active in adopting needed laws and policies and promoting durable solutions—is that they do not perceive IDPs as a political constituency.

Conclusion

Across the fifteen countries surveyed, governments performed especially poorly in ensuring IDP participation in decisionmaking. Too often such efforts are limited to information sharing—one-way communication that does not constitute meaningful participation—and often not conducted properly. At best, most of the governments surveyed occasionally consulted with IDPs; however, it was difficult to gauge whether those consultations in fact represented meaningful participation. There is a difference between consultation with IDPs and their participation in decisionmaking; in none of the cases can it be definitively concluded that IDPs were active participants in decisionmaking. However, perhaps more than with other benchmarks, it is difficult to assess without talking with IDPs whether such consultative mechanisms were effective (although some effort was made, particularly in the case studies, to compensate by referring to polls and surveys of IDP opinions, where available). Another important indicator is whether governments take action to remove any specific obstacles that IDPs face, as a result of their displacement, to electoral participation, in particular to exercising their right to vote.

Displacement is linked to politics, and those who are displaced are among the most vulnerable as they tend to be already marginalized or discriminated against by their own government. Because of that, it stands to reason that their full political participation in decisionmaking and in elections is not supported by the government. With respect to voting, that is evident in the administrative and bureaucratic obstacles that IDPs face in registering to vote and in their ability to vote in elections even when registered, as examined herein. More difficult to measure is whether IDPs actually view it as valuable to actively participate in the political process when such obstacles are removed.

⁶⁷ Mooney and Jarrah, *The Voting Rights of Internally Displaced Persons in the OSCE Region*; see, in particular, pp. 63–68, “Conclusions and Recommendations,” which found that “the OSCE, both at the policy level and in the field, should devote greater and more systematic attention to the voting rights of IDPs. Particular priority should be given to mainstreaming IDP voting rights into the work of election observation missions and to ensuring that there is systematic monitoring and reporting on the extent to which IDPs are in fact able to vote.”



**Pakistan / An IDP man and his son get ready to leave Jalozai camp, where they have been accommodated for the past two months. They will return to their homes in the Swat valley. The bus ride from Jalozai to their village takes 4 to 5 hours. While some people are looking forward to returning, others remain concerned by the security near their villages of origin.
Photo: UNHCR / H. Caux / July 2009**

Benchmark 10

Establish the Conditions and Provide the Means for IDPs to Secure Durable Solutions

Is the government working—or has it worked—to establish conditions enabling IDPs to secure a durable solution to displacement?

A durable solution is achieved when internally displaced persons no longer have any specific assistance and protection needs linked to their displacement and they can enjoy their human rights without discrimination based on their displacement. It can be achieved through the following:

- sustainable reintegration in the place of origin (hereafter referred to as “return”)
- sustainable local integration in areas where internally displaced persons take refuge (local integration)
- sustainable integration in another part of the country (settlement elsewhere in the country).

As articulated in Principle 28 of the Guiding Principles on Internal Displacement, IDPs have a right to a durable solution and national authorities bear “the primary duty and responsibility to establish conditions, as well as provide the means” that allow IDPs to achieve durable solutions.¹ Supporting durable solutions is a gradual process that usually requires the additional involvement of a number of actors, including local authorities as well as humanitarian and development agencies, to identify the right strategies to assist and involve IDPs. Securing durable solutions is in the state’s best interest. Leaving IDPs in a continuing state of marginalization without the prospect of a durable solution could impede long-term stability, recovery and reconstruction in post-crisis countries.

¹ Principle 28(1), Section V, *Guiding Principles on Internal Displacement*.

While the resolution of a conflict—for example, by the signing of a peace agreement—creates opportunities to find durable solutions, it usually is not sufficient in itself to create a durable solution. Although no systematic data are available, it seems that the longer displacement lasts, the more difficult and the more unlikely return to the place of origin becomes. Most national authorities want IDPs to return to their communities once the issue that provoked their displacement is resolved, unless, of course, those authorities condoned or even caused the displacement to achieve political or military objectives. For the most part, IDPs, too, hope to be able to return home if certain conditions are in place. Indeed, they may insist on return as the only just remedy for their displacement while also insisting on support for their local integration in the interim. In many instances in which return is the preferred option, national authorities are loath to assist in the local integration of the displaced for fear of sending the message that their displacement is permanent rather than temporary.

Displacement changes individuals and societies, sometimes irreversibly. Especially in protracted situations, concepts of “home” can change, especially among those who are born into displacement. In addition, the issue of when and how displacement is resolved is usually highly politicized, with governments or other actors favoring certain solutions over others for their own reasons, irrespective of the preferences of the displaced.

In the case of natural disasters, solutions are in some respects more straightforward but in other regards more complex. Unlike in situations of displacement due to conflict, political violence or human rights violations, the possibility of return home after a disaster does not necessarily evoke fear of ongoing persecution, violence or retribution. However, the risk of a recurrence of disaster can be just as powerful an obstacle to return. Moreover, the destruction caused by a disaster can alter the landscape to such an extent that there no longer is any land—or any safe, habitable land—to which IDPs can return.

The Guiding Principles on Internal Displacement—which reflect international law, international

humanitarian law and international human rights law—underscore that regardless of the cause of displacement, “the competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow IDPs to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.” The human rights of IDPs must be respected during the process of finding durable solutions, and certain basic conditions must be met before it can be said that a durable solution has been realized. Based on the Guiding Principles, the Framework for Durable Solutions specifies that the process of resolving displacement must include the following:²

- voluntary and informed choice by IDPs of a location for a durable solution
- participation of IDPs in planning and management of durable solutions
- access to actors supporting durable solutions
- access to effective monitoring
- involvement of IDPs in peace processes and peace building and reinforcement of durable solutions for IDPs within those processes.

The Framework also spells out a set of criteria for determining the extent to which a durable solution has been achieved. There are four criteria of universal importance:

- long-term safety and security
- enjoyment of an adequate standard of living, without discrimination
- access to livelihoods and employment
- effective and accessible mechanisms to

restore housing, land and property.

In a number of contexts, consideration also needs to be given to ensuring that IDPs enjoy, without discrimination,

- access to personal and other documentation, without discrimination
- family reunification
- participation in public affairs, without discrimination
- access to effective legal remedies and justice.

Taken together, these are high standards, and not all of them have been met in any of the fifteen countries included in this study (or in most other situations of internal displacement worldwide). That fact underscores the challenges and considerable investment—of time, resources and political will—required to achieve lasting solutions to displacement. Nevertheless, it must be pointed out that most governments represented in this study took some measures to promote solutions for those displaced within their borders.

Overview of research findings

Finding solutions to displacement caused by conflict inevitably is closely linked to conflict-resolution efforts. When IDPs are able to return to their homes and communities in safety and dignity, it is a clear sign that a conflict is over or moving toward resolution or at least stabilization. Conversely, protracted displacement may be a result of protracted conflict. Yet even when a conflict is resolved, full implementation of a peace agreement and of durable solutions for all those displaced can take years. There also are cases in which governments seek to demonstrate that a conflict has been resolved by promoting IDP return—even when violence and insecurity persist in the area that they fled. In the consolidated

² *Framework on Durable Solutions*, 2010, p. 5.

analysis below, a distinction is made between

—countries in which the conflict that caused displacement has ended, whether through a negotiated peace or lasting cease-fire agreement (Nepal, Uganda and Kenya) or through a decisive military operation (Sri Lanka)

—countries in which the conflict is ongoing or violence still persists (Afghanistan, the Central African Republic, Colombia, the Democratic Republic of the Congo, Iraq, Myanmar, Pakistan, Sudan and Yemen)

—countries in which the conflict is “frozen” in that active hostilities have ceased but little hope exists that the conflict will be resolved definitively in the near future (Turkey and Georgia).

A number of the countries in this study have also experienced natural disasters which have resulted in internal displacement. While a full review of national response in this context was beyond the scope of this study, some analysis of their government’s approach to durable solutions for disaster-induced IDPs is included at the end of the summary analysis for those countries (Nepal, Myanmar and Pakistan).

Countries in which the conflict that caused displacement has ended

In Nepal, the signing of the Comprehensive Peace Agreement (CPA) in November 2006 spurred the return of tens of thousands of IDPs. Provisions of the CPA pertaining to durable solutions for the displaced included commitments to rehabilitate people displaced by the war, to return occupied land and property and to allow for the return of displaced persons.³ While Nepal’s National Policy on Internally Displaced Persons (2007) includes provisions for return, integration or

³ Government of Nepal, *Comprehensive Peace Accord Concluded between the Government of Nepal and the Communist Party of Nepal (Maoist)*, 2006 (www.peace.gov.np/admin/doc/CPA_eng-ver-corrected.pdf).

resettlement, relief assistance packages are available only to those who return. This practice indicates that the government prefers return as a solution and discriminates against IDPs who opt for local integration. The shortcomings of the government in guaranteeing security, nondiscrimination, access to basic services and property rights as well as difficulties in implementing reconciliation efforts have prevented tens of thousands of IDPs from achieving durable solutions. As of January 2010, four years after the signing of the CPA and three years after the adoption of the national policy, between 50,000 and 70,000 people remained internally displaced.⁴

IDP return also gained momentum after the government launched a relief assistance effort in 2007—a three-year program funded by the Nepal Peace Trust Fund (NPTF) to implement the CPA. The assistance, in the form of “state relief and assistance packages” was limited to officially registered IDPs who are willing to return to their place of origin—although in many districts, up to half of IDPs have been unable to register for assistance.⁵ By November 2008, just over 28,000 of the 35,000 registered IDPs had received assistance—typically a subsistence allowance for a period of four months and some support for transportation—and by end 2009,

⁴ The figures refer to those displaced between 1996 and 2006. No accurate displacement figures are available due to lack of monitoring and comprehensive registration. Figures are from the Nepal IDP Working Group (50,000–70,000, as of June 2009) and the government of Nepal (70,425, as of September 2009). See further, Internal Displacement Monitoring Centre (IDMC), *Nepal: Failed Implementation of IDP Policy Leaves Many Unassisted: A Profile of the Internal Displacement Situation*, 28 January 2010, pp. 89–92 (www.internal-displacement.org).

⁵ The state relief and assistance packages replaced a more extensive relief and rehabilitation scheme cancelled due to limited resources that was to target 50,000 IDPs with a total budget of \$5 million. Nepal IDP Working Group, *Distant from Durable Solutions: Conflict-Induced Internal Displacement in Nepal*, June 2009, [hereafter, *Distant from Durable Solutions*] (www.internal-displacement.org); IDMC, *Overview: Failed Implementation of IDP Policy Leaves Many Unassisted*, p. 5 (www.internal-displacement.org).

none of the agricultural loans envisaged as part of the returnee assistance had been disbursed.⁶ The Ministry of Peace and Reconstruction had spent only 42 percent of the NPTF funds.⁷ Of the nineteen districts that the working group surveyed throughout Nepal, only three reported having been allocated sufficient funds to meet the needs of registered IDPs. The assistance is especially vital as employment opportunities are lacking for many IDPs and returnees.⁸

Nearly half of the returnees interviewed by the Nepal IDP Working Group reported serious land, housing and property problems. More than 10,000 cases for compensation for lost or damaged property were recorded by a task force formed by the Ministry of Peace and Reconstruction in 2007. However, by the end of 2009, only 2,000 families had received support to reconstruct or repair their houses.⁹ It is widely reported that IDPs with non-Maoist political affiliations have been the most likely not to recover land and property or not to have their land returned unconditionally.¹⁰

The Internal Displacement Monitoring Centre (IDMC) reports that lack of capacity and poor coordination have hindered the limited number of government-initiated resettlement initiatives. A pilot resettlement project

was under way in Kanchanpur district as of early 2010, but the four-year project has focused only on housing construction, with no livelihood or basic service components.¹¹

Durable solutions for IDPs in Nepal are also hindered by ongoing social tension and discrimination, especially manifest in relations between lower castes and minority ethnic groups. According to the Nepal IDP Working Group in 2009, almost 40 percent of surveyed returnees reported discrimination due to tension with the rest of the community. Dalits and indigenous groups such as the Tharus, already marginalized in Nepal's caste system, were deliberately targeted by both Maoists and government forces, and many fled their homes during the conflict. Discrimination is also attributable in many instances to the stigma attached to being an IDP in Nepalese society; many IDPs prefer not to be known as IDPs.¹²

Under the CPA, both the government and the Communist Party of Nepal (Maoist) committed themselves to respecting a permanent cease-fire and to giving priority to respecting a broad spectrum of human rights. As mandated by the CPA, the National Human Rights Commission of Nepal (NHRC) monitors both parties' upholding of their human rights commitments under the agreement, investigates human rights violations and issues recommendations (see Benchmark 8). In its three-year review of the CPA, the NHRC found some improvement in the parties' human rights record but noted that they were not in compliance with all of their obligations, including by allowing impunity for human rights violators. The NHRC also found that lack of access to property, housing and land hinders some from returning, and it recommended that the government formulate a policy to address the "long-term

⁶ Nepal Peace Trust Fund, *Conflict-Induced Internal Displacement in Nepal: Four Monthly Progress Report—Fourth Report (16 May–15 September, 2008)*, 15 November 2008, p. 24, cited in IDMC, *Overview: Failed Implementation of IDP Policy Leaves Many Unassisted*, p. 5.

⁷ Government of Nepal, Peace Fund Secretariat, Ministry of Peace and Reconstruction, *Nepal Peace Trust Fund Four-Monthly Progress Report: Fifth Report (16 Sep 2008 – 15 Jan 2009)*, 28 February 2009, cited in Nepal IDP Working Group, *Distant from Durable Solutions*, p. 36.

⁸ IDMC, *Overview: Nepal*, pp. 1, 7; Nepal IDP Working Group, *Distant from Durable Solutions*, pp.10, 36-37.

⁹ Nepal Peace Trust Fund, *Four Monthly Progress Report: Seventh Report (Mid-May–Mid-September 2009)*, 15 November 2009, cited in IDMC, *Overview: Nepal*, p. 6.

¹⁰ Nepal IDP Working Group, *Distant from Durable Solutions*, pp. 27–29; Carter Center, *The Carter Center International Observation Mission in Nepal: First Interim Report*, 26 August 2009, p. 6.

¹¹ IDMC, *Overview: Nepal*, p. 8.

¹² Social Inclusion Research Fund, "Social Impact of Armed Conflict in Nepal: Cause and Impact," 6 May 2009, pp. 27–28 (www.nrc.ch/8025708F004BC2FE/postSearch?createdocument); Nepal IDP Working Group, *Distant from Durable Solutions*, pp. 23 and 28.

rehabilitation, reconstruction and socialization for the displaced people.”¹³

Efforts to promote reconciliation and to address the root causes of the conflict, including through establishing related commissions, have largely stalled. The government has, with assistance from the UN Office of the High Commissioner for Human Rights (OHCHR), sought to establish a truth and reconciliation commission, for which a provision exists in both the Interim Constitution of Nepal (2007) and the CPA.¹⁴ However, the status of the draft bill establishing the commission was unclear at the time of writing and had received criticism from OHCHR and international human rights organizations for falling short of international standards.¹⁵ The CPA also includes a provision for the establishment of a National Peace and Rehabilitation Commission, the work of which is to include “rehabilitation activities for

the victims of conflict and [the] displaced.”¹⁶ However, despite the advocacy conducted by the National Human Rights Commission (NHRC) of Nepal to the government of Nepal to create such a commission, there [has been no] effort in order to set up this commission” due to the “lack of will power of the political parties,” according to the NHRC.¹⁷

In situations of displacement due to disasters, the government is responsible for providing immediate support to IDPs and accordingly coordinates with national and international organizations. It is reported that most IDPs uprooted by natural disasters—primarily floods and landslides—are able to return to their places of origin but that long-term livelihood programs and subsistence assistance are often lacking in return areas.¹⁸

In Uganda, where there were some 1.8 million IDPs at the peak of the conflict between the government and the rebel Lord’s Resistance Army (LRA), the signing of the Cessation of Hostilities Agreement in 2006 opened up meaningful possibilities for return, which gained significant momentum in 2008. In 2004, in the National Policy for Internally Displaced Persons, the government had already committed itself to securing durable solutions to displacement.¹⁹

Following the cessation of hostilities, the government conducted demining campaigns in return areas and introduced guidelines on the return process and camp phase-out operations.²⁰ The government’s Peace,

¹³ Under provisions of the CPA, the NHRC monitors rights including the right to life; the right to individual dignity and freedom of movement (which includes a subsection on IDPs); economic and social rights; the right to health; the right to property; the rights of women; and the rights of children. NHRC, *Three-Year Comprehensive Peace Accord (CPA), Summary Report 2006–2009*, pp. 36–37 (www.nhrcnepal.org/publication/doc/reports/3-year_CPA.pdf).

¹⁴ CPA, Article 5.2.5: “Both sides agree to constitute a High-level Truth and Reconciliation Commission through mutual agreement in order to investigate truth about those who have seriously violated human rights and those who were involved in crimes against humanity in course of the war and to create an environment for reconciliation in the society.” Article 33(S) of the Interim Constitution provides for the constitution of “a high-level Truth and Reconciliation Commission to investigate the truth about those persons involved in serious violations of human rights and crimes against humanity committed during the course of conflict, and to create an atmosphere of reconciliation in the society.”

¹⁵ See further: Human Rights Watch, “Nepal: Send Human Rights Bills to Parliament,” 29 January 2009 ([/www.hrw.org/news/2009/01/29/nepal-send-human-rights-bills-parliament](http://www.hrw.org/news/2009/01/29/nepal-send-human-rights-bills-parliament)); OHCHR, “Public consultations on TRC Bill must not be cut short - OHCHR-Nepal,” 4 January 2001 (http://reliefweb.int/sites/reliefweb.int/files/reliefweb_pdf/node-253744.pdf).

¹⁶ CPA, Article 5.2.4.

¹⁷ NHRC, *Three-Year Comprehensive Peace Accord (CPA), Summary Report 2006–2009*, pp. 26–27.

¹⁸ Nepal Institute for Peace, *E-Bulletin on IDPs in Nepal*, June 2009, vol. 1, no. 1 (www.idps-nepal.org/images/e-bulletin/e-bulletin-June.pdf).

¹⁹ Government of Uganda, Office of the Prime Minister, Department of Disaster Preparedness and Refugees, *National Policy for Internally Displaced Persons*, August 2004, § 3.4

²⁰ For a discussion of the camp closure process, see further, Michelle Berg, “A Sort of Homecoming: Local Integration in Northern Uganda,” in *Resolving Internal Displacement: Prospects for Local Integration*, edited by Elizabeth Ferris,

Recovery and Development Plan for Northern Uganda (PRDP), which included as a strategic objective the facilitation of the voluntary return and resettlement of IDPs from camps, became operational in July 2008.²¹ While the PRDP aims to address the root cause of marginalization in the North and therefore is important in providing durable solutions for IDPs, in reality, as of August 2009 few IDPs had benefited from the “re-settlement packages” referred to in the National Policy for Internally Displaced Persons.²² However, the PRDP was expected to run until at least mid-2012, with a total budget of around \$600 million.²³

The vast majority of IDPs—1.1 million of the more than 1.8 million displaced in the north—were displaced in Acholiland between 2002 and 2005, at the height of the conflict.²⁴ By July 2009, roughly 80 percent of the 1.8 million IDPs had returned to their homes or to transit sites near their places of origin; even so, a significant number of people remained displaced in camps.²⁵ As of

June 2010, only some 190,000, or 17 percent of the 1.1 million displaced in Acholiland, remained displaced. According to RSG Kälín in his report on his follow-up visit to Uganda in July 2009, returns were possible in large part due to the

restoration of freedom of movement for all IDPs and the significantly improved security situation in the war-affected Acholi subregion. The shift of responsibility to uphold the law and order from the Uganda People’s Defence Force (the Ugandan army) to civilian authorities and the redeployment of civilian police to Northern Uganda was an important contributing factor.²⁶

While officially the government supported all three durable solutions, some IDPs indicated that their decision to return was not fully voluntary in light of the fact that the government’s plans for camp closure pressured them to return.²⁷ Research commissioned by the Brookings-LSE Project on Internal Displacement examining local integration in Northern Uganda found that “[s]ome Government officials have exhibited bias towards return as a preferred durable solution (subtly through messages, or overtly by issuing deadlines to leave camps). However, agencies and other officials have made efforts to clarify or counter such messaging, emphasising that return is voluntary.”²⁸

The conditions in return areas, in particular insufficient basic services, land issues and inadequate economic opportunities—in addition to insecurity in some areas and the presence of unexploded ordnance—continue to preclude sustainable returns.²⁹ On a positive note, however,

Brookings-LSE Project on Internal Displacement, June 2011 (www.brookings.edu/events/2011/01_protracted_displacement.aspx). See also UNHCR, “Ending Displacement: Report on Workshop on the Framework for Durable Solutions, Kitgum, 17–18 June 2008” August 2008 (www.internal-displacement.org); Government of Uganda, Office of the Prime Minister, “Camp Phase Out Guidelines for all Districts with IDP Camps,” May 2008 (www.internal-displacement.org).

²¹ Government of Uganda, *Peace, Recovery, and Development Plan for Northern Uganda (PRDP), 2007–2010*, p. 63 (www.prdp.org.ug).

²² IDMC, *Uganda: Returns Outpace Recovery Planning: A Profile of the Internal Displacement Situation*, 19 August 2009 (www.internal-displacement.org).

²³ Office for the Coordination of Humanitarian Affairs (OCHA), *Uganda Humanitarian Profile 2011*, p. 18. IDMC, *Overview: Uganda: Difficulties Continue for Returnees and Remaining IDPs as Development Phase Begins*, p. 6, 28 December 2010 (www.internal-displacement.org).

²⁴ Government of Uganda, “Department of Disaster Preparedness and Refugees, Office of the Prime Minister,” (www.opm.go.ug/departments.php?center_id=5).

²⁵ *Follow-Up Working Visit of the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons to Uganda, 13–17 July 2009: Memorandum on Key Findings and Recommendations*

(www.brookings.edu/projects/idp/rsg_info.aspx#Kalin).

²⁶ Ibid.

²⁷ Oxfam “From Emergency to Recovery: Rescuing Northern Uganda’s Transition,” Briefing Paper 118 (www.oxfam.org); UNHCR, “Ending Displacement: Report on Workshop on the Framework for Durable Solutions, Kitgum, 17–18 June 2008.”

²⁸ Michelle Berg, “A Sort of Homecoming: Local Integration in Northern Uganda,” p. 127.

²⁹ See further, Michelle Berg, “A Sort of Homecoming: Local

district governments in Acholiland and an interagency group have initiated a study examining the achievement of durable solutions in the region and related priorities for stakeholder action. Due to be published in December 2010, the study had yet to be published at the time of writing.

In the wake of the 2007–2008 post-election violence in Kenya, the government has undertaken efforts to establish conditions to enable IDPs to secure durable solutions.³⁰ These measures include political reforms and programs aiming to promote returnee reconciliation and reintegration, such as Operation Ujirani Mwema (Operation Good Neighborliness) and Operation Tujenge Pamoja (Operation Build Together). Many IDPs were forced to leave the camps after the government closed them, often through harsh measures that violated their basic human rights, and many did not obtain durable solutions to their displacement. Rather, they remain displaced, having moved to transit camps, urban areas and host communities. Some IDPs voluntarily returned after the signing on 28 February 2008 of the National Accord, which put an end to the violence.³¹ Under the accord, the government has also been undertaking legal and institutional reforms pertaining to land issues, poverty, youth unemployment and national unity as well as accountability.

The Mitigation and Resettlement Committee was set up to resettle and rehabilitate IDPs and work with existing peace-building mechanisms to restore peace and normalcy.³² In addition, the National Humanitarian Emergency Fund for Mitigation and Resettlement of Victims of 2007 Post-Election Violence was set up to meet the full costs of resettlement of IDPs, including reconstruction of basic housing, replacement of

household effects and rehabilitation of infrastructure.³³ In May 2008, the government launched Operation Rudi Nyumbani (Operation Return Home) to close all camps and facilitate the return of IDPs to pre-displacement areas. That was followed by the two other operations mentioned above to promote reconciliation, reintegration of returnees and reconstruction.³⁴

In addition, the government of Kenya established the Truth, Justice and Reconciliation Commission and the National Cohesion and Integration Commission in July and September 2009 respectively, to promote healing and national cohesion. In March 2010 the International Criminal Court began its investigation into the Kenya situation after it became apparent that the government was unwilling to take the lead despite strong public demand for accountability.

While a substantial number of IDPs have unimpeded access to their farms, others have ended up in “transit sites” and urban areas while others have returned to camps; as one IDP told our researcher for the project, “facilitating IDPs to move out of camps only disperses them and makes them less visible; it doesn’t mean their problems are over.”³⁵

Despite these positive actions, an unknown number of IDPs remain in at least twenty transit camps and camp-like self-help groups; often they are unable to reestablish their livelihoods or occupy the houses that have been rebuilt for them. The Kenyan government has been criticized for promoting return before peace-building and confidence-building measures were implemented. The government has also tended to focus on IDPs who own land and to attach durable solutions to land; there is no clear strategy for dealing with landless IDPs, such

Integration in Northern Uganda,” pp. 126–152.

³⁰ See the case study on Kenya in chapter 2 of this volume.

³¹ OCHA Kenya, *Kenya Humanitarian Update*, vol. 19, 15 May 2008 (reliefweb.int/node/266533).

³² National Accord Implementation Committee, *National Reconciliation and Emergency Social and Economic Recovery Strategy*, March 2008, p. iv.; on file with Kenya case study author Prisca Kamungi.

³³ OCHA Kenya, “Frequently Asked Questions on IDPs,” 16 February 2009, p. 3, (ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1109376).

³⁴ See further the Kenya case study in chapter 2 of this volume.

³⁵ Interview with an IDP in a transit site in Mau Summit, November 2010. See the Kenya case study, chapter 2 in this volume.

as squatters and non-farmers, who are unable to return for various reasons. Moreover, the methods employed by the government to move IDPs out of the camps—including use of force, lack of information, disconnection of the water supply, the end of general food distribution and promises of compensation once IDPs were back on their farms—induced involuntary return and were inconsistent with human rights standards.³⁶

The civil war in Sri Lanka displaced hundreds of thousands of people over the course of nearly thirty years. The Kumaratunga administration (1994–2005) expressed its commitment to establishing conditions for the return of IDPs through its Relief, Rehabilitation and Reconciliation Framework, which resulted—following the signing of a permanent cease-fire agreement with the Liberation Tigers of Tamil Eelam (LTTE) in February 2002—in the National Framework for Relief, Rehabilitation, and Reconciliation (2002) and the Joint Strategy to Meet the Immediate Needs of Returned Internally Displaced Persons (2002–03).

The Ministry of Resettlement and Disaster Relief Services (renamed as the Ministry of Resettlement in 2010), which managed camps and the provision of essential services, reported that it undertook several reconstruction projects to facilitate the return of IDPs to their places of origin.³⁷

Following the end of war with the LTTE in May 2009, the government of Sri Lanka gave priority to the return of the estimated 280,000 individuals internally displaced between April 2008 and May 2009.³⁸ However, obstacles to sustainable return have included inadequate de-mining of return areas—including agricultural areas, which are critical for rebuilding livelihoods—as well as damaged or destroyed homes and public infrastructure. As a result, many IDPs were displaced to host families or to temporary transit camps for protracted periods of time, and those in poorly de-mined return areas remained out of reach of international assistance. In addition, there were over 220,000 “old” IDPs, displaced prior to April 2008, primarily because of conflict.³⁹

A common theme evident from analysis of government response in Nepal, Uganda, Kenya and Sri Lanka is the priority given to IDP return and the limited support available for other durable solutions. In three of these four countries—Nepal, Uganda and Kenya—political settlements or agreements for the cessation of hostilities brought an end to the conflicts that had caused massive internal displacement, thereby opening up the possibility of return. Yet IDP returns have been slow, particularly because of inadequate conditions in areas of origin. The return of “new” IDPs in Sri Lanka constituted one of the three largest IDP return movements among all countries affected by conflict-induced internal displacement in 2010.⁴⁰

³⁶ UNHCR, *Lessons Learned from UNHCR's Emergency Operations for IDPs in Kenya*, September 2008 (www.unhcr.org/publ/RESEARCH/48e5d90d2.pdf); Kenya Human Rights Commission, *Tale of Force, Lies and Threats: Operation Rudi Nyumbani in Perspective* (Nairobi: 2008). See also KHRC Briefing Paper, “Operation Rudi Nyumbani Wapi (Return Where?): Formulating Durable Solutions to the IDP Situation in Kenya,” June 2008; “Corruption in Operation Rudi Nyumbani,” *The Standard*, September 1, 2008.

³⁷ Ministry of Resettlement and Disaster Services, “Provision for Infrastructure Development” [no date] (www.resettlementmin.gov.lk/projects-funds-resettlement.html).

³⁸ See further the Sri Lanka case study in chapter 2 of this volume.

³⁹ As of December 2010. Internal Displacement Monitoring Center, *Sri Lanka: IDPs and Returnees Remain in Need of Protection and Assistance*, 14 January 2011, p. 20 (www.internal-displacement.org).

⁴⁰ The largest return movements in 2010 were in Pakistan, Sri Lanka and the Philippines. IDMC, *Internal Displacement: Global Overview of Trends and Developments in 2010*, March 2011 p. 85 (www.internal-displacement.org). IDMC, Sri Lanka; IDPs and returnees remain in need of protection and assistance, 14 January 2011 (www.internal-displacement.org).

Countries in which the conflict or violence is ongoing

In Afghanistan,⁴¹ the government's approach to durable solutions has been to promote return; it has done little to advocate other durable solutions, such as local integration. In 2008, under a joint plan with the UN High Commissioner for Refugees (UNHCR), the government encouraged IDPs living in the three largest IDP camps to return to their home provinces. The plan received a poor response from IDPs, many of whom were unwilling to return due to insecurity, ethnic tensions and lack of economic opportunities in their places of origin.⁴² In 2009, of a total of 135,000 IDPs living in "camp-like settlements," only 7,000 returned.⁴³ According to the Afghan Independent Human Rights Commission, "growing insecurity, homelessness, disputes over property, and lack of livelihood options are the factors obstructing the return of refugees and the reintegration of returnees and IDPs."⁴⁴ The lack of attention given to land disputes is especially notable because such disputes have been not only a consequence but also a core cause of conflict and displacement. In 2007, the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons stressed that land disputes and landlessness "remain a substantial cause of displacement and a substantial obstacle to return."⁴⁵ Moreover, impunity has not been checked: the Law on National Stability and Reconciliation, passed by Parliament in 2007, has been criticized as effectively barring Afghan authorities from

prosecuting alleged perpetrators of displacement in the absence of a complaint by a victim.⁴⁶

With the conditions necessary for sustainable return lacking in many areas in Afghanistan, the reality is that many IDPs who chose to return were displaced once again. However, those who were displaced anew due to lack of basic services (as opposed to insecurity) have tended to be classified by the Afghan government as "economic migrants"; as a result, their ongoing humanitarian needs have been "easily dismissed by provincial authorities and largely ignored by relief agencies."⁴⁷ Similarly, the majority of refugee returnees and deported asylum seekers, most of whom have returned from Iran and Pakistan, have been displaced once again, largely because they were landless prior to displacement or because they found their land occupied on returning, often by members of another majority tribal or ethnic group.⁴⁸

Given the continuing conflict in the Central African Republic, efforts to find durable solutions for IDPs there also have been difficult. In June 2008, the government and all armed insurgent groups signed the Libreville Comprehensive Peace Agreement, which required the government to pass a general amnesty law and to undertake the demobilization, disarmament and reintegration

⁴¹ See further the Afghanistan case study in chapter 2 of this volume.

⁴² IRIN, "IDPs Reluctant to Return Home," 28 April 2008 (www.irinnews.org/Report.aspx?ReportId=77957).

⁴³ IDMC, *Internal Displacement: Global Overview of Trends and Developments in 2009*, May 2010, p. 76 (www.internal-displacement.org).

⁴⁴ Afghanistan Independent Human Rights Commission (AIHRC), *Report on the Situation of Economic and Social Rights in Afghanistan: IV, Qaws 1388* (November/December 2009), December 2009 (www.aihrc.org.af).

⁴⁵ OHCHR, "UN Expert Concerned about Growing Problem of Internal Displacement in Afghanistan," 20 August 2007 (www.brookings.edu/projects/idp/RSG-Press-Releases/20070820_afghanistan.aspx).

⁴⁶ See Human Rights Watch, *Afghanistan: Repeal Amnesty Law*, 10 March 2010 (www.hrw.org); Amin Tarzi, "Afghanistan: Amnesty Bill Places Karzai in a Dilemma," Radio Free Europe/Radio Liberty, 23 February 2007 (www.rferl.org/content/article/1074897.html).

⁴⁷ IRIN, "Afghanistan: Insecurity, Lack of Aid Prompt IDPs to Leave Camp," 21 June 2009 (www.irinnews.org/Report.aspx?ReportId=84926).

⁴⁸ AIHRC, *Economic and Social Rights in Afghanistan II, Kabul: Afghanistan Independent Human Rights Commission*, 1 August 2007 (www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=471f4a5b0); Alec McEwen and Sharna Nolan, "Water Management, Livestock and the Opium Economy: Options for Land Registration," Working Paper Series (Kabul: Afghanistan Research and Evaluation Unit), February 2007 (www.areas.org.af/Uploads/EditionPdfs/701E-Options%20for%20Land%20Registration-WP-print.pdf).

of rebel groups.⁴⁹ In reality, however, conflict is ongoing, as is extensive banditry by armed elements, causing continuing displacement and impeding durable solutions.⁵⁰ In addition, since the signing of the peace agreement, the LRA has infiltrated the southeast part of the country, where the state has little presence, and has launched regular attacks against the civilian population, causing the displacement of thousands.⁵¹

After the signing of the 2008 peace agreement, there was a marked decrease in the number of IDPs in the Central African Republic. At the end of 2007, there were approximately 200,000 IDPs in the country; by February 2009, the number had dropped to an estimated 106,000.⁵² As of December 2009, over 73,000 IDPs had returned to their villages of origin. Many others, however, were unable to find durable solutions, and many areas experienced an increase in violence that caused several waves of renewed displacement.⁵³ Further, the voluntary nature of return has been questioned in light of reports that “rebel groups and government forces have forced villagers to return to destroyed and looted homes in order to extract taxes from them.”⁵⁴

The main obstacles to return include insecurity, lack of basic services and poor infrastructure in areas of return.⁵⁵ During his third visit to the Central African

Republic in July 2010, RSG Kälin noted that in terms of the conflict in the north, “the humanitarian situation has stabilized compared to 2007 . . . and there has been a substantial number of returns that need to be supported.” However, those who had not returned “still face a humanitarian crisis” and “are exposed to insecurity caused, notably, by banditry.”⁵⁶

In Colombia, displacement has been protracted for the majority of IDPs for years. While active conflict continues in several parts of the country, causing new displacements, in other parts of the country the conflict appears to have subsided. At the time of writing, no peace process was under way and durable solutions remained elusive for most of the country’s IDPs.

At least in terms of the national legal and policy framework, the Colombian government’s commitment to supporting durable solutions is unequivocal. Law 387 (1997) and the National Plan for Comprehensive Assistance to the Population Displaced by Violence (1998) affirm that registered IDPs have the right to voluntary return or resettlement, although there is an expressed preference for return, and set out the responsibilities of the government to assist and protect returnees.⁵⁷ In 2009, the government adopted the Protocol for IDP Returns, which, as the title indicates, makes clear the government’s preference among solutions to displacement.⁵⁸

⁴⁹ IDMC, *Central African Republic: New Displacement Due to Ongoing Conflict and Banditry*, December 2009 (www.internal-displacement.org).

⁵⁰ Ibid.

⁵¹ OCHA, *République Centrafricaine: Activités de l’Armée de Résistance du Seigneur (LRA) (1 janvier 2010–16 mars 2011)* (<http://reliefweb.int/node/394703>).

⁵² IDMC, *Central African Republic: New Displacement Due to Ongoing Conflict and Banditry*.

⁵³ UN Security Council, *Report of the Secretary-General on the Situation in the CAR and on the Activities of the United Nations Peacebuilding Support Office in that Country*, 8 December 2009 (www.unhcr.org/refworld/docid/4b279b142.html).

⁵⁴ IRIN, “Under the Gun: Violence and Displacement in CAR,” 28 May 2009 (www.irinnews.org/Report.aspx?ReportId=84566).

⁵⁵ UN Human Rights Council, *Report of the Secretary*

General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Mission to the Central African Republic, 18 April 2008, A/HRC/8/6/Add.1 (http://ap.ohchr.org/documents/dpage_e.aspx?m=71).

⁵⁶ OHCHR, “Protect the Displaced and Help Them Return to Build Peace in Central Africa,” media statement by RSG Walter Kälin, 16 July 2010 (www.brookings.edu/projects/idp/rsg_info.aspx).

⁵⁷ Government of Colombia, Law 387 of 1997; Decree 173 of 1998 adopting the National Plan for Comprehensive Assistance to the Population Displaced by Violence (1998), available at Brookings-LSE Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Colombia” (www.brookings.edu/projects/idp/Laws-and-Policies/colombia.aspx).

⁵⁸ Acción Social, *Protocolo de Retornos* (www.internal-displacement.org).

Yet, while the government favors return, the vast majority of IDPs do not intend to return to their places of origin. To date, the Follow-Up Commission on the Public Policy of Forced Displacement—mandated by the Constitutional Court to monitor the government’s compliance with Decision T-025—has conducted three statistically rigorous “national verification surveys,” which include a host of sociodemographic and other data pertaining to IDPs.⁵⁹ According to the Follow-Up Commission’s third survey, conducted in 2010 (see figure 1-4 below), the majority of registered and of nonregistered IDPs indicated that they did not intend to return.⁶⁰ Most IDPs on the outskirts of Cartagena

surveyed by a researcher in 2007 and 2008 said that they would never return for fear of retribution by nonstate armed actors, even if those actors were demobilized, because the actors view fleeing as tantamount to IDPs’ “involvement” with the enemy and guilt.⁶¹ By contrast much of the national legal and policy framework in place is geared toward or based on consideration of return, not alternative solutions.

⁵⁹ The civil society follow-up commission is a forum composed of representatives of IDP organizations, NGOs, indigenous peoples, Afro-Colombian groups and academia.

⁶⁰ See further, Comisión de Seguimiento a la Política Pública sobre el Desplazamiento Forzado, *III Encuesta Nacional*

de Verificación de los Derechos de la Población Desplazada [Third National Verification Survey on the Displaced Population], July-August 2010, published December 2010, p. 39. Available at Consultoría para los Derechos Humanos y el Desplazamiento (CODHES) “III Informe VCS-09 Dic 10” (www.codhes.org/index.php?option=com_content&task=view&id=39&Itemid=52).

⁶¹ Stine Finne Jakobsen, “How to Behave: Advice from IDPs,” *Forced Migration Review—Feature: Armed Non-State Actors and Displacement*, no. 37, March 2011, p. 24 (www.fmreview.org/non-state.pdf).

Figure 1-4. IDP families’ intention to return, stay or resettle, 2010 (percentage)

Intention	Total	Registered	Unregistered
Return to municipality of origin	5.8	5.7	6.1
<i>Coefficient of variation</i>	5.2	5.8	12.6
Resettle in another municipality	10.2	10.4	9.4
<i>Coefficient of variation</i>	3.9	4.2	10.0
Resettle out of country	2.0	2.1	1.6
<i>Coefficient of variation</i>	9.1	9.7	25.3
Stay in this city	72.7	72.4	74.0
<i>Coefficient of variation</i>	0.8	0.9	1.9
Not specified	9.3	9.4	9.0
<i>Coefficient of variation</i>	4.1	4.4	10.3

Source: Adapted from Cuadro 4 [Table 4], p. 39, in Comisión de Seguimiento a la Política Pública sobre el Desplazamiento Forzado, *III Encuesta Nacional de Verificación de los Derechos de la Población Desplazada* [Third National Verification Survey on the Displaced Population], July-August 2010, published December 2010. Available at Consultoría para los Derechos Humanos y el Desplazamiento (CODHES) “III Informe VCS-09 Dic 10” (www.codhes.org/index.php?option=com_content&task=view&id=39&Itemid=52).

In 2009 the government continued to favor returns through an incentive program offering opportunities for housing and livelihoods to returnees; while a few thousand IDPs did return, the number amounted to less than 1 percent of the total IDP population.⁶² Moreover, where returns do occur, questions arise regarding the adequacy of municipalities' capacity and resources to assist returnees.⁶³ Municipalities facing an influx of returnees often lack financial resources due to the impact of the conflict on the community.

In 1999, during his second mission to Colombia, RSG Francis Deng had already noted that there was an "overemphasis on humanitarian assistance with scant attention paid to the prevention of displacement and support for durable solutions."⁶⁴ Ten years later, in 2009, the Constitutional Court called on the government to do more to support durable solutions to displacement, including by supporting solutions besides return.⁶⁵ The court also ordered the government to measure and report on the impact of its work on durable solutions.

⁶² IDMC, *Internal Displacement Global Overview of Trends and Developments in 2009*, May 2010, p. 51, (www.internal-displacement.org).

⁶³ See, for example, discussions with Colombian municipal authorities, including the mayor of San Carlos, to which some 5,000 IDPs returned in 2006–07: Brookings-Bern Project on Internal Displacement, *Protecting the Displaced in Colombia: The Role of Municipal Authorities—Summary Report*, Bogotá, Colombia, 14 November 2008, July 2009 (www.brookings.edu/reports/2009/07_colombia.aspx).

⁶⁴ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons Submitted in Accordance with Commission Resolution 1999/47—Addendum: Profiles in Displacement: Follow-Up Mission to Colombia*, E/CN.4/2000/83/Add.1, 11 January 2000, para. 53, p. 14 (www.brookings.edu/projects/idp.aspx).

⁶⁵ Comisión de Seguimiento a la Política Pública sobre el Desplazamiento Forzado, *El Reto ante la Tragedia Humanitaria del Desplazamiento Forzado: Superar la Exclusión Social de la Población Desplazada*, Vol. 3, April 2009, available at Consultoría para los Derechos Humanos y el Desplazamiento (CODHES) Web site: www.codhes.org/index.php?option=com_content&task=view&id=39&Itemid=52.

Conflicts over land, which are at the root of the overall conflict, are a major impediment to achieving durable solutions for IDPs in Colombia. Most IDPs were subsistence farmers who never had formal land titles or never formally registered their land. Only registered IDPs are eligible to participate in the national IDP land registration program, and even in those cases, restitution of land has been slow and incomplete. However, in a positive development in May 2011, as discussed in Benchmark 6, the government adopted a landmark land restitution law providing for the return of 500,000 hectares of land each year until 2014 to victims of the conflict, especially to those persons forcibly displaced from their lands. Between August 2010 and May 2011, the government reportedly had already returned 984,000 hectares (2.4 million acres) of land to displaced peasants and over 100,000 hectares (247,000 acres) to indigenous communities.⁶⁶ In addition, the government's Institute for Rural Development (Incoder) announced in July 2010 that it would restore titles to some 420,000 acres of land to over 3,600 Afro-Colombian families in Chocó department, near Quibdó. At the time of writing, the restitution had been delayed seven times, to June 2011.⁶⁷

But restitution of land does not guarantee returnees' security and may even endanger people given that land disputes and seizures remain a driving force of the conflict. To give just one example, in March 2011, hours after 63,000 acres of land in the Chocó department were returned to Afro-Colombian communities through

⁶⁶ *El Espectador*, "De agosto a mayo de este año: Se han formalizado, restituido y adjudicado más de 313 mil hectáreas: gobierno," 15 May 2011 (<http://elespectador.com/economia/articulo-269960-se-han-formalizado-restituido-y-adjudicado-mas-de-313-mil-hectar>), cited in Ben Hockman, "Government Orders to Speed up Land Restitution," *Colombia Reports*, 16 May 2011 (<http://colombiareports.com/colombia-news/news/16283-government-orders-to-speed-up-land-restitution.html>).

⁶⁷ Marguerite Cauley, "Govt to Return Lands to 3,650 Afro-Colombian Families," *Colombia Reports*, 18 April 2011 (<http://colombiareports.com/colombia-news/news/15676-govt-to-return-lands-to-3650-afro-colombian-families.html>).

a formal presentation by the Minister of the Interior and the Minister of Agriculture, alleged members of paramilitary groups raided the land and set ablaze approximately twelve acres of corn in Curvaradó.⁶⁸ In its appeals to the government to provide for these communities' security as ordered by the Constitutional Court, the Afro-Colombian Solidarity Network reports that such incidents have been recurring in these areas. The network was especially concerned about intensified security threats to community members after the government had withdrawn members of the National Army's 17th Brigade in Curvaradó.⁶⁹

Aiming to prevent further victimization of returnees as a result of insecurity and violence, the government established a new security body, the Integrated Center of Intelligence for Land Restitution (Centro Integrado de Inteligencia para la Restitución de Tierras, also known as CI2-RT) within the Ministry of Defense. Additional participants include the Office of the Vice President, the Ministry of Justice and Interior, the Department of Administrative Security (DAS), Social Action (Acción Social), Incoder, and organizations representing victims of violence.⁷⁰ The government sees this body as playing an important role in offering preventative protection so

that civilians do not find themselves in such danger that they need to flee in the first place.⁷¹

Internal displacement has occurred in various waves in Iraq, in addition to outbound refugee flows, as is the case with the other countries examined in this volume. Indeed, roughly one in eleven Iraqis was internally displaced as of 2010, for an estimated total of 2.8 million IDPs in the country. Just over 1 million IDPs were displaced before 2003 due to forced population movements under the former Ba'ath government; around 190,000 were displaced by armed conflict following the March 2003 invasion of Iraq; and 1.6 million were displaced by sectarian conflict triggered by the bombing of the Al-Askari shrine in Samarra in February 2006.⁷² There has been little displacement since 2009 except in the disputed northern areas. The government has given some support to establishing conditions to enable durable solutions for IDPs displaced since 2006, but the vast majority of those IDPs have yet to realize such a solution. Those displaced before 2003 have not been registered; as IDMC notes, "there is no clear assessment of the situation of this group of IDPs, which has been

⁶⁸ Tom Hayden, "Gangs Torch Land Returned to Afro-Colombians," *Colombia Reports*, 21 March 2011 (<http://colombiareports.com/colombia-news/news/15037-gangs-torch-land-returned-to-afro-colombians.html>).

⁶⁹ Constitutional Court, Judgment No. 005 (2009). Afro-Colombian Solidarity Network, "Open Letter to President Santos on Partial Withdrawal of Security Forces in Curvaradó," 14 April 2011 (www.ushrnetwork.org/content/pressrelease/open-letter-president-santos-partial-withdrawal-security-forces-curvarad%C3%B3).

⁷⁰ Government of Colombia, Ministry of Defense, "Gobierno Nacional lanza plan de seguridad para beneficiarios de la restitución de tierras," 16 March 2011 (www.mindefensa.gov.co/irj/go/km/docs/documents/News/NoticiaGrandeMDN/50803ba7-0532-2e10-fe8a-b0d4d44a3f0a.xml); Centro Integrado de Inteligencia para la Restitución de Tierras, *Revista Gobierno*, [no date] (www.revistagobierno.com/portal/index.php?option=com_content&view=article&id=4648:centro-integrado-de-inteligencia-para-la-restitucion-de-tierras&catid=6:ministerios&Itemid=23).

⁷¹ Government of Colombia, Ministry of Defense, "Gobierno Nacional lanza plan de seguridad para beneficiarios de la restitución de tierras."

⁷² UN Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Visit to Iraq*, A/HRC/16/43/Add.1, 16 February 2011 (www.brookings.edu/projects/idp/rsg_info.aspx). According to figures from the Kurdistan Regional Government for the three northern governorates and the Iraqi Ministry of Displacement and Migration for the fifteen central and southern governorates, more than 1,680,000 IDPs (270,000 families) have been displaced throughout Iraq since 2006; see IOM, *Review of Displacement and Return in Iraq*, February 2011 (www.iomiraq.net). According to UNHCR, however, there are 1.258 million IDPs in Iraq; UNHCR, *UNHCR Iraq Operation Monthly Statistical Update on Return: July 2011* (www.iauiraq.org/documents/1497/Return%20Update%20IRAQ%20JUL%202011.pdf). See also IDMC, *Iraq: Little New Displacement but around 2.8 Million Iraqis Remain Internally Displaced: A Profile of The Internal Displacement Situation*, 4 March 2010, pp. 8–9 (www.internal-displacement.org).

largely unaddressed by the Iraqi government as well as the international humanitarian community.⁷³ However, the government has taken some measures to adjudicate property disputes for this group of IDPs, as discussed below.

As have other governments, the Iraqi government has given priority to return over other solutions (see below). However, at the time of writing, only a few hundred thousand post-2006 IDPs had returned, and return was unlikely for many of the remaining IDPs, given threats to their lives; insecurity; damage to, destruction of, or lack of access to housing; poor access to water and basic services; and limited economic opportunities. Indeed, while obstacles to return have varied by governorate and over time, a combination of those factors has precluded return or has resulted in further displacement of returnees. IDPs who have returned have tended to do so in areas where security has improved and where they can find employment.⁷⁴

With respect to factors inhibiting return, according to UNHCR in December 2009, nearly 36 percent of IDPs reported that their property had been damaged or destroyed; 18 percent reported that it was being occupied illegally by militias, local residents or other IDPs; and many feared harassment should they attempt to reclaim their property. Fifteen percent of returned IDPs and over half of returned refugees (56 percent) were unable

to access their property.⁷⁵ According to an April 2010 report of the International Organization for Migration (IOM), the 375,000 IDPs who had returned attributed their decision to do so to a combination of improved security in the area of return, onerous conditions in displacement, and government and other assistance.⁷⁶ Further, UNHCR has reported that returnees were mainly Shi'a and Sunni Arabs who tended to return to areas under the control of their communities, with approximately 58 percent of IDP returns having occurred within the same governorate, principally in Baghdad and Diyala.⁷⁷ By the end of 2009, only 40 percent of returnees surveyed by IOM had registered and applied for a government grant and only 30 percent of applicants had received one.

These conditions help to explain the fact that since 2006, according to IOM's regular surveys, the proportion of IDP families whose preferred option was local integration increased from 25 percent in 2006 to 44 percent as of February 2011 across Iraq, with an increase in Babylon governorate from 77 percent to 87 percent over the same period. The corresponding percentages remained high in Basrah (77 percent), Najaf (70 percent), and Qadissiya (67 percent) governorates. The percentage of IOM-surveyed IDP families desiring resettlement to a third location decreased while the number of families wishing to return to their place of origin increased in 2008, from 45 percent to 60 percent, but decreased to 35 percent in October 2010.⁷⁸

With respect to the pre-2003 IDPs, the government has supported positive steps to realize durable solutions, including establishment of the Commission for

⁷³ IDMC, *Iraq: Overview: Political Wrangling Leaves around 2.8 Million Displaced Iraqis with No Durable Solutions in Sight*, 2010, p. 7 (www.internal-displacement.org).

⁷⁴ IOM, *IOM Emergency Needs Assessment: Four Years of Post-Samarra Displacement in Iraq*, 13 April 2010 (<http://reliefweb.int/node/351148>). According to IOM in its assessment of post-2006 IDPs, «Families who choose to return to their place of origin base their decision on several factors, ranging from improved security in their place of origin to the harsh conditions they face during displacement. It is usually a combination of factors, but IOM field monitors find that families are generally more likely to return to their homes if the security situation has improved and they are able to secure employment.» See IOM, *Review of Displacement and Return in Iraq*, February 2011.

⁷⁵ UNHCR, «UNHCR Reiterates Concern about Involuntary Returns to Iraq Amid Violence», 11 December 2009 (www.unhcr.org/4b222efe9.html).

⁷⁶ IOM, *IOM Emergency Needs Assessment: Four Years of Post-Samarra Displacement in Iraq*, 13 April 2010.

⁷⁷ UNHCR, *UNHCR Iraq Operation Monthly Statistical Update on Return: August 2010* (www.iauiraq.org).

⁷⁸ IOM, *IOM Iraq Report: Five Years of Post-Samarra Displacement*, February 2011, p. 18 (<http://reliefweb.int/node/389935>).

the Resolution of Real Property Disputes (CRRPD) in 2006 to settle property disputes arising from displacement caused by the Ba'ath regime's policies between July 1968 and April 2003. By October 2009, it had received over 156,000 claims and ruled on almost 43,000; therefore nearly three of four land and property disputes still awaited resolution.⁷⁹ Property destruction is not addressed by the CRRPD, meaning that groups such as Marsh Arabs and Kurdish communities whose entire villages were destroyed are not included in the scope of the commission. In early 2010, legislation was passed to replace the CRRPD with the Real Property Claims Commission, which is to include a compensation program for movable and immovable property expropriated or damaged under the former government.

To encourage returns, in 2008 the government of Iraq passed Prime Ministerial Order 101 and the accompanying Council of Ministers Decree 262, aiming at private property restitution. Under the decree, the Ministry of Displacement and Migration provides a stipend of 1,000,000 Iraqi dinars (\$850) for eligible IDP and refugee returnees and a rental compensation package (for a period of six months) to registered IDPs who have been residing as secondary occupants; it also assists or refers returnees to ministries for assistance through its return assistance centers.⁸⁰ However, these programs have been inadequately implemented. In July 2009, the Iraqi government initiated its Diyala Return and Integration Initiative with the United Nations in accordance with Prime Ministerial Order 54 to establish conditions for durable return for over 95,000 displaced

Iraqis displaced between 2006 and 2007; the initiative included support for nearly 17,000 jobs as of February 2010.⁸¹ According to RSG Walter Kälin, the initiative is “a positive model for returns and reintegration” and is intended to be replicated in three key areas of return in Baghdad as well as in Salaheddin governorate. The Diyala program was significant in that it mobilized the efforts of development actors to create economic incentives for providing jobs for returnees, but the program seems to have stalled. Gaps in the program point to the need to address inadequate returnee assistance, to enhance coordination structures and improve the capacity of governorate institutions, as Kälin has advocated. In addition, Kälin has called for solutions for allocating land for IDPs who will not return.⁸² With a housing shortage of approximately 2 million units for Iraq's population as a whole, housing is clearly not an issue for IDPs only. While the government has developed, in partnership with UN HABITAT, a national housing policy, the policy falls short of addressing internal displacement. Hence UN HABITAT has developed a national shelter strategy with the government.⁸³

The government of the Democratic Republic of the Congo (DRC) has largely fallen short of its responsibility to establish the conditions necessary for IDPs to

⁷⁹ For a more in-depth discussion of the CRRPD, see Peter van der Auweraert, “Land and Property Issues in Iraq: Present Challenges and Future Solutions—Discussion Points,” pp. 27–37, in *Resolving Iraqi Displacement: Humanitarian and Development Perspectives, 18-19 November 2009, Doha, Qatar*, edited by Elizabeth Ferris (Washington, D.C.: Brookings-Bern Project on Internal Displacement, April 2010 (www.brookings.edu/reports/2009/1119_iraqi_displacement.aspx)).

⁸⁰ Eligible refugees must have spent eight to twelve months outside the country. IOM, *Iraq Displacement and Return Mid-Year Review: 2008* (www.iomiraq.net/iomdmyear.html).

⁸¹ Order 101 was extended to Diyala through Prime Ministerial Order 54, which also stipulates that return is to be conducted with the support of international agencies. UNHCR Iraq: *UNHCR Monthly Highlights, August 2009*, 31 August 2009 (<http://reliefweb.int/node/326601>).

⁸² UN Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Visit to Iraq*, February 2011. Randa Jamal, “Iraq: The Diyala Initiative: Facilitate the Reintegration of Returnees,” UNAMI (<http://reliefweb.int/node/346131>).

⁸³ UNAMI, “Press Statement: Iraq Ministry of Construction and Housing delivers Iraq's National Housing Policy in cooperation with UN-HABITAT,” 7 November, 2010 (www.uniraq.org/newsroom/getarticle.asp?ArticleID=1448); Peter Van der Auweraert, “Displacement and National Institutions: Reflections on the Iraqi Experience,” Middle East Institute, June 2011 (www.refugeecooperation.org).

secure a durable solution to their displacement, but it has taken some steps to stabilize conflict areas and work toward the return of the displaced.

Most IDPs in the DRC have been displaced multiple times, and aid workers have difficulty providing assistance in many instances because of insecurity and logistical constraints. In his 2008 mission report, RSG Walter Kälin called attention to the fact that houses had been destroyed; that infrastructure, including schools, was lacking in the areas of return; and that female-headed households were especially vulnerable. Many of the women he met during his mission, particularly returning IDPs, said they were vulnerable to acts of violence, including rape, in return areas.⁸⁴ Returns have provoked land disputes among various ethnic groups and between returnees and those occupying their land, who in many instances have also been displaced.⁸⁵ However, in spite of the difficulties and the fact that returnees often experience renewed displacement, large numbers of IDPs have returned to their communities. For example, in 2009, 1 million returnees were reported, half of them in North Kivu. That constituted the highest number of returns in Africa for that year and the second-highest number in the world, after returns in Pakistan.⁸⁶

Notably, in June 2009 the prime minister of the Democratic Republic of the Congo launched the Stabilization and Reconstruction Plan for War-Affected Areas (STAREC), funded and supported by the United Nations, for the stabilization and rebuilding of former

conflict zones in the east of the country, including through the return, reintegration and recovery of IDPs and refugees.⁸⁷ The priorities outlined in STAREC fall into three main categories: security and restoration of state authority; humanitarian and social assistance; and economic recovery.⁸⁸

However, according to the prime minister in 2009, STAREC had been stymied “due to a number of constraints, such as the armed confrontations between the National Congress for the Defence of the People (CNDP) and the Armed Forces of the Democratic Republic of Congo (FARDC).”⁸⁹ Indeed, a range of triggers of conflict and violence—such as social and economic marginalization, inter-ethnic tensions and land and property disputes—have also impeded progress on IDP and refugee returns. Funding has also been identified as a major limitation to STAREC’s ability to provide durable solutions for IDPs.⁹⁰

The Truth and Reconciliation Commission of the DRC, created in 2002 by the Comprehensive Peace Agreement, was constitutionalized in the Transitional Constitution (2003) as a means to achieve national unity, including through the provision of compensation to victims. However, the commission’s work has been limited; reportedly it is unable to conduct investigations

⁸⁴ UN Human Rights Council, *Report submitted by the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum—Mission to the Democratic Republic of the Congo*, A/HRC/8/6/Add.3, 16 May 2008, para. 60 (http://ap.ohchr.org/documents/dpage_e.aspx?m=71).

⁸⁵ International Crisis Group, *Congo: Four Priorities for Sustainable Peace in Ituri*, Crisis Group Africa Report No. 140, 13 May 2008 pp. 9–10 (www.crisisgroup.org).

⁸⁶ IDMC, *Internal Displacement: Global Overview of Trends and Developments in 2009*, p. 17; IDMC, *Democratic Republic of the Congo: Over 2.1 Million IDPs in the Context of Deteriorating Humanitarian Conditions, February 2010*, p. 4 (www.internal-displacement.org).

⁸⁷ GoDRC, *Programme de Stabilisation et de Reconstruction des Zones Sortant des Conflits Armés: STAREC*, June 2009; UNDP, “Trust Fund Factsheet: DRC Stabilization and Recovery” (<http://mdtf.undp.org/factsheet/fund/CRF00>); *Stabilization and Recovery Funding Facility for the Democratic Republic of Congo: Terms of Reference*, final version, 5 November 2009 (<http://monusco.unmissions.org/LinkClick.aspx?fileticket=E8IWO6fjJIY%3D&tabid=4516&mid=4889>).

⁸⁸ See UN Peacebuilding Fund, “Priority Plan for the Democratic Republic of Congo,” (<http://monusco.unmissions.org/LinkClick.aspx?fileticket=YWXss5SIqH8=&tabid=4521&mid=4888>).

⁸⁹ MONUC, “UN Supports Revised Stabilization and Reconstruction Plan for Eastern DRC,” 24 February 2009 (<http://reliefweb.int/node/298860>).

⁹⁰ UN Peacebuilding Fund, “Priority Plan for the Democratic Republic of Congo.”

of human rights violations and focuses instead on conflict-mediation activities.⁹¹

The government of Myanmar does not recognize the existence of conflict-induced IDPs. The talks between the Karen National Union and the military regime, then called the State Peace and Development Council, in December 2003 and January 2004—during which territorial demarcations and the return of internally displaced Karen were reportedly discussed⁹²—led to a provisional cease-fire followed by some small-scale, spontaneous returns of IDPs.⁹³ However, for the vast majority of conflict-induced IDPs, there is little possibility and no support for durable solutions.

Regarding the IDPs displaced by Cyclone Nargis in 2008, the Post-Nargis Recovery and Preparedness Plan includes a subsection on return, reintegration and resettlement, which stipulates that families displaced by Cyclone Nargis will be given assistance to “either return to their native villages or to integrate fully at their new location.” Assistance for resettlement is reserved for special circumstances, but the plan does not specify what conditions would need to be met in order to qualify for resettlement assistance.⁹⁴ In practice, it is unclear what

assistance has been provided to the disaster-induced IDPs to secure a durable solution to their displacement. Obtaining such information has become all the more challenging since the government introduced in 2010 the practice of providing streamlined development assistance through the relevant line ministries rather than coordinating the channeling of all such funds through the Ministry of Social Welfare Relief and Resettlement.

Data on durable solutions for IDPs displaced by conflict in Pakistan are scarce, but it seems that government authorities have made only minimal efforts to establish conditions to enable IDPs to secure durable solutions. As in other countries, the government has given priority to return, despite the insecurity, lawlessness, physical destruction, and lack of basic services and economic opportunities in areas of origin.⁹⁵ Many observers have questioned whether the returns are truly voluntary and have raised concerns that the government gives military and political considerations priority over the rights and safety of IDPs.⁹⁶ Furthermore, the Pakistani army reportedly has prevented IDPs near the Line of Control dividing Pakistan- and India-administered Kashmir from attaining durable solutions.

In July 2009, the government declared victory over militant groups in the Swat Valley and formally announced that it would begin the IDP return process; accordingly, it signed a return policy framework with the UN. By August 2009, between 1.6 and 1.9 million of the 2.7 million IDPs from the Swat Valley and Buner District had returned, according to UNHCR.⁹⁷ However, according to

⁹¹ GoDRC, *Loi No. 04/018 du 30 Juillet 2004 portant organisation, attributions et fonctionnement de la Commission Vérité et Réconciliation* (www.leganet.cd/Legislation/DroitPenal/Loi01.18.30.07.2004.CVR.htm); Theodore Kasongo Kamwimbi, “The DRC Elections, Reconciliation, and Justice,” *Pambazuka News* (www.ictj.org/en/news/coverage/article/986.html); United States Institute for Peace (USIP), “Truth Commission: Democratic Republic of Congo,” Truth Commissions Digital Collection (www.usip.org/resources/truth-commission-democratic-republic-congo).

⁹² C. Guinard, “KNU Cease-Fire Talks: Negotiating a Return to the ‘Legal Fold,’ and the Fate of Millions of Karens,” *Burma Issues Newsletter*, vol. 14, no. 3, March 2004 (www.karen.org/news2/messages/142.html).

⁹³ Ashley South, “Burma: The Changing Nature of Displacement Crises,” Refugee Studies Center, University of Oxford, Working Paper No. 39, February 2007 (www.rsc.ox.ac.uk/publications/working-papers).

⁹⁴ Tripartite Core Group, *Post-Nargis Recovery and Preparedness Plan*, December 2008 (www.aseansec.org/CN-PONREPP.pdf); citation from p. 59.

⁹⁵ See for example, Amnesty International, “As If Hell Fell On Me”: *The Human Rights Crisis in Northwest Pakistan*, 10 June 2010 (www.amnesty.org); IDMC, *Pakistan: Flooding Worsens Situation for People Displaced by Conflict in Northwest: A Profile of the Internal Displacement Situation*, 6 September, 2010 (www.internal-displacement.org).

⁹⁶ See, for example, Overseas Development Institute, *A Clash of Principles? Humanitarian Action and the Search for Stability in Pakistan*, Humanitarian Policy Group, Policy Brief 36, September 2009 (www.odi.org.uk); Refugees International, *Pakistan: Protect People First*, October 2009 (www.refugeesinternational.org).

⁹⁷ UNHCR, *The End of the Road? A Review of UNHCR’s Role*

major international agencies assisting IDPs in Pakistan, those returns often were premature because there were ongoing hostilities in some return areas as well as unexploded ordnance and damaged infrastructure and public services.⁹⁸ Secondary displacement reportedly occurred in Swat District in October 2009 when the government failed to adequately ensure durable returns;⁹⁹ however, it has been difficult to obtain reliable information because access to affected areas by international relief agencies has been severely restricted.¹⁰⁰ According to a UN survey, by July 2010 those still internally displaced cited lack of security, damaged property and lack of employment opportunities as the main reasons that they did not want to return, with many preferring local integration instead.¹⁰¹

With respect to those displaced by the 2010 flooding, Qamar Zaman Kaira, the Minister for Information and Broadcasting, assured the National Assembly in February 2010 that “every registered IDP will be settled [in] his home. Disaster Need Assessment (DNA) has been completed and everybody will be paid compensation for damages.” The minister explained that registered IDPs would receive food rations, relief money and later 25,000 Pakistani rupees (Rs) (approximately \$288) per family for their return, in addition to the compensation that would be paid.¹⁰² The compensation package

announced by the government in September 2010 was to comprise Rs 20,000 (approximately \$230) per flood-affected family plus another payment of Rs 100,000 (approximately \$1,150) for reconstruction of their homes. The government had already delayed one cash payment by September 2010 but Rs 20,000 had been disbursed to 1.4 million flood-affected families by March 2011 through an innovative practice: electronic prepaid debit cards called “Watan cards,” totalling nearly Rs 30 billion (\$234.5 million). This cash transfer program was based on two previous cash compensation schemes the government implemented in response to the 2005 South Asia earthquake and the conflict displacement in Pakistan in North West Frontier Province (officially renamed Khyber Pakhtunkwa province in April 2010) in 2009. Some of the issues in delays in Punjab province stemmed from the issues the provincial Punjab government reportedly faced in declaring too many villages as flood-affected, which eventually became undeclared as such, according to Pakistani press reports in October 2010; Punjab closed its Watan card registration centers on 15 December 2010. The World Bank announced at the end of March 2011 its financial support to the second phase of the compensation system, the disbursement of 4 Rs 40,000 (approximately \$460) to some 1.1 million most affected households, or 7.5 to 8.3 million people, for the reconstruction of homes using the Watan card scheme.¹⁰³ Meanwhile, as of July 2011, these millions of flood-affected have been left without durable solutions to their displacement.

in the Return and Reintegration of Internally Displaced Populations, PDES/2010/09, July 2010, pp. 47–48 (www.unhcr.org/4c4989e89.pdf).

⁹⁸ Ibid., p. 47; “Pakistan Crisis ‘Far from Over’ as Some Displaced Return Home,” press release, International Rescue Committee, 17 July 2009 (<http://reliefweb.int/node/317400>).

⁹⁹ IDMC, *Pakistan: Millions of IDPs and Returnees Face Continuing Crisis: A Profile of the Internal Displacement Situation*, December 2009.

¹⁰⁰ Refugees International, *Pakistan: Protect People First*, October 2009.

¹⁰¹ IRIN, “Pakistan: IDPs Reluctant to Return” (www.irinnews.org/Report.aspx?ReportId=89796).

¹⁰² Government of Pakistan, “Pakistan: Government Committed to Rehabilitate Every Registered IDP: Kaira” (<http://reliefweb.int/node/344864>). US dollar equivalents were made using the exchange rate of PKR (Pakistani

rupee) to USD (US dollar) at 86.87 on 30 September 2010.

¹⁰³ Zeeshan Haider, “Pakistani floods survivors await help to rebuild,” Reuters, 23 September 2010 (www.trust.org/alertnet/news/pakistani-floods-survivors-await-help-to-rebuild); Imran Mukhtar, “NADRA faces problems in distribution of Watan Cards,” 10 October 2010 (www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Politics/12-Oct-2010/NADRA-faces-problems-in-distribution-of-Watan-Cards); World Bank, “World Bank Supports Flood Affected Households in Pakistan with Cash Grants to Rebuild Lives,” Press release no. 2011/397/SAR, 29 March 2011 (<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:22872509~menuPK:34463~pagePK:34370~piPK:34424~theSitePK:4607,00.html>).

The Watan scheme is a creative approach aiming to provide immediate relief to millions of affected individuals—a task which would surely pose a challenge for any government—but there are some areas for improvement. UNHCR’s evaluation of the Watan program in the floods response points to some serious protection issues that have arisen, including that not all flood-affected villages were included and “the process for identifying flood affected villages was not systematic or transparent,” but also that there was inequitable access to registration and assistance, particularly for women, children and female-headed households, and unaccompanied/separated minors and child-headed households were excluded from the WATAN scheme. In addition, not all registered families could access ATMs to retrieve the money, particularly in rural areas, and there were technical issues with the cards and insufficient funds in some participating banks.¹⁰⁴

Sudan has topped the list of countries with the most IDPs since statistics on IDPs have been collected. Its two largest displacement situations are in Southern Sudan and Darfur. While a peace agreement has been in place in Southern Sudan since 2005, making it possible to work to find solutions to displacement, the conflict in Darfur is ongoing, notwithstanding several attempts to secure a comprehensive peace agreement with all of the parties to the conflict. In addition, significant displacements have occurred in other areas, including Abyei and South Kordofan. The progress made toward durable solutions varies across these different situations, although a common theme is that in all cases, considerable work remains to be done.

Finding durable solutions to displacement in South Sudan is especially challenging given the scale of displacement that occurred during the conflict between 1983 and 2005: 4 million IDPs and 500,000 refugees

(making Sudan the country with the largest IDP situation, even before Darfur). The conflict officially was brought to an end with the signing of the Comprehensive Peace Agreement in 2005. In accordance with the terms of the agreement, Southern Sudan held a referendum on independence in January 2011, which led to the independence of the country in July 2011. Over 320,000 Southern Sudanese returned from Sudan between October 2010 and early August 2011 according to the International Organization for Migration, which tracks returns.¹⁰⁵ In the years between the peace agreement and the independence of what is now the Republic of South Sudan, the government of the Republic of Sudan and the government of Southern Sudan largely failed to establish conditions enabling IDPs to secure a durable solution to displacement; nevertheless, both governments pushed for return. However, insecurity, lack of employment and economic development, lack of basic services and lack of access to land have impeded durable returns in South Sudan and adjacent areas.¹⁰⁶ The UN

¹⁰⁵ See OCHA, *Sudan: Weekly Humanitarian Bulletin, 29 July – 4 August 2011* (http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_2039.pdf).

¹⁰⁶ See for example: IDMC, *Sudan: Durable Solutions Elusive As Southern IDPs Return and Darfur Remains Tense—A Profile of the Internal Displacement Situation* (www.internal-displacement.org); Kenneth H. Bacon, “Helping to Rebuild South Sudan,” Testimony before the United States Commission on International Religious Freedom, 24 September 2008 (www.refintl.org/policy/testimony); UN Commission on Human Rights, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Mission to the Sudan (3–13 October 2005)*, E/CN.4/2006/71/Add.6 (13 February 2006) ([ww.brookings.edu/projects/idp/rsg_info.aspx](http://www.brookings.edu/projects/idp/rsg_info.aspx)); Sara Pantuliano and others, *The Long Road Home: Opportunities and Obstacles to the Reintegration of IDPs and Refugees Returning to Southern Sudan and the Three Areas*, Synthesis Paper, Humanitarian Policy Group, Overseas Development Institute, September 2008 (www.odi.org.uk); See also Joel Charny, “Africa’s Forgotten Refugees and Returnees,” Statement to the Subcommittee on Africa and Global Health, Committee on Foreign Affairs, Refugees International, 20 June 2007 (www.refugeesinternational.org).

¹⁰⁴ See UNHCR/Protection Working Group, *The WATAN Scheme for Flood Relief: Protection Highlights 2010 - 2011*, May 2011 (http://floods2010.pakresponse.info/LinkClick.aspx?fileticket=_SpKC9jJCIY%3D&tabid=206&mid=1604).

Secretary-General has noted these and other serious obstacles to securing durable solutions in the South: “Local security and land distribution are among the most urgent issues, but continued efforts are also required to develop options for both rural and urban livelihoods, expanding local services, and promoting inter- and intra-community reconciliation.”¹⁰⁷ In the absence of those conditions and in the context of continued inter-ethnic violence, a number of returnees have been displaced again. According to an IOM report in 2009, “failed returns” include 10 percent of IDP returnees (an estimated 185,000 people) who were such secondarily displaced persons.¹⁰⁸

Planned reintegration schemes that were under discussion in 2009 between the United Nations and the government of Southern Sudan to cover travel costs and school construction to assist 500,000 IDP returnees by 2011 were criticized as falling well short of establishing durable solutions.¹⁰⁹ It is unclear whether this plan is related to the \$25 million “emergency repatriation” program entitled “Come Home to Choose,” unveiled in mid-2010 by the humanitarian affairs and disaster management ministry of the government of Southern Sudan, under which 1.5 million Sudanese from the North would return to the South in time for the December 2010 referendum on secession from the North. The program had prompted concerns that the returns were politically motivated and would be neither voluntary nor durable, as aid organizations already had difficulty integrating existing returnees.¹¹⁰

With the independence of South Sudan in July 2011, national responsibility for securing durable solutions to displacement has shifted fully to the government of South Sudan. Given the scale of the displacement and the centrality of the issue to the conflict, securing durable solutions for the millions of IDPs and refugees from South Sudan surely will be among the greatest challenges faced by this young country as well as among the main criteria by which its new government will be judged.

In Darfur, conflict displaced 2.7 million people IDPs and 300,000 refugees from 2003-09 and displacement continues, with 268,000 new IDPs in 2010 and ongoing displacement in 2011, though some returns also have taken place. Various efforts to halt the violence and resolve the conflict have been attempted but, to date, have failed to secure a comprehensive and lasting peace agreement. In 2006, the Darfur Peace Agreement was brokered after consultations with various armed groups.¹¹¹ However, only one of the various nonstate armed groups in Darfur—the Sudan Liberation Movement—signed the agreement with the government, and in 2011, the group’s leader, Minni Minnawi, retracted his support for the deal entirely. In 2009, the African Union and United Nations restarted peace talks for Darfur, which were hosted by the government of Qatar. Together with the government of Sudan, all the nonstate armed groups had a standing invitation to join the talks, but only the Liberation and Justice Movement (a recently formed amalgam of several armed factions) and, only sporadically, the Justice and Equality Movement (JEM), a long-standing and militarily significant rebel group, participated in the talks. The return of refugees and

¹⁰⁷ UN Security Council, *Report of the Secretary-General on the Sudan*, S/2009/61, 30 January 2009, para. 47, p. 9 (www.un.org/Docs/sc/sgrep09.htm).

¹⁰⁸ IOM, *IOM Tracking of Returns Project: Total Returns to Southern Sudan and Southern Kordofan, Post CPA to December 2009*, March 2010, p. 9 (www.iom.ch/jahia/.../docs/tracking_returns_annual_report_dec2009.pdf).

¹⁰⁹ Refugees International, *South Sudan: Urgent Action Needed to Avert Collapse*, 26 March 2009 (www.refugeesinternational.org).

¹¹⁰ Refugees International, “Statement by Refugees International on the Government of Southern Sudan’s Mass Repatriation Plans,” 27 August 2010 (www.refugeesinternational.org); Agence France-Presse, “South

Sudan Plans Return of 1.5 Million for Referendum,” 24 August 2010 (www.nation.co.ke/News/africa/South%20Sudan%20plans%20return%20of%201.5%20million%20for%20referendum/-/1066/995754/-/dfd1qdz/-/); Hannah Entwisle, *The End of the Road? A Review of UNHCR’s Role in the Return and Reintegration of Internally Displaced Populations*, UNHCR, Evaluation Reports, 1 July 2010 (www.unhcr.org/4c4989e89.html).

¹¹¹ See the full text of the peace agreements at UNDP Sudan (www.sd.undp.org/SudanPanda.htm).

IDPs, including compensation for losses suffered as a result of displacement, was among the five priority issues of the peace process (the others were security arrangements, power sharing, wealth sharing, and justice and reconciliation). The Doha Process concluded in July 2011 with a framework agreement between the government and only the Liberation and Justice Movement; the agreement cites the Guiding Principles on Internal Displacement. However, a comprehensive peace deal will require an agreement among all parties to the conflict, including in particular the Justice and Equality Movement (JEM) and the Sudan Liberation Movement–Abdel Wahid armed groups.

Especially in the absence of a comprehensive peace agreement for Darfur, progress toward achieving durable solutions to displacement inevitably is limited due to continued insecurity and ongoing problems of safe and unrestricted humanitarian access to all conflict-affected areas and populations. Nonetheless, certain efforts have been made, especially by affirming the relevance of key international standards and putting in place mechanisms to ensure that those standards are observed. In particular, the High-Level Committee for Darfur, of which the government of Sudan is a member, agreed to a joint verification mechanism for returns in October 2009, in line with the UN Guiding Principles on Internal Displacement and Sudan's National Policy on Internally Displaced Persons.¹¹² IDP returns in Darfur are monitored and coordinated by the Humanitarian

Aid Commission of the government of Sudan, UN agencies, the International Organization for Migration, the United Nations–African Union Mission in Darfur and NGOs. The mechanism was activated in December 2009. Its work has only underscored the severe lack of the conditions necessary to achieve durable solutions. In July 2010, reporting on over 100 assessment missions conducted over five months, the UN Secretary-General revealed that permanent and durable returns were few and far between in all three states of Darfur due to “rural insecurity and land tenure disputes, crop destruction and a lack of rule of law and basic services in areas of origin.”¹¹³ Until those issues are resolved, safety is ensured, and a voluntary choice is offered of possible solutions—whether return, local integration or resettlement—it is difficult to envisage meaningful progress in the search for durable solutions for IDPs and refugees displaced by the ongoing conflict in Darfur.

In Yemen as elsewhere, the government has promoted return as the preferred solution for IDPs. In 2009, while conflict was ongoing, it was reported that IDPs living in camps had been pressured, either directly or through the withdrawal of humanitarian assistance, to return.¹¹⁴ Moreover, many IDPs risked secondary displacement on returning, as they were going back to destroyed homes, communities without services, and often a lack of security due to the absence of government forces and the presence of land mines and unexploded ordnance.¹¹⁵ Those conditions also prevented access to income-generating opportunities, pushing many IDPs into trafficking and child labor.¹¹⁶

¹¹² The High-Level Committee for Darfur was established in 2008 by the “Joint Communiqué on Facilitation of Humanitarian Activities in Darfur” in 2008. Its members are the Government of National Unity, the African Union, UN humanitarian agencies, the League of Arab States, the European Commission, Russia, the Netherlands, Canada, the United States, and the United Kingdom. Ministerial Decree No. 4 of May 2009 strengthened and expanded the committee. UNMIS, “HLC Joint Press Advisory,” November 2010 (www.unsudanig.org/docs/HLC%20Joint%20Press%20Advisory%2028%20November%202010.pdf); Sudanese News Agency, “Sudan: High-Level Committee on Humanitarian Activities in Darfur Lauds Government Cooperation,” 21 May 2007 (www.reliefweb.int/rw/rwb.nsf/db900sid/SHES-73ER9B?OpenDocument).

¹¹³ UN Security Council, *Report of the Secretary-General on the African Union–United Nations Hybrid Operation in Darfur*, S/2010/382, 14 July 2010, para. 39 (www.un.org/en/peacekeeping/missions/unamid/reports.shtml).

¹¹⁴ IDMC, *Yemen: Constrained Response to Protection Needs of IDPs and Returnees*, July 2009, p. 110, available at: www.internal-displacement.org

¹¹⁵ Ibid; Reuters, “Interview–Yemen donors wary as displaced slowly return north,” 8 June 2010 (<http://uk.reuters.com/article/2010/06/08/idUKLDE65624G>).

¹¹⁶ IDMC, *Yemen: Constrained Response to Protection Needs of IDPs and Returnees*, p. 97.

Since the signing of a cease-fire agreement in February 2010, emphasis on the return of IDPs has been given new impetus by the government, which has promised assistance for returnees.¹¹⁷ However, in practice conditions of insecurity persisted in 2010 in areas of origin in the North, and insufficient funds have been disbursed to those who return.¹¹⁸ A rapid survey undertaken by UNHCR of 439 families in Hajjah and Amran governorates after the February 2010 cease-fire revealed that only 18 percent of those surveyed intended to return within the next six months; the rest either had yet to decide or planned to return later.¹¹⁹ Obstacles to return cited by IDPs included the risk of renewed conflict, land mines, property damage, fear of arrest and food insecurity.¹²⁰ By June 2010, only an estimated 28,000 IDPs (or about 10 percent of those registered) had in fact returned.¹²¹

On 1 July 2010, the government announced that it had reached a new “reconciliation deal” with Houthi rebels in Sa’ada, with the stated purposes of bolstering the February cease-fire, addressing tribal conflicts, and encouraging the return of IDPs. According to the Minister of Local Administration, the agreement stipulates that the Houthi rebels would, among other things, “ensure

security along roads and in mosques and schools to encourage the return of IDPs.” However, according to the secretary-general of a local council in Sa’ada, “too many IDPs don’t want to return home ... They are skeptical about security and stability being restored to Sa’ada. They see this [deal] as one of a series of ineffective agreements that failed to end the six-year conflict.”¹²² According to the RSG Kälin, the lack of alternative durable solutions for IDPs, namely local integration or resettlement elsewhere in the country, risks creating a situation of protracted internal displacement.¹²³

In the South, a conflict beginning in May 2011 had displaced over 90,000 people from their homes in the governorates of Aden, Lahj, Abyan and Sana’a by early August 2011, with many government services severely disrupted or halted altogether and a declining economic situation adding to the vulnerability of the displaced. Determining the exact number of IDPs has been difficult to ascertain in parts of the country due to the conflict and limited access.¹²⁴

¹¹⁷ IRIN, “Yemen: Fatal Clashes Strain Sa’ada Cease-Fire,” 1 June 2010 (www.irinnews.org/Report.aspx?ReportId=89326).

¹¹⁸ IRIN, “Yemen: Ongoing Violence in North Hinders IDP Returns,” 7 June 2010 (<http://irinnews.org/Report.aspx?ReportId=89387>); IRIN, “Yemen: IDP Returnees Face Tough Challenges,” 29 March 2010 (www.irinnews.org/report.aspx?ReportID=88599); International Crisis Group, “Yemen: Defusing the Sa’ada Time Bomb,” 27 May 2009, p. 23 (www.crisisgroup.org); IRIN, “Yemen: Northern Rebels Accuse President of Reneging on Promises,” 24 June 2010 (<http://irinnews.org/Report.aspx?ReportId=89604>).

¹¹⁹ IDMC, *Yemen: IDPs Facing International Neglect*, August 2010 (www.internal-displacement.org).

¹²⁰ Ibid.

¹²¹ UN Office for the Coordination of Humanitarian Affairs, “Registered and Returned IDPs: As of 14 June 2010,” 14 June 2010 (<http://reliefweb.int/rw/rwb.nsf/db900sid/LPAA-86HAZ7?OpenDocument>).

¹²² IRIN, “Yemen: Government Moves to Speed Up IDP Returns,” 1 July 2010 (www.irinnews.org/report.aspx?Reportid=89696).

¹²³ United Nations Office of the High Commissioner for Human Rights (UN OHCHR), “IDPs in Yemen Threatened by Lack of Humanitarian Funding,” 12 April 2010 (www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9957&LangID=E).

¹²⁴ See, for example, OCHA, *Yemen Humanitarian Emergency Situation Report No. 6*, 3 August 2011; OCHA, *Yemen Humanitarian Emergency Situation Report No. 4*, 15 July 2011; OCHA, *Yemen Humanitarian Emergency Situation Report No. 3*, 1 July 2011; OCHA, *Yemen Civil Unrest and Displacement Humanitarian Country Team Situation Report No. 1*, 7 June 2011 (<http://reliefweb.int>); IRIN, “Yemen: Civilians Flee Violence in the South,” 31 May 2011 (www.irinnews.org/report.aspx?reportid=92860); UN News Centre, “More Yemenis Dependent on Aid Because of Ongoing Conflict: UN,” 18 July 2011 (www.un.org/apps/news/story.asp?NewsID=39068&Cr=yemen&Cr1=).

**Countries in which the conflict is “frozen”:
Active fighting has ceased but a political
settlement remains**

In Turkey, while the government has worked to establish conditions to enable durable solutions for IDPs, especially through its Return to Village and Rehabilitation Project (RVRP), initiated in 1994, and the Van Action Plan (2006), several factors hinder the attainment of durable solutions for the approximately 1 million IDPs in the country. Obstacles include the continued existence in areas of return of the paramilitary provincial and voluntary militia called “village guards,” who often were implicated in the initial displacement; landmines and unexploded ordnance; armed clashes that have occurred intermittently since 2004; with some exceptions, lack of adequate public infrastructure; and limited economic opportunities.¹²⁵

According to official government figures, the Return to Village and Rehabilitation Project had been implemented in fourteen eastern and southeastern provinces as of September 2009 and, as of July 2009, over 150,000 IDPs had returned to their original places of residence.¹²⁶ However, there are concerns about the reliability of the government’s statistics on return. For example, Human Rights Watch has suggested that they have been inflated in some instances or otherwise manipulated, including by counting returned village guards who then confiscate the property of evicted villagers as “returnees.”¹²⁷ According to a survey by Hacettepe University in 2006, 120,000 IDPs had returned, representing only 10 percent of the IDP population. Moreover, the vast majority of returnees surveyed (88 percent) had returned without assistance from the government and about half of them were not aware of their entitlements under the RVRP or the Law on Compensation.¹²⁸

Intended to complement the RVRP and other IDP assistance mechanisms, the Van Action Plan supports reconstruction and durable solutions to displacement in Van Province. The plan, developed in collaboration with UNDP, represents a significant step toward addressing IDP issues and was welcomed by RSG Kälın. One of the strengths of the plan is that given that many IDPs in urban areas do not want to return, it also provides measures to address urban internal displacement. However, there are several outstanding gaps in the Van Action Plan: it does not adequately address obstacles to

¹²⁵ See, for example, Council of Europe, Commissioner for Human Rights, *Report: Thomas Hammarber, Commissioner for Human Rights of the Council of Europe Following His Visit to Turkey on 28 June– 3 July 2009*, 1 October 2009 (www.commissioner.coe.int); European Commission, *2003 Regular Report on Turkey’s Progress Towards Accession* (http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/rr_tk_final_en.pdf); UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng, Submitted Pursuant to Commission on Human Rights Resolution 2002/56—Addendum: Profiles in Displacement: Turkey*, E/CN.4/2003/86/Add.2, 27 November 2002 (www2.ohchr.org/english/issues/idp/visits.htm); OHCHR, “Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons Sees New Hope for the Internally Displaced Persons in Turkey,” Press release, 6 May 2005 (www.brookings.edu/projects/idp/RSG-Press-Releases/20050506_turkeypr.aspx); UNDP, “Working Visit by the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons to Turkey, 28 September–1 October 2006: Conclusions and Recommendations,” 2006 (www.undp.org.tr/GoZlem2.aspx?WebSayfaNo=726).

¹²⁶ Also see IDMC, *Turkey: Need for Continued Improvement in Response to Protracted Displacement: A Profile of the Internal Displacement Situation*, 26 October 2009, p. 41 (www.internal-displacement.org).

¹²⁷ See Human Rights Watch, *Still Critical: Prospects in 2005 for Internally Displaced Kurds in Turkey*, 6 March 2005 (www.hrw.org).

¹²⁸ Hacettepe University, Institute of Population Studies, “Findings of the Turkey Migration and Internally Displaced Population Survey,” press release, 6 December 2006 (www.hips.hacettepe.edu.tr/tgyona/press_release.pdf), cited in IDMC, *Turkey: Need for Continued Improvement in Response to Protracted Displacement: A Profile of the Internal Displacement Situation*, 26 October 2009, p. 11 (www.internal-displacement.org).

durable solutions, including return, which is hindered by the village guard system, insecurity and the presence of landmines and unexploded ordnance. Some observers believe that these issues, along with the Kurdish question, need to be addressed first at the national level, in the framework of a solid national policy.¹²⁹

Some effort has been made to do so through the adoption of the Integrated Strategy Document by the Council of Ministers in 2005. This document is in line with the Guiding Principles, including in terms of the definition of IDPs, the promotion of safe and voluntary returns and the provision of assistance for return and reintegration. It also makes positive strides toward durable returns by giving priority to addressing the complaints surrounding the village guard system, removing landmines that hinder return, and consulting with NGOs.¹³⁰ However, it has been criticized for favoring “centralized villages,” in which IDPs have been averse to resettling (such as under the RVRP) because they are outside of their original villages or hamlets.¹³¹

¹²⁹ For a thorough evaluation of the Van Action Plan, see Deniz Yüksek and Dilek Kurban, *Permanent Solution to Internal Displacement? An Assessment of the Van Action Plan for IDPs*, Turkish Economic and Social Studies Foundation (TESEV), May 2009 (www.tesev.org.tr/UD_OBJS/PDF/DEMP/TESEV_VanActionPlanReport.pdf).

¹³⁰ For the full text, see Brookings-LSE Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Turkey” (www.brookings.edu/projects/idp/Laws-and-Policies/turkey.aspx). The RSG has recommended to the government that it produce a national IDP policy; see for example, UNDP, “Working Visit by the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons to Turkey, 28 September–1 October 2006: Conclusions and Recommendations,” 2006 (www.undp.org.tr/Gozlem2.aspx?WebSayfaNo=726).

¹³¹ Dilek Kurban, Ayşe Betül Celik and Deniz Yüksek, *Overcoming a Legacy of Mistrust: Toward Reconciliation between the State and the Displaced: Update on the Implementation of the Recommendations Made by the UN Secretary-General’s Representative on Internally Displaced Persons Following His Visit to Turkey*, IDMC/TESEV, June 2006 (www.internal-displacement.org).

As noted above, one of the principal obstacles to durable solutions is the continued existence of the paramilitary village guard system. According to Human Rights Watch, rates of return in areas heavily dominated by village guards are markedly low and “security forces often make village guard service an informal requirement for return.” Ironically, it was their refusal to join the village guard system that resulted in many IDPs’ forced displacement because refusing provided the grounds for their forcible evacuation by Turkish authorities. The Kurdish Human Rights Project (KHRP) has pointed to allegations by the Turkish Human Rights Foundation in 2004 that male IDPs are forced to become village guards as a condition for return, and KHRP views as discriminatory the pressure exerted on them to do so by the Gendarmerie Intelligence and Anti-Terror Unit of the armed forces and condoned by public officials in the districts of Şemdinli and Kızıltepe.¹³² Furthermore, the government’s approach to return is reported to be discriminatory, with former village guards allegedly giving less priority for assistance to any persons perceived (rightly or wrongly) to be linked to the Kurdistan Workers’ Party (PKK). Representative to the Secretary-General on Internally Displaced Persons Francis Deng noted this alleged practice in his 2002 mission report on Turkey and presented related recommendations for ensuring a nondiscriminatory approach to return.¹³³

¹³² Human Rights Watch, “Letter to Minister Aksu Calling for the Abolition of the Village Guards,” 7 June 2006 (www.hrw.org); Human Rights Watch, *Displaced and Disregarded: Turkey’s Failing Village Return Program*, October 2002. According to the Turkish Economic and Social Studies Foundation, “the Kurdish Human Rights Project (‘KHRP’) bases this view on an April 2004 report by the Turkish Human Rights Foundation (‘Türkiye İnsan Hakları Vakfı–‘TİHV’)”; see Dilek Kurban and others, *Coming to Terms with Forced Migration: Post-Displacement Restitution of Citizenship Rights in Turkey*, TESEV, 2007, p. 124, (www.tesev.org.tr/UD_OBJS/PDF/DEMP/ENG/comingtotermswithforcedmigration.pdf).

¹³³ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng, Submitted Pursuant to Commission on Human Rights Resolution 2002/56–Addendum: Profiles in Displacement: Turkey*, E/

The village guard system has been widely condemned, both nationally and internationally, but Turkey has yet to abolish it, despite promises to do so to the RSG on IDPs and to the European Union.¹³⁴ In June 2007, an amendment to the Village Law went into effect, permitting the recruitment of up to 60,000 village guards.¹³⁵

Land mines and unexploded ordnance—which have been laid by the state and the Kurdistan Workers' Party (PKK)—also hinder durable returns in Turkey. They pose a significant threat to civilians, including returning IDPs and even military personnel, in the east and southeast of the country.¹³⁶

CN.4/2003/86/Add.2, 27 November 2002 (www2.ohchr.org/english/issues/idp/visits.htm).

¹³⁴ Turkish, UN and European entities have called for the abolishment of the village guard system, including the Turkish Grand National Assembly's 1995 parliamentary commission on political killings, the Grand National Assembly's 1997 parliamentary commission on the Susurluk affair and the Grand National Assembly's 1998 parliamentary commission on internal migration; the RSG for IDPs (2002); the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (2001), the Parliamentary Assembly of the Council of Europe (2002), the Kurdish Human Rights Project and Bar Human Rights Committee of England and Wales (2006), Human Rights Watch (2006), Council of Europe (Thomas Hammarberg, Commissioner for Human Rights, October 2009).

¹³⁵ *Official Gazette*, "Köy Kanunundave Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun" [Law Concerning Amendments Brought to the Law on Villages and Some Other Laws], No. 5673, 27 May 2007. 26450, 2 June (<http://rega.basbakanlik.gov.tr/Eskiler/2007/05/20070527-2.htm>), as cited in Dilek Kurban and others, *Coming to Terms with Forced Migration: Post-Displacement Restitution of Citizenship Rights in Turkey*, TESEV, 2007, p. 18. According to TESEV, "The position of provisional village guards was created on 26 March 1985 through a clause added by Law no. 3175 to the 1924 Village Law (Law no. 442)," in Dilek Kurban, Ayşe Betül Çelik and Deniz Yüksek, *Overcoming a Legacy of Mistrust*, p. 20.

¹³⁶ See, for example, Deniz Yüksek and Dilek Kurban, *Permanent Solution to Internal Displacement? An Assessment of the Van Action Plan for IDPs*, p. 11.

In Georgia, from the early days of the displacement crisis, the government has emphasized return of IDPs to their places of origin as the only desirable solution.¹³⁷ Indeed, the authorities created legal, administrative and political obstacles to the full exercise by IDPs of their rights in their place of displacement and impeded their economic, social and political integration, even if temporary.¹³⁸ While those obstacles have now largely been removed and the government has shown itself in recent years to be open to improving IDPs' living conditions in the place of displacement, emphasis on the right of IDPs and refugees to return remains the centerpiece of the government's approach to displacement.

In fact, considerable IDP return did occur, both to South Ossetia and to Abkhazia, in particular to the Gali region, during the periods since the mid-1990s when there was a long break in active hostilities. However, that return was not sustainable in the absence of secure conditions and a lasting solution to the conflict, as was revealed in May 1998 when a renewed outbreak of violence in the Gali district of Abkhazia displaced some 40,000 recent returnees anew. In subsequent years, approximately 45,000 to 55,000 IDPs returned spontaneously to the Gali district, although to this day, for political reasons, their return is not officially acknowledged by the government of Georgia. Meanwhile, the Abkhaz side has pushed for recognition of the IDPs' return, which would bring political gains by suggesting that normalcy and effective law and order have been established in the region and that IDPs have "voted with their feet."

¹³⁷ See further the case study on Georgia in chapter 2 of this volume.

¹³⁸ See UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia*, 2001, paras. 34–69; UN Commission on Human Rights, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Mission to Georgia (21 to 24 December 2005)*, 24 March 2006, para. 15; Erin Mooney and Balkees Jarrah, *The Voting Rights of Internally Displaced Persons: The OSCE Region* (Brookings Institution—Johns Hopkins SAIS Project on Internal Displacement, November, 2004),

Return of IDPs and refugees always has been a heavily politicized issue and a major stumbling block in the peace process for both conflicts. While the Georgian government has consistently promoted the right to return and considers return a key element in its reestablishment of territorial control over the two secessionist areas, for the same reasons the de facto authorities of Abkhazia and South Ossetia largely resist return, albeit with some exceptions. Lasting political solutions to these conflicts and the possibility of large-scale return of the displaced have remained elusive.

At the same time, the government's emphasis on return has had the effect of undermining IDPs' rights in their place of displacement. Until 2007, IDPs were legally barred from owning land or voting in the locality where they were living while displaced unless they forfeited their IDP status and its associated benefits. In addition, IDPs were led to believe that by exercising such rights in their place of displacement, they risked forfeiting their right to return and regain their property in their place of origin. At the same time, the authorities were resistant to allowing international aid and development agencies and donors to help IDPs shift from a state of dependency to self-reliance by providing support for livelihoods. Since the early 1990s, almost half of IDPs have continued to live in the dilapidated and overcrowded "collective centers" that were established in schools, dormitories, factories and even functioning hospitals and were intended to serve only as temporary emergency shelter.¹³⁹

The situation began to change following the "Rose Revolution" of 2003, which brought into power the government of President Saakashvili. The new administration, while maintaining the policy of promoting the right to return, nonetheless slowly began to modify the absolutist approach that impeded any effort to improve conditions, at least in the interim, for IDPs in their place

of displacement. This significant policy shift was formalized with the government's adoption in February 2007 of the State Strategy for Internally Displaced Persons, which marked the government's first-ever recognition that solutions to displacement other than return—including supporting efforts toward local integration and securing dignified living conditions for IDPs in their place of displacement—were a legitimate policy goal. In practice, however, return continued to be emphasized, as reflected in the action plan for implementing the State Strategy.

Yet following the August 2008 renewal of hostilities and the subsequent recognition by the Russian Federation and a handful of other countries of Abkhazia and South Ossetia as independent states, the government and population of Georgia have come to the realization that return is not a viable option for most IDPs in the foreseeable future. Beginning with the "new" 2008 IDPs and then eventually including the "old" protracted IDPs, the government began to implement the second goal of the strategy: supporting improved living conditions for IDPs in their place of displacement. The focus is heavily but not exclusively on providing adequate shelter, and by May 2010, the Ministry for Foreign Affairs had announced that durable housing solutions were provided for 20,800 people displaced by the August 2008 conflict and for 10,911 families displaced from earlier conflicts. However, at times the process of implementing the shelter program, which in some cases entails moving IDPs to new locations elsewhere in the country, has been tense and problematic. In particular, IDP discontent escalated in the summer of 2010 after the government announced that thirty-six collective centers were not eligible for privatization and would be evacuated and the residents offered alternative accommodation in villages outside of the city (where most of the affected IDP families refused to move) or financial compensation of \$10,000. The affected IDPs staged mass demonstrations, at which one IDP woman immolated herself in protest.¹⁴⁰ The Public

¹³⁹ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia*, 2001, paras. 25–69.

¹⁴⁰ 'Self -Immolation Incident Highlights Desperation of Georgian IDPs,' *Radio Free Europe / Radio Liberty*, 29 October 2010.

Defender and the international community, including UNHCR, also criticized the process.¹⁴¹ Internationally endorsed standard operating procedures for such cases since have been developed by the government.

The issue of restitution of housing, land and property left behind in IDPs' place of origin also has long been an important and often high-profile element of the national approach to resolving the situation of IDPs. Efforts have been made to address these issues for both IDPs from Abkhazia and those from South Ossetia, in the former case through a property registration campaign and in the latter case through a consensus among the parties to the conflict for a property restitution mechanism. Nevertheless, the issue remains unresolved and a major sticking point amid reports of illegal property occupation and even illegal transfers of title in IDPs' absence. In the case of the IDPs displaced by the August 2008 conflict, most households whose homes were destroyed during the hostilities received \$15,000 from the government to rebuild their homes; however, little reconstruction has taken place as many persons who received assistance fear resumption of hostilities or general insecurity and thus are reluctant to invest in rebuilding their homes in the context of a fragile cease-fire agreement.¹⁴²

According to a survey in 2010 by the Caucasus Research Resource Centers and Conciliation Resources, when asked whether they would like to return, Georgians who were displaced from their homes by the 1992–93 war in Abkhazia overwhelmingly responded affirmatively. But upon further questioning they clarified that certain requirements would need to be met first, including those for safety, property restitution and, most notable, the return of Abkhazia to Georgia's effective territorial control. Moreover, in the interim they stated that they desperately need decent living conditions and support

for livelihoods in the communities where they have lived for years as IDPs.¹⁴³

Conclusion

Facilitating and supporting durable solutions to displacement is a key expression of a government's responsibility for internally displaced persons and perhaps the area in which government commitment to addressing displacement becomes most apparent. Resolving displacement requires a multifaceted effort, which calls for the involvement of a number of different ministries and offices across a range of fields (including human rights, humanitarian issues, security, economic development, justice and reconciliation, social protection and education) in a coordinated effort that has a clear strategy, solid political leadership and the resources as well as time needed to achieve resolution.

What is striking is that in all three scenarios set out in this chapter—resolution of the conflict causing displacement, ongoing conflict or violence, or so-called “frozen” conflict—it is evident that governments, with the exception of those of the Democratic Republic of the Congo and Myanmar, have taken certain steps to achieve durable solutions. That illustrates that putting creating conditions for durable solutions need not—and should not—wait for an official end to conflict. Certain groundwork, if only at the legal and policy levels, can be done well in advance, as has been done in Colombia. At the same time, it is equally striking that in none of the three scenarios have durable solutions to displacement been fully achieved in the countries studied. That underscores that achieving durable solutions requires considerable time, effort and resources and therefore requires the sustained commitment of the government. Supporting solutions also requires the long-term

¹⁴¹ “Statement of Public Defender of Georgia Regarding Eviction of Internally Displaced Persons,” 17 August 2010 (www.ombudsman.ge); “UNHCR Concerned Over IDPs Eviction Process,” 24 August 2010.

¹⁴² Amnesty International, *In the Waiting Room: Internally Displaced People in Georgia* (August 2010), p. 44 (www.amnesty.org), p. 14.

¹⁴³ See the “IDPs in Georgia Survey” findings on Georgians displaced from their homes by the 1992–93 war in Abkhazia in Magdalena Frichova Grono, *Displacement in Georgia: IDP Attitudes to Conflict, Return and Justice: An Analysis of Survey Findings* (London: Conciliation Resources, April 2011), p. 6 (www.c-r.org).

commitment of the international community, but the reality is that international attention and resources are only likely to decrease over time, thus shifting greater responsibility on the government, where, indeed, responsibility to secure durable solutions ultimately lies.

The empirical evidence of this survey has underscored the importance of establishing other key conditions—security of land tenure, economic opportunities, infrastructure and public services—in order to ensure that the solutions that IDPs choose are sustainable. Land and property disputes are almost always sources (or manifestations) of lingering conflict and often an obstacle to IDPs’ free exercise of their right to return. While some governments have made efforts to provide mechanisms for property restitution or compensation, those mechanisms have rarely been adequate to deal—at least in a timely manner—with the scale and complexity of the claims presented.

While the Framework for National Responsibility identifies three durable solutions—return, local integration and settlement elsewhere in the country—the fifteen countries surveyed herein reflect a global tendency to emphasize return. Yet for solutions to be voluntary, IDPs must be able to choose among them, and local integration or settlement elsewhere in the country may in fact be some IDPs’ preferred solution. Indeed, especially in situations of protracted displacement, those may be the only feasible solutions, at least until sustainable return becomes a possibility. And while governments by and large prefer return, existing surveys of IDP preferences revealed more nuanced results as examined in this benchmark analysis. In all of the countries analyzed in this report and in other countries throughout the world, more attention must be given to alternatives to return, including the option of local integration in the place of displacement, particularly in cases of protracted displacement.¹⁴⁴

¹⁴⁴ Brookings-LSE Project on Internal Displacement, *Resolving Internal Displacement: Prospects for Local Integration*, June 2011 (www.brookings.edu/events/2011/01_protracted_displacement.aspx).

Return of IDPs is frequently a highly politicized issue. That is true in several cases, including Georgia, Sudan and Iraq, given the real or perceived implications for the demographic composition which returns would affect and the potential for return to increase conflicts over the political status or self-determination of a territory. Moreover, as time drags on, if there is no change in circumstances that permits durable solutions, solutions may become more difficult to implement. For example, land and property issues, always complicated for IDPs, can become more difficult to resolve over time as land records are lost, people with knowledge of customary land entitlements die, and traditional land markers are eroded or disappear. Also, as is well documented elsewhere, generational differences emerge as, for example, children resist returning to communities that they have never known or find that displacement in urban areas offers better access to public services and income-generating opportunities. Such benefits may be difficult to refuse, especially if the development or reconstruction of rural infrastructure has stagnated.

By contrast, in other cases, the passage of time may lead to an easing of communal tensions that makes return possible. In the best of cases, political conditions change and peace agreements become possible, opening up the way for returns, although by no means will return be immediate. Thus in South Sudan, in spite of the protracted displacement occurring over decades, the signing of the Comprehensive Peace Agreement opened the way for hundreds of thousands of Southern Sudanese to return to the South in subsequent years. Similarly, in spite of long years of displacement in Northern Uganda, political conditions changed over time, allowing the return of the vast majority of IDPs.

In all of the case studies, it is striking how little is known about returns in spite of the fact that return is the solution most often supported by governments. In some cases, there are detailed reports of individuals or communities returning to their areas of origin at a particular point in time. But for the most part, neither the United Nations nor governments seem to have a precise handle on how many have returned, the locations where they settle or the

conditions that they face. The data seem to indicate that the vast majority of IDP returns occur spontaneously, without or at least in advance of the assistance of governments or international agencies. There is also virtually no information on whether IDP returns constitute durable solutions. Knowing what we know about the mobility of IDPs, it seems likely that some people return to their communities, find that things are not what they thought they would be and then move back—or somewhere else. This is an area where there is an urgent need for much greater monitoring and research.

The ability to assess how many IDPs achieve durable solutions is problematic given the lack of data. As the

Internal Displacement Monitoring Centre noted for 2010, “There was no data available on the number of IDPs who achieved durable solutions in 2010 due to the lack of adequate monitoring and understanding of the process of durable solutions.”¹⁴⁵ This points to the need not just for the collection or development of data, but also to the need for basic education and consensus (as interpretations can vary among and within governments) on what constitutes a durable solution.

¹⁴⁵ IDMC, *Internal Displacement: Global Overview of Trends and Developments in 2010*, March 2011 p. 9 (www.internal-displacement.org)



Iraq / Abbas (at right), aged 7 years, runs to his mother Sabah A., aged 30, in the city of Erbil. This internally displaced family escaped from Mosul after Sabah's brother was killed for working with the Peshmerga.
Photo: UNHCR / W. Khuzaiie / April 2009

Benchmark 11

Allocate Adequate Resources to the Problem

Do the authorities prioritize internal displacement in allocating budgetary resources and in mobilizing international support?

Governments have a responsibility to allocate sufficient funding to support programs to safeguard civilians against displacement, to assist and protect IDPs during displacement, and to create conditions that enable durable solutions. Without funds, none of those responsibilities can be effectively and fully implemented. When the financial resources of a country are insufficient to fulfill its national responsibilities, its government is expected to turn to international funders to support its efforts to address internal displacement (see also Benchmark 12 regarding cooperation with the international community.) The extent to which a government gives priority to funding for IDPs—whether through its national budget or in its requests to external donors—is an indication both of its awareness and of its commitment to internally displaced persons. In other words, a key question is whether governments are, as the saying goes, “putting their money where their mouth is.”

Answering that question clearly and accurately can be challenging. It has proven to be more difficult to collect data on the financial resources that governments devote to address internal displacement than on any of the other benchmarks used in this study. A number of factors complicate data collection efforts. Information on a government’s budget and spending is not always made public, and statements by public officials on these issues tend to be general and often inconsistent. The multifaceted nature of internal displacement and thus of the government response required means that resources typically will be needed for a range of different sectors—for example, security, justice, humanitarian response, education, health, development, and so forth—each of which has its own budget line but rarely earmarks funds

specifically for IDPs. Even when there is a dedicated line in the national budget for IDP issues or when government officials have indicated their intention to allocate a certain level of funding to those issues, determining whether the funds were in fact allocated, disbursed and spent can be extremely difficult. Such issues, along with the variety of budget systems across different countries, make comparative analysis of IDP funding difficult.

Another difficulty in assessing this benchmark is in the term “adequate resources.” Even if data were available on budgetary allocations for IDPs, it is difficult to assess what constitutes an “adequate allocation of resources.” Declaring, for example, that a government allocates X number of dollars per IDP would be misleading on several counts. IDPs living in different situations have different needs; an employed IDP living temporarily with a host family in Pakistan may not require the same amount of assistance as an IDP living in a camp who depends on assistance for survival. An adequate level of assistance for an elderly urban IDP in Georgia may be very different from that for a female-headed household in rural Colombia or the Democratic Republic of the Congo. In addition to being difficult, such direct comparisons among countries are not especially relevant because they do not take into account the availability of public services or the overall economic situation in the country, in particular the amount of resources that are available to the government.

The focus therefore must be on the extent to which a government, within its existing resources, gives priority to spending on IDP issues. Here, the way that the resource issue is addressed within the framework of international human rights provides helpful guidance. The International Covenant on Economic, Social and Cultural Rights, Article 2, states

Each State Party undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights by all appropriate means.

This provision acknowledges that resources are limited, while also making clear that a lack of adequate resources is not a justification for inaction. Available resources need to be used effectively and fully with the aim of achieving, over time, progress and results in terms of access to rights.¹

Detailed budget analysis therefore is required. While it has unfortunately proven to be impossible (within the constraints of the resources for this study) to collect comprehensive data on the allocation and disbursement of resources to address internal displacement, the following overview provides some observations on government policies on resource allocation for IDPs.

Overview of research findings

Colombia illustrates both the importance and limitations of putting in place a legal framework for IDP protection and assistance and mechanisms for monitoring and analysis of policy implementation. On one hand, the attention that protection of IDP rights has garnered in Colombia from the Constitutional Court has led the government to increase its budget allocations for IDP assistance in accordance with its legal obligations under the 1991 Constitution and Law 387 of 1994 and developed through regulations and documents adopted by the National Council on Economic and Social Policy (CONPES) that contain the council's guidelines on specific aspects of the National Plan for Comprehensive Assistance to Populations Displaced by Violence, formulated as called for in Law 387. While implementation of Law 387 remains problematic, it must be said that the adoption of the law itself (see further, Benchmarks 5 and 6) marked a watershed for consideration of the IDP issue in Colombia, as Constitutional Court Justice

Manuel Cepeda Espinosa has observed.²

Yet financial shortfalls and other related obstacles persist, precluding realization of full respect for the rights of internally displaced Colombians. In 2004, the Constitutional Court issued its landmark Decision T-025, declaring that an “unconstitutional state of affairs” existed as a result of the gap between the rights guaranteed to IDPs by domestic law and the insufficient resources and institutional capacity of the government to protect those rights. In that decision, the court examined budgetary allocations for IDPs between 1999 and 2003 and found that while there was a significant increase in resources for IDPs between 1999 and 2002, there was a 32 percent decrease in 2003. The court held that while the decrease represented fiscal reality in Colombia, the state was nonetheless not excused from its legal obligations to provide timely and adequate assistance to IDPs under Law 387.³ Among other remedial measures, the court addressed the budgetary shortfall for IDP issues⁴ by ordering the national and territorial entities responding to internal displacement “to fully comply with their constitutional and legal duties, and to adopt, in a reasonable term and within their spheres of jurisdiction, the necessary corrective measures to secure sufficient budgetary appropriations.”⁵ The court

¹ International Covenant on Economic, Social and Cultural Rights, Article 2(1). See also, for example, Committee on Social and Economic Rights, General Comment No. 12 on the Right to Adequate Food (UN doc. E/C.12/1999/5 of 1999) and General Comment 14 on the Right to the Highest Attainable Standard of Health (UN doc. E/C.12/2000/4 of 2000).

² Justice Manuel Cepeda Espinosa, “The Constitutional Protection of IDPs in Colombia,” pp. 6–7, in Rodolfo Arango Rivadeneira, ed., *Judicial Protection of Internally Displaced Persons: The Colombian Experience* (Washington, D.C.: Brookings-Bern Project on Internal Displacement, November 2009) (www.brookings.edu/papers/2009/11_judicial_protection_arango.aspx).

³ Colombian Constitutional Court, Decision T-025 of 2004, adopted by the third chamber of the court, composed of Manuel José Cepeda Espinosa, Jaime Córdoba Triviño and Rodrigo Escobar Gil. See section 1.1 of Annex 4 and Section 6.3.2, available at Brookings-LSE Project on Internal Displacement, “National and Regional Policies on Internal Displacement: Colombia” (www.brookings.edu/projects/idp/Laws-and-Policies/colombia.aspx).

⁴ Ibid.

⁵ Section 6.3.2, cited in Justice Manuel Cepeda Espinosa, “The Constitutional Protection of IDPs in Colombia,” pp. 16–17, in *Judicial Protection of Internally Displaced Persons: The Colombian Experience*.

also ordered the National Council for Comprehensive Assistance to the Population Displaced by Violence to define, within two months, the amount of resources to be used at the national and territorial levels to overcome the “unconstitutional state of affairs” and thereby fulfill the state’s obligations to IDPs.

In large part because of the jurisprudence of the Constitutional Court, the government has increased its budget allocations to IDP issues since Decision T-025. According to a government statement in July 2010, central government allocations to IDPs increased tenfold between 2002 and 2010, from 543 million Colombian pesos (approximately \$220,000 using July 2002 rates) to 5.3 billion Colombian pesos (estimated 2.7 million using July 2010 rates).⁶ On several occasions since its 2004 decision, the court has expressed dissatisfaction with government progress in several areas, including in terms of ensuring sufficient budgetary allocations.⁷ In its 2010 report to the court, the government stated that it had made progress toward IDP protection and assistance, including by earmarking funds for IDPs. But there is an evident lack of trickle-down to local administrations from the central government as financial allocations to municipalities were still quite low, even for those with large IDP populations, and all municipalities had allocated less than 2 percent of their budgets to their response to internal displacement.⁸

Conversely, budgetary allocations may decrease over time, sometimes dramatically, from one year to the next. In Pakistan, in the 2009–10 fiscal year (FY) budget speech, Pakistan’s Minister of State for Finance and Economic Affairs emphasized the government’s responsibility to “meet the maintenance and rehabilitation costs” of IDPs displaced as a result of the insurgency. To that end, the government allocated 50 billion Pakistani rupees (Rs.) (\$630 million) (approximately 0.3 percent of GDP) of its total FY expenditure of Rs. 1699.19 billion for internal displacement–related relief, rehabilitation, reconstruction and security.⁹ In contrast, the minister’s budget speech for FY 2010–11 made no mention of displacement. The only monetary allocation to IDPs that could be located was a nominal amount of money (Rs. 191,783 or \$2,275) allocated to “Emergency Relief and Repatriation” within the Cabinet secretariat.¹⁰

Of course, budgetary allocations are only the start of the story; resources must actually be dispersed. Nepal, for instance, does allocate funds in its national budget for IDPs, but there is a gap between allocation and distribution. As of January 2009, the Ministry of Peace and Reconstruction had distributed to districts only 42 percent of the total budget allocated for the State Relief and Assistance Package from the National Peace Trust Fund, and insufficient funds prevented most districts from providing adequate, if any, services for IDPs.¹¹

⁶ Internal Displacement Monitoring Centre (IDMC), *Overview: Colombia: Government response improves but still fails to meet needs of growing IDP population*, 10 December 2010, p. 8 (www.internal-displacement.org).

⁷ Manuel Jose Cepeda-Espinosa, “How Far May Colombia’s Constitutional Court Go to Protect IDP Rights?” *Forced Migration Review, Ten Years of the Guiding Principles on Internal Displacement* (2009), pp. 21–23.

⁸ IDMC, *Overview: Colombia: Government response improves but still fails to meet needs of growing IDP population*, p. 8. For further analysis on municipalities’ responses to internal displacement in Colombia, see: Brookings-Bern Project on Internal Displacement, *Protecting the Displaced in Colombia: The Role of Municipal Authorities: A Summary Report*, July 2009 (www.brookings.edu/reports/2009/07_colombia.aspx).

⁹ “Budget for the Fiscal Year 2009-10” as presented by Minister of State for Finance and Economic Affairs, Hina Rabbani Khar, published 14 June 2009 by the Associated Press of Pakistan in *The Nation* (www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Business/14-Jun-2009/Text-of-budget-speech)

¹⁰ “Revised Budget Ceilings 2010–2011,” D.O. No.F.3(1)/MTBF/2010/, Finance Division, Government of Pakistan, 8 July 2010. The U.S. dollar calculation is based on an early 2010 exchange rate.

¹¹ IDP Working Group, *Distant from Durable Solutions: Conflict-Induced Internal Displacement in Nepal*, June 2009 ([www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/666B48300E469C68C12575E600347853/\\$file/distant+from+durable+solutions+June+2009.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/666B48300E469C68C12575E600347853/$file/distant+from+durable+solutions+June+2009.pdf)).

Particularly when the IDP population is a sizable percentage of the national population, even basic care and maintenance operations can represent a significant strain on the budget. In Georgia in 2000, the Minister for Refugees and Accommodation informed Francis Deng, the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons (RSG on IDPs), that 15 percent of the state budget that year was devoted to providing IDPs with assistance to meet their basic needs.¹² At the time, the majority of those resources were channelled through the Abkhaz government in exile to support the system of parallel structures that it had established and administered to assist IDPs from Abkhazia (that system has since ceased operation). A large component of the financial resources devoted to IDPs in Georgia (it is now almost two decades since displacement first occurred) is for the disbursement of the monthly stipend to all IDPs recognized as having the status, under national legislation, of “forcibly displaced person–persecuted person.” The amount of the monthly stipend is minimal. For many years, it was only 12 GEL (equivalent to less than \$7.00); only recently was it increased, in 2009, to 24 GEL (\$13.00). Given the size of the IDP population (almost a quarter of a million people), that nonetheless represents a significant expenditure for the government. Moreover, the stipend is given to all IDPs, regardless of need. A shift from a status-based to needs-based system has long been advocated and is recognized in the State Strategy as a necessary goal. However, little progress has been made at a policy level.

In addition to allocations for IDP issues in the national budget, the president at times has chosen to allocate discretionary funds to addressing IDP issues. In particular, in 2006 the president launched a multimillion dollar property registration program called “My Home,” which used high-tech satellite imagery and thus was resource

intensive; however, the program has been criticized for being of minimal legal utility in substantiating property claims. Currently, the bulk of government resources (as well as the considerable international funds mobilized following the August 2008 hostilities) is dedicated to durable solutions to displacement, in line with the national IDP strategy.

Supporting durable solutions to displacement requires significant resources. In Turkey, the government reported having spent, under the Return to Village Rehabilitation Project (RVRP), \$54 million on infrastructure, social projects and assistance to returnees between 1999 and 2008 and having allocated an additional \$10 million to the RVRP for 2009.¹³ The amount of aid provided by the RVRP has been criticized as inadequate.¹⁴ The European Commission reported in October 2009 that progress in compensation assessments and actual payment of compensation as provided for in the Law on Compensation “has been slow” due to “lack of resources and the heavy workload of the Damage Assessment Commissions.”¹⁵

¹² Author’s notes, mission to Georgia, May 2000; UN Commission on Human Rights, Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia, 2001, para. 110.

¹³ Government of Turkey, October 2009, “Comments of the Republic of Turkey on the Report Regarding ‘Human Rights of Minorities’ by Mr. T. Hammarberg, Commissioner for Human Rights of the Council of Europe, Following His Visit to Turkey (28 June–3 July 2009),” cited in IDMC, Turkey: Need for Continued Improvement in Response to Protracted Displacement: A Profile of the Internal Displacement Situation, 26 October 2009, p. 11 ([www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/E6AF700E502B6D83802570B8005AAF9C?OpenDocument#49.12.1](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/E6AF700E502B6D83802570B8005AAF9C?OpenDocument#49.12.1)).

¹⁴ Human Rights Watch, “*Still Critical: Prospects in 2005 for Internally Displaced Kurds in Turkey*, March 2005, (www.hrw.org); Dilek Kurban, Ayşe Betül Celik, and Deniz Yüksek, *Overcoming a Legacy of Mistrust: Toward Reconciliation between the State and the Displaced: Update on the Implementation of the Recommendations Made by the UN Secretary-General’s Representative on Internally Displaced Persons Following His Visit to Turkey*, Internal Displacement Monitoring Centre (IDMC)/Turkish Economic and Social Studies Foundation, June 2006, p. 11 (www.internal-displacement.org).

¹⁵ European Commission, *Turkey 2009 Progress Report Accompanying the Communication from the Commission to the European Parliament and the Council: Enlargement*

In Sri Lanka,¹⁶ it is difficult to obtain a full picture of national expenditure on IDPs, owing in part to the fact that there is no single focal point for addressing internal displacement. According to government data for 2007-2013, the expenditures by the Ministry of Resettlement rose annually between 2007 and 2009, peaking in 2009, and were projected to decrease annually beginning in 2010. The ministry's actual and projected expenditure for this period, nearly \$166 billion, includes foreign financing, which accounts for around 30 percent of the ministry's total expenditure. The marked reduction in total expenditure beginning in 2010 is indicative of the government's stated position that it has successfully "re-settled" (returned) a vast majority of IDPs and is concluding what it views as extensive reconstruction and de-mining activities in the North.

In Uganda, the budget of the Peace, Recovery and Development Plan for Northern Uganda (PRDP) does not specifically earmark funds for IDP projects, but it does fund projects that benefit IDPs by improving conditions in return areas, including livelihood creation, improved social services, and access to health services. The government has committed itself to funding 30 percent of the overall cost of the PRDP and requested that the remaining 70 percent of PRDP costs be covered by development partners and international donors.¹⁷

In Yemen, although both federal and regional governments do allocate funds specifically for addressing internal displacement, their efforts fall far short of actual needs. Financial support is focused on reconstruction,

mostly through the Sa'ada Reconstruction Fund.¹⁸ The government has allocated \$55 million toward reconstruction through the fund, yet most estimates agree that around \$190 million is required, while others suggest even more, especially considering recent reports of widespread destruction in Sa'ada Governorate.¹⁹ Apart from failing to address most aspects of the physical and mental toll that the conflict has had on civilians, some accounts accuse the Sa'ada Reconstruction Fund of outright bias in its failure to assist Houthi allied areas.²⁰

In several countries, including Colombia, Nepal and Uganda, difficulties arise at the district or municipal levels, where local authorities bear significant responsibility for addressing internal displacement but face many obstacles, including insufficient funds, to do so. And in Colombia, Georgia, Kenya and Yemen, there have been charges of corruption and misallocation of funds intended to benefit IDPs at certain points, though in some cases the problem has decreased in recent years.²¹

National budgetary support for IDPs seems especially low in both the Democratic Republic of the Congo (DRC) and Afghanistan, both of which rely particularly heavily on international resources to address IDPs' needs. Indeed, in the DRC, government authorities do not appear to give priority to internal displacement in allocating budgetary resources, which the RSG on IDPs Walter Kälin noted, along with the overall limited resources of the government.²² The DRC government's

Strategy and Main Challenges 2009–2010, COM(2009) 533, 14 October 2009, p. 31 (http://ec.europa.eu/enlargement/pdf/key_documents/2009/tr_rapport_2009_en.pdf).

¹⁶ See further the Sri Lanka case study in chapter 2 of this volume.

¹⁷ Syda N. M. Bbumba, "Budget Speech Financial Year 2009/2010," delivered at the Meeting of the Fourth Session of the Eighth Parliament of Uganda, 11 June 2009, Ministry of Finance, Planning and Economic Development, Republic of Uganda (www.mediacentre.go.ug/details.php?catId=2&item=446).

¹⁸ IDMC, *Yemen: IDPs Facing International Neglect*, August 2010 (www.internal-displacement.org), p. 63.

¹⁹ IRIN, "Yemen: Government Calls for International Support to Reconstruct War-Affected Areas," 18 September 2008 (www.irinnews.org/report.aspx?ReportID=80455).

²⁰ IDMC, *Yemen: Constrained Response to Protection Needs of IDPs and Returnees*, July 2009, p. 104 (www.internal-displacement.org).

²¹ IRIN, "Analysis: Yemen's aid conundrum," 17 March 2010 (www.irinnews.org/report.aspx?reportid=88451).

²² UN Human Rights Council, *Report Submitted by the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, Walter Kälin—Addendum: Mission to the Democratic Republic of the

inadequate provision of assistance to IDPs has also been noted in successive U.S. Department of State annual *Human Rights Reports* since 2006, in which it has been stated that “the government did not provide adequate protection or assistance to IDPs” and that IDPs had to rely “heavily” or “exclusively” on humanitarian organizations and that assistance was impeded by access problems and insecurity.²³

Afghanistan reportedly allocated only \$3 million for refugees and IDPs for FY 2009–10.²⁴ A senior government adviser stated in January 2010 that “[w]hilst we have no budget for assistance to IDPs, we stress long-term and sustainable solutions.” He added that the Ministry of Refugees and Returnees was unable to provide IDPs with integration services and required assistance from donors, aid agencies and other government entities.²⁵ In 2009, 90 percent of Afghanistan’s public expenditures were funded by international sources.²⁶ In Iraq, which relies on oil revenues for nearly all of its income, the allocation for the Ministry of Displacement and Migration in the proposed 2010 budget was nearly \$170 million of a total budget of \$72 billion. The government reduced financial assistance for IDPs and returnees from \$212 million in 2008 to \$42 million in 2009. The government rejected the proposals of the parliamentary Committee on Displacement and Migration in 2008 to secure a separate budgetary allocation for IDPs and returnees either by allocating 3-5 percent of the country’s oil revenues or by setting aside \$2 billion. The government reportedly said that other issues took precedence, such as municipal services and security.²⁷

Congo, A/HRC/8/6/Add.3, 16 May 2008, pp. 6, 10–11 (www2.ohchr.org/english/issues/idp/visits.htm).

²³ *Human Rights Reports* (www.state.gov/g/drl/rls/hrrpt/index.htm).

²⁴ Ministry of Finance, *1388 [2009] National Budget*.

²⁵ IRIN, “Afghanistan: More IDPs than Previously Thought: Government,” 4 January 2010 (www.irinnews.org/Report.aspx?ReportId=87626).

²⁶ Latest data available at the time of writing. IDMC, *Armed Conflict Forces Increasing Numbers of Afghans to Flee Their Homes*, April 2010 (www.internal-displacement.org).

²⁷ IRIN, “Iraq: MP Calls for More IDP Funding,” 5 January 2010 (www.irinnews.org/Report.aspx?ReportId=87632).

In the case of Sudan, current information for the country as a whole was difficult to obtain, with the exception of recent data on Southern Sudan. In 2003, state funding for the protection and return of IDP populations had been criticized as inadequate, with the government spending the “largest [portion of its] budget on security and military operations for political repression,” according to the Cairo-based Sudan Human Rights Organization, though specific data were not given.²⁸

The government of Southern Sudan prepared a \$25 million budget to assist IDPs currently residing in the North to return to the South before the January 2011 referendum on whether Southern Sudan should secede from the North.²⁹ The government also allocated an additional 10 million Sudanese dinars (\$40,000) in FY 2010 to the Southern Sudan Relief and Rehabilitation Commission for the return of refugees and IDPs.³⁰ Oil revenue accounts for around 98 percent of the government’s estimated \$1.9 billion budget. In his July 2010 report to the UN Security Council, the UN Secretary-General noted that “the United Nations country team has stepped up its advocacy for greater investment by the Government in the social and human development areas, addressing both the national Government and the Government of Southern Sudan.”³¹

²⁸ Sudan Human Rights Organization, “On the Removal of Women Travel Ban,” press release, 22 November 2003 (www.shro-cairo.org/pressreleases/03/november03/womentravelban.htm).

²⁹ Refugees International, “Statement by Refugees International on the Government of Southern Sudan’s Mass Repatriation Plans,” 27 August 2010 (www.refugeesinternational.org).

³⁰ “2010 Budget Speech, Presented to the Southern Sudan Legislative Assembly by Minister of Finance and Economic Planning, Government of Southern Sudan, H. E. David Deng Athorbei,” 14 December 2009, para. 133 (www.goss-online.org/magnoliaPublic/.../2010%20Budget%20Speech.pdf).

³¹ UN Security Council, *Report of the Secretary-General on the Sudan*, 19 July 2010, S/2010/388, para 66, p. 13 (www.un.org/Docs/sc/sgrep10.htm).

Conclusion

As indicated in the introduction to this benchmark, collecting data on government allocation of resources for IDPs has been very challenging. Information is not easily available, and even if data can be obtained, it is difficult to get a comprehensive and accurate picture of the amount of resources allocated to, much less actually spent on, addressing internal displacement. In some of the cases, a certain amount of budget analysis on internal displacement has been undertaken. In Colombia, the Constitutional Court plays a key role in this regard, with its monitoring and critiques of inadequate resources having resulted in a significant increase in the amount of money devoted by the government to the IDP issue. In Georgia, a certain amount of budget analysis on internal displacement is undertaken by NGOs, namely by Transparency International. Both examples suggest that national actors are perhaps the best placed to undertake budget monitoring and analysis.

Systematic data collection and analysis is needed for all of the countries surveyed—and for all countries experiencing internal displacement—and thus is an area

recommended for further research. Tools and technical guidance on human rights budget analysis are available.³² Data collection and analysis on this issue also should be undertaken by relevant international actors—for instance, by development actors including UNDP as part of its governance support and international financial institutions as well as by the human rights treaty monitoring bodies in their periodic assessments of a government's record. After all, the less the allocation of national resources to address internal displacement, the greater the demand on the international community to make up the shortfall. Conversely, governments that progressively increase resource allocations to the issue should be encouraged and supported, including through international resource mobilization efforts.

³² See, for example, *Dignity Counts: A Guide to Using Budget Analysis to Advance Human Rights* (International Budget Partnership, 2004) (www.internationalbudget.org/library/publications/index.cfm?fa=view&id=3377/). Generally, see *Selected Resources on Public Finances and Human Rights*, compiled by Deutsche Gesellschaft für Internationale Zusammenarbeit for the project “Realizing Human Rights in Development Cooperation” January 2011 (www.gtz.de/human-rights/).



Sangar, Sindh Province, Pakistan / Kwel A., a mother of seven, lost her house in the floods.
Photo: UNHCR/ S. Phelps / October 2011

Benchmark 12

Cooperation with International and Regional Organizations

Does the government facilitate efforts by international organizations to address internal displacement?

When a government does not have the capacity to protect and assist IDPs within its territory, it has a responsibility to seek external assistance, including financial support, operational assistance, and technical expertise. International law does not explicitly provide for the right of IDPs to humanitarian assistance except during international armed conflicts, when civilians in occupied territories have the right to directly solicit and receive humanitarian assistance from international humanitarian organizations.

In all situations of armed conflict, parties to the conflict are entitled to conduct controls of humanitarian relief but they must allow and facilitate the rapid and unhindered passage of humanitarian assistance to civilians in need; moreover, assistance must be provided impartially, without adverse distinction. Parties to conflicts must also ensure authorized humanitarian relief workers' freedom of movement, which is essential to the exercise of their functions, subject only to temporary restrictions on the basis of military necessity. Parties to conflicts must also protect humanitarian personnel, goods, and equipment from attack and ensure that relief is not diverted from its intended beneficiaries.¹

The prohibition of arbitrary denial of humanitarian access is the key element of Guiding Principle 25:

¹ On the obligations discussed in this paragraph, see Fourth Geneva Convention, Articles 23 and 59; First Additional Protocol to the Geneva Conventions, Articles 70 and 71; Second Additional Protocol to the Geneva Conventions, Article 18; International Committee of the Red Cross, Customary International Humanitarian Law, vol. 1, *Rules*, Rule 55 and Rule 56.

international humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a state's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.²

The Guiding Principles go on to say that authorities “shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.” At the same time, the Guiding Principles emphasize that international actors have a responsibility to abide by humanitarian principles and international standards. Countries' cooperation with the international community takes different forms, as detailed in the below analysis.

Overview of Research Findings

The most common form of cooperation with the international community is for governments to solicit and accept financial assistance and operational engagement from donor governments and humanitarian organizations. In all of the cases surveyed, such cooperation has, to varying extents, been evident in addressing internal displacement. When displacement becomes protracted—as it has in most of the countries surveyed here—there is further need for the participation of development organizations. However, the transition from humanitarian to development assistance is not automatic or swift, and there are significant gaps between the two in several of the countries. For example, although the Ugandan government has developed a comprehensive approach to supporting reconstruction and IDP

² UN Commission on Human Rights, *Guiding Principles on Internal Displacement*, E/CN.4/1998/53/Add.2, 1998 (www.brookings.edu/projects/idp/gp_page.aspx).

return efforts in its Peace, Recovery and Development Plan for Northern Uganda, development actors have not yet fully engaged to support the plan.³

An important way of demonstrating openness to the international community on IDP issues in particular is to invite the Representative of the UN Secretary-General on the Human Rights of IDPs (RSG on IDPs) to visit the country. The RSG on IDPs has visited all of the fifteen countries included in this report except for Myanmar and Pakistan and has made multiple visits to most countries.⁴ As noted in the introduction to this study, the visits by the RSG have proven to be valuable in raising national awareness of internal displacement and the protection needs of IDPs; assessing the national and international responses and making recommendations for their improvement; and providing support to governments and to international actors to enable them to take concrete steps to protect the rights of IDPs. For instance, in the Central African Republic, Kenya and Yemen, the RSG has been invited to provide expertise in drafting those countries' national laws or policies on internal displacement.

Turkey is an example of significant change over time in the government's openness to international cooperation on internal displacement. Throughout the 1990s, the government denied the existence of internal displacement and rebuffed all requests, including by the RSG, to engage on the issue.⁵ However, when the government, under pressure from the European Union, finally agreed to open its doors to the RSG in 2002, that led to a change in national policy and, more belatedly, to engagement by international actors when RSG Deng called on the

government to explore areas of cooperation with international agencies. At the same time, Deng also called on the United Nations to expand its support to the government vis-à-vis IDPs.

An especially important way of engaging with the international humanitarian community is through participation in the cluster system, which has become the standard way of organizing the international response to emergency situations. The UN cluster system provides a means through which international and local actors can share information on and coordinate their activities. Adopted in late 2005, the cluster approach was piloted in a handful of countries, including the Democratic Republic of the Congo and Uganda, in 2006; it now is applied to every new humanitarian emergency for which a UN humanitarian coordinator is appointed. The cluster approach has been applied in all of the countries surveyed by this study with the exception of Turkey, and in several cases (Afghanistan, the Central African Republic, Colombia, the Democratic Republic of the Congo, Nepal, Somalia, Sudan, Uganda and Yemen), it is still applied today.

The clusters are intended to support national governments' efforts to address humanitarian concerns; however, in practice, the level of national government involvement in the clusters has varied significantly. In one of the cases reviewed in this study, Kenya, the government ensured that it had a leadership role in the cluster system. In 2008 the clusters were reviewed and refocused to enable stronger Kenyan government leadership, and government ministries took over as the chairs of the clusters. In Uganda, leadership of the protection cluster has been handed over to the Ugandan Human Rights Commission. In the Central African Republic, the government, specifically the National Standing Committee (which is charged with relating to international actors), participates in protection cluster meetings. In Georgia, the cluster approach was introduced at the outbreak of new conflict in August 2008, with the government as co-chair; by the spring of 2009, the clusters had been replaced by government-run coordination mechanisms, in which the international community participated. A

³ Internal Displacement Monitoring Centre (IDMC), *Uganda: Returns Outpace Recovery Planning: A Profile of the Internal Displacement Situation*, 19 August 2009 (www.internal-displacement.org).

⁴ For a list of all country missions undertaken by the RSG on IDPs, see the website of the Office of the High Commissioner for Human Rights (www.ohchr.org).

⁵ Bill Frelick and Virginia Hamilton, *The Wall of Denial: Internal Displacement in Turkey* (Washington, D.C.: U.S. Committee for Refugees, 1999).

similar transformation took place, at government insistence, in Pakistan in spring 2011. In Nepal, the cluster approach was introduced in September 2008 following the displacement caused by the flooding of the Koshi River. The protection cluster, led by Office of the High Commissioner for Human Rights, “still struggled to involve the government” during 2010.⁶ The cluster approach also has been used in Myanmar, but the extent of government participation is unknown.

In some cases, the government cooperates with UN peacekeeping operations to provide security to civilians, including IDPs, affected by violence. For example, a European Union peacekeeping mission with a UN civilian component, the UN Mission in the Central African Republic and Chad (MINURCAT), was approved by the UN Security Council in 2007 for deployment to Chad and the Central African Republic.⁷ In the Central African Republic, MINURCAT’s mandate included

creat[ing] security conditions conducive to a voluntary secure and sustainable return of refugees and displaced persons and civilians in danger, by facilitating the provision of humanitarian assistance . . . and by creating favourable conditions for the reconstruction and economic and social development of those areas.⁸

Efforts to promote reconciliation and address the causes of conflict are another area in which international support can be sought. For example, in Kenya, investigative commissions such as the Commission of Inquiry into the Post-Election Violence (Waki Commission) and the Independent Review Commission on the General Elections Held in Kenya on 27 December 2007 (Kriegler Commission) were formed after the political crisis that engulfed Kenya after the 2007 disputed election results

and have employed international expertise. In addition, reform commissions including the Committee of Experts on Constitution Review; the Truth, Justice and Reconciliation Commission; and the Task Force on Police Reforms also sought technical expertise from the international community.

A government’s readiness to fulfill its responsibility to provide safe and unimpeded access of humanitarian actors to affected communities when the government alone cannot address the population’s needs often varies over time. The government of Sudan has often impeded humanitarian access, in word and more often in deed. For instance, on various occasions the government has expressed official commitment to allowing access while imposing bureaucratic delays and obstacles to, for example, the issuance of visas; on many other occasions, humanitarian workers from several agencies have been declared “persona non grata” and denied permission to operate in the country. The bureaucratic obstacles and access restrictions in Sri Lanka, particularly the severe limitations on humanitarian access to the North of the country, have greatly limited humanitarian aid. In 2008, the government ordered the withdrawal of agencies from the North. The government of the Central African Republic has historically given humanitarian organizations unimpeded access to displaced communities throughout the country, including in areas outside of state control;⁹ in March 2009, however, it did temporarily deny access to areas controlled by armed groups in the north, accusing aid workers of providing indirect support to the groups.¹⁰

⁶ IDMC, *Internal Displacement: Global Overview of Trends and Developments in 2010*, p. 92, March 2011 (www.internal-displacement.org).

⁷ UN Security Council, Resolution 1778 (2007), S/RES/1778(2007), 25 September 2007 (<http://unbisnet.un.org>).

⁸ Ibid.

⁹ IDMC, *Central African Republic: New Displacement Due to Ongoing Conflict and Banditry*, December 2009, (www.internal-displacement.org).

¹⁰ U.S. State Department, 2009 *Human Rights Report: Central African Republic* (www.state.gov/g/drl/rls/hrrpt/2009/af/135944.htm). RSG Kälin also stated in his 2010 report to the General Assembly (covering the major activities that he undertook from August 2009 to July 2010) that he “was also deeply concerned that humanitarian access to several regions in the country was severely restricted owing to security reasons. However, he was encouraged by the lifting of military restrictions on humanitarian access to areas outside and around Ndélé at the end of his visit.” Citation in UN General Assembly, *Report of*

Insecurity limits access by international agencies in countries such as Afghanistan, the Central African Republic and Pakistan (see discussion below). In Colombia, humanitarian access is satisfactory in towns and cities to which IDPs have fled, but the intensity of fighting in rural areas and transportation challenges prevent many organizations from accessing newly displaced populations.¹¹ Moreover, when Walter Kälin, the RSG of IDPs, visited in 1999, he was unable to visit IDPs in areas controlled by nonstate actors. While permission for such a visit had been negotiated on site by the RSG with the president, in practice the visit was impeded, reportedly due to time and logistics constraints. U.S. Department of State reports covering 2007 through 2009 reported that the government of the Democratic Republic of the Congo “generally allowed” national and international assistance to IDPs, adding that access and insecurity “impeded their efforts.”¹²

The government of Georgia has long had a policy of allowing the United Nations and other international partners to access Abkhazia and South Ossetia, which have been out of effective state control since the early 1990s, and to engage with the de facto authorities, including on IDP issues. The de facto authorities of Abkhazia and South Ossetia generally mirrored Georgia’s cooperation. However, humanitarian access to both regions has been seriously restricted by all parties since the 2008 conflict. This is especially the case in South Ossetia, where the de facto authorities have barred access to the region through Georgia and insisted instead on access through the Russian Federation, which the government of Georgia does not accept. For example, when the RSG visited South Ossetia in 2009, he was required to enter the region through the territory of the Russian Federation, a route

that nonetheless was taken with the prior knowledge and acquiescence of the Georgian government.

Since the mid-1990s UNHCR and the Organization for Security and Co-operation in Europe maintained a field presence in both regions, where there also have been peacekeeping missions over the same period.¹³ However, OSCE’s mission throughout Georgia was forced to close in June 2009 and the UN peacekeeping mission in Abkhazia ended in July 2009, in both cases due to a veto by Russia for the continuation of the missions. And while UNHCR has maintained a field presence in Abkhazia, South Ossetia has remained closed to UNHCR and to the UN as a whole since August 2008. Meanwhile, the Georgian government passed the Law on Occupied Territories of Georgia, which limits access to each region through only one access point in Georgia proper and upon formal authorization of the central government.¹⁴ Neither the United Nations nor the Organization for Security and Co-operation in Europe has, to this day, been permitted to re-establish its long-standing presence in South Ossetia.

In Nepal, after the signing of the Comprehensive Peace Accord in 2006, humanitarian access greatly improved. However, since 2009 there have been reports of constriction of humanitarian space, with access restricted; extortion directed at humanitarian agencies; and strikes that have prevented and delayed the distribution of aid in some instances.¹⁵

the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, A/65/282, 11 August 2010, para. 17 (http://ap.ohchr.org/documents/dpage_e.aspx?m=71).

¹¹ IDMC, *Colombia: New Displacement Continues, Response Still Ineffective: A Profile of the Internal Displacement Situation*, 3 July 2009 (www.internal-displacement.org).

¹² U.S. Department of State, *Human Rights Reports* (www.state.gov/g/drl/rls/hrrpt/index.htm).

¹³ The UN Observer Mission in Georgia, composed of unarmed UN military observers, has operated in Abkhazia and in Georgia proper since 1994; in South Ossetia, the Joint Control Commission (JCC), composed of representatives from Georgia, the Russian Federation, North Ossetia (in the Russian Federation) and South Ossetia (in Georgia proper) was put in place in 1992 to monitor the cease-fire.

¹⁴ Law on Occupied Territories of Georgia, adopted by Parliament on 23 October 2008 and signed by the president of Georgia on 31 October 2008.

¹⁵ OCHA, *Nepal 2010: Humanitarian Transition Appeal* (<http://ochaonline.un.org/humanitarianappeal/webpage.asp?Page=1888>); IDP Working Group, *Distant from Durable Solutions: Conflict-Induced Internal Displacement*

Problems with access to conflict areas and wider insecurity have curtailed humanitarian operations dealing with conflict-induced displacement. In Pakistan, following large-scale displacement in 2009 due to counterinsurgency operations, the government allowed some humanitarian access but barred access to the IDP populations most in need—those located in or near battle areas or in closed military areas, for example—citing security concerns. The government also had blocked humanitarian access to IDPs, prior to 2009, for example, in Waziristan and Balochistan. In addition, the government expelled the International Committee of the Red Cross from the Swat district in July 2009, in part because the organization, in keeping with its principles of independence and neutrality, insisted on conducting its own assessments independently. Attacks on humanitarian workers have also curtailed assistance to IDPs.¹⁶ With respect to disaster-affected IDPs, it was encouraging that the government eased visa restrictions for international humanitarian workers to facilitate the response to the 2010 flood crisis.¹⁷

Myanmar, it is fair to say, has a troubled history with the United Nations and with ensuring humanitarian access. But while humanitarian access has been problematic, it is because the government has denied the existence of conflict-affected IDPs and restricts access of UN and international nongovernmental organizations to conflict areas. The international community has repeatedly called on the government to loosen its tight control of

humanitarian access. For years, the United Nations has called on the government to allow international humanitarian organizations (INGOs) and their partners safe and full access, including in particular ensuring assistance for the return and reintegration of refugees and for humanitarian assistance to IDPs.¹⁸

In 2010 UNHCR secured a two-year agreement with the government to provide services to conflict-affected populations in the southeast. Local, national and international organizations employ a cautious approach in engaging in humanitarian efforts, and civil society organizations must maintain a low profile in their work and in their partnership with international organizations to avoid retribution from authorities. INGOs serving conflict-affected populations also must maintain a low profile, relying largely on national staff. In some cases, international humanitarian organizations have been able to reach IDPs in the conflict-affected southeast either directly or by partnering with local community-based organizations.¹⁹

When Cyclone Nargis struck Myanmar in May 2008, initially the government launched a poor and inadequate response and refused access to foreign relief workers. Nargis claimed 138,000 lives and affected 2.4 million people, demanding a robust response from this poor country. While the government of Myanmar called for international aid three days after the cyclone struck, it preferred bilateral aid distributed through its own agencies and stated that it would not accept foreign aid workers. The government did not enforce

in Nepal, June 2009 (www.internal-displacement.org); OCHA, *Nepal Situation Overview*, no. 50, June 2009 (reliefweb.int/node/315596).

¹⁶ IDMC, *Pakistan: Displacement Ongoing in a Number of Regions*, 15 May 2008 (www.internal-displacement.org); Helen Nic an Rí and Caitlin Brady, “Protection through Partnership: Lessons Learnt from Pakistan’s Displacement Crisis,” *Humanitarian Exchange Magazine*, Overseas Development Institute, no. 46, March 2010 (www.odihpn.org/report.asp?id=3103); Amnesty International, *As If Hell Fell on Me: The Human Rights Crisis in Northwest Pakistan*, June 2010, p. 78 (www.amnesty.org).

¹⁷ Except for Indians and Israelis. *The Hindu*, “Pakistan Eases Visa Regime Except for Indians,” 23 August 2010 (www.thehindu.com/news/international/article590015.ece).

¹⁸ See for example, the following UN General Assembly resolutions: A/RES/65/241, 21 March 2011; A/C.3/64/L.36, 29 October 2009; A/RES/59/263, 17 March 2005; and A/RES/56/231, 28 February 2002.

¹⁹ UNHCR, *UNHCR Global Appeal 2011 (Update): Myanmar*, December 2010 (www.unhcr.org); Transnational Institute and Burma Centrum Netherlands, *Burma’s Longest War: Anatomy of the Karen Conflict*, March 2011 (www.tni.org/briefing/burmas-longest-war-anatomy-karen-conflict). Ashley South, “Humanitarian Aid to IDPs in Burma: Activities and Debates,” *Forced Migration Review: Burma’s Displaced People*, no. 30, April 2008, pp. 17–18 (www.fmreview.org).

its distribution requirement, however. The government's ad hoc, inconsistent approach to managing the crisis—characterized by bureaucratic red tape and other procedural obstacles, such as conflicting directives from different authorities— inhibited the effective and timely distribution of international humanitarian aid.²⁰ Following strong external pressure, particularly from the Association of Southeast Asian Nations, the government eventually lifted restrictions on disaster relief teams from UN agencies, bilateral government agencies, and international NGOs, allowing access to the cyclone-affected area in the Irrawaddy Delta region.²¹

As in Myanmar, in Sri Lanka the government has restricted international humanitarian assistance and created bureaucratic hurdles curtailing access and assistance. As discussed further in the extended case study, humanitarian access to and within the country, especially in the North, has often been restricted or even denied through administrative obstacles and the government's outright ordering of the withdrawal of humanitarian agencies.²² Senior government officials have gone as far as accusing UN and other international agencies of being supporters or sympathizers of the Liberation Tigers of Tamil Eelam. IDPs have largely borne the brunt of the aid restrictions.²³ In addition, since 2006, humanitarian aid workers have increasingly become a target of violent attacks.²⁴

The situation in Sudan has been one of the most complicated in the world in terms of both access and security for humanitarian workers. While the government has allowed international organizations to work in Sudan, it has limited their access in various ways, including by creating bureaucratic obstacles and failing to guarantee the security of humanitarian operations. The result has been increasing attacks on humanitarian aid workers, especially in Darfur, impeding the delivery of aid even as the humanitarian needs of IDPs and other affected populations increased.²⁵ In March 2007, the government of Sudan and the United Nations signed the Joint Communiqué on Facilitation of Humanitarian Activities in Darfur. In the communiqué, the Sudanese government reaffirmed "its commitment to continue to support, protect and facilitate all humanitarian operations in Darfur," including by fast-tracking the documents that international nongovernmental organizations require to operate.²⁶ This so-called Moratorium on Restrictions was extended by President Omar al-Bashir to January 2010.²⁷

According to the UN, following President al-Bashir's March 2009 indictment by the International Criminal Court for war crimes and crimes against humanity, government-imposed restrictions on aid in Darfur increased. On 4 March 2009, the court issued its first arrest warrant for al-Bashir, which coincided with a wave of international aid worker kidnappings in

²⁰ ICG, *Burma/Myanmar after Nargis: Time to Normalise Aid Relations*, Asia Report No. 161–20 October 2008, pp. 3–4 (www.crisisgroup.org).

²¹ Elizabeth Ferris and Lex Rieffel, "Cyclone Nargis: Catalyst for Change in Myanmar?" Brookings Institution, 16 May 2008 (www.brookings.edu/opinions/2008/0516_myanmar_ferris.aspx); ODI–Humanitarian Practice Network, *Negotiating Humanitarian Access to Cyclone-Affected Areas of Myanmar: A Review*, 31 December 2008 (www.odihpn.org).

²² See chapter 2 of this volume.

²³ Amnesty International, *Stop the War on Civilians in Sri Lanka: A Briefing on the Humanitarian Crisis and Lack of Human Rights Protection*, 15 March 2009 (www.amnesty.org).

²⁴ Center for Policy Alternatives, *Trincomalee High Security Zone and Special Economic Zone*, 7 September 2009 ([\[transcurrents.com/tc/Trincomalee_HSZ_SEZ.pdf\]\(http://transcurrents.com/tc/Trincomalee_HSZ_SEZ.pdf\)\).](http://</p>
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²⁵ See, for example, Overseas Development Institute, *Humanitarian Issues in Darfur, Sudan*, Humanitarian Policy Group Briefing Note, April 2004 (www.odi.org.uk); IDMC, *Sudan: Slow IDP Return to South While Darfur Crisis Continues Unabated*, August 2006 (www.internal-displacement.org).

²⁶ Joint Communiqué between the Government of Sudan and the United Nations on Facilitation of Humanitarian Activities in Darfur, 2007, para. 1 (<http://ocha-gwapps1.unog.ch/rw/rwb.nsf/db900SID/SNAA-7Q2554?OpenDocument>).

²⁷ UN Resident and Humanitarian Coordinator, "Darfur Humanitarian Profile No. 34," 1 January 2009 (www.unsudanig.org).

Darfur.²⁸ Immediately after the warrant was issued, the Sudanese government revoked the operating licenses of thirteen INGOs and disbanded three national NGOs in Darfur,²⁹ accusing them of spying for the court and passing on information about crimes committed in Darfur.³⁰ Some 40 percent of the total aid workers in northern Sudan—which had managed over half of the total humanitarian aid delivered to northern Sudan, including the eastern states and the Three Areas—were directly affected by the expulsions.³¹ The expulsion threatened to severely obstruct the delivery of health services to 1.5 million people, water and sanitation to 1.16 million and food aid to 1.1 million people—many of them IDPs. In June 2009, three of the expelled NGOs—CARE, Mercy Corps, Save the Children and the expelled development firm, Planning and Development Collaborative International (PADCO) resumed operations in Darfur by registering under different names and logos. The announcement by UN Under-Secretary General for Humanitarian Affairs and Emergency Relief Coordinator John Holmes that the NGOs had been allowed to “return” to Darfur sparked a sharply negative response from the Sudanese government, which asserted that Sudan was hosting new NGOs with new names and logos, not allowing the expelled organizations to return.³² Since then there

have been spikes in attacks on humanitarian workers in Darfur. Darfur has been a dangerous operating environment not only for humanitarian actors, but also for other UN personnel. As of June 2011, ninety UN–African Union Mission in Darfur personnel had been killed since the mission began in 2008.³³

While historically the government of Yemen has blocked access to displaced populations and impeded the work of humanitarian organizations during the conflict, following the February 2010 cease-fire agreement for the north of the country, it began to permit international agencies more access to facilitate the delivery of aid, albeit with limitations. The government reportedly was worried that aid would fall into rebel hands.³⁴ Aid agencies granted access to conflict-affected regions have faced significant insecurity, which has consistently undermined and at times required them to suspend their activities.³⁵ Renewed armed conflict in late 2010 rendered humanitarian access very challenging, with UN reporting severe access restrictions in the governorates of Sa’ada and Al Jawf in the north, particularly for international staff.³⁶ Ongoing hostilities and access restrictions, in addition to attacks on international NGO personnel and assets, were also reported in 2011 in the northern governorates

²⁸ “Darfur One Year after NGOs Expelled,” Radio Netherlands Worldwide, 4 March 2010 (www.rnw.nl/international-justice/article/darfur-one-year-after-ngos-expelled).

²⁹ UN Security Council, *Report of the Secretary-General on the Sudan*, S/2009/211, 17 April 2009, para. 50.

³⁰ “Sudan Expels NGOs, Defies Hague Court,” *Mail and Guardian*, 5 March 2009 (www.mg.co.za/article/2009-03-05-sudan-expels-ngos-defies-hague-court); “Darfur One Year after NGOs Expelled,” Radio Netherlands Worldwide.

³¹ Humanitarian Policy Group, ALNAP, “Where to Now? Agency Expulsions in Sudan: Consequences and Next Steps,” 26 March 2009 (www.odi.org.uk); IRIN, “Sudan: Expulsions Leave Gaps in Three Areas, Eastern Region,” 31 March 2009 (www.irinnews.org/Report.aspx?ReportId=83708).

³² BBC, “Sudan Allows Aid Agencies Back,” 12 June 2009 (<http://news.bbc.co.uk/2/hi/africa/8096214.stm>); Michael Kleinman, “Tough Choices for Agencies Expelled from Darfur,” Humanitarian Practice Network, Overseas Development Initiative, 6 May 2009 (www.odihpn.org/

report.asp?id=2998); VOA News, “Sudan Denies Some Expelled NGOs Returning,” 11 June 2009 (www1.voanews.com/english/news/a-13-2009-06-11-voa52-68802962.html); ENews, “Sudan Denies Expelled Aid Groups Allowed to Return,” 14 June 2009 (www.eneews.ma/sudan-denies_i133254_1.html).

³³ UN African Union Mission in Darfur, “UNAMID Facts and Figures” (www.un.org/en/peacekeeping/missions/unamid/facts.shtml).

³⁴ Human Rights Watch, “All Quiet on the Northern Front?” March 2010, p. 51 (www.hrw.org/en/reports/2010/04/07/all-quiet-northern-front-0).

³⁵ IDMC, *Yemen: Constrained Response to Protection Needs of IDPs and Returnees*, July 2009, p. 113 (www.internal-displacement.org).

³⁶ See, for example, OCHA, *Yemen: 2011 Humanitarian Response Plan* (<http://reliefweb.int>).

of Hajjah, Al-Jawf, Amran and Sa'ada, disrupting the delivery of humanitarian assistance to IDPs and other conflict-affected populations.³⁷

Conclusion

All of the countries surveyed for this study have engaged with international organizations and actors. Almost all have invited the RSG on IDPs to visit and have welcomed advice and technical expertise in dealing with complex displacement situations. All have accepted the offers of international humanitarian organizations to provide assistance or support to IDPs within their territory (or in the case of Turkey, development actors). Some have worked with peacekeeping missions to enhance protection of civilians. To varying degrees, governments have facilitated access by international actors to affected communities. However, restrictions on access to IDPs remain a serious challenge. In some cases, it is outright denial of access, whether to IDPs in general (for example, as in Turkey for many years) or to certain groups

of IDPs (for example, in Myanmar, engagement with the international community is extremely limited, if not nonexistent, with respect to conflict-induced IDPs, but some cooperation has occurred with respect to those displaced by disasters). In other cases, permission is formally granted but denied in practice—for instance, through bureaucratic delays and restrictions in terms of travel documents. Often there also are political obstacles, namely that the government does not have effective control over certain parts of its territory. Even then, however, a government should be expected to allow international humanitarian access to those areas, as Georgia and, at times, Sri Lanka has done. In such cases, access also depends on the attitude of the non-state authorities that do control the areas, which also have responsibilities under international humanitarian law, as stated in Guiding Principle 25, to allow safe and unimpeded international humanitarian access to IDPs.

And yet, access is a practical requirement to do much of what is required to assist, protect and secure solutions for IDPs. Therefore, in cases in which government capacity or will is inadequate to mount an effective response to internal displacement—which include many if not most cases—the importance of the benchmark regarding cooperation with international humanitarian organizations cannot be overstated.

³⁷ OCHA, *Yemen: Northern Governorates (Hajjah, Al-Jawf, Amran and Sa'ada): Humanitarian Access Report*, Cumulative January and February 2011 (<http://reliefweb.int>).



North Darfur, Sudan/ A woman collects firewood in Kutum.
Photo: Albert González Farran-UNAMID / August 2011



Rift Valley, Kenya / Internally displaced persons rest at a temporary camp in the Adult Education Center in Dondull, 12 miles from the town of Nakuru.
Photo: UNHCR / T. Mukoya / March 2008

CHAPTER 2

Case Studies

Georgia, Kenya, Afghanistan and Sri Lanka

The four country case studies in this chapter feature in-depth analysis using the tool of the Framework for National Responsibility to assess national response to IDP protection and assistance. The basis for the selection of these four countries is explained in the methodology section of the introductory chapter of this volume.

These case studies seek to analyze the challenges that national authorities have faced in implementing the measures outlined in the benchmarks as well as, where applicable, to assess their approaches to seeking to overcome them. Each case study begins with an overview of the internal displacement situation in the country followed by analysis of each of the twelve benchmarks. Concluding observations, including those based on the analysis presented in these four case studies and the analysis across the other eleven countries examined in this volume, in addition to recommendations to all governments affected by internal displacement, are presented in chapter 3.



Revaz, aged 73, stands in front of the Khobi Swimming Complex, which has been a “collective center” for IDPs from Abkhazia since the conflict in the 1990s. The building is structurally unsound, has no running water and no functioning heating during the winter. Photo: UNHCR/ P. Taggart / October 2008

From Solidarity to Solutions: The Government Response to Internal Displacement in Georgia

Erin Mooney

Overview of Internal Displacement in Georgia

Internal displacement in Georgia is predominantly the result of conflict. As of May 2011, there were some 256,100 conflict-induced internally displaced persons (IDPs) in Georgia, amounting to 5.5 percent of the country's population.¹ Displacement has resulted from two different conflicts, centered in and around the regions of South Ossetia (also known as Tskhinvali) and Abkhazia. In both cases, conflict and consequent large-scale displacement have occurred in two main phases: first, with the outbreak of conflict in both regions in the early 1990s; and second, with the renewal of hostilities in and around South Ossetia that also have affected Abkhazia, for five days in August 2008. Between the two peak phases of conflict have been extended periods of several years characterized by the absence of active hostilities but also by lack of peace, leading to their classification as so-called “frozen” conflicts. The IDPs resulting from these two distinct periods of displacement commonly are referred to as the “old” and “new” IDPs.

“Old” IDPs refers those affected by the internal displacement that occurred in the early 1990s. Following the disintegration of the Soviet Union and Georgia's resulting declaration of independence in 1991, conflicts broke out in South Ossetia and Abkhazia over their claims to self-determination. Combined, the two conflicts displaced some 300,000 people during the period of active hostilities, from 1991 to 1992 in South Ossetia and from 1992 to 1993 in Abkhazia. Most of the displacement

occurred within the internationally recognized borders of Georgia, and the patterns of displacement showed a strong ethnic dimension. The vast majority of the IDPs are ethnic Georgians displaced from Abkhazia. In addition, some 20,000 IDPs, ethnic Ossets as well as ethnic Georgians, resulted from the conflict in South Ossetia, of whom half remained within South Ossetia while the other half fled to Georgia proper.² Additional, smaller-scale displacement in connection with these conflicts took place several years later, following a resurgence of hostilities in May 1998 in Abkhazia and in July-August 2004 in South Ossetia. During the several years of so-called “frozen” conflict, a certain amount of return to these areas took place. An estimated 45,000 to 50,000 people spontaneously returned to the Gali region of Abkhazia—returns that officially are unrecognized by the Georgian government (see Benchmarks 3 and 10)—while the organized return to South Ossetia of several thousand IDPs as well as refugees—of whom 5,735 were assisted by the UN High Commissioner for Refugees (UNHCR)—occurred between 1997 and 2005.³

¹ Figures current as of end May 2011, provided to the author in July 2011 by the Government of Georgia, Ministry for Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees. For further discussion, see analysis under Benchmark 3, below.

² The conflict in Abkhazia displaced some 240,000 people, the vast majority of whom are ethnic Georgians who were displaced from Abkhazia into other parts of Georgia; smaller-scale short-term displacement also occurred within Abkhazia, though even approximate figures are unknown. The conflict in South Ossetia displaced an estimated 60,000 people, of whom approximately 20,000 became IDPs: some 10,000 ethnic Georgians fled the conflict region into areas of the country under the control of the government of Georgia while 5,000 ethnic Ossets were displaced within South Ossetia and were joined by a further 5,000 Ossets who fled into South Ossetia from other parts of Georgia. In addition, some 40,000 people, mostly ethnic Ossets fleeing the conflict in South Ossetia, crossed the border into the Russian Federation region of North Ossetia.

³ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally*

The “new” IDPs refers to those affected by the displacement that occurred in August 2008 as a result of the five-day war between Georgia and Russia that was triggered in South Ossetia but also spread to Abkhazia. An estimated 158,700 people were forced to flee their homes in South Ossetia and adjacent areas as well as the Kodori Gorge of Abkhazia.⁴ Again, displacement was largely internal in nature: the vast majority of those displaced (some 128,000 people) became IDPs, of whom most were displaced in Georgia proper while some 30,000 IDPs were displaced within South Ossetia; meanwhile, 30,000 people from South Ossetia, mostly ethnic Ossets, fled across to the region of North Ossetia, located in the Russian Federation. By October 2008, with the withdrawal of Russian troops from regions of Georgia other than South Ossetia and Abkhazia, the majority of the “new” IDPs had returned home.

Of the 256,100 IDPs in Georgia in 2011, the vast majority (238,187 persons, or 93 percent) are IDPs who were displaced by conflict in the early 1990s and thus have been living as IDPs for nearly two decades. Of these IDPs, most are IDPs from Abkhazia, while a small but imprecise number of IDPs from the South Ossetia conflict of 1991–92 remain, both within South Ossetia

(some 3,500 in collective centers⁵) and in Georgia proper. The remaining IDPs (17,916 according to government IDP registration; 22,000 according to UNHCR and the Public Defender of Georgia—see Benchmarks 3 and 5) were uprooted more recently as a result of the conflict in August 2008, but they were not among the large numbers of IDPs who were able to return to their home areas in the weeks immediately following the end of active hostilities. It is noteworthy that 3,613 of the total number of IDPs in Georgia currently were displaced successively by both periods of conflict and mass displacement.⁶

In addition to IDPs resulting from conflict, Georgia also periodically experiences smaller-scale but still significant displacement due to natural disasters, especially floods, landslides and earthquakes.⁷

1. Prevent Displacement and Minimize Its Adverse Effects

Do national authorities take measures to prevent arbitrary displacement and to minimize adverse effects of any unavoidable displacement?

Neither the Law of Georgia on Forcibly Displaced–Persecuted Persons (1996)⁸ nor the State Strategy on

Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia, E/CN.4/2001/5/Add.4, 25 January 2001, paras. 11–15, 20–21 (http://ap.ohchr.org/documents/dpage_e.aspx?m=71); UN Commission on Human Rights, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Mission to Georgia*, E/CN.4/2006/71/Add.7, 24 March 2006, paras. 7–9 (www.brookings.edu/projects/idp/rsg_info.aspx#Kalin). See also Internal Displacement Monitoring Centre (IDMC), *IDPs in Georgia Still Need Attention: A Profile of the Internal Displacement Situation*, 9 July 2009, pp. 4, 8, 18, 20–21, 28, 32, 43–45 (www.internal-displacement.org).

⁴ According to UN agencies, these 158,703 IDPs included 75,852 persons displaced from and within South Ossetia, 65,800 from Gori and surrounding villages, 12,701 from Western Georgia, and 4,350 from Abkhazia. UN Office for the Coordination of Humanitarian Affairs (UN OCHA), *Consolidated Appeals Process: Georgia Crisis Flash Appeal 2008* (18 August 2008), p. 9 (<http://reliefweb.int/node/276845>).

⁵ UN Human Rights Commission, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Follow-Up to the Report on the Mission to Georgia*, A/HRC/13/21/Add.3, 14 January 2009, para. 5 (www.brookings.edu/projects/idp/rsg_info.aspx#Kalin).

⁶ Figures provided to the author in July 2011 by the Government of Georgia, Ministry for IDPs from Occupied Territories, Refugees and Accommodation.

⁷ For example, the government has reported that between 1987 and 1989, some 20,000 people became internally displaced as a result of natural disasters. UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia*, E/CN.4/2001/5/Add.4, 25 January 2001, para. 12.

⁸ Government of Georgia, Law of Georgia on Forcibly

Internally Displaced Persons (2007),⁹ which focuses on durable solutions to displacement, addresses the issue of protection from arbitrary displacement. However, other national legislation is relevant. The Criminal Code establishes criminal responsibility for any displacement that takes the form of genocide or crimes against humanity.¹⁰ Moreover, during a state of emergency or of martial law, while the applicable national legislation does allow the government to “temporarily resettle citizens from regions that pose a threat to life” and to “restrict, when necessary, the right of citizens and stateless persons to freedom of movement,” any such displacement must be justified on grounds of necessity and must meet numerous procedural guarantees in order for the displacement to be considered lawful.¹¹ It is noteworthy that the government of Georgia has been criticized by some local observers for having failed to meet its responsibility to evacuate civilians from the conflict zone during the August 2008 war.¹²

Displaced–Persecuted Persons, 28 June 1996, as amended 25 October 2010 (<http://mra.gov.ge>). The law with amendments of 2010 changing the title of the ministry currently is available only in Georgian; an unofficial English translation of the law, current to the penultimate amendment in 2006, is available at Brookings-LSE Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Georgia” (www.brookings.edu/projects/idp/Laws-and-Policies/georgia.aspx). For further information, see Benchmark 5, below.

⁹ For further information on the State Strategy, see Benchmark 6, below.

¹⁰ Government of Georgia, Criminal Code of Georgia (1999).

¹¹ Giorgi Chkheidze and Konstantine Korkelia, “Report on the Guiding Principles and the Law of Georgia,” in Roberta Cohen, Walter Kälin and Erin Mooney, eds., *The Guiding Principles on Internal Displacement and the Law of the South Caucasus: Georgia, Armenia, and Azerbaijan*, pp. 21–24 (Brookings-SAIS Project on Internal Displacement and the American Society of International Law, 2003), citing the Law on State of Emergency, 17 October 1997 and the Law on State of Martial Law, 31 October 1997.

¹² Joint submission by Human Rights Priority, the International Center on Conflict and Negotiation and the Caucasus Women’s Network, para. 20, cited in United Nations, General Assembly, Human Rights Council, Working Group on the Universal Periodic Review,

As for mitigating the effects of displacement, the Law on Forcibly Displaced Persons–Persecuted Persons provides that persons who meet the definition and are recognized as having the status of a “forcibly displaced person–persecuted person” (a classification under national legislation that in effect corresponds to persons regarded by the international community as conflict-induced IDPs) are entitled to receive free transportation of person and transfer of luggage by public transportation to the place of temporary residence; to reside in a place of temporary residence and to use utilities free of charge; to receive food in an amount prescribed by relevant legislation; to access medical services free of charge in state medical institutions; and to receive financial aid or other assistance from the state.¹³ IDPs displaced by conflict and registered as having this status are entitled to receive a modest monthly stipend: in 2000, the stipend was 11 Georgian Lari for IDPs in collective centers and 14 Lari for IDPs in private accommodations; since 2005, the monthly stipend has been 22 Lari for IDPs living in collective centers and 28 Lari for IDPs living in private accommodation. Although the amount is minimal and certainly insufficient to cover basic needs,¹⁴ most IDPs rely heavily on the stipend, given their lack of meaningful livelihoods and reliable access to income-generating opportunities. Therefore it was especially problematic when in previous years disbursement of the monthly stipend frequently was delayed, sometimes for several months at a time, thereby depriving many IDPs of a critical source of support and leaving them in a very

Summary Prepared by the Office of the High Commissioner for Human Rights: Georgia, UN doc. A/HRC/WG.6/10/GEO/3 (15 November 2010) (www.unhcr.org/refworld/country,,UNHRC,,GEO,,4d53a9792,0.html).

¹³ Government of Georgia, Law of Georgia on Forcibly Displaced–Persecuted Persons, 1996, as amended 25 October 2010. For more comprehensive analysis of the law, see Benchmark 5.

¹⁴ Consider that in 1999, the World Bank had set the absolute poverty line at 52 Lari per adult per month. The “minimum survival” food basket alone cost 40 Lari a month per adult. World Bank, *Georgia: Poverty and Income Distribution*, vol. 1, Report No. 19348-GE (World Bank, 1999), para. 102.

precarious situation.¹⁵ In recent years, this problem appears to have been corrected.¹⁶

For causes of displacement besides conflict, the specified mitigating measures vary. In the case of persons displaced pursuant to a declared state of emergency or of martial law, the state is obliged to provide all affected persons with a place of temporary residence; compensation for material damage suffered; assistance in finding employment; and other types of assistance.¹⁷ In the case of displacement due to natural disasters, a presidential decree provides for the establishment of state and local commissions for the social-legal protection of persons affected by disasters and the avoidance of such possible disasters in the future.¹⁸ Georgia law does not contain any special provisions regulating the displacement of persons caused by large-scale development projects, although regulations regarding property expropriation would apply.¹⁹

Notwithstanding the various legal provisions for protection against arbitrary displacement and measures taken to mitigate the immediate effects of any displacement (arbitrary or otherwise) that does occur, the August 2008 displacement crisis exposed critical gaps in emergency preparedness. In the absence of a national plan for emergency response, operational procedures had

not been established, the necessary capacities were not in place, and the division of responsibilities among government agencies and coordination mechanisms with nongovernment partners were not clearly defined, leading to an ad hoc response. Acknowledging the gaps, the government has begun to develop its capacities in this area—for instance, by having staff attend training courses in emergency preparedness in 2009 and undertaking in 2010 an emergency preparedness simulation exercise involving the emergency services, the Ministry for Refugees and Accommodation, and the military.²⁰

With respect to improving the living conditions of IDPs in collective centers and other temporary accommodations, the State Strategy on IDPs states that “IDPs shall be protected against arbitrary/illegitimate eviction.”²¹ Moreover, national legislation affirms that IDPs shall not be expelled from their places of temporary residence unless written agreement has been reached with the IDPs; the living conditions of the accommodation that the IDP has been allocated have deteriorated; force majeure; other catastrophes in which case displacement “entails specific compensation and is [to be] regulated according to the general rules” prescribed by law; or the living space is occupied illegally in violation of national legislation.²²

In 2010, the government adopted standard procedures for vacating and reallocating IDP housing, which, among other things, addresses those cases in which removal of IDPs from a collective center is ordered by

¹⁵ For example, in May 2000, IDPs reported to RSG Francis Deng that they had not received the stipend since December 1999. The following month, IDPs staged mass protests demanding payment of the allowance, to which they are entitled by law. UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia*, 2001, para. 34.

¹⁶ The Norwegian Refugee Council (NRC), which provides information, counseling and legal aid services for IDPs, reports receiving from IDPs few complaints on this issue in recent years. E-mail correspondence with NRC Georgia, May 2011.

¹⁷ Chkeidze and Korkelia “Report on the Guiding Principles on Internal Displacement and the Law of Georgia,” p. 26.

¹⁸ *Ibid.*, pp. 31–33.

¹⁹ For a summary of the relevant legislation, see *ibid.*, pp. 31–32.

²⁰ Interviews with government officials and international aid agencies, undertaken by the author, together with Guy Hovey, as part of a USAID technical assistance project carried out through USAID-FORECAST [Focus on Results: Enhancing Capacity across Sectors in Transition], 2009–2010; and e-mail correspondence of the author with a senior adviser to the Ministry for IDPs from the Occupied Territories, Accommodation and Refugees, January–February 2011.

²¹ Government of Georgia, State Strategy for Internally Displaced Persons–Persecuted Persons, Chapter V, 2.2.

²² Government of Georgia, Law of Georgia on Forcibly Displaced–Persecuted Persons, 1996, as amended 25 October 2010, Article 4(4).

the government and may require an eviction.²³ Some observers have expressed concern that cases of eviction in which the only alternative accommodation offered to IDPs was located in a region far from the IDPs' current place of residence could amount to secondary displacement.²⁴ For further discussion on this issue see Benchmark 10, below.

2. Raise National Awareness of the Problem

Does the government (at the highest executive level, for example, the president/prime minister) acknowledge the existence of internal displacement and its responsibility to address it as a national priority?

The government of Georgia not only acknowledges the internal displacement resulting from the conflicts concerning Abkhazia and South Ossetia, it actively promotes national and international attention to the issue. Indeed, during his mission to Georgia in 2000, Francis Deng, the Representative of the United Nations Secretary-General on Internally Displaced Persons (RSG), was struck by the degree to which the authorities exhibited “solidarity” with IDPs uprooted by the conflicts and that “[y]ears on, the government continues to give emphasis to the plight of the internally displaced.”²⁵ More than a decade later, and now nearly two decades

since displacement first occurred, the government continues to do so. In addition, the government, at the highest levels, also has acknowledged and drawn attention to the occurrence in Georgia of internal displacement due to natural disasters.²⁶

The government consistently and actively has endeavored to mobilize attention especially to the plight of conflict-induced IDPs and has done so in the domestic arena as well as in major international forums including the United Nations and the Organization for Security and Cooperation in Europe (OSCE). Beyond the compelling humanitarian reasons for calling attention to the IDP issue, doing so has always had important strategic and political value for the government insofar as it serves as a visible reminder of the otherwise largely forgotten armed conflicts of nearly two decades ago and the consequent loss by the central government of effective control over the territories of Abkhazia and South Ossetia. Consequently, internal displacement, in particular the right of IDPs to return, is a highly politicized issue in Georgia, on both the domestic and the international level. Within the national arena, rhetoric on the issue of IDP return has been especially strong in the run-up to elections, with promises made, including by the president, to restore the territorial integrity of Georgia and thereby enable IDPs to exercise their right to return. Typically such electoral promises have spoken of realizing those goals within a very short timeframe—that is, within a matter of months.²⁷ However, particularly

²³ *The Standard Operating Procedures for Vacation and Re-allocation of IDPs for Durable Housing Solutions* (2010) (www.mra.gov.ge).

²⁴ Amnesty International, “Index,” *Uprooted Again: Forced Eviction of the Displaced People in Georgia* (August 2011) EUR 56/005/2011 (www.amnesty.org); compare “Reply by the Government of Georgia, Ministry of Internally Displaced Persons, Accommodation and Refugees to the Report by Amnesty International,” 5 August 2011 (<http://mra.gov.ge/main/ENG#readmore/635>).

²⁵ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia*, 2001, paras. 1–2.

²⁶ President Eduard Shevardnadze and, separately, the Minister for Refugees and Accommodation, emphasized the plight of disaster-induced IDPs in Georgia to the RSG during his mission in May 2000. UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia*, 2001, para. 12. More recently, the incidence in Georgia of internal displacement due to natural disasters was flagged by senior officials in the ministry responsible for IDPs in the course of a USAID-FORECAST assessment undertaken in February-March 2009 by the author and Guy Hovey of the ministry’s capacity and concerns regarding internal displacement.

²⁷ See, for example, “Georgia: Saakashvili Vows to Secure

in the aftermath of the conflict in August 2008, which was followed by the Russian Federation's recognition of Abkhazia and South Ossetia as independent states, statements by Georgian politicians of the possibility of large-scale IDP return in the immediate future have diminished significantly. Even so, the IDP issue remains prominent in the national consciousness and is an issue of significant political import for the government.

As just one indication, the IDP issue features regularly and with increasing prominence in the president's annual State of the Nation address.²⁸ It is noteworthy that the president's most recent address, in 2011, was framed around the theme of national "responsibility" to address the situation of IDPs. The president noted that the government's "main priority is to care for our internally displaced population," emphasizing that "the State has an obligation to do everything to give our IDP compatriots the possibility of a better life." Continuing with the theme of national responsibility, the president emphasized that the government's "main obligation" is to improve IDPs' living conditions and specified that "part of this obligation" is "the resettlement of displaced persons in private dwellings of their own, instead of shelters," where currently "many" IDPs "still live in difficult conditions . . . in temporary shelters with poor conditions for living." The president summarized current government programs for providing decent shelter to IDPs during their displacement, while acknowledging that these efforts were "just a drop in the ocean; much more needs to be done." At the same time, the president underscored that IDPs' situation will not be completely resolved until "every displaced person gets back their own property" in their area of origin.²⁹

More concretely, the government has taken a number of high-profile national initiatives regarding IDPs. In 2000, the Presidential Commission on IDPs was established, comprising twenty senior representatives from different ministries; though it appears that the commission's work was limited in time and impact (see Benchmark 7). In 2006, a state commission was established to develop a state strategy on IDPs, resulting in the adoption by the Council of Ministers of such a strategy, conveyed by a decree of the prime minister in February 2007 (see Benchmark 6).

Perhaps most notable, at least in terms of national awareness-raising initiatives on IDP issues, was the multimillion dollar "My House" program launched by President Saakashvili in 2006 and funded from the discretionary funds at his disposal.³⁰ This program, which allowed IDPs to register abandoned property in Abkhazia through state-of-the-art satellite technology, was promoted in an extensive mass media campaign. Notwithstanding the national prominence given to the program and the hype surrounding it, its utility and impact were limited (see Benchmark 10 below). Moreover, when rumors and resulting panic spread among IDPs concerning the "My House" program—specifically, rumors suggesting that IDPs who did not participate would lose their IDP status and the assistance afforded under national legislation—the government did little, if anything, to correct the misinformation. The general view among observers of IDP issues in Georgia at the time was that the program was more a political and public relations exercise than a serious effort by the government to strengthen the legal evidence for IDPs' claims for property restitution.³¹

IDPs' Return to Abkhazia in Months," 28 November 2007(<http://reliefweb.int/node/250451>).

²⁸ See, for instance, President of Georgia, "Annual Address to Parliament," 2006, 2007, 2008, 2009 (www.president.gov.ge/index.php?lang_id=ENG&sec_id=231&info_id=2483).

²⁹ President of Georgia, Mikheil Saakashvili, "Annual Address to Parliament," 11 February 2011 (www.president.gov.ge/index.php?lang_id=ENG&sec_id=231&info_id=6143). For an analysis, see Lasha Gogidze and Caitlin Ryan, "Fact-Checking the State of the Nation Address: IDPs,"

Indeed, the aspect of internal displacement on which the government has focused most national

28 February 2011 (<http://transparency.ge/en/blog/pfact-checking-state-nation-address-idpsp>).

³⁰ A description of the government program is available on the government website (www.chemisakhli.gov.ge/index.php?lang_id=ENG&sec_id=1).

³¹ Author's notes, while working in Georgia on IDP issues, 2006–07.

awareness-raising efforts is the issue of IDPs' "right to return." Advocacy of the right to return is a common refrain in virtually every government statement, domestic or international, on IDP issues. While the government's approach to durable solutions to displacement has broadened significantly in recent years to include alternative solutions (see Benchmarks 5 and 10), the focus of government advocacy efforts remains on return. Indeed, every year since 2008 the government of Georgia has sponsored in the UN General Assembly a controversial, but increasingly supported, resolution on the "right to return" of IDPs from Abkhazia and South Ossetia.³² Moreover, President Saakashvili personally remains a vocal advocate of IDPs' right to return.³³

The government's acknowledgement of internal displacement and its responsibility for addressing it is reflected in the national legal and policy framework. Most notably, in 1996 the government adopted the Law of Georgia on Forcibly Displaced Persons–Persecuted Persons; indeed, Georgia counts among the first countries in the world in adopting national legislation

specifically addressing internal displacement (see Benchmark 5 below). Moreover, as mentioned above, in 2007, the government adopted the State Strategy on Internally Displaced Persons (see Benchmark 6, below). Especially noteworthy for this study, the current government minister responsible for IDPs (see Benchmark 7), along with senior officials in the ministry, has made a point of publicizing that all senior officials in the ministry have been provided with copies of the Guiding Principles on Internal Displacement and of the guidance document on national responsibility, *Addressing Internal Displacement: A Framework for National Responsibility*, noting that "this has helped ensure that the humanitarian response has met internationally recognized standards."³⁴ It is noteworthy that Amnesty International also refers to the Framework for National Responsibility and specifically has reiterated the Framework's twelve benchmarks as "valuable criteria for assessing the realization of human rights of internally displaced persons" and for measuring government accountability.³⁵

The government of Georgia attaches significant national priority to the issue of conflict-induced internal displacement and indeed demonstrates strong solidarity with IDPs. In so doing, government rhetoric and response historically has focused almost exclusively on pressing for IDPs' right to return. While advocacy of that right is important and is in line with the responsibility

³² For example, UN General Assembly (UNGA) Resolution 65/287 of 29 June 2011 on the status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia; UNGA Resolution 64/296 of 7 September 2010; UNGA Resolution 63/307 of 9 September 2009; UNGA Resolution 62/249 of 15 May 2008. That these resolutions have been adopted only with numerous abstentions illustrates the highly politicized nature of the issue, in particular regarding Georgia's relations with Russia, which has had significant external influence on the conflicts and efforts to resolve them.

³³ See, for example, President Saakashvili's statement to the OSCE Summit in Astana, 1 December 2010 (http://www.president.gov.ge/index.php?lang_id=ENG&sec_id=228&info_id=5921); and *Daily News Online*, "Saakashvili: UN Vote Russia's Shame and Diplomatic Failure," 10 September 2009 (www.civil.ge/eng/article.php?id=21448), referring to a televised statement by President Saakashvili in which he welcomed UN General Assembly Resolution 63/307 recognizing the right of displaced persons to return to Abkhazia and South Ossetia, by describing this as a major diplomatic victory for Georgia and diplomatic defeat for the Russian Federation.

³⁴ Iulia Kharashvili, Ilya Kharashvili, and Koba Subeliani, "Experience of the Guiding Principles in Georgia," *Forced Migration Review, Special Issue on 10 Years of the Guiding Principles on Internal Displacement*, December 2008, pp.16–17. Koba Subeliani has been the Minister for Refugees and Accommodation since late 2008 to the present and previously served in this same capacity from 2007 to early 2008. In the period between his two ministerial appointments, he was a member of parliament and coordinator of the Georgian Parliament's IDP group; Iulia [who also goes by, and has published under, the name "Julia"] Kharashvili was an adviser on IDP issues in the ministry from 2006 to February 2011.

³⁵ Amnesty International, "Government Accountability," *In the Waiting Room: Internally Displaced People in Georgia* (August 2010), p. 44 (www.amnesty.org).

of a government to create conditions enabling return, in other respects the focus on return has been counterproductive, having worked against IDPs' and their right to access decent living conditions in the interim and even to access alternative solutions to displacement. Only in recent years has the government taken a more comprehensive approach to supporting IDPs in protracted displacement (see Benchmark 10), a shift now reflected in statements by the government at the highest level. Even so, especially in international forums, the priority of the government's awareness-raising efforts remains on pressing for creating conditions enabling IDPs' right to return.

3. Collect Data on Number and Conditions of IDPs

Do the national authorities collect data on the number and conditions of IDPs?

The government collects data on the number and, to a certain extent, the conditions of IDPs. Specifically, data collection efforts focus on IDPs displaced by conflict; data are not systematically collected on the internal displacement that periodically occurs, on a smaller scale, because of natural disasters such as earthquakes and landslides.

Data collection by the authorities on conflict-induced IDPs is based on national IDP registration, which is undertaken in accordance with national legislation regulating IDP status (see Benchmark 5), which defines IDPs as persons displaced by conflict. The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees (previously known as the Ministry of Refugees and Accommodation and, even after the name change, still referred to using the acronym MRA) has responsibility for IDP registration.

The first countrywide IDP registration exercise occurred in 1996; the most recent, a "re-registration" exercise, took place from April 2007 to April 2008. During this exercise, a total of 218,858 IDPs were registered in

Georgia. Of those, 206,538 were IDPs who had fled from Abkhazia; another 12,320 had fled from South Ossetia.³⁶

For each registered IDP, personal data collected include the IDP's name, IDP registration number, age, gender, current address and contact details, predisplacement address, and indication of any vulnerability status recognized under national law, such as orphan, war veteran, and so forth. Basic personal data on IDPs are updated annually to reflect any changes in information, such as a change of address, or new information, including births and deaths. According to national legislation, an IDP is obliged to inform the ministry of any change to her/his place of residence within one month of the change and of planned absences from the country of more than two months (in which case IDP status and its entitlements are to be suspended).³⁷ In practice, however, those requirements are not enforced, nor do they now have much practical importance given that since 2007 all legally recognized IDPs can receive directly through their bankcards and ATM machines the monthly allowance to which they are entitled; thus they can receive their allowance wherever they are. Moreover, in recent years, with the introduction of programs to provide IDPs with improved living conditions through purchase of their current living space or through compensation schemes, the ministry stopped accepting changes of IDPs' addresses with a view to impeding IDPs from abusing the programs to claim ownership of or compensation for housing in a location associated with higher property values, such as Tbilisi, rather than in the location of the residence where the IDPs actually have been living.³⁸

Between countrywide re-registration exercises, IDP figures are updated to reflect normal demographic changes—the birth of children to IDPs and deaths of

³⁶ UNHCR, *Protection of Internally Displaced Persons: A Gap Analysis* (UNHCR and EU, July 2009), p. 10 (hereafter, UNHCR, *Gap Analysis*).

³⁷ Government of Georgia, *Law of Georgia on Forcibly Displaced-Persecuted Persons*, Article 5.

³⁸ I am indebted to Tina Gewis, protection and advocacy adviser, Norwegian Refugee Council, Georgia, for these points. E-mail correspondence with author, June 2011.

registered IDPs—as well as the registration of individuals who were displaced by the conflict and then lived abroad (IDP status is terminated if the individual leaves the country and establishes permanent residence or acquires citizenship of another country) but who have since returned to Georgia but still cannot return to their areas of origin.³⁹

IDPs displaced by the August 2008 conflict initially were registered through another process. Although IDP registration is a mandated responsibility of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees, in the aftermath of the August 2008 conflict, the suddenness and scale of displacement—130,000 persons became internally displaced in five days—overwhelmed the capacity of the MRA in many respects, including registration. As MRA was considered to be ill equipped to mount emergency registration of the newly displaced, the government turned to the Civil Registry Agency (CRA) of the Ministry of Justice to complete this essential task. The CRA, with support from USAID, recently had upgraded its information technology and invested in staff training, both of which were mobilized for this purpose.⁴⁰ Significantly, UNHCR also decided to partner with and support CRA rather than MRA in registering the new IDPs. Inevitably, that experience raised serious questions within government as well as among international stakeholders of whether data collection responsibilities for IDPs—and even focal point responsibility for IDP issues overall—should remain with the MRA in the long term (see also Benchmark 7).⁴¹ MRA, for its part,

voiced concern about discrepancies in the data and in the methodology used by the CRA.⁴² The information collected by the CRA on the “new” IDPs eventually was integrated into a new, comprehensive database developed by the MRA beginning in May 2009.

Yet the MRA has been slow to grant official IDP status, as provided for under the Law on Forcibly Displaced Persons–Persecuted Persons, to all of the “new” IDPs who were unable to return to their home areas in the weeks and months immediately following the end of hostilities and who, factually speaking, remain IDPs. By law IDPs are to be registered within ten days of presenting their application.⁴³ While the government did begin granting IDP status to those cases in the second half of 2009, specific groups of IDPs from 2008, namely those from territories outside the control of the government of Georgia, have been left out of the process (for further discussion of this issue, see Benchmark 5). It therefore is important to note that government figures for the 2008 caseload refer only to IDPs who have been granted IDP status; thus, while the government reports 17,916 “new” IDPs, other observers—including the Public Defender of Georgia (see Benchmark 8), UNHCR, and other international actors—report 22,000 IDPs remaining from the August 2008 conflict.

According to the most recent official data, dated May 2011 and based on the ministry’s database of persons registered as having IDP status, currently there are 256,103 IDPs (88,834 households) in Georgia.⁴⁴ Data are broken down according to whether individuals are “old” or “new” IDPs. The vast majority, 238,187 persons, are IDPs (and their descendants) as a result of the hostilities in South Ossetia and Abkhazia in the early 1990s—the

³⁹ Government of Georgia, Law of Georgia on Forcibly Displaced–Persecuted Persons, Article 6(3), paras. (c)-(d).

⁴⁰ U.S. Agency for International Development (USAID), “Georgian Agency’s new Infrastructure Is Put to the Test,” 14 February 2009 (<http://georgia.usaid.gov/ka/node/126>).

⁴¹ Interviews by author and Guy Hovey, with government representatives, UNHCR, international NGOs and donors, Tbilisi, February–March 2009, in connection with the USAID-FORECAST project to provide technical assistance on IDP issues to the Ministry for Refugees and Accommodation; the project ran from February 2009 to July 2010.

⁴² Interviews by author and Guy Hovey with officials of the MRA, February–March 2009.

⁴³ Government of Georgia, Law of Georgia on Forcibly Displaced–Persecuted Persons, Article 2, para. 9.

⁴⁴ E-mail correspondence with the MRA in June and July 2011. Note that these figures received from the MRA, based on its IDP registration database, differ slightly from the statistics (undated) that were posted at the time on the MRA website (<http://mra.gov.ge/main/ENG#section/50>).

so-called “old” IDPs (of whom most are IDPs from the Abkhazia conflict). In addition, 17,916 persons registered with IDP status are “new” IDPs, resulting from the renewed outbreak of conflict, primarily around South Ossetia and adjacent areas, in August 2008.⁴⁵ Another figure provided by the MRA, of 3,687 persons, refers to those who were displaced by both periods of conflict, that is, in the early 1990s and again in August 2008. However, to avoid double-counting those people, this figure was not and should not be counted in the total number of IDPs noted above. (That calculating error led MRA to provide a total figure of 259,790 IDPs, double-counting the 3,687 persons displaced during both phases of displacement.) Besides the overall figures, the MRA compiles, based on information collected during IDP registration, disaggregated data on IDPs—for instance, data on age, gender and location of residence while displaced. The MRA website publicly posts statistics on the registered location of IDPs, by region and district.⁴⁶ With the exception of the above-noted discrepancy regarding granting IDP status to all of the 22,000 IDPs remaining from the August 2008 conflict, other key actors, most notably UNHCR and the Office of the Public Defender, cite official IDP figures.⁴⁷

⁴⁵ Recall, as noted above, that of the estimated 130,000 IDPs resulting from the August 2008 conflict, the overwhelming majority were able to return in the weeks following the end to hostilities.

⁴⁶ See “IDP Figures” (<http://mra.gov.ge/main/ENG#section/50>), although note that these figures (undated) are slightly different, in terms of total number of IDPs, than the database-generated statistics that the author received directly from MRA on 1 July 2011. Given that the discrepancy between the overall figures is slight, the statistics on the regional distribution of IDPs therefore still are useful as an indication of general pattern of IDP locations.

⁴⁷ See, for example, UNHCR, *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights’ Compilation Report, Universal Periodic Review: Georgia* (July 2010), para. 2 (www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain) (hereafter UNHCR, *Submission to the UPR: Georgia*); Public Defender of Georgia, *Report of the Public Defender of Georgia: The Situation of Human Rights and Freedoms in Georgia: Second Half of 2009, 2010*, p. 174

The statistics generated by the government’s IDP registration exercises nonetheless require a number of qualifications. First, the government figures and the IDP registration exercise on which the figures are based do not cover persons displaced within Abkhazia and South Ossetia, territories over which the state authorities have not had effective territorial control since the early 1990s. According to UNHCR, at the time of the last countrywide registration exercise, completed in April 2008, there were 12,320 IDPs from South Ossetia and an estimated 10,000 IDPs within South Ossetia including some 5,000 persons (mostly ethnic Ossets) who fled from Georgia proper into South Ossetia.⁴⁸ Since the August 2008 conflict, there has been almost no humanitarian access to South Ossetia, apart from access by the International Committee of the Red Cross (ICRC). As a result, little is known about the number or conditions of the IDPs who were displaced within South Ossetia by the August 2008 conflict or about the conditions of the conflict-affected population in general.⁴⁹ Walter Kälin, the Representative of the Secretary-General on Internally Displaced Persons, who visited the conflict zone in November 2009, reported that an estimated 10,000 to 15,000 persons had become internally displaced within the Tskhinvali Region/South Ossetia due to the August 2008 conflict; in addition, of the 5,000 IDPs displaced within South Ossetia during the hostilities of 1991–92, many had yet to find a durable solution, including most notably some 3,500 people still living in collective centers.⁵⁰ The number of IDPs who were and still are displaced within Abkhazia is unknown.⁵¹

(www.ombudsman.ge/index.php?page=21&lang=1).

⁴⁸ UNHCR, *Gap Analysis*, 2009, p. 10.

⁴⁹ UNHCR, *Submission to the UPR: Georgia*, para. 2.

⁵⁰ UN Human Rights Commission, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Follow-Up to the Report on the Mission to Georgia*, A/HRC/13/21/Add.3, 14 January 2009, para. 5.

⁵¹ UNHCR, *Gap Analysis*, 2009, p. 10; UN Human Rights Commission, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin – Addendum: Mission to Georgia (21–24 December 2005)*, E/CN.4/2006/71/Add.7, 24 March 2006, para. 9.

Second, government IDP figures do not take into account that some return has occurred. The rationale is partly pragmatic: without having access to and effective control over South Ossetia and Abkhazia, the government is not able to access and assist returnees or ensure their security. However, there also are political reasons—namely, concern that return will be cited by the de facto authorities as evidence of their establishment of effective control over the area. The Georgian government therefore does not officially acknowledge returns. Consequently, returnees retain their IDP status and thus remain eligible to receive all the entitlements that the IDP status affords under national legislation, including the monthly allowance. Particularly in the case of Abkhazia, significant numbers of IDPs are reported by UNHCR to have returned (spontaneously, without UNHCR assistance) in recent years. It is estimated that 45,000 to 50,000 IDPs have returned spontaneously to southeastern Abkhazia, in particular to the region of Gali as well as to Ochamchira and Tkuarchali. For several years, UNHCR, which maintains a small field presence in the area and undertakes regular monitoring of the overall protection situation, has pointed out the need to collect more precise and comprehensive data on the number and conditions of the returned IDPs. An agreement was brokered by UNHCR in 2006 between the government of Georgia and the de facto Abkhaz authorities to conduct data “verification” regarding the situation of the returned IDPs and of other conflict-affected population residing in the area; this exercise was explicitly encouraged and supported by the UN Security Council.⁵² However, lack of consensus among the parties to the agreement on implementation modalities has continued to impede verification. To this day, the occurrence and sustainability of returns to Abkhazia remains a contentious issue among the parties to the conflict and a stumbling block in the conflict resolution process (see also Benchmark 10).

Historically it has proven difficult to obtain accurate and agreed IDP figures, even when focusing on the

defined scope of the government’s IDP registration exercises. To address this issue, in 2004–2005, UNHCR and the Swiss Agency for Development Cooperation (SDC) supported the government in undertaking an IDP verification exercise. During the exercise, 221,000 people were verified and registered as IDPs, although the Georgian government did not endorse the jointly calculated figure and continued to use its own estimate of 247,000 into 2007, although no new displacement had occurred in the interim. A closer alignment between official and nonofficial figures was achieved by April 2008, after the re-registration process that began in April 2007. However, the registration process was flawed in a number of respects, including that it lacked information on registration dates and procedures; on redress mechanisms if deadlines were missed; on the possibility for invalid, incapacitated, or incarcerated IDPs to be registered through on-site visits; insufficient staff on site; and delays. Moreover, while the exercise did collect certain disaggregated data (including that an estimated 50.5 percent of the Georgia IDP population is female, 70 percent is urban, and 44 percent live in state-owned collective accommodations while the remainder live in private accommodations with host families or in their own rented or purchased accommodations) the registration process is still not an effective mechanism for identifying the most vulnerable. This data gap inevitably poses complications for any programs, including housing allocation programs, seeking to give priority to the most vulnerable persons.⁵³

Residency data is especially problematic. Owing to the protracted nature of displacement, many people inevitably have changed their residences, sometimes several times. Updating that information is, by law, the responsibility of IDPs at the time that they move, and it also should be captured during re-registration exercises. To a certain extent, inaccuracies can be attributed to the failure of some IDPs to re-register when they change residence. However, as noted above, IDPs are not adequately informed about changes in registration dates and procedures or about available remedies in the event that they

⁵² UN Security Council Resolutions 1752 (2007), 1781 (2007) and 1808 (2008).

⁵³ UNHCR, *Gap Analysis*, 2009, pp. 17, 22.

miss the deadline for registration or their application is rejected for other reasons. Further, as noted above, the government no longer enforces these requirements in an effort to avoid fraud in the current program, which provides durable housing assistance, in some cases cash compensation, to IDPs currently living in substandard housing. Presumably for that reason, during the 2007 registration exercise IDPs were required to register only their 2004 address, even if they had since moved. IDPs living in private accommodations face additional barriers, as they must have permission of the owner of the property to notify the authorities of their actual residence.

The lack of accurate residency data can create difficulties for IDPs in claiming their monthly IDP stipend or having their communal expenses covered if they live in a collective center. Moreover, having the wrong address registered risks preventing IDPs from participating in the privatization of collective centers which is currently under way, from being protected from eviction, and from obtaining compensation.⁵⁴

The data collected through IDP registration are limited to the personal details of IDPs. More detailed information on the living conditions of IDPs and their access to rights tends to be generated mostly by nongovernment sources: local and international NGOs, UNHCR and other UN offices, and researchers working in the country.⁵⁵ However, analysts note that those sources tend to offer only partial snapshots of specific issues or analysis based on very specific research questions and small samples of empirical data, so there is a paucity of comprehensive data.⁵⁶ In particular, the Internal Displacement Monitoring Center (IDMC) points out that additional, updated data are needed on the socioeconomic and health status of IDPs, including data comparing employment, health status and access to education of IDPs with the same information on the

nondisplaced population.⁵⁷ Moreover, data on number of households is not necessarily accurate. Especially considering the protracted nature of displacement, families have grown and expanded into second and even third generations of IDPs. While children born to IDPs have the right to be recognized as IDPs and granted IDP status under national legislation, the division of households beyond the original family unit registered needs to be taken into account; this is especially important for issues of allocation of adequate housing space.⁵⁸

There has been a persistent gap in data collection on the large numbers of IDPs living in private accommodations (living with host families or in rented flats or purchased homes)—more than half (55 percent in 2007; 61 percent according to May 2011 statistics)—as opposed living in the government-managed collective centers. The government flagged in the State Strategy for Internally Displaced Persons–Persecuted Persons the problem of lack of sufficient information about IDPs in private accommodations. To fill the gap, the strategy’s revised action plan of May 2009 provided for a survey of the conditions of IDPs in private accommodations. In 2009, a temporary expert group of the Steering Committee on IDP Issues (see Benchmark 6, below) developed a methodology for profiling IDPs in private accommodations. Pilot IDP profiling exercises have since been undertaken by UNHCR and NGOs in the areas of Samegrelo, Adjara and Tbilisi.⁵⁹ The Public Defender’s Office (see Benchmark 8) also was reported to be undertaking a survey of IDPs in private accommodations;

⁵⁴ Ibid., pp. 22–23.

⁵⁵ See, for example, IDMC, “Sources,” *IDPs in Georgia Still Need Attention: A Profile of the Internal Displacement Situation*, 9 July 2009 (www.internal-displacement.org).

⁵⁶ E-mail correspondence with staff of international NGO based in Georgia, May 2011.

⁵⁷ IDMC, “Georgia: Towards Durable Solutions for IDPs,” IDMC Briefing Paper, September 2010, pp. 3–4 (www.internal-displacement.org).

⁵⁸ E-mail correspondence with representative of IDP association, June 2011.

⁵⁹ UNHCR, Field Office Zugdidi, *Report on Pilot Profiling: IDPs in Private Sector of Samegrelo and Adjara Regions of Georgia* (November 2009); Danish Refugee Council (DRC), *Survey Reports on Privately accommodated IDPs in the Samegrelo Region and Tbilisi: An Analysis of Housing Situations and Conditions as well as Durable Housing Solutions in Private Accommodation* (Tbilisi: DRC and the Swedish International Development Cooperation Agency, January 2011).

findings and recommendations will be summarized in the Ombudsperson's annual report, to be presented in fall 2011.

That data collection efforts need to be expanded further is suggested by the analysis above and echoed by Amnesty International's recommendation to the Georgian authorities that they collect disaggregated data through regular and comprehensive surveys to monitor IDPs' realization of their rights.⁶⁰ The MRA has identified the need for more comprehensive data collection and improved data management to implement the state strategy and action plan. At the MRA's request, USAID provided technical assistance to the MRA in 2009–10 to develop a comprehensive database on IDPs—including a case management system for individual concerns that IDPs register with the ministry—and to develop and implement a data collection and management strategy, with particular emphasis on improving data on internal displacement.⁶¹

4. Support Training on the Rights of IDPs

Has there been any training of the authorities on the rights of IDPs?

Since at least the year 2000, government officials have participated in numerous training programs and seminars on the rights of IDPs and issues related to internal displacement. In May 2000, as part of the first visit to Georgia by the Representative of the Secretary-General on Internally Displaced Persons, a regional workshop on internal displacement hosted by the government raised awareness of the Guiding Principles on Internal Displacement among government officials as well as international and local stakeholders. In attendance from the government of Georgia were representatives not only

of the MRA, including the Department for Ecological Migration, but also of the Ministries of Foreign Affairs, Health and Social Care, and Internal Affairs as well as the Office of the President, parliamentarians and regional line ministries of the Abkhazia government in exile.⁶² In advance of the workshop, the RSG, together with UNHCR and the Office for the Coordination of Humanitarian Affairs, had arranged for the translation and publication in the Georgian language of the Guiding Principles on Internal Displacement. A translation into the Abkhaz language followed the RSG's dialogue in May 2000 with the de facto authorities of Abkhazia.⁶³

Several training initiatives on the Guiding Principles followed the workshop. For instance, in November 2000, the Global IDP Project (now known as the Internal Displacement Monitoring Center) of the Norwegian Refugee Council (NRC) conducted a workshop on the Guiding Principles on Internal Displacement for local NGOs and state, regional and municipal authorities in the Kutaisi and Zugdidi regions, where there are high concentrations of IDPs.⁶⁴ In 2002, NRC Georgia developed and began using a training tool to explain the principles to IDP communities and local authorities. In 2006, senior staff of the MRA participated in a course on IDP law organized by the Representative of the Secretary-General on Internally Displaced Persons in Sanremo, Italy.

Notwithstanding these training initiatives, in 2006 humanitarian field staff pointed out that there remained a lack of awareness among government officials of IDPs'

⁶⁰ Amnesty International, *In the Waiting Room: Internally Displaced People in Georgia*, p. 48

⁶¹ Guy Hovey and Erin Mooney, *Technical Assistance to the Ministry for Refugees and Accommodation, Phase III: January–July 2010*, Report to USAID-FORECAST, July 2010; on file with the author.

⁶² *Regional Workshop on Internal Displacement in the South Caucasus (Armenia, Azerbaijan, Georgia)*, Tbilisi, Georgia, May 10–12, 2000 (Brookings Project on Internal Displacement, Organization for Security and Cooperation in Europe, and Norwegian Refugee Council, 2000) (www.brookings.edu/~media/Files/events/2000/0510_caucasus/20000510_SummaryRpt.pdf).

⁶³ See Brookings-LSE Project on Internal Displacement, "Guiding Principles on Internal Displacement" (www.brookings.edu/idp).

⁶⁴ Global IDP Project, *Workshop on the UN Guiding Principles on Internal Displacement*, Borjomi, Georgia, 13–15 November, 2000 (www.internal-displacement.org).

needs and of the national regulatory framework for addressing their needs and ensuring protection of their rights.⁶⁵ To address this gap, NRC Georgia developed a training program targeting authorities working on IDP-related issues to raise their awareness of the Guiding Principles on Internal Displacement and of national legislation of particular relevance to the protection of IDPs' rights. In addition, through its legal program, NRC has regularly included MRA staff from central and regional levels in training events on national IDP legislation as well as the Guiding Principles. At the same time, UNHCR began to increase and systematically integrate IDP issues and the Guiding Principles into its training activities, including those for government officials, in particular for the MRA.⁶⁶ In January 2010, regional staff of the MRA and the staff of a new IDP unit established within the Office of the Public Defender participated in a joint training workshop on the Guiding Principles and other IDP protection issues; training was provided by the Council of Europe and UNHCR, with contributions by NRC on monitoring the rights of IDPs (see Benchmark 8). The Council of Europe also organized a series of training workshops for senior MRA staff on community cohesion, which addressed the importance of facilitating IDPs' integration into the communities in which they currently reside.⁶⁷

In addition to training on the Guiding Principles and the national legal framework for the protection of the rights of IDPs (see Benchmark 5), a number of training initiatives for authorities have been undertaken or recommended on certain thematic or technical issues relevant to the realization of IDPs' rights. Indeed, mapping

and addressing the training needs of MRA staff was a significant component of an eighteen-month USAID technical assistance program to the MRA from 2009 through July 2010. Priority areas identified and addressed through mentoring and training activities were strategic leadership and secretariat functions in chairing the Steering Committee on IDP Issues, communications (both internal and external, in particular with IDPs and international partners), program planning and management, and an in-depth training program for Legal Department staff on legislative drafting, legislative techniques, administrative and civil procedural legislation and court proceeding issues related to IDPs.⁶⁸ In March 2011 in Shida Kartli, UNHCR organized training on the recently adopted standard operating procedures regulating relocation of IDPs (see Benchmarks 5 and 10); participants included not only MRA staff but also members of the police forces. UNHCR and NRC plan to hold a training workshop in September 2011 focused on the Inter-Agency Standing Committee (IASC) Framework on Durable Solutions for Internally Displaced Persons (which NRC translated into Georgian in 2010); officials from the MRA and the Public Defender's Office will participate.

In addition, the MRA has sought training in disaster and other emergency preparedness and response procedures, recalling the challenges that MRA and the government as a whole experienced when caught off guard by the massive humanitarian crisis that resulted from the renewal of conflict in August 2008.⁶⁹ Since then the first deputy minister has attended international training on this issue and senior MRA staff have participated in intragovernment national disaster preparedness exercises. The extent to which

⁶⁵ IDMC, "Enhancing NRC's Capacity to Develop Training on the Protection of IDPs," international workshop for NRC field staff, Tbilisi, Georgia, 20–24 January 2006 (www.internal-displacement.org).

⁶⁶ Author's notes, Tbilisi 2006–07 (when deployed to UNHCR to provide technical assistance on IDP issues to the MRA); and interviews conducted in 2009–10 as part of a USAID-FORECAST technical assistance project for MRA.

⁶⁷ E-mail correspondence with former MRA official, June 2011.

⁶⁸ Hovey and Mooney, *Technical Assistance to the Ministry for Refugees and Accommodation* report, July 2010. On the legal training program, see also Civil Society Institute, "Training programme for the Legal Department Staff of the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia," (www.civilin.org/Eng/viewtopic.php?id=61).

⁶⁹ Interviews by author and Guy Hovey with MRA officials, February 2009.

the training on disaster preparedness addressed specific issues regarding displacement is unclear. Training of Central Election Commission officials at the central, district and precinct level as well as MRA staff on IDP voting rights and procedures was recommended following the legislative amendments to the Electoral Code to enable IDPs to fully exercise their right to vote⁷⁰ (see Benchmark 9b); information was not available on whether training has occurred.

5. Ensure a Legal Framework for Upholding IDPs' Rights

Does national legislation address the specific needs arising in situations of internal displacement and support IDPs to realize their rights?

Since 1992—and therefore shortly after internal displacement first occurred in Georgia—the government has issued more than 200 normative acts with provisions directly relevant to internal displacement. These include normative acts for which the scope of application is limited to IDPs as well as acts that have a general scope of application but have specific relevance to the situation of IDPs.⁷¹

In the first category of IDP-specific legislation, the most notable example is that Georgia counts among the first countries in the world to have enacted a specific law to address internal displacement. The Law of Georgia on Forcibly Displaced Persons—Persecuted Persons was adopted on 28 June 1996, and it has been amended on a number of occasions, most recently on 25 October 2010. As stated in its preamble, the law “determines the

legal status of IDPs, grounds and rules for recognition as an IDP, granting, suspension, termination and deprivation of IDP status, legal, economic and social guarantees as well as IDPs' rights and obligations.”⁷²

Whereas the definition of “internally displaced persons” elaborated in the Guiding Principles on Internal Displacement is simply a descriptive definition, under Georgian legislation the definition of “IDP” or, more specifically of “forcibly displaced persons—persecuted persons” confers a specific legal status. According to Article 1 of the law, a “forcibly displaced person—persecuted person” (also commonly referred to as an “IDP”⁷³)

is a citizen of Georgia or stateless person permanently residing in Georgia who was forced to leave their place of habitual residence and became displaced within the territory of Georgia due to the threat to her/his life, health or freedom or to the life, health and freedom of her/his family members, as a result of aggression of a foreign power, internal conflict or mass violation of human rights.

There is no other national legislation that defines other categories of IDPs. National legislation in Georgia therefore defines IDPs more narrowly than in the Guiding Principles by excluding IDPs who were forced to flee their homes or places of habitual residence due to causes other than those mentioned, including natural disasters. However, it should be noted that although persons internally displaced by disasters in Georgia are not formally recognized as IDPs and given IDP status, the government does recognize and act upon its respon-

⁷⁰ Erin Mooney and Balkees Jarrah, *The Voting Rights of Internally Displaced Persons: The OSCE Region* (Brookings Institution—Johns Hopkins SAIS Project on Internal Displacement, November, 2004), p. 41.

⁷¹ UNHCR, *Gap Analysis*, 2009, p. 8. For a detailed analysis of the plethora of normative acts adopted from 1992 through to the end of 2001, see Chkeidze and Korkelia, “Report on the Guiding Principles on Internal Displacement and the Law of Georgia.”

⁷² Government of Georgia, Law on Forcibly Displaced Persons—Persecuted Persons.

⁷³ This term is commonly understood, both in translation as well as in state and international practice in Georgia, to mean “IDP.” Indeed, this is confirmed in the Government of Georgia, Decree No. 47 of 2 February 2007, “Approving of the State Strategy for Internally Displaced Persons—Persecuted Persons.”

sibilities to assist persons displaced due to ecological disasters,⁷⁴ whom it refers to as “eco-migrants” (see also Benchmark 1 and 7).

As noted above (Benchmark 3), even with regard to conflict-induced IDPs, the government is not entirely consistent or comprehensive in conferring that status. IDPs within Abkhazia and South Ossetia are not eligible for IDP status; perhaps that makes sense in practical terms as the government has not exercised effective control of those areas since the conflicts began in the early 1990s and therefore is not in a position to register, let alone to assist, them. More difficult to justify, however, is the government’s reluctance to register and grant IDP status to displaced persons currently in Georgia proper who come from what the government calls “uncontrolled territories,” which refers to Akhagori and villages outside of but in close proximity to the administrative boundary of South Ossetia—areas that were under the control of the government of Georgia prior to the August 2008 conflict. The Public Defender, in his report to Parliament in autumn 2010, pointed out that two years after their displacement, “the government has yet to determine what type of status should be granted to these persons” or to formulate a unified position on this issue, noting that this delay provided “a clear example” of “the slow pace of decisionmaking” in state policy. The lack of IDP status for these people carries significant repercussions, including lack of entitlement to support and adequate housing. The Council of Europe Commissioner for Human Rights also has voiced concern about this issue and urged the Georgian authorities

to grant IDP status swiftly and without discrimination to all those persons who cannot return to their places of habitual residence and thus remain effectively displaced, having regard

⁷⁴ Government decrees regulating action in this area included, for instance, Decree No. 485, “On Rehabilitation Works for the Houses of Eco-Migrants Built in the Eighties of the 20 Century.” The author is grateful to Dima Zviadadze, head of the legal department of NRC Georgia for pointing out this reference.

to the fact that those who have not yet benefited from a durable housing solution are in a particularly vulnerable situation.

In addition to the failure to grant IDP status to persons displaced from areas adjacent to the conflict zone, there have been severe delays in granting IDP status to those among the new cases of IDPs who opted to receive compensation instead of relocate to the alternative housing offered, thereby depriving them of access to the monthly stipend disbursed to IDPs. According to data compiled by the MRA, at the end of April 2011 more than 4,500 persons displaced by the August 2008 conflict still had not received IDP status. As the Georgian Young Lawyers Association has pointed out, the Law of Georgia on Forcibly Displaced Persons–Persecuted Persons does not specify that IDP status is limited to persons displaced from occupied territories, nor do the Guiding Principles on Internal Displacement.⁷⁵

The law affirms that all “forcibly displaced persons–persecuted persons” are entitled to enjoy, in full equality, the same rights and freedoms under domestic and international law as do other people in their country and that they should not be discriminated against in the enjoyment of any rights and freedoms on the grounds that they are internally displaced. In addition, the law provides for certain specific entitlements. Those registered as forcibly displaced or persecuted persons are entitled to the following benefits: a monthly special social assistance stipend, temporary shelter and temporary access to plots of arable land (which are exempt from related

⁷⁵ Public Defender of Georgia, *Report on the Human Rights Situation of Internally Displaced Persons and Conflict-Affected Individuals in Georgia: Reporting Period January–July 2010* (2010), pp. 12, 15–16 and 51. Council of Europe, Commissioner for Human Rights, *Report on Human Rights Issues Following the August 2008 Armed Conflict in Georgia*, by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Strasbourg, 7 October 2010, Doc. CommDH(2010)40, paras. 17–18. Georgian Young Lawyers Association (GYLA), *State Policy on Internally Displaced Persons: Deficiency Analysis* (2011), pp. 6–7; Annex N4, letter of MRA No. 06-06/2176, dated 29 April 2011, p. 7; and pp. 7–8.

taxes), free primary and secondary education, health coverage under existing state programs and assistance in finding temporary employment in line with their profession and qualifications. IDPs living in collective centers also are entitled to free electricity, water and waste disposal. The authorities also have the responsibility to assist IDPs to return to their place of permanent residence once the reasons for their displacement cease to exist. They are also to assist IDPs to locate graves of relatives killed and the whereabouts of individual IDPs who have gone missing “as a result of massive human rights violations.”

The law designates the Ministry of Refugees and Accommodation (which in 2010 was officially renamed the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees) as responsible for ensuring its implementation; the ministry thereby serves as the national government focal point for responding to internal displacement (see Benchmark 7 below). More broadly, the law affirms that “the rights of IDPs are protected by the State.” Further, it specifies that “[a]ny illegal action of the authorities may be appealed to higher authorities or to the court” and that any violation of the law on IDPs is punishable by law.⁷⁶

In Georgia, therefore, the legislative framework for responding to internal displacement and safeguarding the rights of IDPs already was well developed in the years following the onset of displacement and thus preceded the development of the Guiding Principles on Internal Displacement. An extensive study of the compatibility of Georgian legislation with the Guiding Principles, which was conducted by local lawyers from 2001 to 2002 with the support of the Brookings Project on Internal Displacement, found that in large part the Georgian legislation conformed with and

sometimes offered an even higher degree of protection than the international standards set out in the Guiding Principles. Nonetheless, the study recommended that national legislation be strengthened or at least clarified in a number of areas in order to bring it in line with the Guiding Principles. For instance, electoral legislation needed to be amended in order to enable IDPs to exercise fully their right to vote in their place of displacement without forfeiting the specific assistance benefits to which they were entitled by law as IDPs; certain amendments to the procedures for IDP registration were required; minimum standards needed to be elaborated regarding living conditions for IDPs; and legal provisions needed to be elaborated to protect the right of IDPs to own land and participate in the property privatization process and to regulate IDPs’ claims for property restitution. Those recommendations were presented and discussed with government officials as well as representatives of IDP associations, civil society groups, and international organizations at a roundtable convened in 2002.⁷⁷

In subsequent years, important revisions to strengthen the legal protections of the rights of IDPs that the framework affords have included a ruling by the Constitutional Court of Georgia confirming the rights of IDPs to purchase property without losing their IDP status or in any way diminishing their right to return;⁷⁸ and revisions to the Electoral Code to safeguard IDPs’ voting rights in local and parliamentary elections held in their place of displacement (see Benchmark 9b). The Georgian Parliament also adopted a law on property restitution for IDPs from South Ossetia. It was developed

⁷⁶ Government of Georgia, Law of Georgia on Forcibly Displaced—Persecuted Persons, 1996, as amended 25 October 2010, Articles 9 and 11.

⁷⁷ See study by Chkeidze and Korkelia, “Report on the Guiding Principles on Internal Displacement and the Law of Georgia,” as well as the Roundtable report, both in Cohen, Kälin, and Mooney, eds., *The Guiding Principles on Internal Displacement and the Law of the South Caucasus*, pp. 153–69.

⁷⁸ Kharashvili, Kharashvili, and Subeliani, “Experience of the Guiding Principles in Georgia,” p. 16.

through intensive consultations with the parties to the conflict that were facilitated by OSCE and UNHCR, which also offered technical assistance, in 2007 (see also Benchmark 10).⁷⁹

In 2006, the State Commission for the Elaboration of a State Strategy on Internally Displaced Persons (see Benchmark 6) established a legal issues working group, co-chaired by the Ministry of Justice and UNHCR, which identified other issues and put forth additional recommendations for necessary legislative amendments to strengthen the legal framework for protecting the rights of IDPs.⁸⁰ The state strategy that was adopted in 2007 affirms in its preamble the expectation that in implementing the strategy,

the state and the local authorities act in accordance with the Constitution of Georgia, the legislation of Georgia, and the UN Guiding Principles on Internal Displacement, within the framework of internationally recognized human rights and norms determined by international law.

It includes an express affirmation that “IDPs shall be protected against illegal eviction.” The strategy further notes that “from the legal viewpoint, IDPs have all the rights as other citizens of Georgia; despite this, however, they are not fully integrated in the society”; to this end “it is necessary to create the conditions, or to eradicate the hindering factors, for IDPs to enjoy legal, political, living and socio-economic conditions like other citizens of Georgia.”⁸¹

⁷⁹ Brookings-LSE Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Georgia” (www.brookings.edu/projects/idp/Laws-and-Policies/georgia.aspx).

⁸⁰ The author, seconded to UNHCR, served as co-Chair, with the Deputy of the Ministry of Justice, of this working group, which submitted a report to the state commission in November 2006 (internal document, on file with author).

⁸¹ Government of Georgia, *State Strategy for Internally Displaced Persons–Persecuted Persons (2007)*, Preamble; Chapter V, Section 2.2; Chapter III, Section 2.2.1.

UNHCR subsequently has identified the following areas of the law as requiring amendment and/or elaboration in order to bring Georgian legislation in line with international standards and to contribute to effective application of the laws and regulations on IDPs: IDP status; social benefits and allowances; shelter; and protection from forced return or resettlement.⁸² In July 2010, UNHCR reported to the UN Human Rights Committee that “IDPs still face discrimination with regard to some specific sectors of legislation”; for example, IDPs cannot participate in the privatization of arable land on the same terms as the local population,⁸³ although it is not clear whether the problem is a matter of the law itself or a matter of interpretation and implementation.⁸⁴ To address these and other remaining gaps in the legislation, UNHCR has recommended that there be “a comprehensive review of Georgian legislation governing the treatment of or indirectly impacting on IDPs.”⁸⁵

Moreover, it is significant that the steering committee for implementation of the State Strategy on Internally Displaced Persons (see below) has established several temporary expert groups (TEGs) addressing various legal issues of particular pertinence to IDPs and has produced legal and policy guidance, including the above-mentioned Standard Operating Procedures on Vacation and Re-Allocation of IDPs for Durable Housing Solutions. The work of three of the four TEGs in existence in mid-2011 has a strong legal dimension, namely the TEGs on privatization; on complaints and redress mechanisms; and on guiding principles on durable housing solutions.

Finally, regarding the legal framework in place for safeguarding the rights of IDPs, it is important to be aware of the de facto legislation enacted by the nonstate controlling authorities in Abkhazia and South Ossetia.⁸⁶

⁸² UNHCR, *Gap Analysis*, 2009, p. 13.

⁸³ UNHCR, *Submission to UPR: Georgia*, para. 11.

⁸⁴ E-mail correspondence with NRC, Georgia, May 2011.

⁸⁵ UNHCR, *Submission to UPR: Georgia*, para. 11.

⁸⁶ For a summary of the most relevant legislation adopted by the de facto authorities in each region, see UNHCR, *Gap Analysis*, p. 13.

In Abkhazia in particular, the de facto authorities have passed numerous laws and acts that impact the rights of IDPs and especially returnees regarding “citizenship” and property registration and transfer of ownership.⁸⁷ These laws have no force under international law, which does not recognize them or the de facto authorities. Even so, as UNHCR points out, the de facto legislation does create administrative hurdles for IDPs who want to return and has the effect of creating “at the very least a psychological obstacle to IDP return.”⁸⁸ In addition, there have been widespread reports that in the aftermath of the August 2008 conflict, the de facto authorities in South Ossetia have imposed requirements (besides pre-existing legislation by which IDPs from Georgia were classified as “refugees”), such as for notarized translation of identity cards, for persons to cross the administrative boundary line adjacent to Akhalkalaki. At the same time, the Georgian Law on Occupied Territories reportedly is invoked by Georgian law enforcement officials as the legal basis for limiting freedom of movement toward Akhalkalaki for both persons and goods (see also Benchmark 12).⁸⁹

6. Develop a National Policy on Internal Displacement

Has the national government adopted a policy or plan of action to address internal displacement?

That the government should adopt a national policy for addressing internal displacement in accordance with the Guiding Principles on Internal Displacement first was

recommended to the government in 2000, during the mission to Georgia by Francis Deng, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons. In particular, the RSG recommended that the government develop a more comprehensive approach to durable solutions to displacement that went beyond simply emphasizing IDPs’ “right to return” to also improving the living conditions of IDPs in their current place of displacement and thereby cease viewing these goals as mutually exclusive.⁹⁰ When Deng’s successor, Walter Kälin, visited the country in 2005, he was pleased to learn that the government had finally begun to make plans to draft a national strategy for IDPs in line with those recommendations. RSG Kälin strongly encouraged that initiative and recommended that the national policy be rights-based and comprehensive, with the aim of supporting IDPs’ integration into society and access to adequate living arrangements while maintaining their option to return. Kälin also advocated that the government consult closely with civil society groups, including IDPs, in the process of designing the policy, and that UNHCR and the wider international community assist the government in its efforts.⁹¹

In February 2006, the State Commission for Elaborating the State Strategy for Internally Displaced Persons was established.⁹² The commission was chaired by the Minister of the MRA; other members included the Ministers of Finance; of Justice; of Economic Development; of Labor, Health and Social Affairs; of Education and Science; Agriculture; Civil Integration; and Reforms Coordination; as well as the Deputy Minister of Foreign Affairs and the chair of the Abkhaz

⁸⁷ For a summary, see for instance, UN Commission on Human Rights, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Mission to Georgia (21 to 24 December 2005)*, 24 March 2006, paras. 20, 41 and 48.

⁸⁸ UNHCR, *Gap Analysis*, Section 2.2.1, p. 13.

⁸⁹ Council of Europe, *Report on Human Rights Issues Following the August 2008 Armed Conflict in Georgia*, by Thomas Hammarberg, Commissioner for Human Rights, Strasbourg (7 October 2010), CommDH(2010)40, para. 11.

⁹⁰ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia*, 2001, para. 130(iii)-(iv).

⁹¹ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Mission to Georgia (21 to 24 December 2005)*, 24 March 2006, paras. 18 and 56-57.

⁹² Government of Georgia, Decree No. 80, 23 February 2006.

government in exile. The commission's work also was to benefit from the participation of the Secretary of the National Security Council, chairpersons of relevant parliamentary committees (namely, the Committees on Human Rights and Civil Integration, on Finance and Budget, on Issues of Restoration of Territorial Integrity, and on Health and Social Issues) and representatives of international organizations and NGOs. To prepare proposals for the commission, four working groups were set up on the following issues: shelter; economic activities; legal issues; and social protection. Each working group was chaired by the relevant line ministry and co-chaired by an international agency or NGO.⁹³ According to the work plan developed by MRA, the membership of each working group was limited to eight representatives, with two seats reserved for local NGOs and two for international organizations or NGOs with relevant expertise.⁹⁴ The working groups each submitted analytical reports and recommendations to the State Commission, on the basis of which the strategy was drafted and adopted by the commission. The government adopted the State Strategy for Internally Displaced Persons–Persecuted Persons in February 2007.⁹⁵

The State Strategy for IDPs outlines two goals for addressing the protracted plight of IDPs from the conflicts of the early 1990s: facilitating the return of IDPs to their

pre-war homes; and supporting IDPs' integration into local society and access to improved living conditions while displaced. It therefore marks a long-advocated policy shift by the government in its approach to addressing the protracted plight of IDPs, in particular regarding durable solutions (see Benchmark 10). More specifically, with the adoption of the state strategy the government departed from its long-standing exclusive emphasis on the right to return of IDPs to recognize for the first time that supporting the local integration of IDPs was a legitimate policy goal. The State Strategy recognizes that those goals are not mutually exclusive and that supporting improved living and socioeconomic conditions for IDPs in their place of displacement does not hinder their right to return whenever return becomes possible. The State Strategy also contains the government's first official recognition of the fact that some spontaneous return to Abkhazia already had occurred, while noting that "upon resolution of the conflict, governmental agencies should be ready to support the dignified return of IDPs in a safe environment."⁹⁶ In the interim, the government recognizes through the strategy the need to improve IDPs' living conditions in their place of displacement, in particular by addressing the conditions in the 1,600 collective centers—"most of which are unsuitable for living"—to ensure that IDPs have access to dignified shelter conditions. In addition, the strategy emphasizes the need to ensure IDPs' equal access to public services, including education, health care and social protection, as well as to promote their self-reliance through support for livelihoods.⁹⁷ The strategy is to be implemented in accordance with ten key principles, including the free and informed choice of IDPs; dialogue with IDPs and their participation in decisionmaking; developing tailor-made programs to address different vulnerabilities; and ensuring gender equality, protection of the rights of the child and respect for human rights generally.

As noted in the document, "the main condition for the successful implementation of the Strategy is the

⁹³ Specifically, the following organizations served as co-chairs of the working groups: on shelter, the Abkhaz government in exile and UNHCR; on economic activities, the Ministry of Economic Development and the Danish Refugee Council (DRC); on legal issues, the Ministry of Justice and UNHCR; and on social protection, the Ministry of Labor, Health and Social Affairs and the Norwegian Refugee Council.

⁹⁴ The work plan for drafting the State Strategy on IDPs was developed by MRA with technical assistance from the Swiss Agency for Development Cooperation; copy on file with author.

⁹⁵ Government of Georgia, Decree No. 47 of 2 February 2007, "Approving of the State Strategy for Internally Displaced Persons–Persecuted Persons." For an unofficial translation, see Brookings-LSE Project on Internal Displacement (www.brookings.edu/projects/idp/Laws-and-Policies/georgia.aspx).

⁹⁶ Government of Georgia, *State Strategy for Internally Displaced Persons–Persecuted Persons*, Chapter IV, 3.1.

⁹⁷ *Ibid.*, Chapter V.

development of a well-planned, detailed and realistic action plan” that spells out specific activities and indicators for implementation, indicates priorities, specifies the necessary resources, and clarifies the division of responsibilities among institutional actors. The action plan not only was significantly delayed in its preparation—having been adopted only in July 2008, more than a year after adoption of the strategy—it also was not comprehensive; instead it focused overwhelmingly on the long-standing government priority placed on return. In any case, in early August, within less than two weeks of the adoption of the action plan, conflict broke out anew, resulting in significant new internal displacement. In December 2008, an annex to the State Strategy conveyed two important decisions of the government: to formally extend the applicability of the State Strategy on IDPs to incorporate the new caseload of IDPs; and to develop a new action plan to reflect more fully the State Strategy with respect to addressing the goal of return and also to elaborate activities for realizing the second goal—improving IDPs’ living conditions in their place of displacement.⁹⁸ The revised State Action Plan for Implementation of the National Strategy on Internally Displaced Persons adopted by the government in May 2009 focused on the second goal of the strategy, improving the living conditions of IDPs while displaced, in particular through programs to secure durable housing solutions for IDPs; some attention was given also to the importance of improving their access to livelihoods.⁹⁹ In keeping with a commitment to update the action plan on a regular basis, an updated plan was adopted by the government in May 2010, further elaborating the durable housing strategy and expanding the focus on livelihoods support (see also Benchmark 10).¹⁰⁰

⁹⁸ Government of Georgia, Decree No. 854 of 4 December 2008, “On Making Additions to Ordinance No. 47 as of 2 February 2007 on Approving State Strategy for Internally Displaced Persons,” called on MRA to lead the design, implementation, and coordination of a revised action plan to the State Strategy that would focus on resettling IDPs and supporting their local integration.

⁹⁹ Government of Georgia, Decree No. 403 of 28 May 2009.

¹⁰⁰ Government of Georgia, Decree No. 575 of 11 May 2010.

The strategy assigns the “leading role, responsibility and coordination function for the elaboration of programs and monitoring outcomes of their implementation” to the Ministry for Refugees and Accommodation,¹⁰¹ which is the designated government institutional focal point on IDPs (see Benchmark 7). To assist MRA in effectively fulfilling its role, in March 2009 the government established the Steering Committee on IDPs. Chaired by the Minister of the MRA, the steering committee brings together representatives of the Ministry of Justice, the Ministry of Finance, and the Municipal Development Fund as well as the UN Resident Coordinator and the Representative of UNHCR. Also included are representatives of the European Commission, Swiss Agency for Development and Cooperation, US Agency for International Development, Swedish International Development Cooperation Agency (as of 2011) and the World Bank as well as one representative of international NGOs¹⁰² and one representative of Georgian civil society.¹⁰³ There are provisions to invite to steering committee meetings, on an ad hoc basis, representatives of the Ministry of Interior Affairs, the Ministry of Economic Development, the Ministry of Labor, Healthcare and Social Affairs, and the Ministry of Regional Development and Infrastructure and other government entities; the international community; and

¹⁰¹ Government of Georgia, *State Strategy for IDPs*, Chapter VII.

¹⁰² To date, the Danish Refugee Council has tended to be the international NGO participating in the steering committee, doing so on the basis of its role since 2010 of providing technical assistance for the restructuring of the MRA. However, DRC and others note that this is a de facto arrangement; the selection of an international NGO to participate in the steering committee never has been decided formally by NGOs. E-mail correspondence with NRC Georgia, May 2011, and DRC Georgia, August 2011.

¹⁰³ To date, Transparency International (TI), a Georgian local NGO, has participated in this role. While its candidacy was endorsed by eight local NGOs, as with the international NGO seat on the steering committee, there has been no formal selection process. TI does report, however, that as part of its participation in the steering committee, it channels related information to some thirty local NGOs that work actively on IDP issues. Transparency International, *Annual Report 2010* (2011), p. 31.

nongovernmental organizations. As stated in its terms of reference, the steering committee is “a decisionmaking/advisory board to coordinate joint efforts of the government of Georgia and international organizations” regarding implementation of the State Strategy.¹⁰⁴ Putting in place an effective and transparent mechanism for coordination of efforts to implement the State Strategy, both within government and with the international community, was a consensus recommendation of the international community and a precondition for donor funding of the revised action plan.¹⁰⁵ Complementing the USAID technical assistance project of 2009–10, UNHCR’s ongoing support to the MRA includes support for the continued effective functioning of the steering committee and its subsidiary bodies.

The Steering Committee on Internally Displaced Persons is to meet monthly, with provision for extraordinary meetings should the need arise; in practice, it meets on average every six weeks to two months. To support its work, it has established several temporary expert groups to undertake analysis and develop policy recommendations. Among its achievements have been the development and adoption in August 2009 of Shelter Standards for the Conversion or Rehabilitation of Collective Centers and for New Construction; the development and adoption in August 2009 of the Guiding Principles on Livelihoods Projects; and the development and adoption in September 2010 of Standard Operating Procedures for Vacation and Re-allocation of IDPs for Durable Housing Solutions (also commonly known as the Standard Operating Procedures for Evictions and Relocation). All of these and other documents adopted by the steering committee as well as its terms of reference and now also the minutes of its meetings are posted (in Georgian and English) on the website of the MRA. Yet, besides the MRA, which continues to chair and serve as

secretariat of the steering committee, and some ministries that participate on the steering committee, other ministries have taken a generally limited part in the overall national response to internal displacement.¹⁰⁶

7. Designate an Institutional Focal Point on IDPs

Has the government designated a national focal point on IDPs?

Georgia has had a designated national focal point for responding to internal displacement, usually a government ministry, since 1993. While the designated entity has remained constant, its name and institutional profile have changed a few times over the years. Initially known as the Committee for Refugees and Accommodation, in 1995 it was renamed the Ministry of Refugees and Accommodation; in 2010, it was renamed the Ministry for IDPs from the Occupied Territories, Accommodation and Refugees.¹⁰⁷

The 1996 Law on Forcibly Displaced Persons–Persecuted Persons formally recognized the responsibility of MRA to organize assistance to IDPs, in particular the issues of IDP registration, shelter, and social and other assistance. It is noteworthy that the law speaks of the responsibilities of MRA and of government authorities generally in terms of “guaranteeing exercise of IDPs’ rights.” In particular, MRA, together with other relevant government actors, is to ensure that IDPs enjoy all of the specific entitlements provided for them under law (see Benchmark 5. If an IDP returns to the place of permanent residence, the MRA and “relevant bodies of executive authorities and local self-government” have responsibilities including to guarantee exercise of returnees’ constitutional

¹⁰⁴ “Terms of Reference for the Steering Committee on IDP Issues,” March 2009 (www.mra.gov.ge).

¹⁰⁵ Author’s notes, mission to Georgia for USAID-FORECAST, February–March 2009. Proposing and supporting the establishment of the steering committee was a recommendation and achievement of the USAID-FORECAST technical assistance project to the MRA.

¹⁰⁶ IDMC, “Georgia: Towards Durable Solutions for IDPs,” 2010, p. 4.

¹⁰⁷ Government of Georgia, Decree of the Prime Minister No. 185 of 30 June 2010. The name change reflects the legal declaration by the government of Georgia in October 2008 of Abkhazia and South Ossetia as “occupied territories” (see the analysis relevant to Benchmark 12).

rights; to create the necessary safety conditions and socioeconomic living conditions at their places of permanent residence; to reinstate “their legal heritage” and personal assets, including house and land; to rehabilitate damaged shelter; and to process claims for compensation for damage.¹⁰⁸

Later the ministry’s broader mandate was elaborated.¹⁰⁹ It encompasses IDPs, including not only those displaced by conflict and accorded the status of forcibly displaced-persecuted persons but also those “displaced due to disasters, pandemics etc.”; refugees; asylum seekers; repatriates; and environmental and other migrants. The ministry’s main goals include protection of rights; registration and management of migration flows; organizing accommodation and resettlement, temporary or permanent, of persons of concern; “facilitating their adaptation/integration”; supervising provision of their social and legal protection; organizing and facilitating return to their permanent residence, providing appropriate socioeconomic conditions; and cooperation with international organizations and NGOs. The ministry’s functions, among others, are to elaborate strategy and policy on issues within its competence as well as secure implementation of decisions adopted by the government; prepare the legislative framework for social and legal protection of all persons of concern to the ministry, in cooperation with appropriate central legislative and executive authorities; facilitate the “reception/resettlement, first aid, employment and adaptation/integration of migrants” in cooperation with relevant executive and local authorities; organize the return of refugees and IDPs to their permanent residence in cooperation with central and local authorities and international organizations; collaborate with international organizations; and disseminate relevant information.

¹⁰⁸ The obligations discussed in this paragraph can be found in Government of Georgia, *Law of Georgia on Forcibly Displaced Persons–Persecuted Persons, 1996, as amended 25 October 2010*, Article 7; Article 8; Article 5.1 and 5.2a-k.

¹⁰⁹ See in particular Government of Georgia Resolution No. 43 of 29 May 2004 spelling out the goals, functions and structure of the ministry.

The ministry has two main departments, each of which is headed by a deputy minister: one department is dedicated exclusively to IDP issues; the other covers migration, repatriation and refugee issues. A legal department, international affairs department, and administrative and finance department support all aspects of the ministry’s work. The ministry also has four “territorial units” headed by regional field offices. In total, the ministry currently has 172 staff, of which twenty-eight are posted to the regional field offices.¹¹⁰

In addition handling its mandated responsibilities, the MRA has served as the coordinator of a number of broader national governmental initiatives. In 2000, in connection with the “New Approach to IDPs” (see Benchmark 10 below), the president established a State Commission for improving the living conditions of IDPs, although no evidence was readily available as to the work of this commission and its impact; it appears that this commission no longer exists. In addition to the Minister of MRA, who acted as chairperson, the commission comprised twenty senior government officials, including the Minister of Health and Social Welfare, the Minister of Education, the Minister of Food and Agriculture, the Minister for Finance, and the Deputy Minister of Justice. Four working groups were established, charged with developing proposals in the areas of shelter; income-generation; access to social services; and community development.¹¹¹ In 2006, when the government established a State Commission for the Elaboration of a State Strategy on Internally Displaced Persons (see Benchmark 6), the MRA was assigned the leading role, with the MRA minister serving as chair-

¹¹⁰ The four territorial units of the ministry are Adjara and Samegrelo-Zemo Svaneti division; Imereti, Guria, Racha-Lechkum and Kvemo Svaneti division; Kvemo Kartli, Mtskheta-Mtianeti and Kakheti division; and Shida Kartli and Samtskhe-Javakheti division. *MRA Mandate*, Government Resolution 343 of 29 May 2004. For staffing information, see ministry budget for 2011 (www.mra.gov.ge).

¹¹¹ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia, 2001*, para. 114.



**Khobi, Georgia / Rusudani, aged 27, stands with her child in one of the dark rooms at the Khobi Swimming Complex. Rusudani and her children live with 10 other families in the swimming complex.
Photo: UNHCR / P. Taggart / October 2008**

person of the commission.¹¹² The resulting strategy designated the MRA as responsible for performing “the leading role, responsibility and coordination function for the elaboration of programs and monitoring outcomes of their implementation” related to the State Strategy on IDPs.¹¹³ In December 2008, the MRA’s responsibilities for the State Strategy were updated and elaborated to include developing a revised action plan for implementation of the strategy with an emphasis on its second goal, improving the living conditions of IDPs in their place of displacement.¹¹⁴

Historically, however, the MRA has underperformed as the national institutional focal point for addressing internal displacement. In particular, the ministry has been constrained by weak institutional capacity and limited political leverage within the government. Indeed, until only very recently, the MRA could have been described as a “caretaker” ministry, focused mainly on care and maintenance issues—namely disbursing IDPs’ monthly allowance and supervising management of the collective centers—even more than a decade after displacement first occurred. In line with government policy emphasizing exclusively the right to return, MRA was inactive in advocating for more durable solutions for IDPs—for instance, improved shelter and socioeconomic conditions, enhanced self-reliance, and the possibility of local integration.

At the same time, the MRA’s role as the focal point institution for IDPs was undermined by the strong and active role played until recently by the so-called Abkhaz government in exile. Following the mass displacement from Abkhazia in 1993–94, the government, including elected officials as well as administrative staff, that had

been in place in Abkhazia effectively was reconstituted, now based in Georgia proper. The Abkhaz government in exile was actively involved in supporting the state-level response; in fact, each ministry or department of the central Georgian government allowed its counterpart from the government in exile to use its facilities. Activities in which the Abkhaz government in exile actively engaged included disbursing the monthly stipend to IDPs; facilitating family tracing; allocating shelter to IDPs; distributing humanitarian assistance; and providing health services and education, including through “exile” schools that reconstituted schools based on the children’s place of origin and even employed the same teacher. The Abkhaz government in exile also maintained its own military commissariat, tax authorities, police force, and so forth,¹¹⁵ although some of these entities, including the police force in exile, were disbanded after the Rose Revolution of 2003. That parallel system of services had certain advantages in terms of preserving IDPs’ links to their community of origin as well as providing employment for displaced civil servants, including teachers, but especially after displacement became protracted, it did not facilitate IDPs’ integration into the local communities in their place of displacement. The government in exile also exerted strong political influence, on both IDPs and the central government, advocating a hard line approach that emphasized return only, and until 2004, the central Georgian government officially recognized the exiled government of Abkhazia as the political representative of the displaced (see Benchmark 9b). In practice as well as perception, it supplanted the MRA in terms of several core responsibilities toward IDPs and eclipsed the MRA in terms of leading the government response

¹¹² Government of Georgia, Decree No. 80, *On Establishing Government Commission for Elaborating the State Strategy for Internally Displaced Persons–Persecuted Persons*, 23 February 2006.

¹¹³ Government of Georgia, *State Strategy*, Chapter VII.

¹¹⁴ Government of Georgia, Decree No. 854, *On Making Additions to Ordinance No. 47 as of 2 February 2007 on Approving State Strategy for Internally Displaced Persons*, 4 December 2008.

¹¹⁵ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia*, 2001, paras. 19, 53, 55; Julia Kharashvili, “Georgia: Coping by Organizing. Displaced Georgians from Abkhazia,” in *Caught Between Borders: Response Strategies of the Internally Displaced*, edited by Marc Vincent and Birgitte Refslund Sorensen (London: Pluto Press), pp. 234–35.

to displacement. However, by 2004 the government in exile had been formally disbanded as an operational administrative structure.

Besides the role of the government in exile, however, MRA has suffered its own institutional shortcomings. Particularly in earlier years, MRA was plagued by allegations of nepotism and misuse of funds. Overall, MRA has been constrained by weak institutional capacity, inefficiencies and limited political leverage, both within government and with national and international stakeholders. Given that the MRA already was underperforming as the lead agency for IDPs, it inevitably was not well equipped to fulfill its additional responsibilities to lead and coordinate the broader government and international efforts required for the implementation of the State Strategy on IDPs and its action plan. Further, as noted above, when the new displacement crisis erupted with the resumption of hostilities in August 2008, a weak response by the MRA raised serious doubts about the ministry's capacity to discharge even its mandated responsibilities for emergency response, let alone to lead the national response to internal displacement at a time of national crisis. Other government agencies, in particular the Civil Registry Agency of the Ministry of Justice, the Ministry of Labor, Health and Social Affairs, the Ministry of Interior, and the Municipal Development Fund were called on by the government to step in to fill critical gaps in MRA's performance in core areas (data collection on IDPs, emergency assistance, and shelter). Confidence in the MRA reached an all-time low not only within the government but also among IDPs as well as even long-time international partners. However, with a surge of capacity-strengthening support starting in 2009 and strong leadership from the current minister, the MRA since has regained their confidence as the government focal point institution.

Over the years, there have been a number of efforts to strengthen the capacity of MRA. UNHCR, in particular, has invested heavily, including by providing not only technical assistance but also vehicles and computer equipment and even at one point subsidizing the salaries of some 100 staff of the ministry (although according

to the 2011 budget of the ministry, staff costs are now covered entirely by the ministry's own resources). NGOs have provided training for MRA staff on IDP issues (see Benchmark 4). Moreover, UNHCR, UNDP, and donor agencies such as the Swiss Agency for Development Cooperation have seconded personnel to support the MRA by providing advisory services on specific IDP issues and initiatives, including the development of the State Strategy in 2006–07. Beginning in 2009, when the future of the MRA as the national institutional focal point was very much in doubt, USAID undertook an assessment of MRA's capacity to perform that role and lead implementation of the State Strategy for IDPs. USAID then launched an eighteen-month technical assistance project with the goal of improving the effectiveness of the MRA, in particular its capacity to fulfill its responsibilities as the lead government agency on IDP issues and to operationalize the Action Plan for Implementation of the State Strategy for IDPs. Support was concentrated in four interrelated areas in which critical capacity gaps had been identified: information collection, analysis, and dissemination; communication, both internal and external, including with IDPs and other stakeholders; coordination, both of the national response and with the efforts of local and international partners; and implementation of policies and programs, in particular of the State Strategy on IDPs and its action plan.¹¹⁶ The strengthening of capacity in each of these mutually reinforcing areas has generated increased confidence in the MRA. That, in turn, has translated into significant additional support, political as well as financial, from other international actors for the MRA's work with IDPs, in particular for implementation of the State Strategy on IDPs and its action plan (see Benchmark 6 and Benchmark 12). UNHCR's ongoing support for the MRA has included, since 2009, support for the continued effective functioning of its steering committee and TEGs.

¹¹⁶ The author of this case study and Guy Hovey co-led the implementation of this technical assistance project. See USAID-FORECAST, "Capacity-Building on IDP Issues at the Ministry for Refugees and Accommodation," which ran from February 2009 to July 2010. A summary of the project and key results is available on the ministry website (<http://mra.gov.ge/main/ENG#projects/74>).

Moreover, renewed confidence in the MRA has encouraged other actors, namely the European Union (EU), Danish Refugee Council (DRC), and the World Bank, to invest in and assist the MRA to address the wider range of capacity gaps that still exist. For example, at the recommendation of USAID-FORECAST and with the support of the EU through DRC, a reception center and case management system for receiving and addressing the individual concerns of IDPs was established at MRA in April 2010, helping to rectify a major gap in the national response.¹¹⁷ Complementing the reception center is a telephone “hotline” at the ministry. First established with the support of UNHCR in 2008, it was significantly enhanced through the capacity-strengthening efforts of UNHCR, USAID-FORECAST and DRC in 2009–10. Operating from 09:00 to 23:00 hours daily, the hotline receives up to 1,000 calls a day. MRA reports that IDPs’ inquiries usually concern living spaces, communal problems in collective centers, and compensation and cash assistance as well as IDP status applications and registration at a new address. In addition, IDPs call the hotline to seek information about the programs of other offices and organizations, including those of the government social welfare agency and of UN agencies and NGOs.¹¹⁸ Following up on the USAID-FORECAST assessment and recommendations, a restructuring of the

entire ministry currently is under way with the support of the DRC and the EU.

There is recognition that local authorities as well as state institutions have a key role to play in the national response to displacement. The State Strategy on IDPs asserts that its implementation will rely on the engagement of relevant government ministries and agencies at both the state and local levels.¹¹⁹ Specific roles and responsibilities are elaborated in the action plan for implementation of the strategy and in particular in the government’s 2010 IDP Housing Strategy,¹²⁰ which is based on the action plan. Under the IDP Housing Strategy, the Ministry of Regional Development and Infrastructure (MoRDI) and relevant municipalities are responsible for selecting, together with MRA, the buildings to use and the beneficiaries for the different forms of housing assistance. Moreover, MoRDI is responsible for coordinating implementation of regional development plans with implementation of the State Strategy on IDPs. The Municipal Development Fund (MDF), a state-level fund and agency to support strengthening of the institutional and financial capacity of local government units, plays an especially important role. It has been assigned responsibility under the action plan and Durable Housing Strategy for assessing the buildings selected for housing, contracting the construction companies, and monitoring the quality of work, including ensuring that the rehabilitation and construction standards adopted by the steering committee are applied. Recall (from Benchmark 6) that the Municipal Development Fund is a full member of the steering committee on IDPs, while MoRDI is a standing invitee. A lingering problem, however, is that when it comes to the national response to IDP issues, the MRA largely is “left to implement plans without much engagement from other ministries.”¹²¹

¹¹⁷ Earlier it had been reported that to have certain individual IDP cases resolved effectively was difficult or impossible, as the distribution of responsibilities among the various levels and branches of government addressing internal displacement were unclear and cooperation between them inefficient. UN Commission on Human Rights, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Mission to Georgia (21 to 24 December 2005)*, 2006, para. 44. This changed with the establishment of the MRA reception center in 2010. In the first six months of operation, it responded with more than 5,000 consultations on issues such as IDP housing programs and IDP registration. For a summary of the impact of the reception center on the responsiveness of MRA to IDPs’ queries and other benefits for the MRA’s overall productivity, see the “Reception Center” tab on MRA’s Web site (<http://mra.gov.ge/main/ENG#section/65>).

¹¹⁸ See “Hotline” tab on the ministry’s website (<http://mra.gov.ge/main/ENG#section/5>).

¹¹⁹ *State Strategy on IDPs*, Preamble.

¹²⁰ Government of Georgia, Ministry of Refugees and Accommodation, *IDP Housing Strategy and Working Plan* (2010), pp. 16–17.

¹²¹ IDMC, *Internal Displacement: Global Overview of Trends and Developments in 2010, 2011*, p. 64 (www.internal-displacement.org).

8. Support NHRIs to Integrate Internal Displacement into their Work

Is there a national human rights institution (NHRI) that gives attention to the issue of internal displacement?

The Office of the Public Defender, which was established by law in 1996,¹²² has been recognized since October 2007 as the internationally accredited national human rights institution for Georgia.¹²³ Its mandate is “to oversee observance of human rights and freedoms on the territory of Georgia and within its jurisdiction” and in particular “to independently monitor the observance of human rights and freedoms and examine cases concerning alleged human rights violations.”¹²⁴ The Public Defender is required to submit a report on these issues to Parliament once (previously twice) a year.

The Office of the Public Defender has been monitoring and reporting on IDP issues since at least 2004, when its report to Parliament that year (the earliest such report available on its website) included a chapter on IDPs and refugees.¹²⁵ By 2006, the human rights of IDPs and of refugees were assessed in separate chapters of the Public Defender’s report. The IDP chapter tended to focus on the socioeconomic rights of IDPs. Also relevant is the chapter on the human rights situation in the conflict zones, which gives attention to the situation of returnees.¹²⁶ The most recent annual parliamentary report

available in English, the report covering the second half of 2009, merges the human rights situation of “IDPs and persons affected by conflict” into a single chapter. It begins by noting that “[o]ne of the priorities in the Public Defender’s activities has been the examination of internally displaced persons’ legal status, considering the topicality of the issue. In the reports submitted to the Parliament, a separate chapter has always been devoted to issues related to IDPs.”¹²⁷ An important development is that the attention devoted to IDP issues by the office, including use of the Guiding Principles, has not only continued but also increased with the change in mandate-holder (a new Public Defender was appointed by Parliament in July 2009 for a five-year term).

Yet, as the Public Defender has pointed out, the office’s efforts to monitor and report on internal displacement nonetheless have been limited:

Study and assessment of the situation was not easy because of the large number of IDPs and diversity of the problems in this sphere. Large numbers of IDPs and diversity of the problems they face does not allow the Public Defender to undertake a full analysis of the situation and IDPs legal status.¹²⁸

Strengthening the capacity of the Office of the Public Defender to address issues related to internal displacement was the specific aim of a 2010 project entitled “Support to Public Defender’s (Ombudsman’s) Office in Solving the Problems Related to IDPs and Persons

¹²² Public Defender of Georgia, Organic Law of Georgia on the Public Defender, 16 May 1996 (www.ombudsman.ge/index.php?page=777&lang=1&n=7).

¹²³ OHCHR, “Chart of the Status of National Institutions, Accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights,” accreditation status as of August 2011” (www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf).

¹²⁴ Public Defender of Georgia, Organic Law of Georgia on the Public Defender.

¹²⁵ Public Defender of Georgia, *Report on Conditions of Human Rights in Georgia in 2004* (www.ombudsman.ge/files/downloads/en/szounjmrncjpcvcdgasn.pdf), pp. 66–73.

¹²⁶ Public Defender of Georgia, *Human Rights in Georgia:*

Report of the Public Defender of Georgia, First Half of 2006, 2007, pp.156–68; and Public Defender of Georgia, *Human Rights in Georgia: Report of the Public Defender of Georgia, Second Half of 2006, 2007*, pp. 148–66. Both available at Public Defender of Georgia, “Reports,” (www.ombudsman.ge/index.php?page=21&lang=1).

¹²⁷ Public Defender of Georgia, *The Situation of Human Rights and Freedoms in Georgia: Second Half of 2009*, pp. 174–79. At the time of finalizing this study, the Ombudsman’s report for the first half of 2010 was available, but only in the Georgian language.

¹²⁸ *Ibid.*, p. 174.

Affected by Conflict,” which was funded by the Council of Europe’s Commissioner for Human Rights. Six new staff members were hired, a project coordinator and five monitors, one of whom was stationed in each of the five regional offices of the Public Defender’s Office in areas with significant numbers of IDPs, namely Gori, Zugdidi, Batumi, Kutaisi and Tbilisi (there also are regional offices of the Public Defender the other locations of the country where there are few, if any, IDPs). The project began in January 2010 with training for the project team and the staff of MRA’s regional offices on the rights of IDPs; relevant Georgian legislation; measures taken by the government; international humanitarian law; specific protection issues, including violence against women and participation in decisionmaking processes; the role of UNHCR; universal and regional human rights protection mechanisms; and monitoring techniques.¹²⁹ The monitors then began to conduct regular visits to IDP collective centers and other IDP settlements, undertaking a survey of 10 percent of IDP households in the collective settlements, providing legal consultation on site and, in cooperation with the regional offices of the MRA, working to resolve specific problems and rights issues.¹³⁰

The Public Defender’s Office prepared a special report on the human rights situation of IDPs based on data gathered by the monitors from January to June 2010 and an analysis of existing national legislation, policies and programs. The report summarizes its findings and makes a number of recommendations for improving the national response, in particular with regard to increasing dissemination of information to IDPs on current state programs to support IDPs, providing comprehensive and timely replies to IDPs’ queries addressed to the MRA, and ensuring that the process under way for the privatization and rehabilitation of collective centers

is carried out in full compliance with legal standards and with the additional specific guidelines and procedures developed and adopted by the MRA-led Steering Committee on IDP Issues.¹³¹ In reports addressing IDP issues, the Public Defender typically makes reference to the Guiding Principles on Internal Displacement.¹³²

The Public Defender has become increasingly active, especially since the second half of 2010, in advocating for IDP rights. The office has issued several public statements and press releases, in particular voicing concerns about the eviction of IDPs from temporary shelters and some collective centers in 2010 and 2011.¹³³ The IDP project team also has undertaken a survey on the situation of IDPs in private accommodations, thereby helping to address an important gap in data collection; the results of the survey will be included in the 2011 annual report of the Ombudsman.¹³⁴

The project continues, now with a full-time staff of seven persons including six field monitors (five are lawyers; one is a psychologist) and the project manager. As of January 2011, the project was co-funded by the Council of Europe together with UNHCR.¹³⁵ The IDP team thus relies, at present, entirely on extra-budgetary

¹²⁹ Agenda for the training program, 18–22 January 2010, on file with author.

¹³⁰ Public Defender of Georgia, *Report on the Human Rights Situation of Internally Displaced Persons and Conflict-Affected Individuals in Georgia* (September 2010), pp. 5–7 (www.ombudsman.ge/files/downloads/en/njyyccudreysvwtqszj.pdf).

¹³¹ Public Defender of Georgia, *Report on the Human Rights Situation of Internally Displaced Persons and Conflict-Affected Individuals in Georgia* (September 2010).

¹³² See, for example, Public Defender of Georgia, *Human Rights in Georgia: Report of the Public Defender of Georgia: Second Half of 2006*, p. 149; Public Defender of Georgia, *Report of the Public Defender of Georgia: The Situation of Human Rights and Freedoms in Georgia: Second Half of 2009*, p. 177 and *Report on the Human Rights Situation of Internally Displaced Persons and Conflict-Affected Individuals*, pp. 8, 13, 40, 43.

¹³³ See, for example, “Statement of Public Defender of Georgia Regarding Eviction of Internally Displaced Persons,” 17 August 2010; “Statement of the Public Defender,” 21 January 2011; and “The Public Defender’s Statement Regarding the Planned Process of Displacement of IDPs in Tbilisi,” 12 August 2011 (www.ombudsman.ge).

¹³⁴ E-mail correspondence with the Council of Europe office in Georgia, February 2011.

¹³⁵ E-mail correspondence with the Council of Europe office in Georgia, February 2011.

funds from donors rather than being integrated, at least in some part, in the annual regular budget of the Public Defender's Office.

9. Facilitate IDPs' Participation in Decisionmaking

(a) Do the national authorities encourage and facilitate the ongoing participation of IDPs in the planning and implementation of policies and programs for addressing internal displacement?

Generally, as UNHCR has observed, "Georgia has a vibrant and active NGO community devoted to work for IDPs" and "key IDP NGOs have easy access to political leaders."¹³⁶ Even so, as the government pointed out in the State Strategy, historically "[i]n planning and implementing solutions for IDP problems, IDPs' interests and needs often have been not adequately taken into consideration; dialogue has not been conducted with them."¹³⁷

The process for preparing the State Strategy worked to rectify this gap. Representatives of IDP associations were integrated and actively involved in the strategy development process for each of the four sectoral working groups (legal issues; housing; economic activities; and social protection), and two of the eight member seats of the committee were designated for civil society groups (two other seats were designated for international representatives, and the remaining four were designated for relevant government ministries). The civil society representatives in the working groups were drawn mostly from IDP associations, including the IDP Women's Association, and NGOs providing legal aid to IDPs; other representatives from civil society were organizations with an established reputation for advocacy on IDP rights, such as the Georgian Young Lawyers Association.

The State Strategy that resulted from this process states, as the second of ten guiding principles, that its implementation will be based on "dialogue with IDPs and their participation in decisionmaking: IDPs participate in the planning and implementing of activities envisaged in the strategy."¹³⁸ According to the strategy, a comprehensive information campaign should be implemented through which IDPs regularly receive updated information on all aspects and components of the action plan.¹³⁹

Further, according to the state strategy, "[i]n monitoring implementation of the strategy, much importance is given to the participation of IDPs themselves and of civil society, as well as to the transparency of the process."¹⁴⁰ In this connection, two representatives of nongovernmental organizations (one from local civil society, one a representative of international NGOs) count among the members of the steering committee for implementation of the State Strategy and its revised action plan, which was established in 2009 (see Benchmark 7). To date, Transparency International, a local NGO, has participated in the Steering Committee (see Benchmark 6). Some, albeit few, civil society and IDP associations also have participated in certain of the technical expert groups established by the steering committee—for instance, the TEG on livelihoods—or with the Georgian Young Lawyers Association in the TEG on drafting standard operating procedures regulating eviction and relocation of IDPs. Even so, it is noteworthy that the perception among associations of IDPs is that only international NGOs, not local NGOs, participate in the TEGs.¹⁴¹

Regarding IDPs' representation in the management of their daily living conditions, UNHCR reports that there are "well-functioning IDP committees in collective centers."¹⁴² However, UNHCR has also pointed out that "community mobilization among IDPs living in

¹³⁶ UNHCR, *Submission to the UPR: Georgia*, para. 12.

¹³⁷ State Strategy on IDPs, Chapter I.

¹³⁸ *Ibid.*, Chapter VI, para. 1.2.

¹³⁹ *Ibid.*, Chapter VI, para. 1.5.

¹⁴⁰ *Ibid.*, Chapter VII, para. 3.

¹⁴¹ E-mail correspondence with IDP association representative, April 2011.

¹⁴² UNHCR, *Submission to UPR: Georgia*, July 2010, para. 12.

collective centers varies and in many cases is informal in nature and based on the strong networks formed amongst people living in crowded conditions.” Further: “Although there are some strong IDP women leaders, women still tend to take a back seat to men in Georgia. Few children are involved in decisionmaking.”¹⁴³ Consent, a local NGO, has provided training on the participation of IDPs, both men and women, in the activities of local self-government bodies.¹⁴⁴ Moreover, with the support of DRC, a coalition of NGOs, including the Georgian Young Lawyers Association, the Charity Humanitarian Center Abkhazeti (CHCA), Consent, and the Social Programs Foundation, undertook community mobilization efforts among IDP populations to encourage IDPs to advocate for themselves with local and central authorities, including by organizing regional meetings at which IDP representatives have the opportunity to meet with and express their concerns to high-ranking government officials.¹⁴⁵

Structurally, therefore, a number of policy commitments, processes, mechanisms and awareness-raising initiatives on the importance of IDP participation are in place. In practice, however, those efforts have not yet translated into adequate and meaningful participation of IDPs. Indeed, according to the Public Defender: “When addressing State policy, one of the most acute problems—the lack of communication between IDPs and the ministry—should be emphasized.”¹⁴⁶ Echoing this view, UNHCR has pointed out:

Generally IDPs are not sufficiently involved in decisions affecting their lives. There is not enough explanation about policies launched by the government and insufficient encouragement of IDP participation. IDPs, especially in rural areas or in the small towns, live in

completely isolated circumstances without access to information relating to them.

Consequently, “IDPs have become passive, indifferent, and apathetic with low inspiration” to participate; indeed, tellingly, when UNHCR conducted participatory assessments “[m]ost IDPs welcomed the discussions, although some refused to participate as they felt the discussions would not lead to any improvement in their lives.”¹⁴⁷ Generally, however, human rights observers point out that adequate information about programs and policies affecting IDPs’ lives is not provided to them, nor is there sufficient consultation with IDPs or opportunities for them to influence in a meaningful way decisions that concern them.¹⁴⁸

The creation in 2009–10 of a hotline telephone number as well as a reception center and case management system within the ministry, at the recommendation and with the assistance of UNHCR, USAID and DRC (see Benchmark 7, above), has gone a significant way to improve access to information for IDPs. The Public Defender has assessed these developments “positively,” noting that “[t]hrough these tools, IDPs are able to obtain necessary information and/or consultation during 24-hours.” Yet, despite these developments, he also has pointed out that “it is evident that the lack of information among IDPs remains a problem. The complaints addressed to the Public Defender also attest to this.” Generally, complaints stem from the fact that when IDPs have addressed the ministry regarding a particular concern, they tend to wait for months before they receive a response, if they ever do.¹⁴⁹ In an effort to address this specific time-lag problem, the action plan was updated in May 2010 to include a commitment by

¹⁴³ UNHCR, *Gap Analysis*, p. 24.

¹⁴⁴ Agenda of training program, on file with author.

¹⁴⁵ E-mail correspondence with IDP association representative, June 2011.

¹⁴⁶ Public Defender of Georgia, *Report on the Human Rights Situation of Internally Displaced Persons and Conflict-Affected Individuals in Georgia* (September 2010), p. 12.

¹⁴⁷ UNHCR, *Gap Analysis*, 2009, p. 10.

¹⁴⁸ Public Defender of Georgia, *Report on the Human Rights Situation of Internally Displaced Persons and Conflict-Affected Individuals in Georgia*, p. 16; Amnesty International, *In the Waiting Room: Internally Displaced People in Georgia*, pp. 42–43.

¹⁴⁹ Public Defender of Georgia, *Report on the Human Rights Situation of Internally Displaced Persons and Conflict-Affected Individuals in Georgia*, p. 12.

the government to undertake a comprehensive information campaign to ensure that IDPs are “well informed to make informed decisions.” An assessment of the implementation and impact of this information campaign is expected to be included in the Public Defender’s report to the government in fall 2011.

In addition, IDPs displaced in 2008 who have been provided housing in new settlements reportedly have faced significant political pressure and close scrutiny, especially in the run-up to elections, making it very difficult for them to express their opinions without the risk of being labeled as affiliated with the political opposition. Consequently, many IDPs from the new settlements have opted not to participate actively in government-run or -facilitated assessments and other discussions soliciting their opinion. Civil society and IDP associations have stressed the importance of ensuring that IDPs can participate in discussions freely and without risk of any reprisal or stigmatization.¹⁵⁰

Moreover, concerns regarding IDPs’ access to information and meaningful participation also have arisen in the context of the series of evictions of IDPs from temporary shelters and selected collective centers that began in June 2010 (see Benchmark 10). Indeed, much of the current criticism of the evictions focuses on the lack of a clear framework for genuine consultations—as opposed to simple information sharing—with IDPs.¹⁵¹ A distinction therefore must be made between information sharing and meaningful participation when assessing the issue of IDPs’ participation.

Similarly, a distinction must be made between active engagement by established IDP NGOs in advocacy and humanitarian activities and meaningful participation by members of the IDP community at large. IDPs generally suffer from a lack of familiarity with key policies and programs affecting them, including the State Strategy

and action plan. Indeed, UNHCR has concluded that notwithstanding the number of active IDP and civil society groups working on IDP issues, “more outreach is needed to inform IDPs who are not connected to any organization or association.”¹⁵² The new displacement crisis caused by the August 2008 conflict led to the establishment of several new local NGOs working on IDP issues, a number of which have jointly established, along with several pre-existing NGOs, a coalition for IDP rights.¹⁵³

In terms of outreach to IDPs, it has been suggested by one IDP representative that messages are most persuasively conveyed through the statements of high-ranking public officials rather than in brochures and general information campaigns because “the population believes much more the promises made by these personalities.”¹⁵⁴ Indeed, a recent survey of IDPs displaced from Abkhazia in the early 1990s underscores that point. The IDPs surveyed cited what was assessed as a “relatively high” degree of trust in Georgian government institutions: 41 percent (but only 30 percent of the general population) trusted the Georgian Parliament, 45 percent (but only 31 percent of the general population) trusted the executive government and 47 percent trusted the MRA, toward which 28 percent of respondents were neutral, saying they neither trusted nor distrusted the government. IDPs’ highest degree of trust was reserved for the president, in whom 68 percent (but only 48 percent of the general population) placed their trust.¹⁵⁵ Overall, the survey found that 10 to 30 percent more IDPs than non-IDP Georgians trusted the government’s executive, legislative and judicial institutions. Apparently these findings were not surprising to IDP associations; they pointed out at a workshop analyzing the survey results that “IDPs have higher needs and expectations, and

¹⁵⁰ E-mail correspondence with representative of an IDP association in Georgia, April 2011.

¹⁵¹ Amnesty International, *Uprooted Again: Forced Evictions of the Internally Displaced Persons in Georgia*, 2011, p.13.

¹⁵² UNHCR, *Gap Analysis*, p. 10.

¹⁵³ See Coalition for IDPs Rights (www.idp.ge/geo).

¹⁵⁴ E-mail correspondence with representative of an IDP association in Georgia, April 2011.

¹⁵⁵ Magdalena Fichovo Grovo, *Displacement in Georgia: IDP Attitudes to Conflict, Return and Justice* (Conciliation Resources, February 2011) p. 12, (www.c-r.org).

hence need to trust the government more.”¹⁵⁶ It is important to note that this survey took place before the series of evictions, beginning in summer 2010, of IDPs from selected collective centers; the author of the survey surmises that those developments likely would have had a negative impact on IDPs’ perceptions of the authorities, especially in Tbilisi.¹⁵⁷

(b) Are IDPs able to exercise their right to political participation, in particular the right to vote, without undue difficulties related to their displacement?

The Constitution of Georgia (1995) provides in Article 28.1 that every citizen eighteen years of age and older has the right to participate in referenda and elections. However, for many years, until the relevant provisions eventually were amended, national legislation effectively restricted the voting rights of IDPs in parliamentary and local elections.¹⁵⁸

The Georgian parliament is elected through a mixed electoral system whereby half of the 150 seats are allocated to registered political parties on the basis of proportional representation and the remaining 75 seats are occupied by members elected by majority vote in single-member electoral districts. According to the 1995 Organic Law of Georgia on Parliamentary Elections, IDPs were entitled to vote only in the proportional component of parliamentary elections, not in the election of the parliamentary representative for the district where they were residing while displaced. The rationale given was that IDPs already had representation in the form of the parliamentary deputies for the electoral districts of their places of origin. Indeed, the mandate of the eight deputies from Abkhazia, who were elected in 1992 and

thus were in office at the time the conflict began, was extended by Parliament until such time as the central government reestablished its control over Abkhazia and national elections could be held there again. The seats of the two deputies from South Ossetia were to remain vacant until similar conditions were established in that region. In other words, the mandate of the deputies from Abkhazia was extended indefinitely (until a decision of Parliament in 2004 ended the practice; see below), and that remained the case notwithstanding the fact that many IDPs indicated that after several years they no longer felt that their views were being well-represented by the Abkhaz government in exile. Interestingly, internally displaced women in particular voiced wide discontent with the Abkhaz deputies, whom they perceived to be “genuinely uninterested in and out of touch with the issues and concerns of displaced people.”¹⁵⁹ Meanwhile, IDPs originating from South Ossetia were left without any representatives in Parliament whatsoever.

Regarding local elections, under Georgian law, eligibility to participate as an elector is related to an individual’s registered place of permanent residence. For IDPs to take part in local elections in the area where they reside while displaced, they would have to register that locality as their new place of permanent residence. Changing the registration of place of permanent residence was legally feasible. However, national legislation regulating the status of IDPs stipulated that if an IDP registered her or his residence in a place other than her or his place of origin, the individual’s IDP status and the entitlements and benefits that this status entails would be revoked (see Benchmark 5). In addition, the rumor was rife among IDPs that if they voted for representatives of the area in which they were residing, that would signal acceptance of the de facto territorial situation and would be misconstrued as a decision on their part to relinquish their right to return and seek restitution of their property. For political reasons related to the goal of reestablishing Georgia’s control over the conflict areas,

¹⁵⁶ Ibid.

¹⁵⁷ Ibid., pp. 12–13.

¹⁵⁸ For the more detailed analysis on which the summary in the present case study is based, including an analysis of how these restrictions manifested in every election held in Georgia from the outset of the displacement crisis through 2004, see Mooney and Jarrah, *The Voting Rights of Internally Displaced Persons: The OSCE Region*, pp. 33–41.

¹⁵⁹ Ibid., p. 33, and note 192 citing Norwegian Refugee Council, *Profile of Internal Displacement: Georgia* 18 March 2004, p. 81 (www.internal-displacement.org).

the authorities made little effort to dispel those fears, and they may even have encouraged such misunderstandings, contravening established human rights standards. In fact, the 1998 Law of Georgia on Elections of Bodies of Local Government explicitly stated, in Article 36, that IDPs were ineligible from participating in local elections.

Beginning in 1998, IDPs legally challenged, through the Constitutional Court of Georgia, the national legislation in force, which impeded their ability to fully exercise their right to political participation, in particular the right to vote in local elections and in parliamentary majoritarian elections. Advocacy efforts by a number of international actors supported their efforts, namely the Organization for Security and Cooperation in Europe and the UN Office of the High Commissioner for Human Rights, which were joined in 2000 by the RSG on IDPs and in subsequent years by the UN Human Rights Committee and the Council of Europe Parliamentary Assembly.¹⁶⁰

Eventually, the concerted national and international advocacy efforts bore fruit. In August 2001, the Parliament of Georgia adopted the Unified Election Code of Georgia, which, among other things, removed the earlier restrictions on IDP voting in local elections. Henceforth, IDPs could participate in local elections according to their current place of residence; they would be included on voter lists based on data provided by the MRA. Further amendments to the Unified Electoral Code made in August 2003 rectified the problems with parliamentary elections by enabling IDPs to vote not only in the proportional component but also in the majoritarian component of parliamentary elections. In other words, IDPs could now vote for the parliamentary deputy representing the district in which they currently were residing.¹⁶¹ After affirming, in Article 5, the right

of every Georgian citizen aged eighteen years and older to vote in all local, presidential and parliamentary elections, the revised Unified Election Code of Georgia introduced, in Article 9, a number of special provisions to enable IDPs to realize that right. While in general voters are to be entered in the general list of voters according to the place of his or her residence, the law now specifies that IDPs “shall be entered in the general list of voters at their actual place of residence,” for which the place of “temporary residence shall be indicated.” That provision means that IDPs no longer need to change their place of permanent residence and give up their IDP status in order to vote in their current place of “temporary” residence. As in local elections, IDPs’ names are included in the general list of voters based on data to be provided by the MRA. Further, on the basis of the voter list, each voter is to be issued a paper ballot on election day upon presentation of personal documentation; the revised Election Code specifies that an IDP certificate counts among the accepted pieces of documentation. Furthermore, the revised code affirms the right of every citizen to be elected as a member of Parliament and a representative of local government, without any apparent restriction for IDPs such as having to change one’s permanent place of residence.¹⁶² In a related legal development in November 2003, the Constitutional Court declared unconstitutional and void article 6.2(c) of the national IDP law containing the restrictive provision regarding registration of permanent residence; that provision since has been removed from the Law on Forcibly Displaced Persons–Persecuted Persons. Finally, by a decision of Parliament in April 2004, the mandate of the Abkhaz parliamentary deputies, who were last elected in 1992, was ended and their seats left vacant until such time as parliamentary elections can be held again in Abkhazia.¹⁶³

of Georgia (as amended 14 August 2003), Article 127.

¹⁶² *Ibid.*, Articles 80, 92 and 110.

¹⁶³ This decision was not unanimously welcomed by IDPs, some of whom felt that with the loss of the deputies, there was no longer anyone in Parliament who shared their identity and would really press for their interests. Mooney and Jarrah, *The Voting Rights of Internally Displaced Persons*, p. 40.

¹⁶⁰ For a summary of these efforts and of the responses of the Constitutional Court, see Mooney and Jarrah, *The Voting Rights of Internally Displaced Persons*, pp. 34–36.

¹⁶¹ The mandate of the parliamentary deputies from Abkhazia nonetheless continued to be extended. Government of Georgia, Organic Law of Georgia. Unified Election Code

These important changes to national legislation removed the legal obstacles impeding IDPs' ability to exercise fully their right to vote or to be elected.¹⁶⁴ The remaining difficulties regarding IDPs' political participation have been practical in nature—in particular, the preparation of accurate and timely lists of IDPs eligible to vote; the coordination required between the MRA and electoral officials on this issue; training of MRA and electoral officials on specific provisions for facilitating the exercise by IDPs of their voting rights; and ensuring awareness of voting regulations among IDPs.¹⁶⁵ With respect to knowledge of regulations, a public awareness campaign and voter education programs were undertaken, in particular by the UN Office for the Coordination of Humanitarian Affairs and NRC, that included a televised public service announcement featuring the chairperson of the Central Election Commission providing information about IDPs' right to vote.¹⁶⁶

In practice, despite the removal of legislative impediments to IDPs' exercise of their right to vote, actual voter turnout by IDPs has remained much lower than the national average.¹⁶⁷ Further, IDPs rarely stand as candidates for election, for reasons including lack of financial resources, limited access to political networks, and, as UNHCR points out, the fact that the “constant struggle for survival in everyday life in a precarious economic situation is such a challenge that the question of participation in politics hardly arises.”¹⁶⁸ However, it is noteworthy that currently the vice speaker of Parliament is an IDP, Paata Davitaia, a lawyer who has been active on IDP-related issues, including the government's submission of a case to the International Court of Justice

alleging genocide and arbitrary forcible displacement during the conflicts.¹⁶⁹ The next parliamentary elections are due to take place in Georgia in 2012.

10. Establish the Conditions and Means for IDPs to Secure Durable Solutions

Is the government working—or has it worked—to establish conditions enabling IDPs to secure a durable solution to displacement?

Resolving the situation of IDPs has been a central concern of the government since shortly after displacement first occurred. Indeed, the government has devoted its advocacy and efforts on IDP issues primarily to this subject over the past two decades of internal displacement. However, in so doing, the government has promoted the return of IDPs and refugees to their places of origin as the only possible solution, while impeding IDPs' access to other solutions, including integration in the place of displacement or settlement elsewhere in the country. The government of Georgia's active engagement on the issue of solutions to displacement—or more accurately, on one particular solution—therefore has not been entirely in the best interests of IDPs. By emphasizing IDPs' right to return with such single-mindedness, it effectively ruled out for IDPs their right to choose among solutions. Indeed, the government even restricted IDPs' ability to fully access their rights and improve their living conditions in their place of displacement, even simply as an interim measure until such time as return becomes a feasible option. Only recently, following years of intense international advocacy, has the government shifted its position to enable and support a more comprehensive approach to durable solutions.

It is important to note that to a large extent, the preoccupation of the government with return has corresponded with the preferred solution voiced by many, even the

¹⁶⁴ UNHCR, “Input to Universal Periodic Review” (2010), para. 11.

¹⁶⁵ See Mooney and Jarrah, *The Voting Rights of Internally Displaced Persons*, pp. 35 and 37–41.

¹⁶⁶ *Ibid.*, pp. 37–39; and NRC, *Voting Rights: A Guide to IDP Voting Rights and How to Cast your Vote in the Parliamentary Elections* (Tbilisi: 2003).

¹⁶⁷ *Internally Displaced Persons and Their Behaviour during the Election* (Tbilisi: Business Consulting Group, May 2004), p. 4.

¹⁶⁸ UNHCR, *Gap Analysis*, 2009, para. 6.1.

¹⁶⁹ With thanks to Julia Kharshvili for pointing this out.

majority, of IDPs.¹⁷⁰ Further, the government's advocacy of the right to return is consistent with international human rights standards, which support IDPs' right to return as a general principle.¹⁷¹ In fact, the right of IDPs and refugees to return to Abkhazia and South Ossetia is recognized in the ceasefire agreements brokered for both conflicts back in the early 1990s,¹⁷² and it continues to be emphasized by the international community as a key principle today.¹⁷³

Yet in the absence of a lasting solution to the conflicts, for most IDPs return is a goal that has remained out of reach. Even so, until recent years, the government effectively held IDPs hostage to that goal by going so far as to put legal, administrative and political obstacles in the way of IDPs who wanted access to alternative solutions, namely local integration, and to their full rights in their place of displacement.¹⁷⁴ As a result, IDPs were "left in

limbo," unable to return in safety and rebuild their lives in their area of origin but at the same time impeded by the government from getting on with their lives elsewhere in the country.

In fact, during periods over the past seventeen years when there has been an absence of active hostilities, considerable IDP return has occurred. As noted in the overview section to this study, from 1997 to 2005, UNHCR assisted some 5,700 persons who were internally displaced from or within South Ossetia to return to their areas of origin. In the case of Abkhazia, the government approach has varied from actively promoting return, often prematurely, to at other times denying that any return has taken place. IDPs have "recalled how in 1993 and 1998," even in the absence of a negotiated solution to the conflict, "the government, through mass media, strongly encouraged IDPs to return without sufficient safety guarantees" following agreements between the parties on return.¹⁷⁵ That return was not sustainable in the absence of security conditions and a lasting solution to the conflict was exposed with especially devastating effect in May 1998, when a renewed outbreak of violence in the Gali district of Abkhazia sent some 40,000 recent returnees fleeing again and saw more than \$2 million in international assistance for return and reconstruction literally going up in flames with the burning of some 1,400 houses and sixteen schools.¹⁷⁶

In subsequent years, the de facto authorities have allowed IDPs to return only to a defined area in southeastern Abkhazia, namely the districts of Gali, Ochamchira and Tkuarchuli. UNHCR reports that approximately 50,000 IDPs have returned to their villages of origin in

¹⁷⁰ See, for example, Fichovo Grono, *Displacement in Georgia: IDP Attitudes to Conflict, Return and Justice*, pp. 18–19; IDP Voices Project, *A Heavy Burden: Internally Displaced in Georgia: Stories from Abkhazia and South Ossetia* (IDMC, April 2008) (www.internal-displacement.org). These findings also accord with the author's interviews with IDPs, for instance, in May 2000, and in 2006–07.

¹⁷¹ Principle 28, *Guiding Principles on Internal Displacement*, UN Doc. E/CN.4/1998/53/Add.2.

¹⁷² Quadripartite Agreement of 1994, UN Doc. S/1994/397, Annex II.

¹⁷³ See, for example, UN Security Council Resolution 1866 (2009) of 13 February 2009. See also UN General Assembly (UNGA) Resolution 65/287 of 29 June 2011 on the Status of Internally Displaced Persons and Refugees from Abkhazia, Georgia, and the Tskhinvali Region/South Ossetia, Georgia; UNGA Resolution 64/296 of 7 September 2010; UNGA Resolution 63/307 of 9 September 2009; and UNGA Resolution 62/249 of 15 May 2008.

¹⁷⁴ See UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia*, 2001, paras. 34–69; UN Commission on Human Rights, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Mission to Georgia (21 to 24 December 2005)*, 24 March 2006, para. 15; Mooney and Jarrah, *The Voting Rights of Internally Displaced Persons*, pp. 33–41.

¹⁷⁵ Global IDP Project, Workshop on the Guiding Principles (2000), p. 4. See also Erin D. Mooney, "Internal Displacement and the Conflict in Abkhazia," *International Journal on Group Rights*, vol. 3, no. 3 (1995/1996), pp. 209–14, 222–24.

¹⁷⁶ UN Security Council, *Report of the Secretary-General to the Security Council Concerning the Situation in Abkhazia, Georgia*, S/1998/647, 14 July 1998, para. 13 (www.un.org/Docs/sc/reports/1998/sgrep98.htm).

these areas.¹⁷⁷ However, these figures are not officially acknowledged by the government of Georgia and efforts to verify the number of returnees and their conditions repeatedly have been resisted by the government. Monitoring from UNHCR and others reveals that the situation of the returnees remains precarious as the area remains volatile, with general insecurity and serious criminality, against which local law enforcement bodies are either unable or unwilling to take effective measures. Moreover, the “lack of a reliable state structure and social welfare” means that inadequate social protection for vulnerable people combined with limited access to social rights, lack of sources of income and poor infrastructure make for “extremely difficult living conditions, especially for IDPs in the process of return, [which are] hampering their sustained reintegration.”¹⁷⁸ UNHCR has pointed out the need for more precise and comprehensive data on the number and conditions of returned IDPs and of other conflict-affected persons in the area in order to better assess and therefore better address their needs. While an agreement was brokered by UNHCR in 2006 between the de facto Abkhaz authorities and the Georgian government to conduct a verification and profiling exercise of returned IDPs—an initiative supported by the UN Security Council since 2007¹⁷⁹—implementation of the verification exercise has been stalled in the absence of consensus between the parties to the conflict on the operational modalities of the exercise.

¹⁷⁷ UNHCR, *Submission to the UPR: Georgia*, p. 4.

¹⁷⁸ UNHCR, *Submission to the UPR: Georgia*, pp. 4–5. See also Human Rights Watch, *Living in Limbo: The Rights of Ethnic Georgian Returnees to the Gali District of Abkhazia* (Human Rights Watch, July 2011) (www.hrw.org); UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia*, 2001, paras. 75–104; UN Commission on Human Rights, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Mission to Georgia (21 to 24 December 2005)*, 24 March 2006, paras. 35–43.

¹⁷⁹ UN Security Council Resolutions 1752 (2007), 1781 (2007) and 1808 (2008).

Return of IDPs and refugees always has been a heavily politicized issue and major stumbling block in the peace processes for both conflicts, in particular regarding Abkhazia and since August 2008 more intensively politicized regarding South Ossetia. For the government of Georgia, the return of IDPs is regarded as integral part of reestablishing territorial and political control over the breakaway regions of Abkhazia and South Ossetia and for attenuating the regions’ claims for self-determination by reversing the significant demographic changes wrought by displacement. For the same reasons, the de facto authorities largely resist return—or at least mass return—of IDPs and refugees, albeit with some limited exceptions, as noted above. It should be noted that resistance to return or limitations on return are not in line with the Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons, signed in April 1994 by the Georgian government, the Abkhaz de facto authorities, the Russian Federation and UNHCR, which remains the basis for conflict resolution efforts on displacement issues.¹⁸⁰ Lasting political solutions to these conflicts and the possibility of large-scale return of displaced persons remain elusive.

Meanwhile, the same political imperatives that drive the government’s emphasis on promoting the right to return also led to the adoption of national laws and policies designed to impede IDPs from integrating—economically, socially, and politically—in the areas in which they were residing while displaced (see Benchmarks 5 and 6). For instance, IDPs legally were barred from owning land or voting in the locality where they were living while displaced, unless they forfeited their IDP status and associated benefits. Also, less explicitly, IDPs were led to believe that by exercising such rights in their place of displacement, they risked forfeiting their right to return and to regain their property in their place of origin; the government and especially the Abkhaz government in

¹⁸⁰ *Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons, 4 April 1994*, Annex II to UN Security Council Document, S/1994/397 (1994) (www.unhcr.org/refworld/country,,MULTILATERALTREATY,GEO,,3ae6b31a90,0.html).

exile did little to discourage those rumours. At the same time, the authorities resisted allowing international aid and development agencies and donors to help IDPs shift from a state of dependency to self-reliance by providing support for livelihoods. While some IDP children attended regular schools, several “parallel” schools for IDP children were set up and run by the Abkhaz government in exile, which, in anticipation of eventual return, sought to recreate and maintain children’s educational experience in their area of origin, even by organizing classes for IDPs with the same teacher and classmates as they had in their place of origin. In addition to being obstructed from meaningful participation in the socio-economic and political life of the local communities, almost half of IDPs have lived since the early 1990s in dilapidated and overcrowded “collective centers,” which were established in schools, dormitories, factories and even functioning hospitals and intended only to serve as temporary emergency shelter.¹⁸¹ Already in 1999, the buildings were assessed to be in very poor or poor condition, and by 2003, 70 percent of units were found not to meet minimum shelter standards. In 2005, during his first mission to the country, RSG Walter Kälin observed that he was “shocked by the misery in which thousands of IDPs are still living, more than a decade after the violent fighting that caused them to flee their homes.”¹⁸²

The international community—in particular humanitarian agencies and NGOs in Georgia as well as both RSG Deng following his mission to Georgia in 2000 and RSG Kälin following his first mission to the country in 2005—long had advocated that the government change

its approach to solutions for IDPs. In particular, they wanted the government to stop viewing the right of IDPs to return and their right to live in dignified conditions in their place of displacement as mutually exclusive; instead, both were rights that should be respected in parallel and that even could be mutually reinforcing.¹⁸³ While fledgling steps were taken by the government, at international urging, to move in this direction, most notably with the “New Approach” to IDP assistance promoted by the international community beginning in 2000, the policy and practices of the government did not fundamentally change.¹⁸⁴

However, new opportunities opened up following the Rose Revolution of 2003, which brought into power the government of President Saakashvili. While maintaining the policy of promoting the right of IDPs and refugees to return, the new administration began to modify its absolutist approach of impeding alternative, or at least interim, solutions for IDPs in their place of displacement. This significant policy shift was formalized with the government’s adoption in February 2007 of the State Strategy for Internally Displaced Persons (see Benchmark 6). The strategy articulates two main goals for government policy: to create conditions for the dignified and safe return of IDPs; and to support dignified living conditions, in terms of both housing and overall socioeconomic conditions, for IDPs in their current places of residence. The strategy marked the government’s first-ever recognition that solutions other than return, specifically local integration, were a legitimate

¹⁸¹ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia*, 2001, paras. 25–69.

¹⁸² International Federation of the Red Cross (IFRC), *Survey of Collective Centers Accommodating Internally Displaced Persons, 1999* (Tbilisi: 2000); UN Office for the Coordination of Humanitarian Affairs (OCHA), *Georgia Humanitarian Situation Strategy 2004* (November 2003) (<http://reliefweb.int/node/138045>); Walter Kälin, “Georgia Must Act on Promises to End Displacement Crisis,” 2006 (www.brookings.edu/articles/2006/0531georgia_kalin.aspx?rssid=georgia).

¹⁸³ See UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia*, 2001, paras. 105–111, 128 and 130(xii); UN Commission on Human Rights, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced persons, Walter Kälin—Mission to Georgia (21 to 24 December 2005)*, 2006, para. 15.

¹⁸⁴ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia*, 2001, paras. 108–128 and 130.

policy goal. In practice, however, the government, including the MRA, continued to place emphasis on the right to return and did not meaningfully pursue the strategy's second goal of improving IDPs' shelter and socioeconomic conditions in their place of displacement. The action plan for implementation of the strategy that the government adopted in July 2008 largely reflected its continued emphasis on the goal of return.¹⁸⁵

Yet following the August 2008 renewal of hostilities and the subsequent recognition by the Russian Federation and a handful of other countries of Abkhazia and South Ossetia as independent states, the government and population of Georgia have come to the realization that most IDPs will not be able to return to their homes in the foreseeable future.¹⁸⁶ Propelled forward by intense international advocacy as well as pledges of significant international financial support for alternative solutions (see Benchmark 11), the government began to implement the strategy's second goal, of supporting improved living conditions for IDPs in their place of displacement, in particular by focusing on securing durable housing solutions for IDPs. The government first began to implement this approach for the "new" cases of IDPs. Beginning in September 2008, the government initiated construction of thirty-eight settlements (fifteen of which are clusters of newly built "cottages" while the remaining thirteen are apartment blocks that have been rehabilitated) to provide housing to IDPs displaced by the August 2008 conflict.

The irony, which was not lost on the "old" IDP cases, was that the much larger group of IDPs who had been displaced for much longer—nearly two decades—was second in line to access decent living conditions and durable housing solutions. However, at the end of 2008, the government recognized the need to correct the

imbalance and reiterated the commitment, first articulated in the State Strategy for IDPs adopted in 2007, to secure durable housing solutions for the IDPs displaced in the 1990s. As spelled out in the State Strategy and in the revised action plan, priority would be given to closing the 1,600 collective centers where nearly half of the "old" cases of IDPs still resided; that would be followed by housing support for IDPs in private accommodations. More specifically, the housing solutions would be rolled out in three phases. Stage 1 (2008–10) would entail transferring ownership to IDPs of their living spaces in the collective centers or providing them living spaces in previously unoccupied buildings, with rehabilitation of the buildings as necessary to comply with the Standards for Rehabilitation, Conversion or Construction Works of Durable Housing for IDPs (2009). Stage II (2010–12) would entail construction of new apartment blocks "in areas which provide sustainable integration and livelihoods opportunities," with ownership of the apartments transferred to IDPs. Stage III (2011–12) would entail providing one-off financial grants to IDPs in private accommodations to enable them to secure, or in some cases simply finalize securing, a housing solution on their own initiative. Throughout all three stages, social housing for the most vulnerable IDPs as well as vulnerable nondisplaced individuals would be supported.¹⁸⁷

Three different scenarios were envisaged regarding the situation of IDPs in collective centers. First, with respect to the large number of collective centers that were state-owned and could be refurbished, the government would help IDPs to privatize the buildings, should they wish, transferring IDPs' current living spaces to their legal ownership, and it would undertake the necessary renovations. IDPs who chose not to own their current living space in the collective center or who were living in collective centers that could not be converted into durable housing were to be provided with dignified housing elsewhere. Second, IDPs living in state-owned collective centers in buildings of "special importance for

¹⁸⁵ *Action Plan for Implementing the State Strategy for Internally Displaced Persons – Persecuted* (July 2008) [copy on file with author].

¹⁸⁶ As of July 2011, the Russian Federation, Nicaragua, Venezuela, Nauru and Vanuatu had recognized Abkhazia and, except in the case of Vanuatu, South Ossetia as independent states.

¹⁸⁷ *State Strategy on IDPs; Action Plan 2009; Revised Action Plan 2010; and Government of Georgia, MRA, IDP Housing Strategy*, p. 6.

the state”— for instance, those of significant commercial value and thus of potential interest to private investors or buildings that had a public purpose, for example, hospitals and schools—would be relocated to alternative housing. Third, the government would help IDPs living in collective centers that were privately owned and could not be purchased by the state for onward transfer of ownership to IDPs to find decent housing solutions elsewhere.¹⁸⁸ For those IDPs for whom privatization of their living space was not an option or who did not choose that option, the revised action plan provided for the purchase or construction of individual flats or houses and transfer of ownership to IDPs.¹⁸⁹

Combined, government programs for both the “new” and “old” cases of IDPs had helped, in just over a year and a half, a reported 68,495 IDPs (23,838 families)—or nearly a third of IDPs—to access durable housing by April 2010. For IDPs displaced as a result of the August 2008 conflict, 7,663 IDP families (totaling 22,108 persons) had received durable housing through one of three types of housing assistance: 4,379 houses were constructed, 1,598 apartments were rehabilitated or purchased, and 1,686 IDP families received a one-time financial grant of \$10,000 to help them secure their preferred housing.¹⁹⁰ Meanwhile, among the IDPs in protracted displacement since the 1990s, 16,173 families (totaling 46,384 persons) had received or were in the process of receiving a durable housing solution; of those families almost half (7,818 families) already had received a certificate verifying that they owned the apartments.¹⁹¹

¹⁸⁸ Government of Georgia, *State Strategy on IDPs*, Chapter III, sections 3.1.2. and 3.2., Chapter V, section 2.1.

¹⁸⁹ Government of Georgia, Ministry of Refugees and Accommodation, *IDP Strategy Action Plan: Updated in 2010*, 11 May 2010.

¹⁹⁰ Government of Georgia, Ministry of Refugees and Accommodation, *IDP Housing Strategy and Working Plan* (December 2010), p. 7.

¹⁹¹ *Ibid.*, p. 7. As confirmed by the author’s correspondence with the government in August 2011, this remains the most recent comprehensive set of statistics published by the government at the time of finalizing this study. Updated statistics are expected to be issued at the end of 2011.

Even so, a number of concerns have been noted. While the swiftness of the government response to the housing needs of the “new” IDPs was welcomed overall, especially given the years of resistance to providing similar support to the protracted IDPs, some concerns did arise regarding the quality of assistance provided. As pointed out by several observers, including the Georgian Public Defender, the so-called “cottages,” individual homes, for the “new” IDPs did not always meet construction standards, especially with regard to water and sanitation, on account of a hasty planning process.¹⁹² As for the collective centers, renovations of the buildings reportedly have not always been fully compliant with the above-mentioned standards on shelter construction and renovation.¹⁹³ Another concern is that the government has decided that the estimated 332 state-owned collective centers located in the capital of Tbilisi will be transferred to IDPs’ ownership without renovation assistance. Different explanations provided by the government for the decision reportedly include that the condition of collective centers is generally much worse outside of the capital city, that property in Tbilisi has a higher market value and therefore higher resale value, and that the funding available cannot cover the costs of renovating every collective center as planned.¹⁹⁴ In the case of IDPs who require alternative housing (because they live in collective centers that are too run down to renovate, are not state-owned, or are considered of significant commercial interest to the state or because they opted not to privatize their current space), the housing

¹⁹² Public Defender of Georgia, *Report on the Human Rights Situation of Internally Displaced Persons and Conflict-Affected Individuals in Georgia*, pp. 33–36. Transparency International Georgia, *Cottage Settlements for Georgia’s New IDPs: Accountability in Aid and Construction* (2010) (www.osgf.ge/files/publications/2010/new_transparency_eng_2.pdf).

¹⁹³ Public Defender of Georgia, *Report on the Human Rights Situation of Internally Displaced Persons and Conflict-Affected Individuals in Georgia*, pp. 40–43; Amnesty International, *In the Waiting Room: Internally Displaced People in Georgia*, pp. 27–29.

¹⁹⁴ Godigze and Ryan, “Fact-Checking the State of the Nation Address: IDPs,” citing Government of Georgia, MRA, *IDP Housing Strategy*, p. 10.

offered tends to be in locations entirely different from where they are currently living, requiring them to move to new, often remote areas where opportunities to earn a livelihood are very limited. Consequently, few IDPs have been willing to accept that option. For those who did in fact move, while the housing generally was found to be adequate, in certain cases the location of the settlement has proven problematic in terms of adequate access to health care services, schools and other public services as well as to livelihoods.¹⁹⁵

An issue of particular concern that affects most “new” IDPs but also some of the “old” IDPs has been the series of evictions, beginning in 2010, of IDPs from temporary shelters and some collective centers in Tbilisi.¹⁹⁶ In June 2010, the government announced that thirty-three temporary shelters and three collective centers where IDPs, mostly new cases, were living would be vacated as part of a concerted action to bring to an end the housing allocation process for IDPs displaced as a

result of the August 2008 conflict.¹⁹⁷ Recall, as noted above, that IDPs from August 2008 who chose not to move to settlements newly built to accommodate the new caseload IDPs were eligible to receive a one-off payment of \$10,000 with which to secure housing independently (by contrast, IDPs displaced in the 1990s who could not or did not wish to privatize their current living space were to be supported through resettlement to alternative accommodations but were not eligible for any compensation). According to the IDPs, however, instead of cash compensation they were offered only accommodation in rural areas where there were limited job opportunities.¹⁹⁸ Refusing to move, IDPs staged protests that included demonstrations outside of the MRA; several IDPs went on a hunger strike, some sewing their mouths shut.¹⁹⁹ The evictions nonetheless were carried

¹⁹⁵ Amnesty International, *Uprooted Again*, 2011, pp. 9, 20–21.

¹⁹⁶ It is important to clarify that whereas both types of buildings would meet the definition of “collective center” used internationally, in Georgia, there is a distinction. “Temporary shelters” refers to buildings to house IDPs displaced in August 2008 that, given the government’s mass housing construction and resettlement program for these IDPs that began by late September, were intended to be used by IDPs only for a brief period. “Collective centers” are buildings legally recognized as such by the government in 1996 to provide residency rights to people displaced by the conflicts in the early 1990s. “Collective centres are pre-existing buildings and structures used for the collective and communal settlement of the displaced population in the event of conflict or natural disaster.” Cluster on Camp Coordination and Management, *Collective Centre Guidelines* (UNHCR and International Organization for Migration, 2010), p. 5, (<http://onerresponse.info>). On definitional issues and the need for conceptual clarity, see also Erin Mooney, “Collective Centers: When Temporary Lasts Too Long,” *Forced Migration Review*, no. 33 (September 2009), pp. 64–66 (www.fmreview.org). Regarding this distinction in Georgia, see Lasha Gogidze and Caitlin Ryan, “IDP Evictions: Explaining the Real Issues,” 24 January 2011 (<http://transparency.ge/en/blog/pidp-evictions-%E2%80%93-explaining-real-issuesp>).

¹⁹⁷ According to the Public Defender, whose office was closely monitoring the eviction process, the buildings were inhabited predominantly by “new” IDPs, but also by some IDPs from the 1990s, thus representing IDPs in several different situations who, as set out in the action plan for implementing the State Strategy on IDPs, were to be assisted in different phases of implementation, with first priority given to IDPs in collective centers. The majority of the residents were IDPs from August 2008 who had applied for monetary compensation in lieu of accepting the alternative housing constructed for them and who were still waiting to receive compensation. In addition, residents of the building included some “old” IDPs who were registered as living in private accommodations or in other buildings that were recognized collective centers but who had moved into the premises shortly before the evictions. Public Defender of Georgia, *Report on Human Rights Situation of Internally Displaced Persons and Conflict-Affected Individuals in Georgia: January-June 2010*, p. 62. See also Amnesty International, *Uprooted Again*, 2011, p. 10.

¹⁹⁸ UNHCR, “UNHCR Concerned over IDPs Eviction Process,” 24 August 2010 (www.unhcr.org/refworld/country,,UNPRESS,,GEO,,4c762de8c,0.html).

¹⁹⁹ Radio-Free Europe/Radio Liberty, “Displaced Georgians Protest Eviction Attempt in Tbilisi,” 12 August 2010 (www.rferl.org/content/Displaced_Georgians_Protest_Eviction_Attempt_In_Tbilisi/2125629.html); “Georgian IDPs Sew Mouths Shut in Eviction Protest,” 25 August 2010 (www.rferl.org/content/Georgian_IDPs_Sew_Mouths_Shut_In_Eviction_Protest_/2137496.html).

out. Afterward, a number of the IDPs protested that the housing that they were provided was located in a remote region in western Georgia with scant employment opportunities and no possibility for growing food for subsistence farming. They staged further demonstrations and set up camp outside the MRA, calling for the minister's resignation; one IDP woman set herself on fire in protest and later died.²⁰⁰

The first round of evictions, which was undertaken from June to August 2010 and affected 5,000 IDPs, also caused a widespread public outcry. The Public Defender pointed out that the process of evictions was marred by four main problems. First, the evictions were carried out in an "extremely limited" timeframe; on average, IDPs were given five days' notice (delivered verbally) of the eviction; in some cases, they received notice only hours before the eviction. Second, there was a lack of information about the alternative housing on offer; observers report that in many cases IDPs were told that such information would be provided to them en route to the location. Third, while in some cases IDPs were informed in advance of possible alternative housing, the housing did not meet the agreed minimum standards for durable housing for IDPs. Fourth, according to the IDPs, the eviction process was carried out in a manner that was "very insulting"; verbal abuse was frequent and in some cases IDPs also were subject to physical abuse.²⁰¹ UNHCR voiced concern that the evictions "have not been undertaken with the necessary transparency or circulation of information."²⁰² In response to these concerns, which also were communicated through representations by UNHCR to the prime minister, the government agreed in late August to a moratorium on evictions and stated that any further

evictions would proceed only after standards were developed, in partnership with the international community, to guide the process and protect IDPs' rights. In October 2010, the Standard Operating Procedures on Vacation and Re-allocation of IDPs for Durable Housing Solutions were adopted by the steering committee.²⁰³ The standing operating procedures on evictions outline the rights and obligations of all parties involved, based on existing national legislation. Observers point out that the procedures do not create additional guarantees for IDPs, nor do they address post-eviction issues, including issues associated with the location of alternative housing offered, such as access to employment opportunities and education.²⁰⁴

A second round of such evictions took place in January 2011, affecting some 1,500 IDPs (some 500 families) from twenty-two buildings in Tbilisi. Generally, the second round was regarded as having shown marked "improvement" over the earlier round. In particular, IDPs were provided in advance with information on the specific assistance or alternative housing options for which they were eligible, the accommodation sites were prepared in advance, financial compensation was paid to those who were eligible and had submitted their application in a timely manner, and the use of disproportionate force was avoided.²⁰⁵ While noting that "no major violations of international law or standards were observed," UNHCR pointed out that there nonetheless remained "shortcomings" in the process, including not giving protection monitors full access to IDPs during the eviction process, communication gaps, and some disputes over the calculation of the amount of financial compensation.²⁰⁶ Other observers were sharper in

²⁰⁰ Radio-Free Europe/Radio Liberty, "Self Immolation Incident Highlights Desperation of Georgian IDPs," 29 October 2010.

²⁰¹ Public Defender of Georgia, *Report on Human Rights Situation of Internally Displaced Persons and Conflict-Affected Individuals in Georgia*, p. 62. See also GYLA, *State Policy on Internally Displaced Persons: A Deficiency Analysis*, pp. 13–24.

²⁰² UNHCR, "UNHCR Concerned over IDPs Eviction Process," 2010.

²⁰³ *The Standard Operating Procedures for Vacation and Re-allocation of IDPs for Durable Housing Solutions* (2010) (www.mra.gov.ge).

²⁰⁴ Caitlin Ryan and Lasha Gogidze, "IDP Evictions: Explaining the Real Issues," 24 January 2011 (www.transparency.ge/en/blog/pidp-evictions-%E2%80%93-explaining-real-issues).

²⁰⁵ UNHCR, "UNHCR Observations on the Resumption of the IDP Relocation Process," 3 February 2011 (www.civil.ge/files/files/2011/UNHCRstatement-ENG.pdf); "Statement of the Public Defender," 21 January 2011 (www.ombudsman.ge); Amnesty International, *Uprooted Again*, 2011, p. 13.

²⁰⁶ UNHCR, "UNHCR Observations on the Resumption of

their criticism, in particular certain local NGOs and opposition politicians.²⁰⁷ Amnesty International, in an in-depth report on the evictions published in August 2011, agreed that the process represented a “significant improvement” over the first round of evictions but also raised a number of concerns—including the lack of genuine consultation with the IDPs to be affected and failure to provide them with information about where they could raise concerns and complaints—and called for revision of the guidelines governing the eviction process.²⁰⁸ The MRA issued a statement refuting those criticisms and asserting that there had been “a long-term consultation ongoing with IDPs about the relocation process; however, certain political groups interfered in their decisionmaking process and the social process has been politicized.”²⁰⁹ Further evictions, in this case of IDPs from recognized collective center buildings of interest to private investors, are planned. In August 2011, the Public Defender called on the MRA to protect the rights and interests of IDPs in the process, denoting a number of specific actions expected in that regard.²¹⁰

The issue of restitution of housing, land and property left behind in IDPs’ place of origin also is essential to durable solutions to displacement, and it long has been an important and often a high-profile element of the national approach to resolving the situation of IDPs.

In 1994, the Cabinet of Ministers requested the State Insurance Company to calculate the damage suffered by IDPs.²¹¹ Moreover, in 1999 the president of Georgia created a working group charged with recommending measures and drafting legal provisions to restore and protect the housing and property rights of refugees and IDPs.²¹² Moreover, in 2006 President Saakashvili allocated several million U.S. dollars in discretionary funds to establish a program entitled “My House” for registering and substantiating claims for property, with the assistance of satellite imagery.²¹³ Though intended to secure IDPs’ property claims, the program proved to be an ineffective means for doing so because it was not adequately linked to the cadastral records. Also, although the program ostensibly was voluntary, some IDPs reported not being allowed to renew their IDP registration unless and until they submitted a claim under the program.²¹⁴

Specifically regarding South Ossetia, in 2007 the government of Georgia adopted the Law on Property Restitution and Compensation for the Victims of Conflict in the Former South Ossetian Autonomous District in the Territory of Georgia.²¹⁵ The law had been prepared as a peace-building measure through intensive consultations between the parties to the conflict and with input from

the IDP Relocation Process.” See also “Statement of the Public Defender,” 21 January 2011.

²⁰⁷ “NGOs Condemn UNHCR Response to Georgia’s IDP Evictions,” *Hurriyet Daily News and Economic Review*, 18 February 2011 (referring to a statement issued by eight local NGOs) (www.hurriyetaidailynews.com/n.php?n=ngos-condemn-unhcr-reponse-to-georgia8217s-idp-evictions-2011-02-18). See also, “Georgia and IDPs: Homeless in Georgia,” Eastern Approaches Blog, *The Economist*, 4 February 2011 (www.economist.blogs/easternapproaches/2011/02/georgia_and_idps).

²⁰⁸ Amnesty International, *Uprooted Again*, 2011, pp. 22-23.

²⁰⁹ “Reply by the Government of Georgia, Ministry of Internally Displaced Persons, Accommodation and Refugees to the Report by Amnesty International,” 5 August 2011 (mra.gov.ge/main/ENG#readmore/635).

²¹⁰ “The Public Defender’s Statement Regarding the Planned Process of Displacement of IDPs in Tbilisi,” 12 August 2011 (www.ombudsman.ge).

²¹¹ Resolution No. 900 of the Cabinet of Ministers of the Republic of Georgia, 31 December 1994. Cited by Chkeidze and Korkelia, in *The Guiding Principles on Internal Displacement and the Law of the South Caucasus*, edited by Cohen, Kälin and Mooney, p. 104.

²¹² Ordinance of the President of Georgia No. 294 on Measures of Restoration and Protection of the Housing and Property Rights of Refugees and Internally Displaced Persons, 30 April 1999. Cited in Chkeidze and Korkelia, in *The Guiding Principles on Internal Displacement and the Law of the South Caucasus*, edited by Cohen, Kälin and Mooney, p. 104.

²¹³ Government of Georgia, Decree of the President No. 124 on Measures to Register the Rights to Immovable Property Located in the Abkhazian Autonomous Region and Tskhinvali Region, February 2006.

²¹⁴ UNHCR, *Gap Analysis*, 2009, p. 23.

²¹⁵ See Brookings-LSE Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Georgia” (www.brookings.edu/projects/idp/Laws-and-Policies/georgia.aspx).

UNHCR, OSCE and local legal experts. It establishes the legal grounds on which and procedures by which refugees and IDPs who fled South Ossetia can submit claims for property restitution or compensation, with awards of compensation to be funded from the state budget as well as other sources. The six-member Commission on Restitution and Compensation, comprising two representatives each from Georgia, South Ossetia and the international community, was to have been established by mid-2007, but in fact it was never formed.

The UN Security Council underlined the need “to ensure, without distinction ... the protection of the property of refugees and displaced persons” in Georgia.²¹⁶ Most households whose homes were destroyed during the hostilities in August 2008 received \$15,000 from the government to rebuild their homes; however, little reconstruction has taken place as many who received assistance fear the resumption of hostilities or general insecurity and thus are reluctant to invest in rebuilding their homes in the context of a fragile ceasefire agreement.²¹⁷ In 2009, the RSG recommended the establishment of a comprehensive mechanism for resolving housing, land and property claims in both South Ossetia and Abkhazia.²¹⁸

Achieving durable solutions to displacement requires allowing IDPs to choose among possible solutions—whether return, local integration in the place of displacement, or settlement elsewhere in the country—and ensuring that whichever solution they choose, IDPs enjoy on a sustainable basis and without discrimination safety, security, and freedom of movement; access to an adequate standard of living; access to livelihoods and

employment; and restoration of housing, land and property rights.²¹⁹ In Georgia, important progress has been made in the search for durable solutions in recent years, in particular with the significant shift in government policy to enable IDPs to access decent living conditions and remove legal barriers to their integration into communities other than their place of origin. However, much work remains to be done in order to meet the criteria for achieving durable solutions.²²⁰ In particular, the progress achieved in recent years regarding local integration has concentrated on housing, whereas greater attention to livelihoods and IDPs’ self-reliance is a critical need. A “scoping study” on IDP issues undertaken by the World Bank in 2011 holds promise for a stronger government focus on promoting the local socioeconomic integration

²¹⁶ UN Security Council Resolution 1866 adopted on 13 February 2009, S/RES/1866 (2009), para. 3.

²¹⁷ Amnesty International, *In the Waiting Room: Internally Displaced People in Georgia*, p. 14.

²¹⁸ UN Human Rights Commission, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Follow-Up to the Report on the Mission to Georgia*, A/HRC/13/21/Add.3, 14 January 2009, paras. 44–45 and 49.

²¹⁹ Additional criteria that may be relevant to securing a durable solution are access to documentation; family reunification; public participation; and remedies for displacement-related violations. Inter-Agency Standing Committee (IASC), *IASC Framework on Durable Solutions for Internally Displaced Persons*, Brookings-Bern Project on Internal Displacement, April 2010 (www.brookings.edu/reports/2010/04_durable_solutions.aspx). Also presented to the UN Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Framework on Durable Solutions for Internally Displaced Persons*, A/HRC/13/21/Add.4, 9 February 2010.

²²⁰ For an assessment of the situation in Georgia in reference to the Framework criteria, see Nadine Walicki, “Part Protracted, Part Progress: Durable Solutions for IDPs through Local Integration,” in *IDPs in Protracted Displacement: Is Local Integration a Solution? Report from the Second Expert Seminar on Protracted Internal Displacement, 19–20 January 2011, Geneva* (Brookings-LSE Project on Internal Displacement and IDMC, June 2011) (www.brookings.edu/idp). For lessons for Georgia from other countries’ experience in trying to meet these criteria, see Erin Mooney, “Securing Durable Solutions to Displacement: The Experience in Bosnia and Herzegovina,” Presentation to the Information Session on “When Does Displacement End?” Geneva Discussions XVI, Working Group II, on Humanitarian Issues, Geneva, Switzerland, 6 June 2011. “Geneva Discussions” refers to the conflict resolution process, in which authorities from Georgia, Abkhazia, South Ossetia and the Russian Federation participate.

of IDPs and potential support for such an effort.²²¹ In parallel, of course, efforts to secure a political settlement to the conflicts must continue.

To promote broader discussion on durable solutions, the Norwegian Refugee Council translated the Framework for Durable Solutions into Georgian and in September 2010 co-organized with UNHCR an event, in which the Representatives of the Secretary-General on the Human Rights of Internally Displaced Persons participated, to introduce the document to all major stakeholders in Georgia, including the MRA, the Ministry of Justice and the Ministry of Labor, Health and Social Issues as well as to civil society groups and the international community. As a follow-up, UNHCR and NRC plan to hold a training workshop for relevant authorities and stakeholders, specifically on the Framework for Durable Solutions and its application in Georgia, in September 2011.

11. Allocate Adequate Resources to the Problem

Do the authorities prioritize internal displacement in allocating budgetary resources and in mobilizing international support?

The Law of Georgia on Forcibly Displaced Persons—Persecuted Persons devotes a chapter to financial resources for IDP assistance. It specifies that “financial expenses to IDPs shall be borne by the State and local budgets,” while “additional financial sources are reserve budget funds, donations from private individuals or legal entities and financial assistance rendered by other governments and international organizations.” In addition, the law specifies that in the case of death of an IDP, the cost of burial expenses will be borne by the local budget for IDPs in the area of their temporary settlement.²²²

²²¹ The report on this study by the World Bank was not yet released at the time that this case study was finalized.

²²² Government of Georgia, *Law of Georgia on Forcibly Displaced Persons—Persecuted Persons*, 1996, as amended

In Georgia, as in other countries, it can be difficult to determine precise figures for allocations of national resources for addressing internal displacement. They are not necessarily reflected in a single line item of the state budget; typically resources are channeled to various government agencies and programs, some of which are IDP-specific while others are broader in scope, with IDPs being one of a group of beneficiaries. Budgetary allocations to ministries and even to focal point agencies for IDPs also are generally not disaggregated in terms of the percentage of the allocation devoted to addressing IDP issues. Moreover, figures for resources allocated from local government budgets are not accessible in the available literature. In addition, until recently a significant but indeterminate portion of resources was channeled through the Abkhaz government in exile to address IDPs’ needs through the system of parallel structures that it had established to assist IDPs from Abkhazia, and there were reports of misuse of funds.²²³ While “mismanagement, corruption and the lack of funds” historically has “impacted” government efforts to effectively address the situation of IDPs,²²⁴ combating corruption has been a government priority in recent years and one on which measured progress has been recorded.²²⁵

The Ministry for Refugees and Accommodation, as the designated government focal point for IDP issues, warrants specific attention. In 2000, the Minister for Refugees and Accommodation informed the Representative of the Secretary-General on Internally Displaced Persons that 15 percent of the state budget that year was devoted to providing IDPs with assistance

25 October 2010, Article 10; Article 5(2)(j).

²²³ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia*, 2001, para. 110.

²²⁴ IDMC, *Georgia: IDPs in Georgia Still Need Attention: A Profile of the Internal Displacement Situation*, 9 July 2009 (www.internal-displacement.org).

²²⁵ Organization for Economic Cooperation and Development (OECD), *Georgia: Anti-Corruption Achievements Must Become Sustainable*, 31 March 2010 (www.oecd.org).

Figure 2-1. Ministry for Internally Displaced Persons, Accommodation and Refugees Budget

Year	Georgian Lari (GEL)	USD equivalent (approximate, based on 2011 conversion rates)
2005	61,866,600	37,592,900
2006	59,239,300	35,996,400
2007	65,537,600	39,823,500
2008	121,783,100	74,000,800
2009	66,697,600	40,528,400
2010	41,670,600	25,320,900
2011	40,708,200	24,736,100

to meet their basic needs.²²⁶ For the past several years, the allocation from the state budget to the MRA usually has hovered at around 60 million Georgian Lari (GEL); see figure 2-1. An exception was in 2008, when, in response to the renewed conflict and massive new displacement in August, allocations from the state budget to the ministry increased significantly, almost doubling in size. By 2009, however, the budget dropped back to its earlier amount. In 2010, the budget of the ministry was reduced by a third, to just above 40 million Lari, where planning figures remained in 2011.²²⁷

In comparative terms, the planned state budget allocation for the MRA in 2010 was equivalent to the allocation for the Ministry of Agriculture; considering that agriculture is a major sector of the Georgian economy, this comparison gives some indication of the relative weight given to IDP issues. The same year, the allocation to MRA was more than double the amount allocated to the Ministry of Environmental Protection and nearly four times greater than the allocation to the Ministry of Energy.²²⁸

²²⁶ Author's notes, mission to Georgia, May 2000; UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia*, 2001, para. 110.

²²⁷ Figures reported by the Government of Georgia, Ministry of Finance. The author is grateful to Lasha Gogidze of Transparency International for pointing me to and translating this information from the Ministry of Finance website.

²²⁸ Government of Georgia, Ministry of Finance, *A Citizen's*

The budget of the ministry for 2011—which is posted on the ministry website—reflects both the state budget resources (38,732,200 GEL) and direct donor funding to the ministry in the form of a World Bank community development project in the amount of 1,976 million GEL. Beyond that, while certain IDP budget line items are specified—such as one-time health care allowances for IDPs (in the amount of 20,000 GEL for 2011)—the budget of the ministry is not disaggregated in terms of the portion that goes to fund work with IDPs. Indeed, that could be difficult or even impossible to do given that a number of the staff and programs (for example, the hotline and reception center) and resources of the ministry go beyond IDPs to address other persons of concern to the ministry.

Government offices and programs besides the MRA also disburse resources for IDP-related activities. For instance, immediately after the 2008 conflict, the government allocated some 40 million GEL for shelter reconstruction, through the Municipal Development Fund. The Ministry of Health, Labor and Social Protection reported providing “Targeted Social Assistance” to over 22,000 IDP families as part of its overall budget of nearly 1.6 billion Georgian Lari in 2010.²²⁹

Guide to the 2010 State Budget of Georgia (January 2010), p. 17 (www.mof.ge/en/4070).

²²⁹ Author's e-mail correspondence with Transparency International Georgia, June 2010 and May 2011; and Government of Georgia, *A Citizen's Guide to the 2010 State Budget of Georgia*.

A large component of the financial resources devoted to IDPs goes to the monthly stipend for all those recognized, under national legislation, as “forcibly displaced persons–persecuted persons.” As noted earlier, the amount of the monthly stipend is minimal (see Benchmark 1 The same amount is given to every IDP regardless of differences in needs and vulnerabilities. Shifting from a status-based to a needs-based system, whereby vulnerable IDPs would have their needs addressed through the general social assistance system, has long been advocated and indeed is recognized in the State Strategy as a necessary goal. However, little progress has been made at a policy level. Moreover, there is little incentive for IDPs to make the transition. While legally there is no barrier to IDPs registering for general social assistance, if they do so they are no longer entitled to receive the monthly IDP allowance and other IDP-specific entitlements.²³⁰ At the same time, the social protection system does not yet provide a reliable or enhanced level of support.

Significantly, the president at times has chosen to allocate discretionary funds to addressing IDP issues. Most notably, in 2006 President Saakashvili allocated significant resources from the discretionary funds of his office to the project “My House,” administered by MRA, to allow IDPs who had lost property in Abkhazia to register their lost property and substantiate their claims using satellite imagery (see Benchmarks 2 and 10).²³¹ State budgetary resources continue to be devoted to this project: 300,000 GEL (\$180,230), according to the 2011 budget of MRA.

In addition, the government actively seeks financial resources from the international community to supplement its own efforts to address internal displacement. Indeed, the government of Georgia openly admits that “it was the donor community which took the major responsibility for allocating financial and material

aid and ensuring . . . appropriate planning and implementation of humanitarian programs for IDPs.”²³² For years, however, the government had resisted large-scale international support for undertaking activities to improve the living conditions of IDPs and reduce their dependency.²³³

Yet, after the adoption of the State Strategy, in which the government envisages “close cooperation” with donor organizations to implement the strategy,²³⁴ in particular after the August 2008 conflict, the government adopted a more welcoming approach to international assistance in support of securing durable solutions to displacement. Of the \$4.5 billion in aid that was pledged by donors at a conference in October 2008 to help rebuild the country, \$102.7 million was earmarked to secure durable housing for IDPs from the August conflict.²³⁵ Donors then pledged significant additional funds to support government efforts to implement the broader State Strategy and its revised action plan of 2009, in particular to support durable housing solutions and livelihoods for the “old” IDP cases. Indeed, adoption by the government of a comprehensive action plan for implementing the State Strategy for IDPs was a condition for provision by the European Union of sizable financial support for its implementation: a total of 115 million Euros, allocated in three tranches.²³⁶ EU support was made conditional on

²³⁰ Government of Georgia, Decree No. 145 of 28 July 2006, on Social Assistance to the Georgian Population.

²³¹ Government of Georgia, President of Georgia, “IDP Property Satellite Imagery Presented to President Saakashvili,” 7 April 2006 (www.president.gov.ge/index.php?lang_id=ENG&sec_id=226&info_id=4516).

²³² Government of Georgia, MRA, *IDP Housing Strategy and Working Plan*, p. 17.

²³³ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia, 2001*, paras 34, 111–114, 128–129.

²³⁴ Government of Georgia, *State Strategy for IDPs*, Chapter VI, para. 1.3 and Chapter VII, paras. 1 and 3. See also Revised Action Plan, adopted in May 2010, Chapter 4, para. 4.3.

²³⁵ According to an opinion poll conducted in the fall of 2008, only 27 percent of Georgians thought that the influx of aid money would be properly spent, citing concerns about ineffective spending and corruption. Transparency International Georgia, *Annual Report 2009* (2009), p. 27 (<http://transparency.ge>).

²³⁶ European Commission, Commission Decision of

the adoption in 2008 of an action plan for implementing the State Strategy and in 2009 on revision of the action plan and establishment of a reliable mechanism for coordination between the government and the international community for overseeing implementation. Both conditions were met with the establishment of the Steering Committee on Internally Displaced Persons (of which, recall, major donors on IDP issues in Georgia—the EU, USAID and the World Bank—are members) and its adoption of the revised action plan. This strongly suggests that the adoption by a government of a policy or strategy, complete with an action plan, for addressing internal displacement (Benchmark 6) and a reliable coordinating mechanism with the international community (Benchmarks 7 and 12) is considered by donors to be an especially important indicator of a government's recognition of its national responsibility toward IDPs and its effort to implement a strategy to meet that responsibility.

According to government estimates, \$1 billion will be required for the state to ensure that all of the country's IDPs are provided with decent housing that they themselves will own; that they have opportunities to earn a living wage; and that they have full access to social services. By early 2011, it had only received \$200 million.²³⁷ On housing and livelihoods issues alone, the government reported that even with the significant new donor funding secured for 2011—namely \$61.5 million from the EU and \$42 million from the United States (funds that it reports would cover the needs of 5,200 IDP families)—there remain 22,000 IDP families in need of direct housing assistance and 30,000 IDP families in need of one-time monetary support. The funding shortfall is

463 million Euros (\$654.2 million).²³⁸

The deputy minister of the MRA concedes that while the government's own funding for the IDP housing program has been comparatively small, its in-kind support, including donating some 700 buildings as well as new roads, gas and electricity and infrastructure, has been significant.²³⁹ And while the government has come under criticism in some recent media reports for not giving priority to spending on IDP housing, other observers, including Transparency International and key local NGOs working on IDP issues, counter that it is inaccurate to suggest that providing IDPs with a durable housing solution is not a priority of the government.²⁴⁰

12. Cooperate with International Community when Necessary

Does the government facilitate efforts by international organizations to address internal displacement?

From the outset of internal displacement in the country, as noted by RSG Francis Deng in 2000, the “government readily acknowledged the problem of internal displacement and invited the international community to assist it in meeting the emergency needs of the displaced.”²⁴¹ As the displacement crisis became protracted, the cooperative approach generally continued, but the government now tried to limit international efforts to transition from humanitarian assistance to more development-oriented support aimed at securing durable, dignified

16/12/2009 on the special measure for *Support to Georgia's IDPs Action Plan: 2009–Part III*, to be financed under Article 19 09 01 03 of the general budget of the European Union, Brussels, 16/12/2009, C(2009) 9529.

²³⁷ “Georgia and IDPs: Homeless in Georgia,” Eastern Approaches Blog, *The Economist* (4 February 2011). For specific estimates of resources required for the remaining housing program and for programs of socioeconomic support, see MRA, *IDP Housing Strategy* (December 2010), p. 4.

²³⁸ Government of Georgia, MRA, *IDP Housing Strategy*, p. 15.

²³⁹ Interview with Deputy Ministry of MRA, Tamar Martiashvili, in EurasiaNet, “Georgia: Making a Luxury Resort a Priority over IDPs?” 31 August 2011 (www.eurasianet.org).

²⁴⁰ EurasiaNet, “Georgia: Making a Luxury Resort a Priority over IDPs?” 31 August 2011.

²⁴¹ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia*, 2001, para. 109.

living conditions for IDPs and supporting IDPs' economic self-reliance. Such efforts were resisted because they were considered tantamount to supporting IDPs' integration in their place of displacement and thus were misinterpreted as running counter to the overriding goal of eventually securing for IDPs their right to return.²⁴² Indeed, as the government finally acknowledged in the State Strategy for IDPs of 2007, when it came to addressing protracted internal displacement, "no joint vision ... existed for addressing problems related to IDPs"²⁴³ until the shift starting in 1999, at the initiative of the international community, toward a "new approach" to assisting IDPs by transitioning from humanitarian assistance to development and other programs focused on self-reliance (see Benchmark 10). The State Strategy for IDPs adopted by the government in 2007, including the inclusive process by which the document and its action plan were drafted (see Benchmark 6), mark the culmination of these efforts and a strategic realignment of national and international objectives in supporting the internally displaced.

The MRA long has been the main government counterpart of international agencies and donors engaged in coordination on IDP issues. Its role in this regard has been formally recognized and institutionalized on a number of occasions, including when it was designated the chair of various mechanisms for coordinating with the international community, including the state commission established in 2000 to cooperate with the international community in developing and implementing initiatives

to improve the situation of IDPs and the state commission established in 2006 to develop a state strategy for IDPs (see Benchmark 7, above). The government, for its part, participated in the various sectoral cluster working groups set up by the international community in implementing the "cluster approach" to interagency coordination in response to the humanitarian crisis resulting from the conflict of August 2008. By early 2009, with the phase-out of the cluster approach, international stakeholders underscored the need for an effective coordination mechanism with the government and new principles of partnership for developing the revised action plan for the State Strategy for IDPs. Through technical assistance provided to MRA by USAID-FORECAST, the Steering Committee for IDP Issues was established in 2009 to bring together the key government and international agencies and donors as well as civil society representatives engaged in IDP issues in Georgia. The establishment of the IDP Steering Committee is widely regarded as having facilitated an enabling environment within which coordination on strategic and funding issues has been enhanced not only between the government and the international community but also among international agencies and donors.²⁴⁴ The government has been lauded specifically for having "engaged international organizations and NGOs, who are often vocal critics of the government, to help design policies and procedures."²⁴⁵ Indeed, IDMC observes that "[i]nternational organizations enjoy privileged, quick and meaningful access to government officials on IDPs issues."²⁴⁶

UNHCR always has been a strong partner of MRA on IDP issues. Over the years, MRA has demonstrated increased openness to receiving technical assistance from additional international partners to support its efforts on IDP issues (see Benchmark 7). A specific focus of the USAID-FORECAST project to provide technical

²⁴² The UN Secretary-General, in a report to the UN Security Council in 2000, noted that this approach left IDPs "in a precarious position, in effect locking them out of the benefits that could accrue to them from participation in longer-term development activities." United Nations, *Report of the Secretary-General Concerning the Situation in Abkhazia, Georgia*, S/2000/345, 24 April 2000, para. 24 (www.un.org/Docs/sc/reports/2000/sgrep00.htm). See also UN Commission on Human Rights, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Mr. Francis Deng—Addendum: Profiles in Displacement: Georgia*, 2001, paras. 34–36 and 111–12.

²⁴³ Government of Georgia, *State Strategy for IDPs* (2007), Chapter I.

²⁴⁴ Guy Hovey and Erin Mooney, *Technical Assistance to the Ministry for Refugees and Accommodation*, Final Report, July 2010.

²⁴⁵ "Displaced and Disgruntled in Georgia," Eastern Approaches Blog, *The Economist*, 2 November 2010.

²⁴⁶ IDMC, "Georgia: Towards Durable Solutions for IDPs," 2010, p. 4.

assistance to the MRA (2009–10) was to address the ministry's shortcomings and strengthen its institutional capacity and performance in the area of coordination, including coordination with the international community. Progress in this regard with the establishment of the Steering Committee and improved overall institutional performance by the MRA in fact generated renewed confidence in the ministry, which is benefiting from an expanded number of capacity-building projects. To maximum the impact of these efforts, the MRA has called for its partners to coordinate and support a comprehensive capacity-strengthening program for the MRA, based on a common analysis of needs and joint strategy for addressing these gaps.²⁴⁷ As noted earlier (Benchmarks 4, 6, 7, 10 and 11), key capacity-strengthening partners of the MRA currently include UNHCR, the Danish Refugee Council with EU support, USAID, the World Bank, and the Norwegian Refugee Council.

The government of Georgia has responded affirmatively to various requests by the Representative of the Secretary-General on Internally Displaced Persons to allow official visits to the country.²⁴⁸ Regarding humanitarian access more broadly, the government of Georgia historically has facilitated efforts by international organizations seeking access to Abkhazia and South Ossetia in order to engage with the de facto authorities, including on IDP issues, and to undertake humanitarian operations in these areas; its cooperation generally was mirrored by that of the de facto authorities of Abkhazia and South Ossetia. Most notably, UNHCR and the OSCE maintained since the mid-1990s a field presence in both regions, where peacekeeping missions also were

deployed over the same period.²⁴⁹

However, in a significant departure from the cooperation generally enjoyed by the international community with all parties to the conflict since the 1990s, humanitarian access to both conflict regions has been seriously restricted since the 2008 conflict. The Georgian government passed the Law on Occupied Territories of Georgia, which limits access to each region through only one point in Georgia proper (Zugdidi municipality to access Abkhazia and Gori municipality to access South Ossetia), and access is contingent on formal authorization by the central government.²⁵⁰ While the law provides that “special permission” to enter the territories may be granted in “extraordinary circumstances,” including for humanitarian purposes, this exception is limited to emergency humanitarian assistance.²⁵¹ As RSG Kälin has pointed out, it still would not allow for delivery of non-emergency assistance, such as for durable shelter, which, since the end of the emergency phase immediately following the conflict, is what is needed.²⁵² Meanwhile, the South Ossetian de facto authorities insist that humanitarian assistance may enter only through the

²⁴⁷ Hovey and Mooney, *Technical Assistance to the Ministry for Refugees and Accommodation*, 2010.

²⁴⁸ RSG Francis Deng undertook an official mission in May 2000; RSG Kälin undertook an official mission to the country in December 2005, a working visit in December 2006 and official missions in October 2008 and November 2009. Related documents, cited above, are available at Brookings-LSE Project on Internal Displacement (www.brookings.edu/projects/idp/rsg_info.aspx) and OHCHR (http://ap.ohchr.org/documents/dpage_e.aspx?m=71).

²⁴⁹ The UN Observer Mission in Georgia, composed of unarmed UN military observers, operated in Abkhazia and in Georgia proper from 1993 until July 2009, ending after the required consensus within the UN Security Council for continuation of the mission was lost in June 2009. In South Ossetia, the Joint Control Commission, comprising representatives from Georgia, the Russian Federation, North Ossetia (in the Russian Federation) and South Ossetia (in Georgia proper), was in place from 1992 to 2008 to monitor the ceasefire brokered in 1992.

²⁵⁰ Law on Occupied Territories of Georgia, adopted by Parliament on 23 October 2008 and signed by the President of Georgia on 31 October 2008.

²⁵¹ Compare in this regard the interpretation of European Commission for Democracy through Law (Venice Commission), *Opinion on the Law on Occupied Territories of Georgia*, Adopted by the Venice Commission at its 78th Plenary Session (Venice, 13–14 March 2009) ([www.venice.coe.int/docs/2009/CDL-AD\(2009\)015-e.asp](http://www.venice.coe.int/docs/2009/CDL-AD(2009)015-e.asp)).

²⁵² UN Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, Walter Kälin—Addendum: Mission to Georgia, 2009, para. 35.

Russian Federation. In addition, since the August 2008 conflict, they have barred UNHCR and OSCE (whose presence in Georgia was terminated in June 2009 due to Russia's veto of the proposed renewal of their mission) from reestablishing their long-standing presence in South Ossetia; human rights observers seeking to investigate claims of abuse and violations of international law also have been barred.²⁵³ Abkhazian authorities, for their part, terminated the the UN Observer Mission in Georgia in June 2009, following the Russian Federation's veto in the UN Security Council of a resolution to extend the mission's mandate. While UNHCR and a handful of international NGOs have continued to carry out humanitarian activities in Abkhazia and the UN Security Council has called on all parties to facilitate humanitarian access to persons affected by the conflict, "including refugees and internally displaced persons,"²⁵⁴ UNHCR noted at the end of 2010 that "it is becoming increasingly more difficult and complex to operate in Abkhazia."²⁵⁵ Meanwhile, in South Ossetia, UNHCR reported that humanitarian access to some 14,000 IDPs and returnees in South Ossetia "remains impossible."²⁵⁶ Indeed, with the exception of the International Committee of the Red Cross, international humanitarian agencies still did not have access to South Ossetia by August 2011, three years after the war.

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²⁵³ US Department of State, Bureau of Democracy, Human Rights and Labor, *2009 Human Rights Report: Georgia*, 11 March 2010, Sec. 1 (g) (www.state.gov).

²⁵⁴ UN Security Council Resolution 1866, adopted on 13 February 2009.

²⁵⁵ UNHCR, "Georgia," *UNHCR Global Appeal 2011 Update*, 2010, p. 255 (www.unhcr.org/4cd970e69.html).

²⁵⁶ *Ibid.*



IDP Return to Nasienda, North Rift Valley, Kenya / A returnee girl carries mattresses to her home in Nasienda. Like thousands of people, she had been staying with her family at the IDP Showground settlement in Kitale since January, following post-election violence. The government started to bring people back home in early May 2008 even though many families say they do not yet feel safe to return.

Photo: UNHCR / H. Caux / 7 May 2008

National Response to Internal Displacement: Achievements, Challenges and Lessons from Kenya

Prisca Kamungi

Overview of Internal Displacement in Kenya

The political crisis that engulfed Kenya after the 2007 disputed election results led to the displacement of 663,921 people across the country. However, this was not the first time the country had experienced violence-induced displacement; Kenya has had a long history of forced displacement linked to conflicts over space among different identity groups in multiethnic regions. In Kenya, as in most agriculture-based economies, those who control land also control economic and political power. The competition for control of land, particularly in the Rift Valley, has been protracted, resulting from mutually exclusive claims based on property rights by migrant groups and assertion of cultural heritage rights by indigenous groups. This has made the Rift Valley the theatre of the most vicious episodes of violence and displacement, particularly since the transition to democracy in the early 1990s.

Identity-based politics and contested land rights are the cause and consequence of cycles of displacement in multiethnic regions. The relationship between political affiliation, ethnic identity and land ownership form the basis for contestation, whereby members of ethnic groups associated with rival political opinion are labelled ‘outsiders’ and violently ejected from their farms. In this regard, contested claims about ‘who owns the land’ and therefore who has the right to vote or be voted for on that land becomes a mobilising slogan in the competition for political power. Political strategies to disenfranchise perceived hostile voters and the culture of impunity for political elites cause displacement to become protracted. Conflicts over land make it difficult for IDPs to return to their farms and for the landless to purchase land elsewhere.

The government’s apparent failure to effectively address impunity and “historical injustices” over land access in the Rift Valley and Coast provinces attenuates the realization of durable solutions for conflict-induced IDPs. This has resulted in increased migration to urban areas and the establishment of transit sites from which returnees commute to their farms during the day. Other IDPs have decided to sell or exchange their land and migrate permanently from ethnically heterogeneous regions to safer areas, a coping mechanism that inadvertently seems to support ethnic cleansing. Similarly, the government’s intervention to buy land for landless IDPs far from where they were displaced also seems to result in that unintended outcome.

Apart from political violence and “ethnic clashes,” internal displacement in Kenya is caused by conflict over natural resources, particularly among pastoralist groups; natural disasters such as floods, landslides, drought and famine; incursions into Kenyan territory by armed militia from Sudan, Ethiopia and Somalia; infrastructure development projects such as the construction of roads; and environmental conservation projects. Seven and a half thousand households have been evicted from forests across Kenya] to conserve the environment.¹ The number of IDPs in Kenya is contested as different sources provide unreliable estimates. The Internal Displacement Monitoring Centre (IDMC) suggests there are about 200,000 IDPs while

¹ These evictions were to restore forested areas and protect water catchments. The need to remove those encroaching on forests was widely supported by Kenyans but the manner of eviction raised public outcry because it was done without notice and very violently, in disregard of international eviction laws and Kenya’s own Eviction Guidelines.

government statistics indicate that there were only 158 households in eight camps as of the end of May 2011.

The government did not expressly recognize the presence of IDPs before the 2007 post-election crisis. However, the national and international response to internal displacement in Kenya since 2007 has employed the cluster approach as the *modus operandi*. Kenya has experienced both the advantages and challenges of the collaborative response as reported in the Cluster Approach Evaluation report, particularly the challenge of coordination and the lack of an exit strategy at the end of the emergency phase and the beginning of the early recovery stage.² Lack of timely and efficient profiling of IDPs created loopholes for imposters to infiltrate IDPs camps, where they pose as IDPs in order to benefit from assistance programs, including land allocation. While the Ministry of Special Programs is the line ministry, it is a headquarters ministry with hardly any field staff; implementation of IDP-related programmes is carried out by other collaborating Ministries such as Lands, Internal Security and Provincial Administration. Since ministries are equal and autonomous, inter-ministerial coordination and oversight are palpable challenges for the line ministry. In addition, ineffective sequencing of IDP management activities led to use of force to close camps. Failure to consolidate peace and reconciliation efforts to create conditions of voluntary, safe and dignified return, lack of meaningful consultation with IDPs and receiving communities in host areas; contributed to rejection of IDPs seeking to settle in safer regions. The lack of clear policy guidelines for the management of the IDP crisis has led to concurrent application of ad hoc and disjointed approaches—such as disbursement of money, (re)construction of houses and land allocation to IDPs—while large numbers of deserving IDPs are excluded from assistance programs. The 2010 draft National Policy on the Prevention of Internal Displacement and the Protection and Assistance

to IDPs in Kenya, which provides comprehensive guidelines for responding to all categories of IDPs in all phases of displacement, has yet to be adopted and implemented. Enabling legislation has yet to be developed for pertinent draft policies, including a disaster management policy, human rights policy, peace-building policy, and so forth.

The main protection and assistance concerns facing IDPs include violent attacks, including gender-based violence, sometimes by government officials, humanitarian workers, fellow IDPs and members of host communities; lack of food, water and sanitation; and lack of livelihoods. The government has subsidized access to health care and primary school education for all Kenyans; hence IDPs do not face specific challenges in accessing social services. However, in ethnically segregated parts of the Rift Valley, access to schools and other social services is mutually exclusive for IDPs and members of local communities.

The government has taken a number of steps to respond to the problem of internal displacement. This case study examines the progress, challenges and obstacles faced in implementing these measures against the 12 benchmarks in the Framework for National Responsibility. The findings are as of 31 May 2011.

1. Prevent Displacement and Minimize its Adverse Effects

The government of Kenya has taken measures to prevent displacement and minimize its adverse effects. An institutional framework is in place, and a number of initiatives have been taken to formulate policy and enabling legislation to prevent and respond to displacement. These initiatives and the challenges faced are discussed below.

The government has developed a draft national IDP policy: the National Policy on the Prevention of Internal Displacement and the Protection and Assistance to

² Abby Stoddard et al., *Cluster Approach Evaluation—Final*, November 2007 (www.odi.org.uk/resources/download/3820.pdf).

IDPs in Kenya.³ The draft policy aims to “prevent future displacement, to be better prepared, to mitigate and respond to situations of displacement, and to find sustainable durable solutions.” The draft is an important step toward implementing Kenya’s obligations assumed under the Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons and provisions of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). The draft policy adopts the definition of IDPs that is provided in the Guiding Principles on Internal Displacement and contextualizes it to include those internally displaced by political violence, natural disasters including climate change, and development projects or projects on preservation of the environment. It also expressly recognizes IDPs in various locations, such as camps, host families, and transit sites in rural and urban areas.

In 2009, the government, through the Ministry of State for Special Programs (MoSSP), also developed the draft Kenya National Disaster Management Policy to institutionalize disaster management and mainstream disaster risk reduction in the country’s development initiatives.⁴ The policy, which aims to increase and sustain the resilience of communities vulnerable to hazards, is based on international and regional initiatives contained in the Yokohama Strategy and Plan of Action for a Safer World (1994), the Johannesburg Plan of Implementation issued at the World Summit on Sustainable Development (2002), and the targets set to achieve the Millennium Development Goals. It is also consistent with the

Hyogo Declaration and Hyogo Framework of Action 2005–15 and the African Union (AU)/ New Partnership for Africa’s Development (NEPAD) Africa Regional Strategy for Disaster Risk Reduction acknowledged by various agencies in 2004.⁵

The National Disaster Management Policy presents a shift from short-term relief responses to sustainable development and continual risk reduction and preparedness. Further, it aims to preserve life and minimize suffering by providing sufficient and timely early warning information on potential hazards that may result in disasters, and it provides measures to alleviate suffering by providing timely and appropriate response mechanisms for disaster victims.⁶ In 2009, the government produced a National Disaster Response Plan, which contains operating instructions for the MoSSP, the Ministry of State for Provincial Administration, the National Disaster Operations Center, government departments and other collaborating partners countrywide. By the end of 2010, disaster management had been mainstreamed in all government ministries, and staff in 80 percent of the districts had been trained in disaster management.⁷ Kenya’s Vision 2030, the blueprint for development, articulates commitment to “enhance disaster preparedness in all disaster-prone areas and improve the capacity for adaptation to global climatic change.”⁸ Nonetheless, the policy has not prevented displacement; predictable seasonal flooding, while drought in arid and semi-arid areas continue to force people out of their homes.

³ The draft policy, developed in March 2010, was at the time of writing (May 2011) still awaiting Cabinet debate and adoption. However, it has been at this stage for more than a year. The delay has been caused by the lack of a champion at the Cabinet level and the general perception that it is not a priority compared with more urgent legislation that needs to be drafted and passed for timely implementation of the new constitution. Interview with a senior official at the Ministry of State for Special Programs, 22 May 2011.

⁴ Republic of Kenya, MoSSP, *National Policy for Disaster Management in Kenya*, Mar 2009, pp.17-8; also http://www.sprogrammes.go.ke/index.php?option=com_content&task=view&id=157&Itemid=1170

⁵ Strategy developed in 2004 by African Development Bank (AfDB); African Union (AU); New Partnership for Africa’s Development Planning and Coordinating Agency (NEPAD); United Nations International Strategy for Disaster Reduction Secretariat - Africa (UNISDR - AF)

⁶ Kenya National Disaster Management Policy, p. 4

⁷ Interview with a senior government official at the National Disaster Operations Centre, 20 January, 2011; training manuals were developed by a task force drawn from government ministries, OCHA, UNDP, universities and NGOs. See OCHA Kenya, *Humanitarian Update* No. 48, May 2009, p. 6

⁸ Republic of Kenya, *Kenya Vision 2030: The Popular Version* (Nairobi, Government Printer, 2007), p.19

In October 2009, through the Ministry for Lands, the government produced the Evictions and Resettlement Guidelines, which outline safeguards against arbitrary eviction or dislocation of populations without procedural protections identified by the UN Committee on Economic, Social and Cultural Rights. The Task Force that developed the guidelines adopted the draft in March 2011.⁹ The National Land Policy (2009) recommends measures to protect the rights of both informal settlers and land owners from forced evictions. The land management guidelines outlined in the National Land Policy are consistent with the new constitution.¹⁰ The Constitution also provides a comprehensive Bill of Rights, including the right to housing.¹¹ It obliges the government to respect the Bill of Rights to prevent all forms of human rights violations, including arbitrary displacement.

The Ministry of Justice, National Cohesion and Constitutional Affairs, in collaboration with the Kenya National Commission on Human Rights (KNCHR), developed the draft National Policy on Human Rights (2010) to provide a comprehensive framework to protect and promote the realization of the human rights of all Kenyans.¹² The draft policy, which adopts a rights-based approach to development, recognizes that the primary responsibility for human rights of all citizens lies with the state. Specifically, it recognizes IDPs as a human rights concern and obliges the government to domesticate and implement the Great Lakes Protocol on the Protection and Assistance to Internally Displaced

Persons and the Kampala Convention and to ensure prompt resettlement of and/or adequate compensation for IDPs.¹³

In September 2009, the government unveiled the draft National Policy on Peace-Building and Conflict Management. The policy provides for peaceful resolution of disputes and notes that coordinated and consistent response to IDPs is a critical part of post-conflict recovery.¹⁴ The government has also developed a peace-building curriculum for primary schools, which has been piloted in several schools in Nairobi and in two regions affected by the post-election violence.¹⁵

The government became a signatory to the Great Lakes Pact and its protocols in 2006.¹⁶ The Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons commits member states to “prevent and eliminate the root causes of displacement.”¹⁷ It further commits member states to adopt and implement the Guiding Principles on Internal Displacement,¹⁸ ar-

⁹ Administrator, ‘Taskforce Approves Eviction and Resettlement Guidelines’ http://www.esrc-hakijamii.com/index.php?view=article&catid=34%3Anews&id=90%3Atask-force-approves-eviction-and-resettlement-guidelines&format=pdf&option=com_content&Itemid=53

¹⁰ Ch. 5 of the Constitution. Interview with Program Officer-Advocacy, Kenya Human Rights Commission who is also a member Protection Cluster, 22 January 2011.

¹¹ Interview with the director, Hakijamii Trust, 20 November 2010.

¹² The draft policy has yet to be debated by the Cabinet. Interview with the director, Adili Consulting, 16 February 2011.

¹³ Government of Kenya, “Draft National Policy on Human Rights,” 2010, p. 25.

¹⁴ Draft National Policy on Peace-Building and Conflict Management, 2009, p. 38. The peace policy is still a draft that has yet to be debated by the Cabinet and Parliament.

¹⁵ Interview with a senior official at the Ministry of Education, 8 December 2010; interview with the director, Nairobi Peace Initiative-Africa, 26 January 2010; interview with UNDP Early Recovery Cluster representative, UNDP, 29 October 2010.

¹⁶ The pact comprises five elements: the 2004 Dar es Salaam Declaration on Peace, Security, Democracy and Development, ten Regional Protocols (two of them specific to displaced persons), Regional Programs of Action, the Special Reconstruction and Development Fund, and a Regional Follow-Up Mechanism. See Prisca Kamungi and Jaqueline Klopp, “The Challenges of Protecting the Internally Displaced through IC/GLR” (www.columbia.edu/~jk2002/publications/KKlopp08b.doc).

¹⁷ Great Lakes Region, Protocol on the Protection and Assistance to Internally Displaced Persons, 30 November 2006, Article 6 (www.brookings.edu/fp/projects/idp/GreatLakes_IDPprotocol.pdf).

¹⁸ Jaksa Brigitta and Jeremy Smith, “Africa: From Voluntary Principles to Binding Standards,” *Forced Migration Review*,

ticles 5–9 of which call on states to prevent and avoid conditions that might lead to displacement.

The government has an elaborate and effective early warning and early response mechanism. It is signatory to the Conflict Early Warning and Early Response Network (CEWARN) Protocol of the Inter-Governmental Authority on Development (IGAD).¹⁹ The national chapter of CEWARN is coordinated by the Conflict Early Warning and Early Response Unit (CEWERU) in the Office of the President. These mechanisms are mainstreamed within the Provincial Administration and complement existing intelligence systems.²⁰ CEWERU has organs dealing with cross-border conflicts and natural disasters, such as the National Disaster Operations Center. In addition to the IGAD initiative, the government has its own national CEWARN, coordinated by the National Steering Committee on Peace-Building and Conflict Management (NSC) and a network of District Peace Committees (DPCs). The NSC brings together representatives from government, the UN, foreign missions, research institutions and civil society. It coordinates early warning and early response efforts through members of the early recovery cluster and a network of field monitors who issue situation reports, incident reports and alerts.²¹ The District Peace Committee brings together a number of actors involved in detecting displacement, including the Provincial Administration and the District Security Intelligence Committee. The government is in the process of establishing a tertiary institution for training in disaster

management.²² The institution will be open to government employees and members of the public.

Several joint government-UN-NGO conflict-mapping initiatives have been implemented since 2008, most of which rely on mobile phone technology and the Internet.²³ In July 2010, the Kenya National Commission of Human Rights, UN Children’s Fund (UNICEF) and the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) deployed field monitors across the country as part of their early warning mechanism ahead of the August 2010 referendum on the Constitution. The joint initiative also established coordination offices in areas considered “hot spots of violence,” such as the Rift Valley and western provinces. The coordination centers are mandated to respond to any incidents of violence while the monitors are to look out for issues such as family separation and tracing of missing persons, denial of access to assistance and provision of assistance or services, forced movement, sexual and gender-based violence (SGBV) and loss and/or destruction of personal documents and property.²⁴ Following the political violence that engulfed Kenya after the disputed December 2007 general election, the two main parties—the Party of National Unity and the Orange Democratic Party—signed an agreement on February 28, 2008 agreeing on a number of steps to address the crisis. The mediation by the African Union Panel of Eminent African Personalities under the chairmanship of Kofi Annan resulted in the parties signing the ‘Agreement on the Principles of Partnership of the Coalition Government,’ which paved the way for the enactment of the National Accord and Reconciliation Act 2008. Under the Kenya

December 2008, p. 18.

¹⁹ Inter-Governmental Authority on Development, *Protocol on the Establishment of a Conflict Early Warning and Response Mechanism for IGAD Member States*, January 2002.

²⁰ The Provincial Administration is a hierarchical governing structure comprising administrative officers from the Office of the President at the top to the village chief and elders at the community level.

²¹ Interview with senior staff at National Steering Committee, 9 February 2011; interview with Conflict Early Warning and Early Response Network representative at Africa Peace Forum, 14 November 2010

²² Interview with a senior government official, National Steering Committee, 9 February 2011

²³ These were most visible during the 2010 constitutional referendum campaigns—for example, Uwiano Platform for Peace. Kamungi Prisca and Okello Julius, *Strengthening Democratic Governance through ICT: Post-Election Reconstruction in Kenya* (forthcoming, February 2012 Africa Peace Forum, 2011); interview with program officer, PeaceNet, 18 December 2010.

²⁴ Minutes of Eldoret Protection Working Group, 28 July 2010.

National Dialogue and Reconciliation (KNDR) agreement, the parties committed to undertake a set of actions under four main agenda items. These were: Agenda Item 1: Immediate action to stop violence and restore fundamental rights and liberties; Agenda Item 2: Immediate measures to address the humanitarian crisis, and promote healing and reconciliation; Agenda Item 3: How to overcome the political crisis; and Agenda Item 4: Addressing long-term issues, including constitutional and institutional reforms, land reforms, poverty and inequalities, youth unemployment, national cohesion, and transparency and accountability.²⁵

Thus, the Kenya National Dialogue and Reconciliation specifically provides for measures to address internal displacement. Implementation of agenda 2 aims to mitigate the effects of displacement and to ensure that displacement does not become protracted.²⁶ Through Operation Rudi Nyumbani (Return Home) the government has endeavored to implement provisions of the peace agreement. In early 2008, the government developed the National Reconciliation and Emergency Social and Economic Recovery Strategy to expedite early recovery and facilitate attainment of durable solutions.²⁷ The National Accord seeks to address the “root causes” of displacement-inducing violence through legal and institutional reforms and measures to resolve the land question and address poverty, unemployment and inequality.²⁸ Operation Rudi Nyumbani] has faced

issues such as corruption allegations, use of force to close camps or disperse IDPs who were demonstrating against delayed disbursement of ‘start-up’ funds, insecurity in return areas and the rejection of IDPs by receiving communities.²⁹

The National Cohesion and Integration Commission (NCIC) was established in 2009 to promote reconciliation after the 2007-2008 election violence. It has become an important institution for preventing violence and displacement by monitoring hate speech and mobilization for political violence.³⁰ The NCIC Act 2008 criminalizes hate speech and elaborates stiff penalties for mobilization of violence. NCIC has received wide public acclaim for preventing displacement. The Truth, Justice and Reconciliation Commission (TJRC) is mandated to look into past human rights violations, including forced displacement, in order to guarantee that such violations are not repeated. However, since its inception in 2009, the TJRC has faced serious credibility and integrity challenges. The chairperson was compelled to relinquish office to give way for investigation of his alleged involvement in the 1984 Wagalla massacre, an issue over which civil society rejected the TJRC as capable of revealing the truth about the past. The vice chair resigned in July 2010, and the TJRC has since lacked public support and participation and the internal capacity and resources to effectively carry out its mandate.

²⁵ For progress on what the government has done on each of these agenda items, see South Consulting KNDR Monitoring Project, Quarterly Review Reports, www.dialoguekenya.org

²⁶ See Annotated Agenda II, Measures to signed by the parties on 14 January 2008

²⁷ The government launched a number of initiatives to return IDPs to their former homes: Operation Return Home [Rudi Nyumbani], Operation Reconstruction [Tujenge Pamoja] to reconstruct damaged houses and infrastructure and Operation Good Neighborliness [Ujirani Mwema] to promote healing and reconciliation.

²⁸ Agenda 4, National Accord. For progress on the extent to which provisions of the KNDR have been implemented, see monitoring and evaluation review reports conducted by South Consulting on behalf of the African Union Panel

2. Raise National Awareness of the Problem

The government of Kenya acknowledges the existence of IDPs on its territory and has taken measures to raise national awareness of the problem. Since the 2007–2008 post-election violence, the plight of IDPs in Kenya is relatively well known within government and among

of Eminent Personalities (www.dialoguekenya.org).

²⁹ South Consulting, Quarterly Review Reports, section on ‘Agenda II’ www.dialoguekenya.org

³⁰ Interview with chairperson, National Cohesion and Integration Commission, 19 November 2010

the population, unlike with earlier IDPs.³¹ The 2007 caseload was highly visible because of the scope and magnitude of the crisis: thousands across the country were affected and there was a massive international response.³²

The Kenya National Dialogue and Reconciliation, signed by the president and prime minister on 28 February 2008, was the first sign of acknowledgement that IDPs were a problem that the coalition government needed to address as a national priority. In March 2008, the government formed the National Accord Implementation Committee, which formulated the National Reconciliation and Emergency Social and Economic Recovery Strategy. The strategy outlined short-term and long-term steps and budgetary estimates towards reconstruction. It prioritized the resettlement and rehabilitation of IDPs. In March 2008 the president and the prime minister made a much-publicized symbolic unity tour of the Rift Valley to signal the end of violence and to encourage IDPs to return home. Although the visit was clouded by a protocol war between the vice president and prime minister and diverted focus from IDPs, other government officials, notably senior politicians, religious organizations and NGOs continue to emphasize the plight of IDPs in the media, encouraging IDPs to return home. The problem has been highlighted in research reports and at peace rallies, and it is the core dynamic in reconciliation initiatives.³³ Media coverage

of the situation in camps, individual IDPs' stories and advocacy activities have raised and sustained public awareness of the problem.

The government has established an institutional framework for addressing internal displacement. It designated the Ministry of State for Special Programs as the IDP line ministry and established the Department of Resettlement and Mitigation within the MoSSP to coordinate efforts to address internal displacement. The MoSSP coordinates all response activities and compiles information on progress and challenges to addressing the IDP problem through the monthly *Status Brief on IDPs*. It collaborates with OCHA Kenya, which produces and widely disseminates the regular *Humanitarian Update*,³⁴ which documents the number, location and plight of various categories of IDPs and crisis situations as reported by a wide range of sources.³⁵

The Ministry of State for Special Programs also collaborates with other initiatives to respond to disasters, including the Kenya Red Cross Society, the Kenya Food Security Meeting³⁶ the Kenya Food Security Steering Group and Arid Lands Resource Management. Specialized organs such as the National Disaster Operations Center in the Office of the President, the Crisis Management Center in the Office of the Prime Minister, the National Environment Management Authority, the Kenya Meteorological Department, local fire brigades, the police and the National Youth Service

³¹ Human Rights Watch, *Failing the Internally Displaced: The UNDP Displaced Persons Program in Kenya* (New York: 1997); Internal Displacement Monitoring Centre (IDMC), *I Am a Refugee in My Own Country: Conflict-Induced Internal Displacement in Kenya* (Geneva: NRC, 2006).

³² Kamungi, Prisca "The Politics of Displacement in Multi-Party Kenya," *Journal of Contemporary African Studies*, vol. 27, no. 3, 2009, pp. 345–64; OCHA Kenya, *Kenya: 2009 Year End Funding Update*, p. 1

³³ These include peace meetings, dialogue forums, peace training workshops, shelter reconstruction programs, sports and games, peace walks/runs, letter-writing, eating together, and so forth. For quarterly reports of these activities since 2008, see OCHA Kenya, *Humanitarian Update*, 2008–11; South Consulting KNDR Monitoring Project Review Reports (www.kenyadialogue.org)

³⁴ During the emergency, the *Humanitarian Update* was released every week. As normalcy returned, it was released once a month. Since 2009, the *Humanitarian Update* and *Status Brief* are released at longer intervals.

³⁵ Interview with a senior official, Department of Mitigation and Resettlement, Ministry of Special Programs, 12 February 2011.

³⁶ The Kenya Food Security Meeting (KFSM) is the main coordinating body that brings together food security actors in a forum where information is exchanged, options debated and decisions on activities formulated for referral to the Government of Kenya and donors. It is an open forum of high level presentation of a broad grouping of organizations at the national level with interest in food security (www.kenyafoodsecurity.org).

operate in a partially spontaneous system³⁷ assisted by the UN and relief agencies to respond to natural or human disasters. The government supports and collaborates with various clusters formed by the UN and international partners in January 2008 to respond to the needs of IDPs in all phases of displacement.³⁸ The protection, early recovery, and water, environment and sanitation clusters highlight assistance, protection and recovery needs and advocate for government action.

As noted previously, the government has signed regional instruments on IDPs and formulated a number of national policies and guidelines to prevent displacement, indicating its acknowledgment of the problem of IDPs and its willingness to address it. The IDP question has been the subject of vibrant parliamentary debate, particularly after the 2007 crisis. Legislators highlight new cases of displacement and question the prolonged encampment of IDPs despite restoration of relative peace. The debates are broadcast live from Parliament on television and radio, which has increased public access to information on IDPs. Over the last two decades, the government has formed a judicial commission of inquiry,³⁹ thematic task forces,⁴⁰ working groups⁴¹ and a parliamentary select committee⁴² to investigate and report on specific situations or issues of internal displacement.⁴³ The 2010 Parliamentary Select Committee

on Resettlement of IDPs is mandated to draft legislation on IDPs.⁴⁴ The government also raises national awareness about IDPs through training conducted by the Kenya National Commission on Human Rights and members of the Protection Working Group on IDPs.⁴⁵ The national human rights institution, the Kenya National Commission on Human Rights (KNCHR), and the NGO Kenya Human Rights Commission (KHRC) work with field staff and research assistants to monitor displacement and issues affecting IDPs.⁴⁶

The government works with IDPs themselves to find acceptable and feasible durable solutions. The government through the National Steering Committee on Peacebuilding collaborates with members of the UN early recovery Cluster and local communities in return areas to mitigate the stigma associated with displacement. The children's department in the Ministry of Home Affairs works closely with UNICEF Kenya and religious organizations to raise awareness about separated

³⁷ When there is a disaster, the actors such as the Kenya Red Cross respond immediately and automatically without waiting for prompts from any particular body or government agency; coordination and synergy is built after initial response

³⁸ OCHA Kenya, *Emergency Humanitarian Response Plan*, 2010.

³⁹ Commission of Inquiry into Ethnic Clashes in Kenya, 1999.

⁴⁰ Task Force on IDPs, 2004; Task Force on Mau Forest Evictions, 2009.

⁴¹ Several ministries are represented in the Protection Working Group on IDPs and the Legal Aid Working Group. Interview with senior official, Department of Mitigation and Resettlement, MOSSP, January 2011.

⁴² Parliamentary Select Committee on Resettlement of IDPs, 2010.

⁴³ Commission of Inquiry into Ethnic Clashes in Kenya,

1999. Task Force on IDPs, 2004; Task Force on Mau Forest Evictions, 2009. Several ministries are represented in the Protection Working Group on IDPs and the Legal Aid Working Group. Interview with senior official, Department of Mitigation and Resettlement, MoSSP, January 2011. Parliamentary Select Committee on Internally Displaced Persons, 2010.

⁴⁴ Parliament, *National Assembly Official Report (Hansard)* (Nairobi: Government Printer, 17 Nov 2010) (www.parliament.go.ke/index.php?option=com_content&view=article&id=91&Itemid=84).

⁴⁵ Members that have conducted training on IDPs using the Guiding Principles include OCHA Kenya, UNHCR, UNICEF Kenya, Kenya Human Rights Commission, Danish Refugee Council, Kituo Cha Sheria in collaboration with IDMC, and the Refugee Consortium of Kenya. The Guiding Principles have been translated into Kiswahili and widely disseminated in regions affected by massive displacement.

⁴⁶ The KNCHR is the government national human rights institution, while the Kenya Human Rights Commission (KHRC) is an independent human rights NGO. Both are based in Nairobi. They work in close collaboration, and many have difficulty distinguishing the two, perhaps because persons who worked in the NGO were employed by the KNCHR, which has retained a vibrant human rights monitoring and advocacy role.

children and unaccompanied minors. Despite measures to consult with IDPs and receiving communities, landlessness and lack of social cohesion at the community level present intractable challenges to resolving internal displacement.

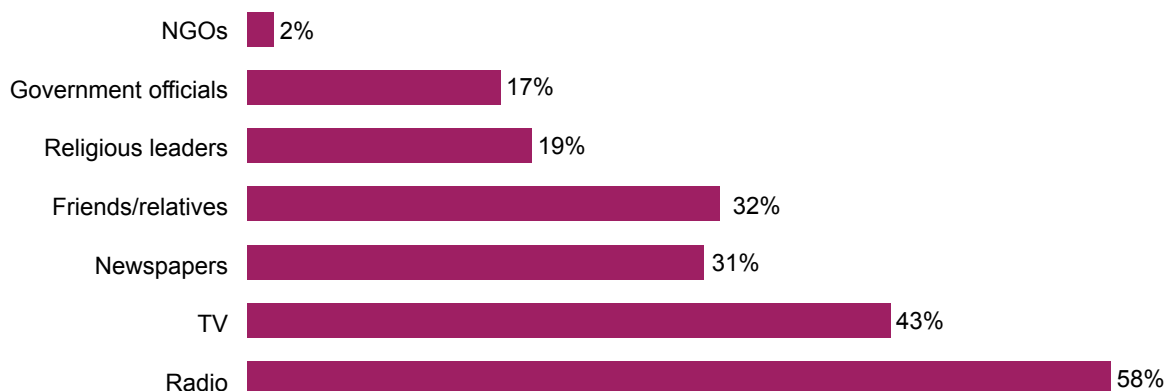
Successive national surveys show a high level of public awareness of the issue of IDPs. A national survey of 6,017 persons carried out in July 2010 found that 95 percent of the respondents were aware of the problem of IDPs.⁴⁷ Kenyans living in areas affected by violence and regions to which IDPs fled were most aware of the problem. Interestingly, the main source of information on IDPs was the media; only 2 percent had heard about IDPs from NGOs; see figure 2-2, below.

attention and aid to camps and so-called self-help groups⁴⁹ discourages IDPs from going home and attracts impostors. Kenyans aware of these challenges express dissatisfaction with the government’s strategy to address internal displacement.⁵⁰

3. Collect Data on Number and Conditions of IDPs

The government has taken measures to collect data on the number and condition of IDPs; a number of profiling exercises have been conducted by the Ministry of State for Special Programs and the Ministry of State for Provincial Administration and Internal Security.

Figure 2-2. What is the source of what you know about IDPs?
(multiple responses, N=6017)



Source: South Consulting, July 2010 survey data, on file with author.

The media highlights IDPs’ situations, self-advocacy activities (for example, public demonstrations), public pronouncements by the executive, government policy actions and expert opinion on the matter.

On the flip side, the association of IDPs with tents (camps) obscures the visibility of IDPs living in other, non-camp settings.⁴⁸ The concentration of government

In June 2008, the MoSSP, in conjunction with the Central Bureau of Statistics and UNHCR, conducted an IDP profiling exercise that concluded that there were 663,921 IDPs in Kenya,⁵¹ of whom 314,000 were integrated

⁴⁷ Respondents were male and female adults (over eighteen years), including IDPs and non-IDPs throughout Kenya.

⁴⁸ The Kiswahili term for IDPs is “those in tents.”

⁴⁹ Self-help groups are groups of landless IDPs who formed cooperatives and collectively purchased small parcels of land in safer areas. The government offered to support their initiative by buying bigger plots of land for them and helping them construct homes.

⁵⁰ Kenya Human Rights Commission and National IDP Network, “Gains and Gaps: A Status Report on IDPs in Kenya, 2008–2010” (Nairobi: KHRC, 2011).

⁵¹ Ministry of State for Special Programs, *Status Brief on*

in host communities.⁵² The data were disaggregated by province only. The MoSSP and the Protection Working Group continue to monitor the number and situation of IDPs and regularly release this information through the *IDP Status Brief*.

The profiling exercise focused only on IDPs displaced by post-election violence (PEV); it excluded many other categories of IDPs.⁵³ Communities viewed as “aggressors” claimed that affected people with whom they shared ethnic, tribal, or other kinship ties were neither counted nor assisted.⁵⁴ Due to exclusion of some PEV IDPs, the old caseload and those displaced by natural disasters, there is no consensus about the number of IDPs in Kenya.⁵⁵ It is not clear how many PEV IDPs are remaining or what types of camps still dot the Rift Valley. Furthermore, imposters and opportunists have infiltrated camps and mixed with genuine IDPs, distorting numbers.⁵⁶ The flux caused by IDPs’ inability to return to their original homes, the high incidence of family separation, the proliferation of “satellite”/ “transit” camps, self-help groups and migration into urban areas confound efforts to establish an accurate number of IDPs. In 2010, Kituo Cha Sheria, a legal aid NGO, conducted research on urban IDPs in Nairobi and published a short report that described lack of assistance but did not give numbers of IDPs.⁵⁷

There is no central depository of data on persons displaced by other causes, such as natural disasters or

development projects.⁵⁸ Such data are collected by the Ministry for Provincial Administration at the district level, local leaders, the UN Inter-Agency Joint Team and the Kenyan Red Cross Society.⁵⁹ Some members of the protection cluster and IDP self-advocacy groups have called for an inclusive profiling exercise to determine accurate number of IDPs from all causes.⁶⁰

Generally, data on IDPs are not disaggregated by gender, age, sex, ethnicity, head of household or any other characteristic, making it difficult to describe or categorize IDPs. In 2008–2009, UNICEF Kenya and the Ministry of Home Affairs, in partnership with Kenyan civil society organizations established a database of separated children in the Rift Valley, with the data disaggregated by gender and age. “The humanitarian agencies which were the first to establish field presence to assist IDPs in camps ignored disaggregation of data; it was difficult for those which came later to correct this because clusters were using the same sets of numbers.”⁶¹ The MoSSP has collected hundreds of registers of IDPs compiled by officials from the Ministry of Internal Security and Provincial Administration and self-advocacy teams of IDPs for purposes of disbursement of relief and assistance funds. Those submitting these lists claim that they were not instructed to disaggregate the data.⁶² In many

IDPs, March 2009.

⁵² OCHA Kenya, *Humanitarian Update*, vol. 6, 2008.

⁵³ South Consulting, “KNDR Monitoring Project Review Report,” August 2008.

⁵⁴ UNICEF Kenya, *Emergency Response Review Mission Report*, unpublished, July 2008.

⁵⁵ IDMC, *Kenya: No Durable Solutions for Internally Displaced Yet*.

⁵⁶ Interview with official at the Ministry of Special Programs, 22 January 2011; interview with official at the Ministry of Lands, 10 February 2011; interview with the national coordinator, IDP Network, 20 December 2010.

⁵⁷ Interview with program officer, Peace, Justice and Reconciliation Program, Kituo cha Sheria, 18 January 2011.

⁵⁸ There is no mechanism for collating data for these IDPs, ostensibly because only a small number of people are affected and causes such as floods and drought are predictable. Besides, displacement caused by disasters is seen as temporary. The government is strengthening its disaster preparedness and response capacity. Interview with a government official from Ministry of Internal Security and Provincial Administration, 2 February 2011.

⁵⁹ OCHA, Displacement Tracking Matrix (January 2009–January 2010), January 2010 (<http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1157161>).

⁶⁰ Interview with program officer, KHRC; interview with national coordinator, IDP Network; see KHRC, *Out in the Cold: The Fate of Internally Displaced Persons in Kenya* (Nairobi: KHRC, 2009).

⁶¹ Interview with IOM field staff in Eldoret, 12 November 2010.

⁶² Interview with a district officer in Central Rift Valley, 6 November 2010.

instances, the distinction between number of persons and number of households is not clear.⁶³

The Ministry of State for Special Programs also collects, collates, and disseminates information on assistance programs to IDPs, including records of monies disbursed to returning IDPs, houses reconstructed, counselling programs and sources of funds. The *Status Brief* on IDPs summarizes progress made in addressing the IDP problem and the challenges that the government faces in resolving the problem.

The draft national IDP policy acknowledges that it is necessary to establish a system for the collection of relevant disaggregated data on internal displacement, including the number of internally displaced persons and their location, conditions and needs, including the special needs of the most disadvantaged among the displaced population.

4. Support Training on the Rights of IDPs

The Ministry of Justice, through the Kenya National Commission on Human Rights, supports training on the rights of IDPs. From June 2008, KNCHR has offered a series of training sessions on IDPs for public officers, including district officers and judicial authorities, and law enforcement authorities, including the army, police, prison services, and the national intelligence service.⁶⁴ The training curriculum on the rights of IDPs is based on the Guiding Principles on Internal Displacement. The Kenyan National Commission on Human Rights also took the lead in monitoring and advising government departments on the human rights of IDPs prior to and after the 2007-2008 election violence.⁶⁵ KNCHR's human rights education department works to "inform

and educate the public as to human rights for the purpose of enhancing respect for such rights by means of a continuing programme of research, publication, lectures, symposiums and by such other means that the commission may deem fit."⁶⁶ In August 2010, KNCHR began to build the internal capacity of human rights organizations involved in monitoring the IDP situation in the country. Monitors were drawn from all regions and trained using the Guiding Principles.⁶⁷ OCHA Kenya has translated the Guiding Principles into Kiswahili. The Kenya Red Cross offers regular training on disaster management across the country.⁶⁸

In March 2008, KNCHR advocacy prevailed on the Ministry for Internal Security to deploy trained security officers to newly established "gender desks" in police stations in regions with high numbers of IDPs to respond to the need for protection of women and children.⁶⁹ In May 2008, the government deployed thirty-five district officers with special training on IDPs and peace-building to violence-affected areas.⁷⁰ The officers, most of whom have stayed, have helped to educate the public about the special vulnerability of IDPs to human rights violations and to promote IDPs' enjoyment of rights in their various settings. In particular, they have increased IDPs' awareness of their rights and access to justice. For instance, more SGBV cases and more types of sexual and gender-based violence are reported at the gender desks than were reported before.⁷¹

The 2010 draft National Policy on the Prevention

⁶³ Discussion at a protection cluster meeting, November 2010.

⁶⁴ Interview with human rights officer, KNCHR, 4 January 2011

⁶⁵ Interview with human rights officer, KNCHR, 4 January 2011.

⁶⁶ KNCHR, Human Rights Education Programme, 28 January 2011 (www.knchr.org/index.php?option=com_content&task=blogcategory&id=2&Itemid=67).

⁶⁷ Interview with human rights officer, KNCHR.

⁶⁸ Interview with the head of Disaster Management, Kenya Red Cross, 3 February 2011.

⁶⁹ *Ibid*; gender desks also address child protection issues in collaboration with local offices of the Children's Department.

⁷⁰ Interview with senior official, Ministry of Internal Security and Provincial Administration, 30 November 2010; the officers were trained by KNCHR.

⁷¹ Interview with official at the Federation of Women Lawyers (FIDA) Kenya Chapter, 18 May 2011.

of Internal Displacement and the Protection and Assistance to IDPs in Kenya reiterates at various points the need for capacity building. The Ministry for Special Programs, the IDP line ministry, is not explicitly mandated to conduct training on the rights of IDPs, but it collaborates with human rights NGOs to conduct such training.⁷² For instance, the Protection Working Group, which the MoSSP co-chairs, works to strengthen government capacity to protect the rights of IDPs by holding training sessions on the UN Guiding Principles on Internal Displacement for the government.⁷³ In July 2009, the Protection Working Group held a stakeholders' forum on protection and durable solutions for IDPs in Kenya, which initiated the process for developing a national IDP policy. In cooperation with UNHCR, other cluster members, including the Internal Displacement Monitoring Centre, held a workshop on the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa and the draft national policy on IDPs. In October 2010, the Kenya Human Rights Commission and the National IDP Network trained twenty-five IDP monitors and dispatched them to regions affected by cycles of displacement.⁷⁴

5. Ensure a Legal Framework for Upholding IDPs' Rights

The government has no legislation on IDPs. However, the 2010 Parliamentary Select Committee (PSC) on the Resettlement of IDPs is mandated to come up with a draft bill. The PSC is collaborating closely with members of the Protection Working Group to ensure that the anticipated draft legislation is consistent with provisions outlined in the 2010 draft National Policy on the Prevention of Internal Displacement and the Protection

and Assistance to IDPs in Kenya, which is based on the Guiding Principles, the Great Lakes Protocol and the Kampala Convention.

The 2010 Constitution of Kenya contains the Bill of Rights, which explicitly recognizes and protects the fundamental rights and freedoms of the individual citizen—including IDPs—and sets out the mechanisms for enforcing those rights and freedoms. Rights are also protected by statutory laws; there are many acts of Parliament dealing with issues that cause displacement—for example, the Public Order Act, the Preservation of Public Security Act, the Election Offences Act, and the Sexual Offences Act. In addition, there are sectoral laws with provisions on issues such as land, which is a key underlying cause of displacement in Kenya. Such laws include the Agriculture Act, the Forests Act, the Water Act, the Environmental Management and Coordination Act, Wildlife Conservation and Management Act, and so forth.

6. Develop a National Policy on Internal Displacement

The Ministry of State and Special Programs and the Ministry of Justice, National Cohesion and Constitutional Affairs, in collaboration with the Protection Working Group (PWG) have developed the 2010 draft National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya. The draft was unveiled on 17 March 2010 at a stakeholders' review workshop. The IDP policy addresses all phases of displacement.⁷⁵

The draft national IDP policy recognizes the complexity of internal displacement in Kenya. It adopts the Guiding Principles' definition of IDPs and includes persons displaced by politically instigated violence or inter-communal hostilities such as competition over land or other resources; persons displaced by natural disasters, whether or not triggered by climate change; and those

⁷² Interview with senior official at the Department of Mitigation and Resettlement, MOSSP, 21 January 2011.

⁷³ Kenya IDP Protection Cluster, Protection Working Group on Internal Displacement, Transition Concept Note, 2 June 2009 (<http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1152806>).

⁷⁴ Interview with program officer, KHRC.

⁷⁵ IRIN, "Draft Policy Offers New Hope for IDPs," March 2010, (www.irinnews.org/report.aspx?ReportID=88485).

displaced by development projects or projects to preserve the environment, including those forcibly evicted, who remain without proper relocation and sustainable options for reintegration.⁷⁶ It provides for protection in all phases of displacement.

Further, the draft policy establishes an institutional framework outlining the roles of relevant stakeholders, including the government, communities, elders, community-based organizations, regional institutions, the international community, humanitarian and development partners and armed groups or similar nonstate actors in addressing displacement. It identifies the Ministry of State for Special Programs as the national government's institutional focal point for internal displacement. It also designates the yet-to-be-established Consultative Coordination Committee to bring together focal points from relevant ministries, other national actors, IDP representatives, civil society and the international community. The draft policy identifies the Kenya National Commission on Human Rights as the government's chief agency for promoting and protecting the human rights of IDPs.

The draft policy further recognizes national laws for protecting the rights of citizens, affirming the primary responsibility of the state to protect the rights of IDPs as citizens of Kenya. Chapter VIII of the draft policy outlines measures to ensure protection and assistance during displacement, including protection of rights and entitlements and protection of life, integrity, liberty and security, movement-related rights and adequate standard of living, health and education.

The Protection Working Group has disseminated the draft policy and regional instruments on IDPs to government and other stakeholders through training sessions. With support from UNDP, the PWG has developed a

simplified version of the draft National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya in English and Kiswahili that summarizes provisions of the draft policy; it is intended to be used as a training tool to sensitize IDPs on their rights.⁷⁷

Chapter X (4) of the draft policy provides for an effective mechanism for monitoring and evaluation of implementation of the policy. The draft policy has been approved by a technical committee⁷⁸ and has been pending before the Cabinet since March 2010. The Protection Working Group is exploring ways to push it to the next step in the legislative process.⁷⁹

The draft National Disaster Management Policy has been revised sixteen times and has remained without an enabling legislation for over a decade.⁸⁰ The draft IDP policy seeks to address coordination and collaboration challenges presented by power struggles within government. However, failure to legislate or enforce existing laws presents the main challenge to overcoming displacement.

7. Designate an Institutional Focal Point on IDPs

Presidential Circular No.1/2008 designates the Ministry of State for Special Programs (MoSSP) as the government office mandated to deal with, among other things, mitigation and resettlement of IDPs and coordination of disaster risk-reduction programs.⁸¹ This is further af-

⁷⁶ Government of Kenya, Office of the President, Ministry of State for Special Programs, National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya, Final consolidated draft (24 March 2010), Chapter II (1-3).

⁷⁷ Interview with human rights officer, KNCHR,

⁷⁸ The technical committee comprises officials from MOSSP, the Attorney General's Chambers, and the Justice Ministry; interview with official at MOSSP, 16 February 2011.

⁷⁹ Discussion and debate at a forum with the Parliamentary Select Committee organized by the KNCHR, 23 May 2011.

⁸⁰ Ostensibly due to power struggles among ministries; interview with a member of the National Disaster Coordinating Committee, 13 February 2011.

⁸¹ The circular outlined the organization of the coalition government, providing information on senior government officers, their official titles, duties and mandates of ministries

firmed by the draft policy, which states, “The Ministry of Special Programmes is the national institutional focal point for internal displacement within government.”⁸² According to the draft policy, the primary role and responsibility of MoSSP is “policy implementation and coordination of implementation efforts with its branches and other relevant government stakeholders at the regional and local level, and other relevant ministries and government entities in accordance with their respective ministerial responsibilities, the Kenya National Commission on Human Rights (KNCHR), IDPs, civil society and the international community.” The ministry is also mandated to ensure that effective coordination of efforts take place at the regional and community level, to monitor and evaluate implementation and to develop guidelines on internal displacement in collaboration with other ministries.

In response to the displacement following the 2007-2008 post-election violence, the MoSSP established the Department of Mitigation and Resettlement with the role of resettling post-election violence IDPs and offering counselling and assistance to restore their lives.⁸³ The department is responsible for implementing the mandate of the National Humanitarian Fund for Mitigation of Effects and Resettlement of Victims of post-2007 election violence, which was established in January 2008 to fund the resettlement of IDPs. The fund is also meant to support measures to replace destroyed household effects, services to restore livelihoods, reconstruction of basic housing, and rehabilitation of community utilities and institutions.⁸⁴

(www.communication.go.ke/media.asp?id=635).

⁸² Government of Kenya, Office of the President, Ministry of State for Special Programs, National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya, Final consolidated draft (24 March 2010), p. 12.

⁸³ OCHA Kenya, “Frequently Asked Questions on IDPs in Kenya,” February 2010 (<http://reliefweb.int/node/344084>)

⁸⁴ MoSSP, National Humanitarian Fund (www.sprogrammes.go.ke/index.php?option=com_content&task=view&id=271&Itemid=167).

The draft National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya recognises that the MoSSP works with a number of other ministries responsible for addressing issues related to internal displacement, such as human rights, justice, security, foreign affairs, lands, education, environment, social protection and support, health, disaster management and relief, reconciliation, and so forth. The MoSSP works with the Ministry of Lands to identify and purchase land for resettlement of IDPs and with the Ministry of Home Affairs to address child protection issues.⁸⁵ These ministries are key players in Protection Working Group at the national level (Nairobi) and in the field (Nakuru and Eldoret). The PWG meets once a month.

The MoSSP also works to prevent and mitigate the effects of displacement due to natural disasters, particularly those caused by drought, famine, fires and landslides. It distributes food relief monthly to affected districts and provides emergency shelter.⁸⁶ The Kenya Red Cross Society, established under the Kenyan Red Cross Society Act, is the government’s main actor in this respect. The particular role of the Kenyan Red Cross is also reflected in the institutional part of the draft national IDP policy. The Crisis Response Centre and the Interim Coordinating Secretariat in the Office of the Prime Minister reinforce institutional response to natural disasters and forest evictions.⁸⁷

Due to the lack of human and financial capacity, the MoSSP is dependent on the Ministry for Provincial Administration to carry out resettlement program activities at the local level. Its technical capacity has been greatly enhanced by collaboration with the Protection

⁸⁵ OCHA Kenya: “Frequently Asked Questions on IDPs in Kenya.”

⁸⁶ MoSSP, “Relief and Rehabilitation, Programmes and Activities,” (www.sprogrammes.go.ke/index.php?option=com_content&task=view&id=255&Itemid=140); MoSSP, National Disaster Response Plan (<http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1160526>).

⁸⁷ Persons who have illegally encroached on forestlands and other protected areas are removed.

Working Group. Since mid 2010, the MoSSP has taken measures to enhance its own capacity; for instance, regional offices have been established in Nakuru, Eldoret and Nyandarua.⁸⁸ Nonetheless, there is concern that poor coordination between the MoSSP and other ministries, particularly the Ministry of Provincial Administration and the Ministry of Lands, hinders the effectiveness of its programs and activities.⁸⁹ There is also concern that the mandates of the MoSSP and the Humanitarian Fund are restricted to the post-2007 election violence IDPs, excluding other categories of IDPs.⁹⁰

IDPs are able to engage and dialogue with the MoSSP directly at the ministry headquarters and at lower-level offices as well as at Protection Working Group meetings where other line ministries are also represented. The regional PWG meetings are chaired by the District Commissioner, who has the authority to respond to IDPs' protection and assistance needs at the district level. As noted above, IDPs may petition the MoSSP directly or through human rights NGOs, most of which are members of the Protection Working Group

8. Support NHRIs to Integrate Internal Displacement into Their Work

The government supports the efforts of the national human rights institution, the Kenya National Commission on Human Rights (KNCHR), to integrate internal displacement into its work.⁹¹ KNCHR is a constitutional body established in 2002 through the Kenya National Commission on Human Rights Act, and it became operational in July 2003 when the president

appointed nine commissioners.⁹² KNCHR's mandate is to enhance the promotion and protection of human rights.⁹³ The commission draws its finances from the Treasury, but its activities are independent of government direction.⁹⁴ The 2010 Constitution provides for its financial independence, and the commission will now draw resources from the Consolidated Fund at the Treasury.⁹⁵

KNCHR focused on the human rights situation of IDPs before and after the 2007 political crisis. Even though the government did not expressly recognize the presence of IDPs until the 2007 crisis, KNCHR was working to raise the profile of IDPs. For instance, advocacy efforts culminated in the 2004 visit by the UN Special Rapporteur on Adequate Housing,⁹⁶ who described the situation of IDPs in Kieni Forest as a "humanitarian crisis and recommended assistance programmes."⁹⁷ The Kenya National Commission on Human Rights also highlights broader issues that cause displacement and cause it to become protracted.⁹⁸

In 2009, the commission recognized IDPs as an important human rights concern and designated a focal point and dedicated staff to work on IDPs. It established regional offices and a network of field monitors. It is working in concert with other organizations

⁸⁸ Interview with senior official at the MOSSP, January 2011.

⁸⁹ KHRC, "Out in the Cold: The Fate of Internally Displaced Persons in Kenya," December 2009 (<http://2logicstudios.com/khrc/1/content/khrc/1/images/2009-12/Binder1.pdf>).

⁹⁰ Interview with human rights officer at KNCHR, January 2011; see Agenda 2 of South Consulting reports, (www.kenyadialogue.org).

⁹¹ National Human Rights Institutions Forum, Kenya (www.nhri.net/NationalData.asp?ID=95).

⁹² KNHRC, "Public Accountability Statement for 2006–2008, Statement of Successes and Challenges," (www.knchr.org/index.php?option=com_docman&Itemid=&task=doc_download&gid=21).

⁹³ KNCHR, "About Us," (www.knchr.org/index.php?option=com_content&task=blogsection&id=4&Itemid=14).

⁹⁴ Interview with a KNCHR commissioner, 26 January 2011.

⁹⁵ *Ibid*; also Chapter 249 of the 2010 Constitution.

⁹⁶ Interview with human rights officer, KNCHR, 23 May 2011.

⁹⁷ UN Commission on Human Rights, "Adequate Housing as a Component of the Right to an Adequate Standard of Living," *Report by the Special Rapporteur, Miloon Kothari—Mission to Kenya*, 17 December 2004.

⁹⁸ Reports and special issues published in the KNCHR annual human rights journal, *Nguzo Za Haki*— for example, "IDPs and the Land Question in Kenya," *Nguzo za Haki* (Nairobi: KNCHR, 2009).

concerned with IDPs⁹⁹ on monitoring the government's response to IDPs, investigating cases of human rights violations, advising government institutions, and promoting rights awareness among IDPs and government authorities.¹⁰⁰ KNCHR plays a large and important role in protecting and promoting the human rights of IDPs and holding the government accountable through its advocacy work.¹⁰¹ It conducts visits to IDP in camps and other settings as well as return sites to monitor the progress of IDP returns and to assess whether or not the rights of IDPs are being respected. In 2009, it released a report showing that millions of shillings from the Humanitarian Fund meant for IDPs had been embezzled.¹⁰² Following investigations into the Kenya situation by the International Criminal Court in 2010, the KNCHR advocated for an effective program to protect witnesses to human rights violations—including 'forced transfer of a population'—committed during the post-election violence, some of whom are IDPs.¹⁰³ The KNCHR is obligated to submit an annual report to the National Assembly that includes an "overall assessment of the performance of the government in the field of human rights" and of KNCHR's achievements and challenges.¹⁰⁴ In its 2009–13 Strategic Plan, KNCHR re-

ported that two of its main challenges in carrying out its mandate were limited physical access across the country and inadequate staffing.¹⁰⁵ From 2009, it began to boost its internal capacity to address internal displacement through hiring permanent staff and supporting a network of field monitors. It moved away from ad hoc to sustained activities; IDPs issues are now an integral part of the commission's work.¹⁰⁶ While its initial focus was the post-2007 IDPs, a broader response under the Economic, Social and Cultural Rights Programme is looking at all the causes of displacement, as articulated in the draft national IDP policy.¹⁰⁷ The KNCHR was an important actor in the process of developing this draft policy: it co-chairs the National Protection Working Group, under the auspices of which the policy was developed.

9. Facilitate IDPs' Participation in Decisionmaking

(a) Do the national authorities encourage and facilitate the ongoing participation of IDPs in the planning and implementation of policies and programs for addressing internal displacement?

The government facilitates IDPs' participation in decisionmaking processes at the local and national levels. IDPs participate in national and regional Protection Working Group (PWG) meetings, where they articulate their concerns to national and international policymakers. In addition, individual IDPs participate actively as key respondents in policy research conducted by government and NGO teams, including commissions of inquiry, thematic task forces, parliamentary select committees, independent commissions and monitoring and evaluation projects. During the emergency phase,

⁹⁹ Interview with a KNCHR commissioner, 26 January 2011.

¹⁰⁰ KNCHR, *Strategic Plan 2009–2013*, launched January 2010 (www.knchr.org/index.php?option=com_docman&Itemid=&task=doc_download&gid=41)

¹⁰¹ IDMC, *Kenya: No Durable Solutions for Internally Displaced Yet*, December 2008 (www.internal-displacement.org).

¹⁰² KNCHR, "Outcome of KNCHR Assessment of GOK Resettlement Program of IDPs and Corruption Allegations," *Daily Nation*, 2 December 2009. See also: South Consulting, *December 2009 Status of Implementation Report*, p. 29 (www.kenyadialogue.org).

¹⁰³ Interview with a KNCHR commissioner, 26 January 2011.

¹⁰⁴ KNCHR produces two reports: the *Status of Human Rights Report* and an accountability report, the *Annual Report of the Commission*. Since its inception, the KNCHR has produced three status of human rights reports and submitted annual reports to the Ministry for Justice, which is supposed to present it to the National Assembly for debate. No annual report has ever been discussed by the National Assembly. The KNCHR does not know why the reports have not been discussed, but it has continued to submit its reports. Interview with deputy secretary of

the KNCHR, 21 January 2011.

¹⁰⁵ KNCHR, *Strategic Plan 2009–2013*.

¹⁰⁶ Interview with human rights officer, KNCHR, 26 January 2011.

¹⁰⁷ Ibid.

the National IDP Network, a self-advocacy network of IDPs from all parts of the country, represented IDPs in all UN clusters, where operational decisions were often made. As noted above, random individual IDPs have unhindered access to government ministries, most of which have designated at least two days a week to receive members of the public. IDPs approach relevant government departments on their own initiative or through KNCHR monitors or human rights NGOs to express concerns or demand rights. IDPs have access to the MoSSP's focal points in regional offices established in Nakuru, Eldoret and Nyandarua in 2010.¹⁰⁸

Nonetheless, the quality of consultation and participation of IDPs is poor and perceived to be done to fulfill an expectation rather than a genuine commitment to their views and wishes.¹⁰⁹ Avenues for genuine participation at the policymaking level are not open since key policy decisions on response strategy and actions on IDPs are made by the Cabinet Subcommittee on Resettlement, which comprises senior officials from the ministries of special programs, lands, provincial administration, justice and finance.¹¹⁰ Concerns articulated to low-level policymakers at PWG meetings and government departments may not necessarily impact high-level decisions due to lack of efficient intraministerial reporting and feedback channels and lack of efficient interministerial coordination.

IDPs have contributed to the development of the draft National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya through their participation in the PWG.¹¹¹ From 2006, the Ministry of Lands, the Kenya Land Alliance and NGOs such as the Kenya Human Rights Commission facilitated IDPs' participation in the process of drafting of the National Land

Policy, which was approved by the Cabinet in June 2009.¹¹² IDPs are also represented in peace-building mechanisms, notably the district peace committees and the Shelter Reconstruction Program. Humanitarian NGOs and religious organizations, most of which work in partnership with relevant government ministries, consult with IDPs and host communities to identify the most vulnerable among them for assistance.¹¹³ Opportunities for participation in the Protection Working Group¹¹⁴ and peace forums are systematic and available to the members of the of the Kenya National Network of IDPs. The protection and assistance concerns of women and children are discussed first at Protection Legal Aid Working Group meetings and more comprehensively at meetings of the Protection Working Group.

However, IDPs complain that the level and quality of consultation is poor; for instance, they were not meaningfully consulted on the development and implementation of Operation Rudi Nyumbani, the resettlement program launched in May 2008. They were also not adequately consulted on eligibility for/distribution of relief and assistance funds or land allocations. The involvement of IDPs was poor in substantive ways—for example, dissemination of information to IDPs on the resettlement plan and their rights was inadequate. As a result, forcible closure of camps and violent dispersal of protesting IDPs characterized the initial phase of the resettlement program.¹¹⁵ The

¹⁰⁸ Interview with official at MoSSP, January 2011.

¹⁰⁹ Interview with program officer, Advocacy, KHRC (14 December 2010).

¹¹⁰ Interview with senior official at the Ministry of Provincial Administration and Internal Security, 28 January 2010.

¹¹¹ Interview with member of the National IDP Network, 22 November 2010.

¹¹² Sessional Paper on Land adopted by the National Assembly on 3 December 2009; interview with program officer, Advocacy, KHRC, December 2010; statement by the national coordinator, Kenya Land Alliance, at the KACC-LSK Ethics and Anti-corruption Workshop, 25-26 February, 2010, Panari Hotel, Nairobi.

¹¹³ Interview with IOM Eldoret, November 2010; interview with a bishop, Catholic Diocese of Eldoret, November 2010.

¹¹⁴ In 2009, the Protection Cluster transformed into the Protection Working Group, which has been further subdivided into thematic areas, including the Protection Working Group on Internal Displacement and the Legal Aid Working Group, which covers SGBV and child protection concerns.

¹¹⁵ IRIN, "Kenya: Guiding Principles Violated in IDP Resettlement—Activist," October 2008 (www.irinnews.com).

government failed to recognize the substantial category of IDPs who were unable or unwilling to return home.¹¹⁶ Communities to which IDPs were returning or integrating were also not consulted, resulting in rejection of IDPs in return and host areas.¹¹⁷ IDPs who protested against delayed disbursement of relief and assistance funds were often violently dispersed.

But there are potential avenues for future active participation and consultation of IDPs, including the most disadvantaged, reflected in the draft National Policy on the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya (March 2010). The draft policy recognizes that participation and consultation “in all processes in matters affecting them [IDPs] contributes to a more effective response to their needs, reduces their dependency and facilitates reintegration” and thus envisages the establishment of a permanent forum for dialogue with IDPs, with separate mechanisms for consulting with women, children and others with special needs, in concert with national and international stakeholders.¹¹⁸ The government’s first stakeholders’ meeting to discuss the draft national IDP policy in March 2010 had over 100 participants, including representatives of the IDP community from all affected districts, as well as NGOs, international organizations and the United Nations. The forum was the result of collaborative planning by MoSSP, the Ministry of Justice, National Cohesion and Constitutional Affairs, the Kenya

National Commission on Human Rights, civil society (including IDP groups) and UN agencies. The forum was designed, among other things, to “garner the voices of IDPs, strengthen their involvement in this process, and ensure their participation in the implementation of the Policy.”¹¹⁹ At the meeting, the minister of state for special programs expressed the government’s hope that the policy “espouses the virtues of inclusiveness, consultation and participation.”¹²⁰

(b) Are IDPs able to exercise their right to political participation, in particular the right to vote, without undue difficulties related to their displacement?

Generally, IDPs are able to exercise their right to political participation, in particular to vote, without undue difficulties related to their displacement. They face no legal or administrative challenges; in fact, the government has taken specific measures to restore the right to political participation if and where it was abrogated. The Kenya National Dialogue and Reconciliation (KNDR) gave priority to the replacement of documents lost in the post-election violence, and in May 2008 the government began facilitating the issuance of new documents or replacement of documents lost or destroyed in the course of displacement.¹²¹ In the run-up to the August 2010 referendum, the Interim Independent Electoral Commission (IIEC) set up voter registration centers near camps and urged IDPs to register.¹²² The IIEC carried out a fresh registration of voters countrywide; hence IDPs did not need to return to the regions from which they were displaced to obtain docu-

org/report.aspx?ReportID=80948); KHRC, *Out in the Cold: The Fate of Internally Displaced Persons in Kenya*, December 2009 (<http://2logicstudios.com/khrc/1/content/khrc/1/images/2009-12/Binder1.pdf>); South Consulting, *Status of Implementation Report*, March 2009 (www.kenyadialogue.org).

¹¹⁶ Jacqueline Klopp and Nuur Mohamud Sheekh, “Can the Guiding Principles Make a Difference in Kenya?” *Forced Migration Review, Tenth Anniversary of the Guiding Principles on Internal Displacement* (2008).

¹¹⁷ South Consulting, *Status of Implementation Report*, December 2010.

¹¹⁸ Government of Kenya, MoSSP, *National Policy on the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya* (Draft March 2010), 1.2. (on file with the authors).

¹¹⁹ OCHA, *Kenya Humanitarian Update*, vol. 59, 9 March–7 May 2010, pp. 7-8 (<http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1164181>).

¹²⁰ Government of Kenya, MoSSP, “Speech of Minister for State for Special Programs at the Workshop on the National Internally Displaced Persons Policy,” 17 March 2010 (www.sprogrammes.go.ke/index.php?option=com_content&task=view&id=321&Itemid=117).

¹²¹ South Consulting, *Status of Implementation Report*, August 2008.

¹²² “Commission Calls on IDPs to Register,” *The Standard*, 5 April 2010 (www.standardmedia.co.ke/InsidePage.php?id=2000007034&catid=159&a=1).

mentation or to vote. During the referendum period, adequate security was deployed to regions mapped as hot spots, and results indicated high voter turnout in polling stations near camps and resettlement areas.¹²³

The draft National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya acknowledges IDPs' participatory rights and provides for their right to freedom of association and assembly and the right to vote and participate equally in government, public and community affairs, including the right to vie for any elective post. The draft obligates the government to "include provisions related to internal displacement in election management processes" as well as to "provid[e] for registration of IDPs" and to "remov[e] all obstacles hindering them from effectively exercising their political rights."¹²⁴

While physical and logistical impediments do not prevent IDPs from exercising their right to vote, IDPs displaced by the 2007 elections nonetheless do face difficulties in participating because of other reasons, such as trauma suffered during the last elections. Many IDPs associate voting with violence and displacement: "I am in the tent because I voted; why should I vote if it means this?"¹²⁵ Reluctance to participate in the electoral process is not a new phenomenon. The UN Development Fund for Women (UNIFEM) reported that there was low IDP voter turnout during the 1997 general elections due primarily to trauma from the previous election cycle, which was the cause of displacement.¹²⁶ Besides fear of

violence, some IDPs from the 2007 crisis have felt that the government has neglected them;¹²⁷ threatening not to vote was a strategy to draw attention to their plight as a constituency.¹²⁸ Lack of confidence in the electoral system is leading some IDPs to consider boycotting the whole electoral process.¹²⁹

10. Establish the Conditions and Provide the Means for IDPs to Secure Durable Solutions

The government has made efforts to establish the conditions and provide the means for IDPs to secure durable solutions. The signing of the National Accord on 28 February 2008 halted the violence and triggered the voluntary return of some IDPs.¹³⁰ The Mitigation and Resettlement Committee was set up to resettle and rehabilitate IDPs and to work with existing peace-building mechanisms to restore peace and normalcy.¹³¹ The National Humanitarian Emergency Fund for Mitigation and Resettlement of Victims of 2007 Post-Election Violence was set up to meet the full costs of resettlement of IDPs, including reconstruction of basic housing, replacement of household effects, and rehabilitation of

Dispossessed Women in Kenya, UNIFEM/African Women in Crisis Programme, January 2002; also Human Rights Watch (HRW), *Failing the Internally Displaced: The UNDP Displaced Persons Programme in Kenya* (New York: HRW, 1997).

¹²⁷ "IDPs Shun Voter Registration, Claim Neglect," *The Standard*, 24 March 2010 (www.standardmedia.co.ke/archives/InsidePage.php?id=2000006341&cid=4&story=IDPs%20shun%20voter%20registration,%20claim%20neglect)

¹²⁸ South Consulting, *Status of Implementation Report*, October 2010.

¹²⁹ Jacob Mulaku, "Kenya: IDPs to Boycott Voter Registration," *AfricaNews.com*, 25 March 2010 (www.africanews.com/site/Kenya_IDPs_to_boycott_voter_registration/list_messages/30828).

¹³⁰ OCHA Kenya, *Kenya Humanitarian Update*, vol. 19, May 2008.

¹³¹ National Accord Implementation Committee, *National Reconciliation and Emergency Social and Economic Recovery Strategy*, March 2008, p. iv.; on file with author.

¹²³ South Consulting, *Status of Implementation Report*, October 2010. KNCHR monitors and referendum observers reported that IDPs voted. Interview with KNCHR human rights officer, February 2010.

¹²⁴ Government of Kenya, Office of the President, Ministry of State for Special Programs, National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya, Final consolidated draft (24 March 2010), Chapter VIII, 24(a-c).

¹²⁵ Interview with a displaced woman at the Pipeline IDP Camp in Nakuru, 20 November 2010.

¹²⁶ Prisca Mbura Kamungi, *The Lives and Life-Choices of*

infrastructure, such as community utilities and institutions destroyed during the post-election violence.¹³² On 5 May 2008, the government launched Operation Rudi Nyumbani to close all camps and facilitate the return of IDPs to predisplacement areas.

In August 2008, the government launched Operation Ujirani Mwema (Operation Good Neighborliness) to promote reconciliation and reintegration of returnees. That was followed by Operation Tujenge Pamoja (Operation Build Together), aimed at reconstructing the destroyed houses and supporting recovery of livelihoods for people who had returned to their farms. The government reconstructed twenty-two destroyed or vandalized schools and put up thirty-two new police stations and 200 patrol bases to enhance security in the regions most affected by violence and displacement. The heavy police presence has produced positive results, as witnessed during the peaceful referendum in August 2010.¹³³ The government and the Early Recovery and Shelter Clusters, with support from the African Development Bank, the UN Central Emergency Response Fund and development partners have constructed over 19,000 houses.¹³⁴

¹³² OCHA Kenya, *Humanitarian Update*, vol. 3-48, 2008-2010 (<http://ochaonline.un.org/Kenya/reports/UNOCHAHumanitarianUpdates>).

¹³³ South Consulting, *KNDR Quarterly Review Report*, October 2010 (www.kenyadialogue.org). On the flip side, the heavy security deployment aggravated resentment and feelings of subjugation among local communities, who complained that the government had “poured” hundreds of police officers into communities to protect non-locals. See South Consulting, *Quarterly Review Report*, Oct 2010

¹³⁴ Members of the Shelter Cluster who have collaborated with MOSSP to support shelter reconstruction include Habitat for Humanity, International Organization for Migration, Goal Ireland, Kenya Red Cross Society, Danish Refugee Council and the Catholic Church; interviews in Nairobi and the Rift Valley, October and November 2010 and February and April 2011.

The MoSSP, with funding from the African Development Bank, is running a four-year project to offer fertilizers and farm inputs to returnees. It is also running a four-year project, with UNDP support, on sustainable livelihoods,¹³⁵ including animal restocking, farm inputs, fishing and construction of fish ponds, vocational training and establishment of District Business Solution Centers for information gathering, capacity building and coordination of business initiatives in violence-affected regions.

Government officials in their official and personal capacity have supported efforts to restore normalcy. For instance, individual politicians spearheaded peace activities such as Operation Karibu Nyumbani (Operation Welcome Back Home) in 2008.¹³⁶ Similarly, media houses and NGOs have facilitated reconciliation programs, peace meetings and conflict management training workshops.¹³⁷ The government established two commissions, the Truth, Justice and Reconciliation Commission and the National Cohesion and Integration Commission in July and September 2009 respectively, to promote healing and national cohesion.

To fight impunity for perpetrators of political violence, in 2009 the Kenya National Commission on Human Rights initiated drafting of the Hate Speech Bill¹³⁸ and in March 2010 the International Criminal Court (ICC) began investigations into the Kenya situation. The ICC intervened after it became apparent that the government was unwilling to fight impunity, particularly among senior politicians. Impunity is a major cause of political

¹³⁵ Interviews with MoSSP and a program officer at UNDP, February 2011.

¹³⁶ “Close Camps, Say Rift Valley MPs,” *Daily Nation*, 22 February 2009.

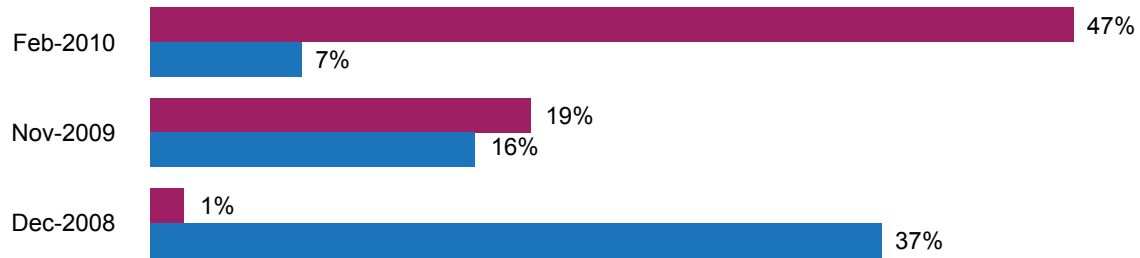
¹³⁷ For review of efforts to promote peace and address root causes, see Agenda 2 and Agenda 4 sections of successive status of implementation reports by South Consulting (www.kenyadialogue.org).

¹³⁸ The draft was incorporated into the National Cohesion and Integration Act, which established the National Cohesion and Integration Commission.

violence and displacement in Kenya.¹³⁹ Lethargy in holding perpetrators accountable contrasted sharply with public demand for accountability, particularly once the country stabilized, as shown in figure 2-3 below.

re-establish sustainable livelihoods or occupy houses reconstructed for them. The Kenya National Commission on Human Rights and some members of the Protection Cluster criticized Operation Rudi Nyumbani as untimely and “a failure,” arguing that return should have

Figure 2-3. What is the best way to prevent future violence in your community?



Source: South Consulting data, on file with author

■ Prosecute those responsible ■ Promote national unity

Under the framework of Agenda 4 of the National Accord, the government has been undertaking legal and institutional reforms and rolling out programs to address the root causes of violence and displacement. These include measures to implement land reforms; to fight poverty, inequality, regional imbalances and unemployment, particularly among the youth; and to promote national unity and transparency and accountability.¹⁴⁰

Despite such positive actions, an unknown number of IDPs remain in at least twenty transit camps and camp-like self-help groups.¹⁴¹ The majority are unable to

been preceded by or done concurrently with confidence-building measures and peace-building activities in return areas.¹⁴² The push factors employed by the government to spur movement out of camps (including use of force),¹⁴³ along with lack of information, lack of incentives to return,¹⁴⁴ disconnection of water supplies, and the end of general food distribution and promises of compensation once IDPs were back on their farms, induced involuntary return and were inconsistent with

¹³⁹ Susan Mueller, “The Political Economy of Kenya’s Crisis,” *Journal of Eastern African Studies*, vol. 2, no. 2 (2008), pp. 185–210.

¹⁴⁰ For progress made in each of these areas, see the Agenda 4 section of monitoring and evaluation review reports, South Consulting Review Reports, 2008-2010, dialoguekenya.org

¹⁴¹ Statistics from the MoSSP show that by end of May 2011 there were only eight transit camps with a total of 158 households remaining in one district in the Rift Valley. However, a spot check by the author in late May 2011 revealed that there were many more camps in at least six districts, and some of the camps on the government list do not exist on the ground.

¹⁴² Mushtaq Najum, “Doubly Displaced,” *IPS News*, 28 June 2008 (<http://ipsnews.net/news.asp?idnews=43007>); KHRC, *Tale of Force, Lies and Threats: Operation Rudi Nyumbani in Perspective* (Nairobi: KHRC, 2008)

¹⁴³ For instance, police beat up IDPs and forcibly closed Endebess Camp in TransNzoia, while two IDPs protesting the resettlement program were shot dead by police officers at Nakuru Show Ground Camp. OCHA Kenya, *Kenya Humanitarian Update*, vol. 19, May 2008.

¹⁴⁴ The government offered monetary incentives to encourage people to return home, paying Ksh (Kenyan shillings) 10,000 (approximately \$127) to those who agreed to ‘go back home’ Jacqueline Klopp and Nuur Mohamud Sheekh, “Can the Guiding Principles Make a Difference in Kenya?” *Forced Migration Review, Tenth Anniversary of the Guiding Principles on Internal Displacement* (2008).

human rights standards.¹⁴⁵ UNHCR concluded that “the way in which Operation Rudi Nyumbani was implemented suggests that the movement of people out of camps cannot be fully characterized as being free and voluntary based on an informed choice.”¹⁴⁶ Allegations of corruption and embezzlement of the Humanitarian Fund have been reported.¹⁴⁷

There is concern that the government has focused on the return process at the expense of finding other durable solutions;¹⁴⁸ it seems preoccupied with “making camps disappear.”¹⁴⁹ IDPs leaving camps have not necessarily returned to their former homes due to lingering insecurity and lack of social cohesion.¹⁵⁰ While a substantial number of IDPs have unimpeded access to their farms, others have ended up in transit sites and urban areas while others have returned to camps. As one IDP remarked in November 2010, “facilitating IDPs to move out of camps only disperses them and makes them less visible; it doesn’t mean their problems are over.”¹⁵¹ Observers refer to the apparent lack of a strategy for the attainment of durable solutions for those who do not

wish to return home.¹⁵² The government has also tended to focus on landowning IDPs and to attach durable solutions to land; there is no clear strategy for dealing with landless IDPs, such as squatters and non-farmers, who are unable to return for some reason. A university instructor observed, “The government wants to give land to fishermen and artisans without asking them why they are unable to go back where they came from.”¹⁵³

Kenyans also complain that while the government has taken steps to implement reforms under the framework of the National Accord, such reforms have little impact at the community level. For instance, the TJRC is discredited and has had little impact, while the NCIC has little human capacity, is Nairobi-based, and has focused only on hate speech rather than its broad mandate. Moreover, the political culture has not changed; politicians continue to mobilize along divisive lines and to tacitly endorse measures at the community level [to block the return of IDPs. Surveys show that while fear was a major obstacle to resolving Kenya’s IDP problem in 2008, three years later root causes such as landlessness and lack of political were the main causes (see figure 2-4).

A trend analysis over a three-year period shows the level of satisfaction with the government’s performance in finding durable solutions to IDPs was, at best, average, as seen in figure 2-5.

The low level of public satisfaction may be attributed to use of force to disperse IDPs during Operation Rudi Nyumbani, allegations of embezzlement of funds meant for IDPs,¹⁵⁴ and lack of profiling and screening

¹⁴⁵ Kenya Human Rights Commission, *Gains and Gaps: A Status Report on IDPs in Kenya, 2008-2010* (Nairobi: KHRC and National Network for IDPs in Kenya, Feb 2011), pp. 35-40.

¹⁴⁶ UNHCR, “Lessons Learned from UNHCR’s Emergency Operations for IDPs in Kenya,” September 2008 (www.unhcr.org/publ/RESEARCH/48e5d90d2.pdf).

¹⁴⁷ Kenya Human Rights Commission, *Tale of Force, Lies and Threats: Operation Rudi Nyumbani in Perspective* (Nairobi: KHRC, 2008); see also KHRC, “Operation Rudi Nyumbani Wapi (*Return Where?*): Formulating Durable Solutions to the IDP Situation in Kenya,” Briefing Paper, June 2008; “Corruption in Operation Rudi Nyumbani,” *The Standard*, 1 September 2008.

¹⁴⁸ UNHCR, “Lessons Learned from UNHCR’s Emergency Operations for IDPs in Kenya.”

¹⁴⁹ Interview with a university lecturer, Centre for Refugee Studies, Moi University, 20 November 2010.

¹⁵⁰ Water sources were deliberately poisoned in some return areas to block the return of IDPs to their farms. See UNICEF Kenya, “Mission Review Report,” July 2008, on file with the author.

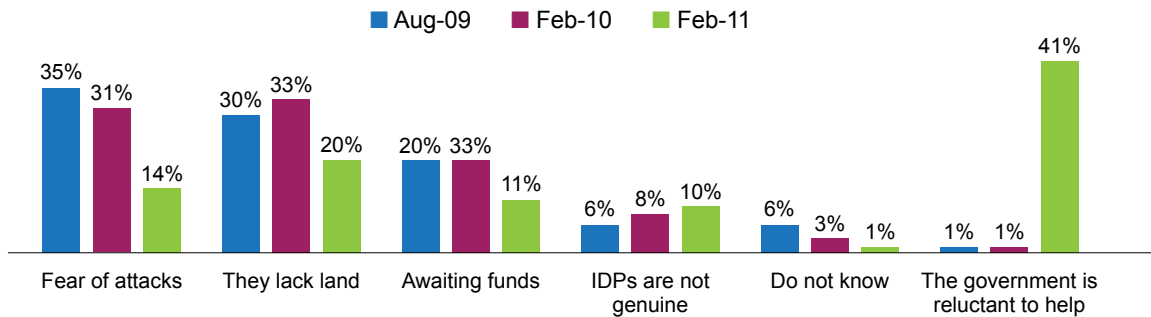
¹⁵¹ Interview with an IDP in a transit site in Mau Summit, November 2010.

¹⁵² Jacqueline Klopp and Nuur Mohamud Sheekh, “Can the Guiding Principles Make a Difference in Kenya?” *Forced Migration Review, Tenth Anniversary of the Guiding Principles on Internal Displacement* (2008).

¹⁵³ Interview with a university lecturer, Centre for Refugee Studies, Moi University, 20 November 2010.

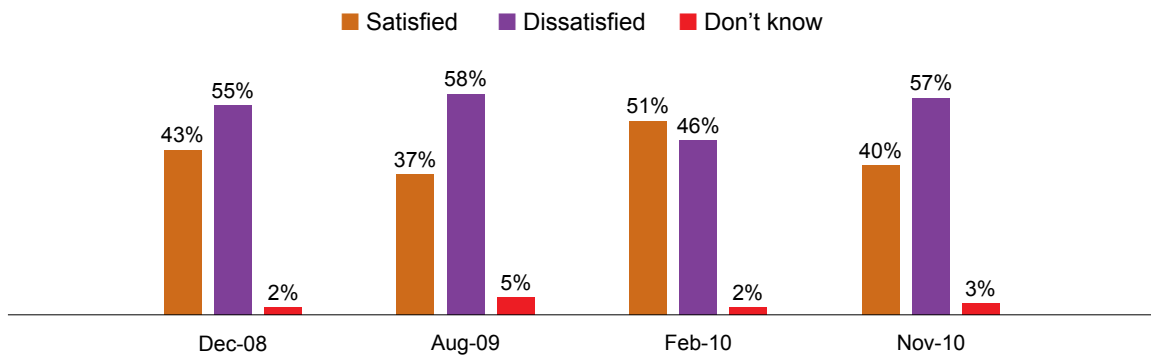
¹⁵⁴ KNCHR, “Outcome of KNCHR Assessment of Government of Kenya Resettlement Program of IDPs and Corruption allegations,” press release, 2 December 2009. In August 2008, the National Humanitarian Fund Advisory Board blocked Ksh 330 million for procurement of building materials in

Figure 2-4. What are the main reasons IDPs remain in camps?



Source: South Consulting survey data, 2009-2011

Figure 2-5. Level of public satisfaction with government's performance in resettling IDPs



Source: South Consulting survey data, 2008-2010

mechanisms, which has enabled infiltration of impos-
tors into camps. When the government began to pur-
chase land for IDPs at the beginning of 2010, the level
of satisfaction spiked from 37 percent in August 2009 to 51
percent in February 2010.

Over a quarter of respondents in successive surveys (see
figure 2-6) say that resettling IDPs elsewhere is one im-
portant step that the government can take to address the
problem. A significant number also emphasize the need
to both resettle IDPs in their communities of origin and

give them land, underscoring the centrality of land as a
cause of and solution to displacement in Kenya.

While these suggestions to achieve durable solutions are
important strategies that should be taken into account
by the government, they must be anchored in broader
democratic governance reforms for better impact.

11. Allocate Adequate Resources to the Problem

The government allocates budgetary resources to fi-
nance measures to address the problem of internal dis-
placement. The draft National Policy for the Prevention
of Internal Displacement and the Protection and

the Rift Valley due to the absence of authentic registers or
accountability systems: "Corruption in Operation Rudi
Nyumbani," *The Standard*, 1 September 2008.

Figure 2-6. What can the government do to address the problem of IDPs in Kenya?

	Aug-09	Feb-10	Nov-10
Resettle them elsewhere	33%	34%	28%
Resettle them in areas where they were displaced from	25%	18%	24%
Give them financial assistance	12%	13%	28%
Promote peace and reconciliation	12%	12%	10%
Take them back to their ancestral districts	7%	12%	6%
Increase security	6%	9%	6%
Give them land			35%
Settle them where they are (promote local integration)			11%
Don't know	3%	1%	
Other	2%	1%	1%

Assistance to Internally Displaced Persons in Kenya recognizes the need for predictable funding and provides for the establishment of an IDP fund “to comprehensively cover the implementation of the policy in all its aspects and any kind of displacement situation irrespective of its cause.”¹⁵⁵ To address corruption and mismanagement of the fund, the draft policy further provides that the fund

shall be overseen by an independent board composed of representatives of relevant stakeholders and be open to receive bilateral and multilateral donations, but not exclude the possibility for donors to continue to directly fund humanitarian activities as well as recovery and development projects.

As noted above, a special fund, the National Humanitarian Fund for Mitigation and Resettlement, was established in March 2008 to support the return of post-election violence IDPs.¹⁵⁶ The budget for the fund is provided through budgetary appropriations by Parliament, but it is also open to public

¹⁵⁵ Draft IDP Policy, Chapter X, Paragraph 3

¹⁵⁶ Minister of MoSSP, Speech at Launch of Public Fund Raising toward the Resettlement of IDPs, 12 May 2008 (www.sprogrammes.go.ke/index.php?option=com_content&task=view&id=143&Itemid=117).

contributions by citizens, other countries, and international institutions.¹⁵⁷ The government provided an initial 1 billion Kenyan shillings (Ksh.) (estimated \$12.5 million) to establish the fund.¹⁵⁸ Records from the Ministry of Finance show the government has spent Ksh. 7.977 billion (\$99,712,500) to support IDPs.¹⁵⁹ The funds allocated since 2007 are shown below:

Figure 2-7. Government expenditure on IDPs, 2007-2011

Financial Year	2007/2008	2008/2009	2009/2010	2010/2011
Amount (Ksh.)	1.25 billion	1.035 billion	3.005 billion	2.687 billion

Source: Government of Kenya, Ministry of Finance, January 2011.

As shown in figure 2-8, the funds were disbursed to the

¹⁵⁷ MoSSP, National Humanitarian Fund (www.sprogrammes.go.ke/index.php?option=com_content&task=view&id=271&Itemid=167); “Report of the Commission of Inquiry into Post-Election Violence,” 15 October 2008 (www.dialoguekenya.org/docs/PEVReport1.pdf).

¹⁵⁸ MoSSP, National Humanitarian Fund (www.sprogrammes.go.ke/index.php?option=com_content&task=view&id=271&Itemid=167).

¹⁵⁹ \$1=KSH 80. “Statement on Government Support for IDPs,” press statement from the Office of the Deputy Prime Minister and Ministry of Finance, *The Star*, 7 January 2011.

MoSSP and the Ministry of Lands for payment to IDPs, department maintenance and operations, house construction and purchase of land for resettlement of IDPs.

Figure 2-8. Government funds to purchase land for IDPs (by financial year)

	2007/ 2008	2008/ 2009	2009/ 2010	2010/ 2011
MoSSP	1.25 billion	1.035 billion	1.605 billion	1.187 billion
Ministry of Lands	0	0	1.4 billion	1.5 billion

Source: Government of Kenya, Ministry of Finance, January 2011.

The fund pays Ksh. 10,000 (\$150) in “relief and assistance” as a token to each displaced household to “start up” their lives through replacement of basic household items and transportation cost to former homes. Those whose houses were destroyed or vandalized are entitled to a cash payment of Ksh. 25,000 (\$350) for home reconstruction.¹⁶⁰ As of March 2010, the government reported that 157,598 households had received their start-up funds and another 38,145 households received payments to reconstruct their houses.¹⁶¹ Due to alleged mismanagement of the fund by government officials, diversion to other uses by beneficiaries and “recycling” by IDPs, in January 2010 the government decided to distribute building materials instead of disbursing cash.¹⁶² As noted above, civil society organizations, the media and IDPs reported that funds had been grossly mismanaged and embezzled by government officials colluding with some IDP representatives.¹⁶³ By the end of 2009, the government could not account for over \$19 million allocated to purchase the land.¹⁶⁴

¹⁶⁰ OCHA, “Kenya: Frequently Asked Questions on IDPs in Kenya,” February 2010.

¹⁶¹ Statistics from the Ministry of State for Special Programs, March 2010.

¹⁶² Interview with an official at the Humanitarian Fund Secretariat, 2 February 2011; also see South Consulting *Status of Implementation Report*, April 2010.

¹⁶³ South Consulting, *Status of Implementation Report*, April 2010.

¹⁶⁴ IDMC, “Kenya: Corruption keeps resettlement funds from

International funding support to address the IDP problem has come from the UN Consolidated Appeals Process and the Emergency Humanitarian Response Plan (2008, 2009 and 2010) launched by the UN and nongovernmental organizations, in close coordination with the government of Kenya.

Funds for disaster-related displacement come from the treasury, which funds the Ministry of State for Special Programs, the National Disaster Operations Center (NDOC) and all pertinent line ministries. Other funding for government intervention is received from donations, grants and joint programming with UN agencies, NGOs, community-based organizations, and the private sector.¹⁶⁵ The Kenya Red Cross, the main implementing partner of the government on disaster management, also complements government financing through public fundraising appeals for disaster preparedness and response activities.¹⁶⁶

Funding for IDP-related activities, including durable solutions, has been hampered mostly by corruption and red tape, including bureaucratic delays and inadequate interministerial coordination mechanisms. The ministries with a mandate to address IDPs have often complained of delays in disbursement of funds from the Treasury. In addition, there is lack of clear interministerial accountability mechanisms, a persistent flaw that has contributed to misappropriation of funds. The draft national IDP policy seeks to address some of these problems—for instance, by providing for easy access to available resources, including quick release for immediate response to emergency situations.

IDPs,” IDP News Alert, 14 January 2010 ([www.internal-displacement.org/idmc/website/news.nsf/\(httpIDPNewsAlerts\)/05E28D99085F598CC12576AB00591D09?OpenDocument#anchor2](http://www.internal-displacement.org/idmc/website/news.nsf/(httpIDPNewsAlerts)/05E28D99085F598CC12576AB00591D09?OpenDocument#anchor2))

¹⁶⁵ Interview with Conflict Early Warning and Early Response Network NGO focal point in Nairobi, 15 February 2011; see also National Disaster Response Plan, p. 12.

¹⁶⁶ Telephone interview with head of Disaster Management, Kenya Red Cross Society, 16 February 2011.

12. Cooperate with International Community when National Capacity is Insufficient

The government cooperates with the international community to respond to internal displacement when national capacity is insufficient. It invites and accepts assistance from the international community to help address the IDP problem and takes measures to ensure that international actors enjoy safe and unimpeded access to the internally displaced. The government works in partnership with UN agencies and international organizations on protection and assistance programs and to strengthen government capacity to respond to displacement. The Ministry of State for Special Programs is the coordinating institution that facilitates cooperation between the national authorities and international actors on IDP issues.¹⁶⁷

In January 2008, eleven UN clusters were established and began to be rolled out, including the protection, early recover and shelter clusters, which have supported the government since the emergency phase of late 2007 to early 2008. Due to lack of preparedness and capacity of the government to deal with the large number of IDPs, the clusters more or less took over the management of the IDP problem, and eventually the government raised concerns that clusters had failed to “respect the extent of national capacity and systems.”¹⁶⁸ In August 2008, members in coordination with the UN and line ministries revised the clusters and began to reorient their work to focus on “supporting national mechanisms for national and sub-national sector coordination.” In 2009, the clusters transitioned into “more sustainable and inclusive structures with stronger national leadership; government ministries took over as Chair of the clusters.” The former protection cluster is the current National Protection Working Group, led by the Ministry of Justice, National Cohesion and Constitutional Affairs

and co-chaired by the Kenya National Commission on Human Rights and the Ministry of Special Programs.¹⁶⁹

In June 2008 the government collaborated with UNHCR to conduct a profiling exercise to determine the number of IDPs. The government has also worked with UNOCHA and UNDP on disaster management and information sharing and early recovery initiatives respectively. The government has sought funding from development partners, the African Development Bank and the UN, to run its IDP resettlement programs. Investigative commissions such as the Commission of Inquiry into the Post-Election Violence (Waki Commission) and the Independent Review Commission on the General Elections Held in Kenya on 27 December 2007 (Kriegler Commission) formed after the crisis have employed international expertise. In addition, reform commissions including the Committee of Experts on Constitution Review, the Truth, Justice and Reconciliation Commission and the Task Force on Police Reforms enjoyed international expertise. The Office of the Representative of the Secretary-General (RSG) on the Human Rights of IDPs provided technical expertise for the drafting of the national IDP policy. In April 2011, the government invited the new Special Rapporteur on the Human Rights of IDPs to conduct a mission in Kenya.¹⁷⁰

In February 2008, RSG Walter Kälin visited Kenya and met with the MoSSP, the Ministry of Justice, UN agencies, the Kenyan Red Cross, NGOs, local authorities and humanitarian organizations and visited IDP camps and transit sites for returnees.¹⁷¹ He recommended that the government adopt a comprehensive IDP policy. In January 2010, a staff member from the RSG’s office was

¹⁶⁷ UNHCR, “Lessons Learned from UNHCR’s Emergency Operations for IDPs in Kenya,” September 2008 (www.unhcr.org/publ/RESEARCH/48e5d90d2.pdf).

¹⁶⁸ Ibid.

¹⁶⁹ IDMC, *Kenya: No Durable Solutions for Internally Displaced Yet*; citations from p. 13 in which IDMC references email correspondence with OCHA Kenya.

¹⁷⁰ Remarks by Chaloka Beyani, the new RSG, at a forum with the Parliamentary Select Committee on the Resettlement of IDPs, organized by the KNCHR, in Mombasa, Kenya, 23 May 2011.

¹⁷¹ “Report from OHCHR Fact-Finding Mission to Kenya,” 6–28 February 2008.

seconded to Kenya to give technical support to the IDP policy drafting process. The RSG Kälın revisited Kenya in March 2010 to provide his personal support to and show his appreciation of the IDP policy process. As noted above, OCHA Kenya has translated the Guiding Principles into Kiswahili.

The draft IDP policy provides for a complementary system of cooperation with the international community. Chapter III, Article 20, of the draft policy provides that the Government of Kenya shall seek support and cooperate with members of the international community, including humanitarian, development and human rights actors, in the implementation of this Policy, in particular in circumstances overwhelming national capacities to provide adequate protection and assistance to internally displaced persons.

Kenyan authorities allow international programs assisting IDPs in all parts of the country. International actors have unimpeded access to IDPs and return sites; they

do not have to deal with bureaucratic delays. The draft national IDP policy provides for rapid and unimpeded access to IDPs to actors providing protection and assistance, including through “facilitation and fast-tracking of immediate entry and direct access to all IDPs.” It also provides for free passage of humanitarian assistance through waivers of customs and taxes and the elimination of price regulations. In addition, the draft policy prohibits the diversion of humanitarian assistance by state and nonstate actors.¹⁷²

¹⁷² For the provisions mentioned in this paragraph, see Chapter III, 21(a-c) in Government of Kenya, Office of the President, Ministry of State for Special Programs, National Policy for the Prevention of Internal Displacement and the Protection and Assistance to Internally Displaced Persons in Kenya, Final consolidated draft (24 March 2010),



An Afghan internally displaced boy waits for charity from the Islamic Relief organisation in Kabul August 25, 2010.
Photo: REUTERS/Omar Sobhani

Internal Displacement in Afghanistan: Complex Challenges to Government Response

Andrew Solomon and Chareen Stark

Overview of Internal Displacement in the Islamic Republic of Afghanistan

The displacement and suffering experienced by those forced to flee their homes, communities and land is not a new phenomenon for Afghans. After three decades of armed conflict, serious human rights violations and ethnic violence—in addition to frequent natural disasters—millions of Afghans have been displaced as refugees and as IDPs.¹ According to a survey conducted by the International Committee of the Red Cross in 2009, 76 percent of Afghans affected by conflict have experienced some form of forced displacement during

The analysis presented in this case study is based on desk research consisting of data collection on the twelve benchmarks of the Framework for National Responsibility in addition to approximately twenty-five interviews and discussions with representatives of the government of Afghanistan, Afghan civil society organizations, international organizations and international military forces. These key interviews were conducted by Andrew Solomon in Afghanistan in April 2010 to identify national responses to displacement, elements of the domestic normative framework relevant to IDP protection, gaps in this normative framework and challenges to its implementation. This field research informed a report published by the Brookings-Bern Project on Internal Displacement and the Norwegian Refugee Council in November 2010, entitled *Realizing National Responsibility for the Protection of Internally Displaced Persons in Afghanistan: A Review of Relevant Laws, Policies, and Practices* ([/www.brookings.edu/reports/2011/11_afghan_national_responsibility.aspx](http://www.brookings.edu/reports/2011/11_afghan_national_responsibility.aspx)).

¹ For a historical overview of displacement in Afghanistan during this time, including discussion of the six key phases of this displacement, see *Beyond the Blanket: Towards More Effective Protection for Internally Displaced Persons in Southern Afghanistan*, Brookings-Bern Project on Internal Displacement and the Liaison Office, May 2010, pp. 22–26 (www.brookings.edu/reports/2010/05_idp_protection_afghanistan.aspx).

their lives.² According to an Oxfam-led study with similar findings, of the 76 percent who had been forcibly displaced over the past three decades, 41 percent were internally displaced at least once, 42 percent were displaced as refugees and 17 percent were both internally and internationally displaced.³

Since 1978, Afghanistan has witnessed six major phases of forced displacement, peaking at 1.2 million IDPs in 2002.⁴

—Phase 1 (1978–1988; mainly refugee out-flows): Displacement began after the Saur Revolution (April Revolution) in 1978, which was supported by the former Soviet Union, brought to power the People’s Democratic Party of Afghanistan (PDPA).

—Phase 2 (1989–1995; internal and international displacement; refugee return): Displacement began with the withdrawal of Soviet forces from Afghanistan in 1989 but gained momentum in 1992 following the defeat of the Afghan communist government.

—Phase 3 (1996–2001; refugee return and renewed internal and international displacement; drought displacement in 2000): Displacement occurred under the Taliban regime, with fighting concentrated in the non-Pashtun territories of the North; displacement was also due to drought.

² International Committee of the Red Cross, *Our World: Views from Afghanistan, Opinion Survey 2009*, June 2009, pp. 16–17 (www.icrc.org).

³ Oxfam International, *The Cost of War: Afghan Experiences of Conflict, 1978–2009*, p. 4 (www.oxfam.org).

⁴ For further analysis, see *Beyond the Blanket*.

—**Phase 4 (2001–2002, renewed internal and international displacement):** Afghans fled in anticipation of a U.S. military intervention following the attacks of 11 September 2001, in anti-Pashtun violence after the fall of the Taliban, and to avoid aerial bombardments by the U.S.-led Coalition Forces.

—**Phase 5 (2002–2004, massive return of refugees and IDPs):** Following the end of Taliban rule, the UN High Commissioner for Refugees (UNHCR) undertook the world's largest assisted repatriation operation in almost thirty years, repatriating nearly 5 million Afghan refugees from Pakistan, Iran and other countries of asylum. At the same time, the majority of Afghanistan's 1.2 million internally displaced persons returned home spontaneously.⁵

—**Phase 6 (2004 to the present, new internal displacement and secondary displacement of returnees).** The growing strength of the Taliban insurgency—particularly in the south, east and southeast, which are predominantly Pashtun areas—and its increasingly fierce engagement with the Afghan National Security Forces (ANSF) and international military forces has prompted tens of thousands of rural households to relocate to the relative safety of urban areas, where shelter and livelihoods are more accessible. In 2010, over 100,000 Afghans were newly displaced within the country due to conflict, largely armed conflict between NATO-led forces and Taliban-led insurgent groups in the south, southeast and west; most IDPs

fled attacks or combat initiated by NATO-led forces.⁶

Because of the volatile security and political situation in Pakistan, more and more Afghans are forcibly displaced within their own country—particularly to urban areas, since the traditional asylum options of Iran and Pakistan have become less desirable due to continued deportations from Iran, forced closures of refugee camps in Pakistan and harassment of refugees.⁷ According to the UN High Commissioner for Refugees (UNHCR), as of January 2011, the number of persons internally displaced due to conflict, human rights abuses and generalized violence in Afghanistan is estimated to be around 350,000—the highest figure since 2005.⁸ This figure includes Afghans displaced before 2003 who were unable to return home or integrate locally but excluded IDPs in remote, urban and semi-urban locations whose status could not be verified. Indeed, due to the complexity of the causes and dynamics of internal displacement as well as the limitations on humanitarian access in conflict-affected areas, many estimate the actual population of IDPs throughout the country to be significantly larger than indicated by most publicly available sources.

Most internally displaced Afghans exist on the margins of society and lack basic protection and assistance, including adequate access to fundamentals such as food, water, shelter and health care. Many have also been dispossessed of property, are unable to secure their livelihoods and are denied basic education. Displacement of such a magnitude and consequence also affects and is inextricably linked to the well-being and development of society as a whole, including the communities that

⁵ Nearly half a million IDPs (493,556 individuals) received UNHCR assistance to return between 2002 and end 2009; see UNHCR, *Operational Information Monthly Summary Report—January 09, Statistical Overview of Returned Afghan Refugees from Pakistan, Iran and Nine Neighboring Countries, IDPs Caseload and Movements and Reintegration Activities, 02 Mar 2002– 31 January 2009*, p. iii (www.aims.org.af/services/sectoral/emergency_assistance/refugee/unhcr_summaries/jan_09/summary1.pdf).

⁶ Internal Displacement Monitoring Centre (IDMC), *Internal Displacement: Global Overview of Trends and Developments in 2010*, March 2011, p. 87 (www.internal-displacement.org).

⁷ *Beyond the Blanket*, p. xvi.

⁸ UNHCR, *2011 UNHCR Country Operations Profile: Afghanistan* (www.unhcr.org); data are based on information collected from provincial authorities (the Departments of Refugees and Repatriation) and UNHCR field offices.

host the displaced. Efforts to prevent internal displacement, protect those who have been displaced, and bring an end to displacement should figure prominently among the national priorities of Afghan authorities.

1. Prevent Displacement and Minimize Its Adverse Effects

Do national authorities take measures to prevent arbitrary displacement and to minimize adverse effects of any unavoidable displacement?

In 2007, the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons (human rights of internRSG) called on the government to do more to prevent displacement and assist the displaced.⁹ However, the ability of the government of Afghanistan to prevent arbitrary displacement and to minimize the adverse effects of any unavoidable displacement is hindered by its inability to exercise effective sovereignty over its territory due to the presence of nonstate armed groups and, since 2001, an ongoing armed conflict and insurgency.¹⁰ According to several estimates, the central government in Kabul exercises effective control over less than 50 percent of the country.¹¹ The inability of the government (or foreign military forces) to provide protection against arbitrary displacement is evidenced by the fact that it is not uncommon

for IDPs to seek the patronage and protection of local strongmen or other nonstate armed actors.¹²

The ability of national authorities to prevent and mitigate displacement is also challenged by the ongoing operations of international military forces. Since at least 2007, President Hamid Karzai has repeatedly condemned the alleged indiscriminate killing of Afghan civilians during U.S. and North Atlantic Treaty Organization (NATO)–International Security Assistance Force (ISAF) operations. Notably, both commands have reformed their operational guidelines to mitigate the impact of counterinsurgency and other combat and security operations on the civilian population. The issue of civilian casualties nevertheless remains a major point of friction between these forces and Karzai, who has launched investigations into a number of the incidents. In February 2010, Karzai acknowledged that NATO had made progress in reducing civilian casualties, but at the same time he urged NATO to do more to protect civilians during combat operations.¹³

While the Afghan legal system neither explicitly guarantees the right to be free from arbitrary displacement nor explicitly provides for the criminalization of arbitrary displacement, the Afghan Constitution, civil code and penal code guarantee several fundamental rights and freedoms that are relevant to the prevention and mitigation of displacement.¹⁴ For instance, in addition to af-

⁹ OHCHR, “UN Expert Concerned about Growing Problem of Internal Displacement in Afghanistan,” 20 August 2007, (www.brookings.edu/projects/idp/RSG-Press-Releases/20070820_afghanistan.aspx).

¹⁰ The role in internal displacement played by the Taliban regime (1996–2001) and antigovernment elements after 2001 is beyond the scope of this study.

¹¹ According to the Brookings state weakness index, Afghanistan ranks at the bottom of 141 countries in terms of the state’s ability to provide security and basic social services. See *Index of State Weakness in the Developing World*, Brookings Institution, 2008 (www.brookings.edu). See also *Report on Progress toward Security and Stability in Afghanistan*, U.S. Department of Defense, April 2010, section 3 (www.defense.gov).

¹² For an in-depth discussion of coping strategies pursued by IDPs in the absence of national protection, including seeking protection of local strongmen and the insurgency, see *Beyond the Blanket*, pp. 61–72.

¹³ Alfred de Montesquiou, “Karzai: NATO Still Causes Too Many Civilian Deaths,” Associated Press, 20 February 2010 (www.huffingtonpost.com/2010/02/20/karzai-nato-still-causes-_n_470048.html); “Karzai Protests Civilian Deaths,” *New York Times*, 25 January 2009 (www.nytimes.com/2009/01/25/world/asia/25iht-25karzai.19659063.html); “Karzai Anger over Civilian Deaths,” BBC News, 2 May 2007 (<http://news.bbc.co.uk/2/hi/6615781.stm>).

¹⁴ See further, Brookings-Bern Project on Internal Displacement and the Norwegian Refugee Council, *Realizing National Responsibility for the Protection of Internally Displaced Persons in Afghanistan*, pp. 24–25.

firming the principles of nondiscrimination and equality of all citizens before the law, the 2004 Constitution affirms the rights to freedom of movement, health, employment, education, family life and other fundamental rights and freedoms for all Afghans, including those who are internally displaced.¹⁵

The new Draft Law on Disaster Response, Management, and Preparedness, which was still being reviewed by the executive and legislative branches at the time of writing, outlines disaster prevention and mitigation activities and mechanisms for managing them in a range of disasters, from drought to earthquakes, avalanches, forest fires, epidemics, storms, floods and landslides. The draft law does not mention internal displacement specifically, but it includes among its goals the “rescue of disaster victims” and their “return to normal lives” in addition to overall disaster prevention.¹⁶

The *2009–2010 Strategy Report* of the Afghanistan National IDP Task Force, co-chaired by the Ministry of Refugees and Repatriation (MoRR) and UNHCR, includes the goal to “advocate with all relevant stakeholders to address causes of displacement and support initiatives to prevent further internal displacement.”¹⁷ However, it is unclear what substantive activities, if any, have been undertaken to prevent displacement.

On criminalization and prosecution, see Benchmark 10 in this case study.

¹⁵ See Articles 22, 39, 48, 52, 54. On education: Articles 17, 43–47, Constitution of the Islamic Republic of Afghanistan, 2004.

¹⁶ See Articles 5.3 and 5.4, Draft Law on Disaster Response, Management, and Preparedness in the Islamic State of Afghanistan. If approved, it would supersede the law on disaster response from 1990, a copy of which was not acquired for this report. The current draft law was received from representative of the UN Development Programme.

¹⁷ Afghanistan National IDP Task Force, *Strategy 2009 to 2010*, 30 August 2009 (<http://ochaonline.un.org/OCHALinkclick.aspx?link=ocha&dodid=1164335>).

2. Raise National Awareness of the Problem

Does the government (at the highest Executive level, e.g. President/Prime Minister) acknowledge the existence of internal displacement and its responsibility to address it as a national priority?

Although its ability to prevent and mitigate displacement remains limited, the government acknowledges the existence of internal displacement and its responsibility to address it as a national priority. An international adviser to the Ministry of Rural Development and Rehabilitation (MoRRD) has noted that President Karzai has “repeatedly emphasized that reducing [the] IDP caseload is a national priority.”¹⁸ In 2003, a report by the MoRRD and the Ministry of Refugees and Repatriation included the statement that “the State of Afghanistan is responsible for protection and durable solutions for the IDP population in the country with support from specialised agencies such as UNHCR, IOM and with financial assistance by the international community.”¹⁹ In the “Refugees, Returnees and IDP Sector Strategy” of the Afghanistan National Development Strategy for 2008–2013—the country’s blueprint for security, governance, economic growth and poverty reduction efforts developed in concert with national and international actors and approved by Karzai in 2008—the government acknowledges its responsibility for IDPs but also calls on international actors to complement government efforts.²⁰ The Ministry of Justice reportedly was work-

¹⁸ Peter Spink, “A Closing Window? Are Afghanistan’s IDPs Being Forgotten?” *Forced Migration Review*, no. 21, September 2004, p. 36 (www.fmreview.org).

¹⁹ Ministry of Rural Development and Rehabilitation and Ministry of Refugees and Repatriation, *Towards Definite Solutions for IDPs in the South: A Regional Operation Plan*, October 2003 ([www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/B057C8B9AB7B8DC5802570B8005A6F8D?OpenDocument#1.11.5](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/B057C8B9AB7B8DC5802570B8005A6F8D?OpenDocument#1.11.5)).

²⁰ Islamic Republic of Afghanistan, *Afghanistan National Development Strategy Secretariat, Afghanistan National*

ing in early 2010 to develop a national policy, though not IDP-specific, to guide the promotion of public awareness of citizens' legal rights.²¹ In addition, the UN Guiding Principles on Internal Displacement have been translated into Dari and Pashto and were distributed at the national and local levels in 2003.²² It is unclear if the government has ongoing institutionalized awareness campaigns on the rights of IDPs.

3. Collect Data on Number and Conditions of IDPs

Do the national authorities collect data on the number and conditions of IDPs?

The Ministry of Refugees and Repatriation, including through its various provincial departments (Department of Refugees and Repatriation, or DoRRs) collects data on and profiles IDPs through its role as co-chair with UNHCR of the National IDP Task Force. The ministry relies on its provincial DoRR branches, relevant ministries, local authorities, UN agencies, the Afghanistan Independent Human Rights Commission (AIHRC) and NGOs. However, data collection methods have not been very systematic and are fraught with difficulties that affect their accuracy. While the task force has sought to redress some of these problems, others are beyond its control.

Development Strategy 1387–1391 (2008–2013): A Strategy for Security, Governance, Economic Growth and Poverty Reduction (www.undp.org.af/publications/KeyDocuments/ANDS_Full_Eng.pdf).

²¹ *The Situation in Afghanistan and Its Implications for International Peace and Security*, Report of the Secretary-General, 10 March 2010, UN Doc. No. A/64705-S/2010/127, 17. See further, Brookings-Bern Project on Internal Displacement and the Norwegian Refugee Council, *Realizing National Responsibility for the Protection of Internally Displaced Persons in Afghanistan*, p. 22.

²² Norwegian Refugee Council and UNHCR, *Workshop on the UN Guiding Principles on Internal Displacement*, 7–8 December 2003, Kabul (www.internal-displacement.org).

Established in 2008 as a subgroup of the UN-led Afghanistan Protection Cluster, the National IDP Task Force includes national actors and international partners and undertakes monitoring and profiling of three IDP caseloads in Afghanistan: conflict-induced, natural-disaster induced, and protracted IDPs.²³ While task force data are used as a primary reference for planning purposes, it is commonly accepted that the data do not accurately and fully represent the magnitude and complexity of the displacement situation in Afghanistan. Factors hindering the counting and profiling of IDPs include the temporary nature of displacement, particularly in terms of natural disaster-induced displacement; insecurity and lack of access to IDPs, particularly in the southern provinces of Helmand, Kandahar and Uruzgan; and different interpretations of who qualifies as an internally displaced person rather than an economic migrant and when displacement begins and ends.

Politics also affects accurate reporting of numbers—the basis for providing protection and assistance—illustrating the complexity of the IDP issue in Afghanistan. According to UNHCR in 2006, “there is much at stake for IDP leaders when determining the numbers of people in their settlements” as aid distribution amounts depend on those figures. In addition, it has been frequently alleged that poor individuals have presented themselves as IDPs, especially in the “less official camps” in Panjwayi and Maywand, “and received equal benefits as the ‘genuine’ Kuchi IDPs.”²⁴

In 2007, the Representative of the UN Secretary-General on the Human Rights of Internally Displaced

²³ See further, Afghanistan Protection Cluster, *Afghanistan Protection Cluster—Terms of Reference, Final July 2010*; Afghanistan Protection Cluster, *Afghanistan Protection Cluster Work Plan 2011 Final -1* (<http://ochaonline.un.org/afghanistan/Clusters/Protection/tabid/5586/language/en-US/Default.aspx>).

²⁴ Asia Consultants International, *Durable Solutions for Kuchi IDPs in the South of Afghanistan: Options and Opportunities*, commissioned for UNHCR Kandahar, November 2006 (www.unhcr.org/46c993942.pdf).

Persons human rights of internrecommended that the government undertake comprehensive national assessment and profiling of IDPs.²⁵ On the basis of the RSG's recommendation, UNHCR, under the auspices of the National IDP Task Force and in close cooperation with the Ministry of Refugees and Repatriation, profiled IDPs based on surveys that had been undertaken, in particular those by UNHCR offices in the field, by provincial Departments of Refugees and Repatriation of the Ministry of Refugees and Repatriation, and by the UN Assistance Mission in Afghanistan (UNAMA). The resulting report, published in November 2008, the *National IDP Profile*, documented 235,833 IDPs, including the cause and location of their displacement, and assessed their protection and assistance needs.²⁶

The report distinguishes the following four categories of displacement: protracted displacement, including the majority of identified IDPs; new conflict-induced displacement, including individuals displaced since 2002; secondary displacement, including returnees and deportees; and displacement due to food insecurity or natural disaster. The report does not include IDPs displaced by recent droughts and included scant information on the estimated thousands displaced since 2006 due to conflict between national/international forces and antigovernment elements.²⁷ In May 2009 the National IDP Task Force updated the total figure of IDPs upward, to 270,000, to account for new information on urban areas in Helmand Province and conflict-induced displacement, although the numbers were contested due to access restrictions.²⁸

²⁵ OHCHR, "UN Expert Concerned about Growing Problem of Internal Displacement in Afghanistan."

²⁶ UNHCR and Ministry of Refugees and Repatriation, "Joint Press Release: First National IDP Report Reveals Complex Challenges for IDPs," 15 December 2008 (www.unhcr.org/49b8e91c2.html); UNHCR, *National Profile on Internally Displaced Persons (IDPs) in Afghanistan*, December 2008 (www.unhcr.org/49ba33a02.html).

²⁷ UNHCR, *National Profile on Internally Displaced Persons (IDPs) in Afghanistan*.

²⁸ Figures provided at IDP Task Force meeting, 12 May 2009; cited in *Beyond the Blanket*, p. 16.

As the *National IDP Profile* acknowledges, access restrictions and insecurity limit the collection of information in many parts of the country. Given these and other methodological issues, the figures for this profile are neither comprehensive nor fully accurate.²⁹ However, the report served to re-engage actors on the issue of internal displacement, and IDP data compiled and reported by the National IDP Task force is considered a starting point.

Data collection efforts since the release of the *National IDP Profile* continue to reveal complexities and limitations. In contrast to the December 2009 UNHCR estimate of 297,000 IDPs, the January 2010 MoRR estimate included 414,000 IDPs.³⁰ Accessibility was one of the reasons for the discrepancy. The MoRR data were collected from all thirty-four provinces, whereas the UNHCR figure likely "exclude[d] displaced persons residing in a number of host communities throughout the country."³¹ UNHCR has acknowledged that it had little access to certain groups of displaced people and thus limited information on those groups.³² However, UNHCR has also noted that temporary displacements and secondary displacements also account for the variance in figures.³³ Similar discrepancies between MoRR and UNCHR IDP figures were reported in October 2010.³⁴ But, as discussed, the misrepresentation of IDP figures also accounts for the variance in the figures.³⁵

²⁹ For further analysis of the methodology used in the *National IDP Profile*, see *Beyond the Blanket*, pp. 16–18.

³⁰ Integrated Regional Information Networks (IRIN), "Afghanistan: More IDPs than Previously Thought-Government," 4 January 2010 (www.irinnews.org/Report.aspx?ReportId=87626).

³¹ USAID, *Afghanistan – Complex Emergency Situation Report # 1, FY 2010*, September 30 2009, available at: www.usaid.gov

³² Refugees International, *Afghanistan: Eyes Wide Open to Humanitarian Needs*, 20 July 2009 (www.refugeesinternational.org).

³³ USAID, *Afghanistan: Complex Emergency Situation Report No. 1, FY 2010*, 30 September 2009.

³⁴ IRIN, "Afghanistan: Little Relief for Growing Number of Conflict IDPs," 14 October 2010 (www.irinnews.org/report.aspx?reportid=90768).

³⁵ According to interview with key informant, July 2011.

To address the problems and discrepancies in data collection and reporting on IDPs and thereby provide IDPs with greater protection and assistance, the task force established an ad hoc group, the Working Group on IDP Data Reconciliation and Harmonization.³⁶ This working group, which comprises technical staff from UNHCR and the emergency section of the MoRR, reviewed the IDP data collection and reporting methodologies of both entities. It issued a formal note in March 2010 discussing its findings and offering a series of recommendations to streamline data collection, recording and reporting across the DoRRs, other ministries, local authorities, UN agencies, the AIHRC and NGOs—all of which employ different methodologies. Among the DoRRs, there are no uniform practices, forms, databases or the like for developing and analyzing data on IDPs.

The working group issued eleven recommendations for improving data collection, including that UNHCR and the MoRR develop guidelines for collecting and harmonizing data, as part of the more comprehensive “Guidance Package on Protection of IDPs.” This “package” also entails clarifying the concept of “internally displaced person” and the roles of the relevant humanitarian and other actors providing IDPs with protection and assistance. The working group also called for establishment of additional regional IDP task forces as well as regular monthly meetings between DoRRs and UNHCR field offices to ensure consistency in IDP data reporting. With respect to natural disaster-induced displacement, the working group recommended that the International Organization for Migration (IOM) compile related displacement figures and share the information on a monthly basis with the national and regional task forces.

To follow up on these recommendations, the MoRR and UNHCR formed the IDP Data Management Working Group in September 2010. This working group conducted a comparative review of IDP statistical

information to identify discrepancies by region in numbers of IDPs (in terms of families, not individuals, due to data limitations) and cause of displacement, from September 2010 through February 2011. The working group was able to reduce the discrepancies by 95 percent (over 30,000 families) by the time that it released its report with revised figures, analysis and recommendations in April 2011. The review process revealed many of the same issues in data collection previously identified by the National IDP Task Force.

Indeed, the working group acknowledged those issues: “Practical steps have not been taken to implement recommendations/ suggestions made by the IDP Data Harmonization working group held in March 2010 by MoRR.” Chief among the problems identified was the DoRRs’ lack of a consistent methodology for collecting IDP information and reporting it to the Ministry of Refugees and Repatriation. Reporting to provincial offices on the presence and number of IDPs included “haphazard methods including phone calls, post, letters and contact with the regional DoRRs via Codan HF Radio. The working group also called attention to the fact that IDP statistics do not capture return, secondary displacement, or relocation; do not distinguish between protracted and new caseloads and in many cases between conflict- and natural disaster-induced displacement; and are not disaggregated by age or gender. Further to the above discussion on manipulation of IDP figures, the working group observed: “IDP data and information is mainly reported by DoRRs for the purpose of humanitarian assistance distribution and in most cases the IDP data is higher than UNHCR data.” While this working group issued a series of recommendations to improve data collection efforts, it remains to be seen what impact they will have.³⁷

³⁶ See IRIN, “Afghanistan: Little Relief for Growing Number of Conflict IDPs.”

³⁷ UNHCR and MoRR, *Afghanistan Note IDP Data Management Working Group: 2011*, 25 April 2011, p. 5-6 (<http://ochaonline.un.org>; for Recommendations).

4. Support Training on the Rights of IDPs

Has there been any training of the authorities on the rights of IDPs?

Human rights training for government officials, including those in the formal justice and security sectors, takes place on a periodic basis and with the support and participation of international partners.³⁸ Much of the training tends to focus on general human rights standards and pertinent issues like rights of the accused, women's rights, child abuse, and access to justice. The AIHRC, for example, has trained police and army recruits on human rights through the National Army Training Center and the National Policy Academy.³⁹ The Ministry of Refugees and Repatriation and other line ministries have participated in training on internal displacement organized by international organizations, for example, the Norwegian Refugee Council.

Some members of traditional dispute mechanisms (*jirgas* and *shuras*) have also been trained in basic aspects of Afghan national law that are relevant to resolving property disputes involving IDPs.⁴⁰ Afghan refugee and returnee issues were part of the agenda for the 2010 Consultative Peace Jirga on national reintegration and reconciliation but the situation of IDPs was not addressed in a meaningful way.⁴¹

In addition, Afghan authorities have established the new Human Rights Support Unit (HRSU) within the

Ministry of Justice (MoJ) as a mechanism to facilitate domestic compliance with international human rights obligations in all line ministries.⁴² The government's commitment to establishing the HRSU was set forth in the Afghanistan National Development Strategy, in Pillar 2, "Governance, Rule of Law and Human Rights"; in the Afghanistan Compact (AC); and at the International Kabul Conference on Afghanistan in July 2010. A task force comprises MoJ officials and representatives from the AIHRC and civil society organizations provides oversight and functions as a decisionmaking body for the HRSU. The task force meets on a quarterly basis and is chaired by the minister of justice or his designated deputy. The HRSU and the task force receive technical support from an advisory board.

The HRSU is composed of four subunits: Human Rights Education Subunit; Legal Technical and Strategic Studies Subunit; Monitoring, Evaluation and Follow-up Subunit; and the Internal Issues Related Subunit.⁴³ The Human Rights Education Subunit is tasked with conducting capacity-building activities, particularly training sessions and workshops on human rights, for government officials. To date, at least one training session has been conducted, with support from the UN Development Programme (UNDP) and in cooperation with the UNAMA Human Rights Unit, on the implementation of the recommendations to Afghanistan issued by the UN Human Rights Council in its Universal Periodic Review.⁴⁴ Participants included the Ministry of Foreign Affairs, HRSU staff, members of the Department of Human Rights and International Women's Affairs, AIHRC representatives and UNAMA staff. The HRSU, if properly resourced and staffed, could

³⁸ UN Assistance Mission in Afghanistan, "UNAMA Trains Police Officers, Prosecutors on Human Rights," 19 February 2010 (<http://unama.unmissions.org>).

³⁹ Afghanistan Independent Human Rights Commission, *Annual Report, January–December 31, 2009, 2010*, pp. 31–32 (www.aihrc.org.af/English).

⁴⁰ Mary Lindgren, *Property Law Training for Jirga and Shura Members: The Process for Creating Legal Training*, Norwegian Refugee Council, 2007.

⁴¹ "Resolution Adopted at the Conclusion of the National Consultative Peace Jirga, 2–4 June 2010," 6 June 2010 (www.afghanistan-un.org).

⁴² The Ministry of Interior established the Human Rights Department (with branches at the provincial level) in April 2002 to investigate human rights abuses by police.

⁴³ Government of the Islamic Republic of Afghanistan, Ministry of Justice, "Human Rights Support Unit" (<http://moj.gov.af/en/page/3165>).

⁴⁴ Government of the Islamic Republic of Afghanistan, Ministry of Justice, "Human Rights Support Unit Success Story: Human Rights Support Unit conducts UPR follow up training workshop," <http://moj.gov.af/en/page/1822>

contribute to improving the Afghan legal framework for human rights protection in general and for the protection of IDPs in particular.

Government authorities have participated in training sponsored by the Afghanistan Independent Human Rights Commission, the Norwegian Refugee Council and the Internal Displacement Monitoring Centre and have worked to incorporate human rights trainings into police academy curriculum.

IDMC and UNHCR have trained state and provincial authorities on the UN Guiding Principles on Internal Displacement, aiming to enhance their ability to protect IDPs more systematically. For example, in 2003 representatives from MoRR, the Ministry of Internal Affairs, the Ministry of Rural Rehabilitation and Development, and the Afghanistan Independent Human Rights Commission were trained on the Guiding Principles, which were provided in English, Dari, and Pashto.⁴⁵ Similar training was held in 2009 and 2010. An outcome of the 2003 workshop was the issuing of recommendations by participants, including government officials, on what steps could be taken to prevent displacement. These included continuing to strengthen the democratic process at national and local levels, raising awareness among government officials and local authorities, and offering training on international humanitarian law and human rights relating to the prevention of arbitrary displacement. Participants stressed the need to settle land and property disputes as a strategy to minimizing risks of renewed displacement.⁴⁶ In 2005 representatives from the AIHRC attended a workshop on national human rights institutions and internal displacement conducted by the Asia Pacific Forum–Brookings-Bern Project on Internal Displacement.⁴⁷

⁴⁵ IDMC, *Workshop on the UN Guiding Principles on Internal Displacement*, 7-8 December 2003, available at: www.internal-displacement.org

⁴⁶ Ibid.

⁴⁷ See APF-Brookings-Bern Project on Internal Displacement, “Regional Workshop on National Human Rights Institutions and Internally Displaced Persons,” October 2005, Colombo, Sri Lanka (www.brookings.edu/

5. Ensure a Legal Framework for Upholding IDPs’ Rights

Does national legislation address the specific needs arising in situations of internal displacement and support IDPs to realize their rights?

Afghan national authorities have not developed a comprehensive IDP-specific legal instrument that affirms the human rights of those who are internally displaced or establishes minimum standards for preventing and responding to internal displacement. Nor have they formally adopted a normative instrument that sets forth a flexible or dynamic concept or definition of an internally displaced person for the purpose of ensuring full respect for IDPs’ human rights. Nevertheless, several basic elements of a framework for addressing the basic needs and vulnerabilities of IDPs can be found among a variety of constitutional provisions and legal instruments, including presidential decrees that are currently in force.⁴⁸

The Afghan legal system does not explicitly guarantee an individual’s right to be free from arbitrary displacement as set forth in the Guiding Principles on Internal Displacement. However, the Constitution does affirm several fundamental rights and freedoms that can prevent Afghans from being forced from their homes and communities. For example, according to Articles 38 and 40 of the Constitution, the homes and property of all persons are considered inviolable and immune from invasion. Similar prohibitions on extrajudicial confiscation or acquisition of property are affirmed by the Civil Code of Afghanistan, which provides that no person may be dispossessed of property except by law.⁴⁹ In addition, dispossession of a person’s residence is also a

idp).

⁴⁸ See further, Brookings-Bern Project on Internal Displacement and the Norwegian Refugee Council, *Realizing National Responsibility for the Protection of Internally Displaced Persons in Afghanistan*.

⁴⁹ Article 1903, Civil Code of Afghanistan.

criminal offense under the Penal Code of Afghanistan.⁵⁰ Although these provisions are clearly intended to protect against trespassing and confiscation of property, not arbitrary displacement, they can contribute in a limited manner to the development of a more comprehensive protection framework that deters acts associated with displacement and provides a remedy to those who have been forcibly evicted and separated from their property without a basis in law. These provisions, however, are not strengthened by the prohibition of acts of arbitrary displacement or similar crimes.

Afghan IDPs who have lost or who are denied documentation, such as national identity cards (*tazkera*) or birth certificates, may be excluded from health care, education, pensions and other social benefits. The Constitution does not explicitly guarantee the right of legal personality, although it does recognize the inherent right of all Afghans to citizenship.⁵¹ Legal personality is recognized by the Civil Code, which also provides for the registration of Afghan male citizens and the issuance of a national identity card that contains personal and family information along with place of residency, occupation, and military service status; registration is mandatory for all men but reportedly is optional for women.⁵² This document, which typically is issued by the local population registration department of the Ministry of Interior, serves as an Afghan citizen's primary form of identification and means of accessing legal entitlements.⁵³ According to the Law on Registration of Population Records, which regulates issuance of the *tazkera* as well as birth and death certificates, when a

person seeking to obtain a *tazkera* and other documents is no longer in his place of normal residence, an application may be submitted to the local registration department.⁵⁴ This type of facilitated procedure is essential to ensuring that IDPs enjoy a legal relationship to the state and can realize their rights and freedoms under the law.

Property and land rights of IDPs are either specifically addressed or generally implicated by substantive and procedural provisions found in a series of executive acts issued since 2001.⁵⁵ Presidential Decree No. 104 on Land Distribution for Settlement to Eligible Returnees sets forth a basic framework for distributing government land to IDPs and returnees as a means of addressing their needs for shelter; however, it does not recognize other rights or needs of IDPs.⁵⁶ It requires IDPs seeking access to land to provide a national identity card and documentation proving internal displacement status—a requirement that excludes most IDPs because they do not have the necessary documentation. In practice, the decree has not proven effective in guaranteeing the land and property rights of IDPs in a meaningful way.⁵⁷

⁵⁰ Article 431, *Penal Code of Afghanistan*.

⁵¹ Article 28, Constitution of the Islamic Republic of Afghanistan.

⁵² See Article 36 and 47, Civil Code. Articles 51–54 regulate residency and appear to define criteria for establishing and confirming residency but complete English language translations of these provisions are not readily available.

⁵³ Mobile registration units have reportedly been established in other government buildings and courts. For more information on the *tazkera*, see “Frequently Asked Questions: National Identification Cards,” United Nations High Commission for Refugees (UNHCR), May 2005, available at: www.unhcr.org/4497b1c12.pdf.

⁵⁴ Article 5, *Law on Registration of Population Records*, 1955. (Efforts to confirm existence of a more recent version of this law or other instruments regulating issuance of population records were unsuccessful.)

⁵⁵ For a comprehensive and in-depth discussion of Afghan property and land rights, see Conor Foley, *Guide to Property Law in Afghanistan*, Norwegian Refugee Council, 2005. See also Sheila Reed and Conor Foley, *Land and Property: Challenges and Opportunities for Returnees and Internally Displaced People in Afghanistan*, Norwegian Refugee Council, June 2009; Liz Alden Wily, *Policy Brief: Land and the Constitution*, Afghan Research and Evaluation Union, August 2003.

⁵⁶ *Decree of the President of the Islamic Republic of Afghanistan on Land Distribution for Settlement to Eligible Returnees and Internally Displaced Persons*, No. 104 (6 December 2005).

⁵⁷ See Reed and Foley, *Land and Property: Challenges and Opportunities for Returnees and Internally Displaced People in Afghanistan*, p. 6.

6. Develop a National Policy on Internal Displacement

Has the national government adopted a policy or plan of action to address internal displacement?

To date, the Afghan government has not adopted a policy or plan of action focused specifically on internal displacement or protection of the human rights of IDPs.⁵⁸ While national authorities had developed policies, including the Draft Regional Operational Plan for the south of the country in 2003 and the National IDP Plan and Policy in 2005, these instruments are defunct.⁵⁹ However, one of the key strategies of the Afghanistan National Development Strategy for 2008–2013 lays the foundation for a basic framework to address the situation of IDPs, refugees and returnees.

In 2003, the Ministry of Rural Rehabilitation and Development (MoRRD), Ministry of Refugees and Repatriation and the Ministry of Frontiers and Tribal Affairs (MoFTA) drafted the Regional Operational Plan for achieving durable solutions for IDPs in the south of the country, focusing on return. The plan foresaw the provision of direct support by the governors of Kandahar and Helmand and oversight by the Consultative Group on Returnees and IDPs. The plan aims to identify activities that could lead to durable solutions for IDPs within a three-year period, yet the plan itself “does not stretch beyond 2004,” in recognition of the need to reassess and engage in additional dialogue before developing a final plan, especially given the security situation and other external factors that could constrain its implementation.⁶⁰ One of the plan’s principles was that “the UN Guiding

Principles on Internal Displacement are to be adhered to by the Afghan State to promote and seek permanent solutions for IDPs.”⁶¹ The plan foresaw the development of other regional plans to address internal displacement and the inclusion of the plan in the national budget; it also included a Terms of Reference for an international adviser to assist in the plan’s implementation.

In 2005, the Consultative Group on Returnees, Refugees, and IDPs endorsed the National IDP Plan and Policy, which emphasized durable solutions and affirmed the government’s responsibility to address internal displacement.⁶² This group was reportedly the mechanism that facilitated coordination between the government and the United Nations as of April 2003. The National IDP Plan and Policy was an initiative of the MoRRD, the MoRR, and the MoFTA and was supported by UNHCR, the UN Development Programme, the World Food Programme and the UN Assistance Mission in Afghanistan.⁶³ The consultative group also agreed to respect the Guiding Principles.⁶⁴

Under the economic and social development pillar of the Afghanistan National Development Strategy for 2008–2013, the Afghan government adopted the Refugee Return and IDP (RRI) sector strategy. The RRI strategy was also affirmed in Kabul at the International Conference on Return and Reintegration in November 2008.⁶⁵ The RRI strategy, which emphasizes the return

⁵⁸ The Transitional Islamic State of Afghanistan adopted the National Return, Displacement, and Reintegration Strategy in March 2003, but the instrument has expired.

⁵⁹ Key informant interview, July 2011.

⁶⁰ Ministry of Refugees and Repatriation and Ministry of Rural Development and Rehabilitation, *Towards Definite Solutions for IDPs in the South: A Regional Operation Plan*, October 2003, p. 2 (www.internal-displacement.org).

⁶¹ *Ibid.*, p.3.

⁶² UNHCR, *National Profile of Internal Displaced Persons (IDPs) in Afghanistan*, p. 6.

⁶³ Pete Spink, “A Closing Window? Are Afghanistan’s IDPs Being forgotten?” *Forced Migration Review*, no. 21, September 2004.

⁶⁴ Transitional Islamic State of Afghanistan, *National Return, Displacement and Reintegration Strategy for the Year 1382 [2003]*. March 2003 (<http://reliefweb.int/node/409885>).

⁶⁵ Islamic Republic of Afghanistan, Afghanistan National Development Strategy Secretariat, *Afghanistan National Development Strategy 1387–1391 (2008–2013): A Strategy for Security, Governance, Economic Growth and Poverty Reduction*, June 2008, pp. 129–33 (www.embassyofafghanistan.org/documents/resume_ANDS.pdf); UNHCR, *Afghanistan Situation Operational Update*,

and reintegration of returnees to the exclusion of other durable solutions such as local integration or settlement elsewhere, states that it is geared toward the sustainable reintegration of “all Afghan refugees, returnees and IDPs choosing to return” and that return is the “guiding principle” of the strategy. The strategy further states that its vision includes paying greater attention to the protection of women and children, among other vulnerable groups of refugees and IDPs, but it stops short of providing specific policy guidance as to how to protect their rights in practice. To encourage voluntary return, the RRI strategy sets forth measures to encourage voluntary return in two main areas: the provision of housing, facilities, and access to land and social services such as employment opportunities, health care and education for IDPs; and improving government capacity.⁶⁶ While the RRI strategy does demonstrate the government’s commitment to meeting the Afghanistan Compact’s benchmark on protecting and assisting all IDPs,⁶⁷ the strategy and the Afghanistan National Development Strategy as a whole do not fully integrate a human rights perspective in their efforts to address the protection needs of IDPs.

7. Designate an Institutional Focal Point on IDPs

Has the government designated a national focal point on IDPs?

The Ministry of Refugees and Repatriation is the lead

September 2009 (www.unhcr.org/4ac49fa39.html).

⁶⁶ Government of the Islamic Republic of Afghanistan, *Afghanistan National Development Strategy 1387–1391 (2008–2013)*.

⁶⁷ This benchmark, which was adopted in February 2006, provides “[b]y end-2010, all refugees opting to return and internally displaced persons will be provided assistance for rehabilitation and integration in their local communities.” See Annex I, “Benchmarks and Timelines of the Afghanistan Compact,” London Conference on Afghanistan, 31 January–1 February 2006, p. 11. The Afghanistan Compact is a political document that sets forth the framework for international cooperation with Afghanistan for five years.

government ministry for conflict-induced IDPs.⁶⁸ The Afghanistan Natural Disaster Management Authority (ANDMA), a subministerial body responsible for coordinating emergency response and post-disaster recovery, coordinates short-term assistance for those affected and displaced by natural disasters.⁶⁹ Both bodies coordinate protection and assistance at the national level with other government bodies and international actors concerned with protection issues. They also work at the provincial level through their respective regional directorates. However, the MoRR and ANDMA lack the necessary resources, capacity and political clout to effectively realize their protection mandates.

The designation of a lead ministerial focal point is a fairly recent phenomenon. According to the Deputy Representative for the UN High Commissioner for Refugees in Afghanistan in 2008, there was “no single agency that has responsibility for IDPs; however, the institutional response is better organized than previously.” The MoRR, ANDMA and the Ministry of Rural Rehabilitation and Development all “claim[ed] some jurisdiction” over IDPs, although the provincial governor’s office was often the government body that dealt with internal displacement issues in lieu of the national government. The deputy representative also noted that at the time, UNHCR had been working to establish an IDP task force.⁷⁰ That year, the National IDP Task Force was created, co-chaired by the MoRR and UNHCR. In April 2011, the IDP Data Management Working Group recommended that the MoRR designate an institutional focal point on internal displacement at the national level and the provincial level to facilitate and improve data collection efforts (see Benchmark 3).

⁶⁸ Islamic Republic of Afghanistan, *Afghanistan National Development Strategy 1387–1391 (2008–2013)*.

⁶⁹ Brookings-Bern Project on Internal Displacement, *Displacement and Security in Afghanistan*, summary report of seminar, 23 June 2008 (www.brookings.edu/events/2008/0623_afghanistan.aspx).

⁷⁰ “Remarks by Ewen McLeod, Deputy Representative for the United Nations High Commissioner for Refugees in Afghanistan,” in Brookings-Bern Project on Internal Displacement, *Displacement and Security In Afghanistan*.

The National IDP Task Force works in coordination with regional IDP task forces based in Kandahar, Herat, and elsewhere in the country in addition to assisting other ad hoc, informal protection coordination mechanisms at the provincial level. Notably, the National IDP Task Force's work plan, which is currently being implemented and monitored through the regional task forces, formally adopts the IDP definition set forth in paragraph 2 of the Guiding Principles on Internal Displacement. Following a May 2010 request by the National IDP Task Force to the Afghanistan Protection Cluster for guidance on assessing the protection needs of IDPs, the Afghanistan Protection Cluster issued the *Protection Checklist: Internally Displaced Persons* and the *Guidance Note on Protection for the Internally Displaced: Causes and Impact by Sector* in July 2010.⁷¹ These tools serve to assist all actors, including the MoRR, national and regional IDP task forces, civil society organizations and international humanitarian organizations, in their protection and assistance activities for IDPs displaced by conflict and natural disasters.

8. Support NHRIs to Integrate Internal Displacement into Their Work

Is there a national human rights institution (NHRI) that gives attention to the issue of internal displacement?

Afghanistan's national human rights institution is the Afghanistan Independent Human Rights Commission.⁷² The AIHRC, which was established by a presidential decree of the interim administration in June 2002, became constitutionalized in 2004 and regulated by the Law on the Structure, Duties, and Mandate of the

Afghanistan Independent Human Rights Commission in 2005. While the mandate of the AIHRC is to protect, monitor and promote the human rights of all Afghans, it includes a focus on women, children, and those with disabilities⁷³ and also monitors and reports on other vulnerable groups, including IDPs, refugees and returnees.⁷⁴ The AIHRC investigates complaints, monitors and reports on human rights abuses, advises the government and conducts workshops for government staff and civil society. The Kabul-based commission had thirteen other offices throughout the country at the time of writing.⁷⁵

Previously, the AIHRC was a member of the working group of the Return Commission of the North. Established in 2002 with UN, central government and northern faction representatives, the commission sought to facilitate the return of refugees and IDPs in the northwest.⁷⁶ Further information on the commission's work beyond its study on returnees in 2003 was not available.⁷⁷

Through field monitoring, the AIHRC assesses the human rights and protection situation and needs of the vulnerable, including IDPs' status, area of origin and

⁷¹ Afghanistan Protection Cluster, *Protection Checklist: Internally Displaced Persons*, 22 July 2010; and Afghanistan Protection Cluster, *Guidance Note on Protection for the Internally Displaced: Causes and Impact by Sector*, 22 July 2010 (on file with authors). Both documents received by UNHCR in Kabul.

⁷² National Human Rights Institution Forum, Afghanistan (www.nhri.net/NationalData.asp?ID=127).

⁷³ Article 58, Constitution of the Islamic Republic of Afghanistan, 2004.

⁷⁴ UN General Assembly, *Report of the UN High Commissioner for Human Rights on the Situation of Human Rights in Afghanistan and on the Achievement of the Technical Assistance in the Field of Human Rights*, 9 September 2005 (www.unhcr.org/refworld/docid/43f30fbd0.html).

⁷⁵ AIHRC (www.aihrc.org.af/english/).

⁷⁶ Other members were representatives from the UN Assistance Mission in Afghanistan, the UN High Commissioner for Refugees and the Jumbesh, Jamiat, Hizb-e-Wahdat factions,

⁷⁷ According to UNAMA, the commission was formed in October 2002. UNHCR also reportedly "inaugurated" it in March 2003. See further UNAMA, "Press Briefing by Manoel de Almeida e Silva, UNAMA Spokesman, 09 Feb 2003," 9 February 2003 (<http://reliefweb.int/node/118793>); IRIN, "Afghanistan: UN High Commissioner for Refugees Inaugurates Return Commission," 5 March 2003 (www.irinnews.org); IRIN, "Afghanistan: Focus on Returns and Reintegration in the North" (www.irinnews.org).

cause of displacement. IDPs constituted a significant segment of the monitored research population for the commission's 2008–09 annual report on economic and social rights, which indicated that the majority of IDPs living in urban slums and informal settlements lacked adequate food, water, health care, and education.⁷⁸ The report also revealed that the majority of IDPs are unable to return to their homes and communities due to insecurity, lack of housing, and disputes over land and property.

Internal displacement also is covered by the AIHRC and the UN Assistance Mission in Afghanistan in their annual reports on the protection of civilians. The latest report, on 2010, stated that civilians were severely affected by the ongoing conflict, including through displacement and other humanitarian consequences. Notably, the report includes observations and analysis on problems with respect to protection of civilians affected by operations of the Afghan National Security Forces and International Security Assistance Force in Marja and Kandahar in 2010, based on monitoring conducted throughout 2010 by the AIHRC and UNAMA.⁷⁹ Both organizations tracked and investigated civilian casualty incidents and met with government officials, elders, individuals internally displaced by the military operations and ISAF.⁸⁰ Since July 2010, the AIHRC has

worked with the National IDP Task Force on IDPs. However, their collaboration has been largely ad hoc and limited to specific cases.

The AIHRC is fully funded by donor countries. The commission has stated that one of its main institutional challenges has been the “lack of State funding towards AIHRC’s overall budget [and] this lack of sustainable funding and our ongoing dependency on donor contributions continues to undermine the future stability of the AIHRC.”⁸¹

9. Facilitate IDPs’ Participation in Decisionmaking

(a) Do the national authorities encourage and facilitate the ongoing participation of IDPs in the planning and implementation of policies and programs for addressing internal displacement?

The government has made some efforts to encourage IDP participation; however, it is unclear whether opportunities to participate are offered on an ongoing or ad hoc basis. UNHCR, in coordination with the Ministry of Refugees and Repatriation, has organized “go and see” visits to enable IDPs to make informed decisions regarding return.⁸² Information on the usefulness of the visits and the frequency with which IDPs have participated in them was not available. However, according to research conducted in Kandahar province by the Brookings-Bern Project on Internal Displacement and the Liaison Office, many IDPs relied on information on conditions in areas of origin from their kin and tribal networks, “much of which contradicted the ‘official’ views of IDP representatives taking part in the UNHCR-facilitated visits.”⁸³

⁷⁸ Afghanistan Independent Human Rights Commission, *Report on the Situation of Economic and Society Rights in Afghanistan: IV, Qaws 1388 (November/December 2009)*, p. 21 (www.aihrc.org.af/2010_eng).

⁷⁹ ANSF includes the Afghan Border Police, the Afghan National Army (ANA), the Afghan National Police (ANP) and the National Directorate of Security. See further UNAMA and AIHRC, *Afghanistan Annual Report 2010: Protection of Civilians in Armed Conflict*, March 2011, pp. 46–56 (www.aihrc.org.af/2010_eng).

⁸⁰ AIHRC and UNAMA specify that “[i]nterviews with internally displaced persons included persons who left Marja at all phases of the military operation and its aftermath, from the start of operations in February 2010 through to early August. As the situation stabilized, UNAMA Human Rights and the AIHRC also interviewed elders and IDPs who fled Marja during active operations and who had begun making regular trips back to Marja through to the end of 2010.” UNAMA and AIHRC, *Afghanistan Annual Report 2010: Protection of Civilians in*

Armed Conflict, p. 47.

⁸¹ AIHRC, *Strategic Action Plan: 2010 – 2013*, March 2010 (www.aihrc.org.af/english).

⁸² UNHCR, *Returnee Update*, no. 43, 1–15 October 2003 (www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=SUBSITES&id=3f9928ca4).

⁸³ *Beyond the Blanket*, p. 67.

The need for further efforts to involve IDPs in decision-making processes was stressed at a training workshop held in Kabul in 2003 by the Norwegian Refugee Council and UNHCR.⁸⁴ The participants raised concerns that government efforts to promote IDP participation were insufficient and that improvements needed to be made.⁸⁵ Participants reported that while most camps have IDP representatives that assist in camp management and food distribution, the majority of “camp residents lack information on their rights.”⁸⁶

With the support of UNHCR, the MoRR formed the Displaced Persons Council (DPC) in 2003. Comprising groups of IDPs and refugees originally from five Northern provinces who were displaced elsewhere in Afghanistan as well as to the Balochistan region of Pakistan, this council was intended specifically to complement and inform the work of the Northern Return Commission and to increase the participation of displaced populations in the return process. The DPC shared its recommendations on how best to address obstacles to return with the Hamid Karzai (with whom the DPC met in October 2003 at the Presidential Palace), relevant government ministries, the Afghan Independent Human Rights Commission, governors in the places of origin, and the international community. However, the DPC had ceased to function by 2005, after most DPC members had returned to their places of origin.⁸⁷

(b) Are IDPs able to exercise their right to political participation, in particular the right to vote, without undue difficulties related to their displacement?

Evidence on the ability of IDPs to vote in elections since 2004 could not be verified. For the presidential elections in 2009, security posed significant constraints during

the campaigning, registration and actual election periods.⁸⁸ The Electoral Law (2010) does not include any provisions specifically upholding and protecting the rights of IDPs to vote, but it does affirm the right of all Afghan citizens to participate in elections and prohibits restriction of that right on the basis of “social status.”⁸⁹

In 2003, the UN Assistance Mission in Afghanistan, in cooperation with the government, conducted a voter registration campaign for the 2004 general elections.⁹⁰ The operational plan drafted by UNAMA included specific procedures to register returnees, IDPs, and nomads (Kuchis) and called for thirteen teams to register IDPs in camps and host communities.⁹¹ Information on the actual registration and turnout of IDPs for the 2004 election could not be found. However, 10.5 million people were registered, and about 8 million individuals, or roughly 80 percent of the electorate, voted.

In 2005, the Joint Electoral Management Body created the Election Operational Plan for the Constituent Assembly Elections. The plan specifically mentions preparing and promoting materials that would help to “encourage the participation of minorities, internally displaced persons (IDPs) and refugees, nomads and

⁸⁴ IDMC, *Workshop on the UN Guiding Principles on Internal Displacement*, 7–8 December 2003 (www.internal-displacement.org).

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ UNHCR, *Report of the Displaced Persons Council Meeting, 19-21 October 2003* (15 November 2003).

⁸⁸ UNAMA, *Electoral Unit, Voter Registration in Afghanistan: Operational Plan*, 31 July 2003 (www.iec.org.af); AIHRC-UNAMA, *Joint Monitoring on Political Rights: Presidential and Provincial Council Elections, Second Report, 16 June–1 August 2009* (www.aihrc.org.af/English).

AIHRC-UNAMA, *Joint Monitoring on Political Rights: Presidential and Provincial Council Elections, Third Report, 1 August–21 October 2009* (www.aihrc.org.af/English).

⁸⁹ Article 5, *Decree of President of the Islamic Republic of Afghanistan on Promulgation of the Electoral Law (Electoral Law 2010)*, 18 February 2010. See further, Brookings-Bern Project on Internal Displacement and the Norwegian Refugee Council, *Realizing National Responsibility for the Protection of Internally Displaced Persons in Afghanistan: A Review of Relevant Laws, Policies, and Practices*, November 2010, p. 27.

⁹⁰ Only presidential elections were held in 2004; the parliamentary and provincial council elections, which were postponed, were held in September 2005.

⁹¹ UNAMA, *Electoral Unit, Voter Registration in Afghanistan: Operational Plan*, 31 July 2003.

disabled persons.”⁹² The Organization for Security and Cooperation in Europe (OSCE), which monitored the 2009 presidential and parliamentary elections, noted that the 850,000 Kuchis who are registered to vote did not participate in the provincial council election. “As a nomadic population, the Kuchi have one national ballot for parliamentary elections, and did not participate in the current provincial council election, as they are not attached to one location.” The OSCE recommended that the Independent Election Commission of Afghanistan (IEC) take specific measures to ensure that the Kuchi population is able to vote.⁹³

UNAMA and national and international observers reported significant irregularities in other areas bearing on the participation of IDPs in the 2009 elections, and there was “relatively low participation of women and voters in general, especially in conflict-affected areas.”⁹⁴ In addition, the language used in voter education and information materials for outreach to all Afghans was an issue. The OSCE reported that the Independent Election Commission of Afghanistan had planned to restrict the languages used in outreach materials to Dari and Pashto—in violation of the Constitution—in order “to avoid controversies as to which minority languages should also be used” and recommended that local languages be used for voter outreach. However, the OSCE also noted that

the IEC public outreach department was able to recruit civic and voter education trainers who spoke the local language in areas where there are higher densities of various minority groups for the “face-to-face” outreach program. In addition, production companies which prepared radio and TV broadcast materials also duplicated messages in Uzbek and Tajik on a voluntary basis.

Nevertheless, the OSCE reported that the lack of local languages in public announcements regarding the campaign process prompted complaints from civil society representatives.⁹⁵

10. Establish the Conditions and Provide the Means for IDPs to Secure Durable Solutions

Is the government working or has it worked to establish conditions enabling IDPs to secure a durable solution to displacement?

The government has not worked effectively to establish conditions allowing IDPs to secure durable solutions. Many IDPs are deterred from returning or unable to return to their places of origin due to a variety of factors, including ongoing insecurity and property disputes, a lack of basic services in return areas and inadequate economic opportunities. These factors have also resulted in further displacement upon return, for IDPs and refugees alike.

⁹² *Joint Electoral Monitoring Body, 2005 Afghanistan Constituent Assembly: Election Operational Plan Outline*, 8 March 2004 (www.iec.org.af).

⁹³ OSCE, *Islamic Republic of Afghanistan, Presidential and Provincial Council Elections, 20 August 2009, OSCE/ODIHR Election Support Team, Final Report*, p. 33 (www.osce.org); Article 16, Constitution of the Islamic Republic of Afghanistan, 2004.

⁹⁴ Citation from AIHRC/UNAMA, *AIHRC-UNAMA Joint Monitoring of Political Rights Presidential and Provincial Council Elections Third Report, 1 August - 21 October 2009*, p. 1 (<http://unama.unmissions.org>) See also, UN General Assembly/UN Security Council, *The Situation in Afghanistan and Its Implications for International Peace and Security: Report of the Secretary-General*, A/64/705-S/2010/127, 10 March 2010, Annex, p. 16 (www.un.org/Docs/sc/sgrep10.htm).

⁹⁵ OSCE, *Islamic Republic of Afghanistan, Presidential and Provincial Council Elections, 20 August 2009, OSCE/ODIHR Election Support Team, Final Report*, 8 December 2009, p. 33 (www.osce.org); The Afghan Constitution states that minority languages are the third official languages, after Pashto and Dari, in areas where they represent a majority; see Article 16, Constitution of the Islamic Republic of Afghanistan, 2004.

The government promotes return and is not considered to be doing much to facilitate local integration. Authorities have focused primarily on finding durable solutions for IDPs in protracted displacement, acknowledging that local integration is a viable option in such cases. There is concern that the government has not adequately addressed durable solutions for IDPs displaced since 2006.⁹⁶

According to the Afghan Independent Human Rights Commission, “Growing insecurity, homelessness, disputes over property, and lack of livelihood options are the factors obstructing the return of refugees and the reintegration of returnees and IDPs”⁹⁷ In 2007, the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons stressed that land disputes and landlessness “remain a substantial cause of displacement and a substantial obstacle to return.”⁹⁸

In 2008, in a joint plan with the UN High Commissioner for Refugees, the government encouraged thousands of IDPs living in the three largest IDP camps to return to their home provinces. The plan was poorly received by IDPs, many of whom were not willing to return due to insecurity, ethnic tensions and lack of economic opportunities in their places of origin.⁹⁹ In 2009, only 7,000 IDPs of a total of 135,000 IDPs living in “camp-like settlements” had returned.¹⁰⁰ Those who do choose to return are often displaced again due to a lack of basic services and are thus classified as economic migrants, a classification that is “easily dismissed by provincial authorities and largely ignored by relief agencies.”¹⁰¹

⁹⁶ IDMC, *Armed Conflict Forces Increasing Numbers of Afghans to Flee Their Homes*, April 2010 (www.internal-displacement.org).

⁹⁷ AIHRC, *Report on the Situation of Economic and Social Rights in Afghanistan*, December 2009.

⁹⁸ OHCHR, “UN Expert Concerned about Growing Problem of Internal Displacement in Afghanistan,” 20 August 2007.

⁹⁹ IRIN, “Afghanistan: IDPs Reluctant to Return Home,” 28 April 2008 (www.irinnews.org).

¹⁰⁰ IDMC, “Internal Displacement Global Overview of Trends and Developments in 2009,” p. 76 (www.internal-displacement.org).

¹⁰¹ IRIN, “Afghanistan Insecurity, Lack of Aid Prompt IDPs

The government has also taken legal measures that are contrary to establishing the conditions for durable solutions. A group of twenty-four Afghan civil society groups, the Transitional Justice Coordination Group, stated that the controversial Law on National Stability and Reconciliation “undermines justice and the rule of law.”¹⁰² Passed by Parliament in 2007, the law, which purports to recognize the rights of war crime victims to seek justice, effectively bars Afghan authorities from prosecuting alleged perpetrators of displacement if the victim does not file a complaint.¹⁰³

11. Allocate Adequate Resources to the Problem

Do the authorities prioritize internal displacement in allocating budgetary resources and in mobilizing international support?

The government has made an effort to address internal displacement in its allocation of budgetary resources on paper, but it is unclear whether that has borne out in reality. Moreover, the government relies heavily on international financial support to address displacement.

The government minimally addresses the displaced in its 2009 National Budget, which includes a medium-term fiscal strategy for 2009–2011 and is aligned with the objectives of the Afghan National Development Strategy. According to this budget, by the end of 2010,

to Leave Camp,” 21 June 2009 (www.irinnews.org).

¹⁰² Human Rights Watch, *Afghanistan: Repeal Amnesty Law*, 10 March 2010 (www.hrw.org).

¹⁰³ See, for example, Human Rights Watch, *Afghanistan: Repeal Amnesty Law*; and “Top UN Human Rights Official in Afghanistan Calls for Repeal of Amnesty Law,” United Nations News Centre, 25 March 2010 (www.un.org). See also Amin Tarzi, “Afghanistan: Amnesty Bill Places Karzai in a Dilemma,” Radio Free Europe/Radio Liberty, 23 February 2007 (www.rferl.org/content/article/1074897.html).

all refugees opting to return and internally displaced persons will be provided assistance for rehabilitation and integration in their local communities; their integration will be supported by national development programmes, particularly in key areas of return.¹⁰⁴

The FY 2009–2010 budget allocated \$3 million to the Ministry of Refugees and Repatriation to fund efforts for refugees and IDPs under the “Social Protection Sector” to “ensure technical and basic social services for established towns for returnees.”¹⁰⁵ However, Noor Mohammad Haidari, a senior MoRR adviser, stated in January 2010, “Whilst we have no budget for assistance to IDPs, we stress long-term and sustainable solutions.” He added that MoRR is unable to provide IDPs with integration services and requires assistance from donors, aid agencies and other government entities.¹⁰⁶

In addition, international humanitarian organizations and the donor community provide significant resources to fill gaps and fund protection-oriented programs for the displaced along with other humanitarian activities. In 2009, 90 percent of Afghanistan’s public expenditures were funded by international sources.¹⁰⁷ Also as of 2009, Afghanistan had been the fourth-largest recipient of humanitarian aid in the world since 1995. Between 2000 and 2009, humanitarian expenditures for Afghanistan, Asia’s largest recipient of such aid, stood at \$5.1 billion of a total of \$90 billion spent globally on humanitarian response.¹⁰⁸

¹⁰⁴ Ministry of Finance, 1388 National Budget, 2009 (www.budgetmof.gov.af/Budget_Resources/1388/1388_National_Budget_ENG.pdf).

¹⁰⁵ Ibid.

¹⁰⁶ IRIN, “Afghanistan: More IDPs than Previously Thought—Government,” 4 January 2010 (www.irinnews.org).

¹⁰⁷ Latest data available at the time of writing. IDMC, *Armed Conflict Forces Increasing Numbers of Afghans to Flee Their Homes*.

¹⁰⁸ Figures from Development Initiatives, as reported by Global Humanitarian Assistance. Figures include contributions from governments—members of the Organization for Economic Cooperation and Development—Development Assistance Committee and others reporting to the UN

12. Cooperate with the International Community when National Capacity is Insufficient

Does the government facilitate efforts by international organizations to address internal displacement?

The government invites and accepts assistance from the international community to help address internal displacement and works to ensure that international actors enjoy safe and unimpeded access to the internally displaced. However, ongoing insecurity and violence limit humanitarian access.

In August 2007 during a working visit to Afghanistan, Walter Kälin, the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons, participated in a UN workshop on the protection of civilians in Afghanistan and met with the vice president, several ministers, and heads of international agencies.¹⁰⁹

Humanitarian access is limited due to insecurity and violence throughout the country, including attacks against aid workers, largely by armed opposition groups. The attacks are indicative of the inability of the national authorities to provide adequate protection to those assisting crisis-affected populations. Since 2006, Afghanistan has been the second of the three most violent environments for aid workers, reflecting an increasing trend in the incidence of attacks on aid workers since 1997.¹¹⁰ In

Office for the Coordination of Humanitarian Affairs (OCHA) Financial Tracking Service (FTS)—and private contributions reported to the FTS. This includes the money spent by these donors through UN agencies, NGOs and financing mechanisms such as the Central Emergency Response Fund. Global Humanitarian Assistance, “Country Profile: Afghanistan,” and Global Humanitarian Assistance, *GHA Report 2011*, pp. 22–34; see further pp. 38, 50, 69–75 (www.globalhumanitarianassistance.org).

¹⁰⁹ OHCHR, “UN Expert Concerned about Growing Problem of Internal Displacement in Afghanistan,” 20 August 2007.

¹¹⁰ See further, Abby Stoddard, Adele Harmer and Victoria

2007, following his visit to Afghanistan to participate in a UN workshop on the protection of civilians, Walter Kälin stated that the inaccessibility “for security reasons” of conflict-affected areas to humanitarian organizations “hampers the delivery of urgently needed humanitarian assistance.”¹¹¹ In 2009, the UN Assistance Mission in Afghanistan reported that insecurity restricted its access to a number of displaced persons and made it difficult to provide assistance.¹¹² According to the UN, less than 40 percent of the country was categorized as a “low-risk/permissive environment” for international

humanitarian organizations in 2009.¹¹³ Insecurity has prompted the UN and international organizations to limit the number of international staff based in certain areas or, following attacks on personnel, to evacuate staff temporarily and to reduce nonessential programs in order to reduce exposure to attacks.¹¹⁴ The spread of conflict in 2010 to more stable provinces in the north-west and the west further reduced humanitarian access, hindering the ability of humanitarian agencies to protect and assist civilians, including internally displaced Afghans.¹¹⁵

DiDomenico, *Providing Aid in Insecure Environments: 2009 Update Trends in Violence against Aid Workers and the Operational Response*, Humanitarian Policy Group Policy Brief 34, Overseas Development Institute, April 2009 (www.odi.org.uk).

¹¹¹ OHCHR, “UN Expert Concerned about Growing Problem of Internal Displacement in Afghanistan,” 20 August 2007.

¹¹² U.S. State Department, *2009 Human Rights Report: Afghanistan* (www.state.gov).

¹¹³ OCHA, *Afghanistan Humanitarian Action Plan 2010*, 30 November 2009 (www.unocha.org).

¹¹⁴ See for example, Zoi Constantine, “Evacuated UN Workers Return to Afghanistan,” *The National*, 25 February 2010 (www.thenational.ae); OCHA, *Afghanistan Humanitarian Action Plan 2010*, 30 November 2009.

¹¹⁵ OCHA, *2011 Consolidated Appeal for Afghanistan*, November 2010, p. 36 (www.unocha.org).



Kabul, Afghanistan / A woman passes her registration details to a UNHCR worker at a distribution event at Tamir Mill Bus site.
Photo: UNHCR / J. Tanner / February 2011



Oddusudan, Mullaitivu district, Northern Province, Sri Lanka / Returned IDP students of Katchilalmadu Government School were displaced during the last phase of the war, living in hiding and then in government-run camps.
Photo: UNHCR / D. Seneviratne / May 2010

Sri Lanka: Gaps in the Government Response to Post-2007 Internal Displacement

John Schroder and Chareen Stark

Overview of Internal Displacement in Sri Lanka

Sri Lanka experienced conflict-induced displacement as early as August 1977, when ethnic violence in many parts of the island led to the displacement of some 25,000 individuals.¹ Since that time, there have been multiple, overlapping waves of internal displacement, resettlement and return in Sri Lanka, resulting primarily from the twenty-six-year civil war between the government of Sri Lanka and the secessionist Liberation Tigers of Tamil Eelam (LTTE). Internal displacement has also resulted from natural disasters such as seasonal flooding and, most notable, the Indian Ocean tsunami of 2004, which displaced over 500,000 people.

After more than two decades of relatively low-intensity fighting, the LTTE controlled much of Northern Province—comprising the districts of Kilinochchi, Mannar, Mullaitivu and Vavuniya as well as the Jaffna Peninsula—and much of Eastern Province, comprising the Trincomalee, Batticaloa and Ampara districts. The conflict escalated in 2006, when government forces initiated large-scale military operations in Eastern Province.² In the period between April 2006 and March 2007, over 220,000 individuals were displaced from Trincomalee and Batticaloa.³ It was a relatively brief

displacement, and the vast majority of these IDPs had returned to their places of origin by early 2008. In 2007, after taking complete control of Eastern Province, the government turned its offensive to Northern Province.

In January 2008, the government officially withdrew from a five-year-old cease-fire agreement, a step that marked the start of the final phase of the conflict.⁴ As government forces pushed the LTTE further toward the northeast coast during the subsequent months, civilians residing in Northern Province were displaced, primarily to a cluster of emergency sites in Vavuniya known as Menik Farm, as well as to smaller sites in Jaffna and Mannar.

On 16 May 2009, after a final assault on the northeast, the government declared victory and an end to the conflict. Although no precise figures can be determined, it is estimated that more than 280,000 persons were internally displaced between April 2008 and May 2009.⁵ Most were interned in closed sites at Menik Farm. The approximately 280,000 persons displaced since April 2008 are referred to as “new” IDPs.

Following the final assault, infrastructure and property damage throughout Northern Province was substantial, and both residential and agricultural land was severely contaminated with landmines and unexploded ordnance.

¹ Human Rights Watch, *Playing the “Communal Card”: Communal Violence and Human Rights*, April 1995 (www.hrw.org).

² International Crisis Group, *Sri Lanka’s Muslims: Caught in the Crossfire*, Asia Report No. 134, 29 May 2007 (www.crisisgroup.org).

³ UN Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Mission to Sri Lanka, 14 to 21 December 2007, A/HRC/8/6/Add.4*, 21 May 2008, para. 16(a), p. 7 (www.brookings.edu/projects/

idp/rsg_info.aspx).

⁴ BBC News, “Sri Lanka Profile: A Chronology of Key Events,” updated 21 January 2011 (www.bbc.co.uk/news/world-south-asia-12004081).

⁵ UN Office for the Coordination of Humanitarian Affairs, *Sri Lanka, Joint Humanitarian Update*, 15 June 2009 (<http://ochaonline.un.org/srilanka/SituationReports/JointHumanitarianUpdate/tabid/5724/language/en-US/Default.aspx>).

The closed sites, in particular those at Menik Farm, attracted considerable international attention. The government claimed that LTTE fighters and supporters were hiding among civilians fleeing the conflict areas in the North. The government did not allow IDPs fleeing the North to stay with host families, instead directing them to camps and confining them there while conducting a “screening” process to separate alleged LTTE supporters. Military personnel were staged on the periphery of the camps, and freedom of movement was severely restricted until, under international pressure, the government introduced a temporary pass system in late 2009.

There is also a substantial caseload of persons, displaced prior to April 2008 primarily because of conflict, known as “old” IDPs. While figures vary significantly for several reasons, there were estimated to be approximately 227,000 “old” IDPs at the end of 2010.⁶ That figure includes more than 70,000 individuals whose land had been occupied as government-designated high-security zones (HSZs)—buffer zones surrounding military installations—in the districts of Jaffna, Mullaitivu, Kilinochchi, Trincomalee and Mannar. Civilians are not allowed to enter military-controlled HSZs, and while many HSZs have been officially “gazetted” by the government, others have been set up in an ad hoc manner. Another large component of the “old” IDP caseload—and the group displaced for the longest period of time in Sri Lanka—comprises at least 65,000 “Northern Muslim” IDPs who have been living in protracted displacement in Puttalam District since 1990.⁷ The “old” IDP caseload also includes an estimated 44,000 individuals displaced from Northern Province between 2006 and 2008, as well as several thousand displaced by the creation of a special economic zone in Trincomalee in 2006.

⁶ Internal Displacement Monitoring Center, *Sri Lanka: IDPs and Returnees Remain in Need of Protection and Assistance*, 14 January 2011, p. 20 (www.internal-displacement.org).

⁷ Norwegian Refugee Council, *Protracted Muslim IDPs from Jaffna in Puttalam and their Right to Choose a Durable Solution*, June 2010 (www.nrc.no/arch/_img/9493105.pdf).

The “new” IDP population is the primary focus of this study for several reasons:

—Both international donors and the government have given priority to the return of “new” IDPs and that caseload has received much international attention.

—The current government, which took power in November 2005, has responded to the “new” IDP caseload in a manner that has disregarded many of the programs, initiatives and commitments undertaken during the decade before it assumed office.

—There are substantial political complexities surrounding the “old” IDP caseload, and reliable information and data regarding this group (at least with respect to the 12 benchmarks used in this study) are lacking.

The government’s policies toward the “new” IDP population have differed substantially from policies toward IDPs displaced in the past, such as in the aftermath of the 2004 tsunami. Broadly speaking, two overarching policies in particular have been detrimental to IDPs: the government’s closed-camp policy during and after the final stages of the conflict (see Benchmark 1, below), which ran far afield of the Guiding Principles on Internal Displacement, led to international condemnation and raised many protection concerns beyond those related to freedom of movement and the government’s consistent denial of access to humanitarian actors (see Benchmark 12, below), which compounded, and continues to compound, the already very serious protection concerns.

Together, the consequences have been far-reaching. The government’s desire to move quickly from the humanitarian relief phase to the recovery phase (see Benchmark 3, below) was precipitated in part by international outrage over conditions in the closed camps (see Benchmark 1, below) and the lack of humanitarian access to the camps (see Benchmark 12, below). Rather

than focusing on care and maintenance of the displaced population with the assistance of the international community, the government embarked on a campaign to return IDPs as quickly as possible, often without considering the protection of individual IDPs. Government denial of humanitarian access continues to hamper efforts to bring about durable solutions in the North.

1. Prevent Displacement and Minimize its Adverse Effects

Do national authorities take measures to prevent arbitrary displacement and to minimize adverse effects of any unavoidable displacement?

It cannot be said that the government of Sri Lanka, as a party to a conflict that resulted in the displacement of hundreds of thousands of civilians, takes measures to prevent conflict-induced displacement. However, the government does take measures to prevent and mitigate the effects of disaster-induced displacement, efforts that significantly increased after the 2004 tsunami.⁸

Since June 2006, the Indian Ocean Tsunami Warning System has been active in Sri Lanka.⁹ The government conducts public awareness campaigns and periodic tsunami preparedness drills that include evacuations to pre-designated safety areas.¹⁰ In 2009, the Ministry of Disaster Management and Human Rights identified zones at risk of flooding in the upcoming rainy season and constructed drainage systems to mitigate the risk.

⁸ UN Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Mission to Sri Lanka*.

⁹ SciDev Net, “Indian Ocean Tsunami Alert System Up and Running” (www.scidev.net/en).

¹⁰ Government of Sri Lanka News, “Tsunami: Five Years On Thursday,” December 24, 2009 (www.priu.gov.lk/Development2009/dev200912/20091224tsunami_five_years_on.htm); Spot, “Tsunami Drill Today” (www.spot.lk/article10673-tsunami-drill-today.html).

The ministry promised in July 2009 to “work closely with all our partners to enhance preparedness and develop mitigatory measures and responses to any foreseeable hazard.”¹¹

In 2009 and 2010, during and after the final stages of the conflict in Northern Province, most civilians fleeing the North in May 2009 were interned in military-run camps at Menik Farm, where some 220,000 remained in detention until at least September. Conditions in the camps were below established international standards, despite the provision of substantial material assistance from the international community. The camps, designed as temporary emergency relief sites and not semi-permanent structures, were overcrowded and lacked sufficient health and sanitation facilities and clean water.¹²

During this period, the displaced were prevented entirely from leaving the camps.¹³ In August 2009, Amnesty International observed, “Sri Lanka’s IDP camps—which should only serve to provide emergency assistance to people uprooted by conflict—have become places of mass arbitrary detention.”¹⁴ In statements following his September 2009 visit to Sri Lanka, Walter Kälin, Representative of the Secretary-General on the Human Rights of Internally Displaced Persons (RSG), emphasized: “There is an urgent need to restore the freedom of movement for the displaced. They should be allowed to return to their homes, and where this is not possible,

¹¹ Address by Hon. Mahinda Samarasinghe, MP, Minister of Disaster Management and Human Rights, in Parliament on 22 July 2009 on the occasion of the Adjournment Debate on Internally Displaced Persons (www.dmhr.gov.lk/english/more_news.php?dmhrnind=261).

¹² ICG, *Sri Lanka: A Bitter Peace*, Update Briefing, Asia Briefing No. 99, 11 January 2010, p. 2 (www.crisisgroup.org).

¹³ U.S. State Department, 2009 Human Rights Report: Sri Lanka, 11 March 2010 (www.state.gov/g/drl/rls/hrrpt/2009/sca/136093.htm).

¹⁴ Amnesty International, *Sri Lanka: Unlock the Camps in Sri Lanka: Safety and Dignity for the Displaced No—A Briefing Paper*, ASA 37/016/2009, August 2009, p. 6 (www.amnesty.org).

to stay with host families or in open relief centres.”¹⁵ Following Kälín’s visit, the government set a target to release 70-80 percent of IDPs still in camps by the end of 2009 (see Benchmarks 2 and 10, below).

Despite the fact that “the Sri Lankan government misrepresented the scale of the crisis”¹⁶ and was unable to provide adequate material assistance such as shelter, food and water, it refused to provide international and national relief agencies adequate access to the camps.¹⁷ International agencies were prevented during this time from monitoring the protection of the displaced population and often even from speaking with them.¹⁸

2. Raise National Awareness of the Problem

Does government (at the highest Executive level, e.g. President/Prime Minister) acknowledge the existence of internal displacement and its responsibility to address it as a national priority?

The government has publicly acknowledged its responsibility to address internal displacement as a national priority, but it has failed to meet international standards in addressing it. In formal statements and press releases, the president and other officials have recognized their responsibility for IDPs in accordance with international standards. For example, the prime minister, speaking at the Sixty-Fourth Session of the UN General Assembly

in September 2009, stated: “One of our highest priorities [subsequent to the defeat of the LTTE in May 2009] has been to meet the immediate humanitarian needs of these displaced civilians, and to ensure their long-term safe, voluntary and dignified return to their homes.”¹⁹

In November 2009, the permanent representative of Sri Lanka to the UN recognized that “the State has the primary responsibility not only to provide for the welfare of displaced civilians in terms of food, clothing, medical care and shelter, but also to ensure their safety, in keeping with the provisions of the Guiding Principles on Internal Displacement.”²⁰ Partially as a consequence of such statements, there is a broad public understanding that internal displacement is an important national issue in Sri Lanka.

However, such direct statements by government officials—particularly regarding adherence to the UN Guiding Principles on Internal Displacement—may be understood in light of the government’s reported tendency to engage in public relations “acrobatics.”²¹ Explicit reference to the Guiding Principles is not the

¹⁵ IRIN, “Sri Lanka: Concerns Growing over Pace of IDP Resettlement,” 30 September 2009 (www.irinnews.org/Report.aspx?ReportId=86371).

¹⁶ Amnesty International, “Sri Lanka: Government Misrepresentations Regarding the Scale of the Crisis,” ASA 37/012/2009, May 2009; Amnesty International, *Sri Lanka: Unlock the Camps in Sri Lanka*, p. 5 (www.amnesty.org).

¹⁷ Amnesty International, *Sri Lanka: Unlock the Camps in Sri Lanka*, pp. 7–8, 10–15.

¹⁸ *Ibid.*, pp. 11–12, pp. 23–24.

¹⁹ Address by Ratnasiri Wickramanayaka, Prime Minister and the Head of Delegation of the Democratic Socialist Republic of Sri Lanka at the Sixty-Fourth Session of the United Nations General Assembly, New York, 26 September 2009 (www.un.org/ga/64/generaldebate/pdf/LK_en.pdf).

²⁰ Permanent Representative of Sri Lanka to the UN, Security Council Debate on Protection of Civilians in Armed Conflict – 11th November 2009, Statement by Ambassador Palitha Kohona, Permanent Representative of Sri Lanka, “Statement on Protection of Civilians,” 12 November 2009, (www.slmission.com/consular/other-missions/86-security-council/380-statement-on-protection-of-civilians.html). (also repeated verbatim in subsequent speeches, as recently as May 2011.)

²¹ Human Rights Watch, *Uncovering Sri Lanka’s War Crimes*, 21 January 2010 (www.hrw.org/en/news/2010/01/22/uncovering-sri-lankas-war-crimes); see also International Crisis Group, *War Crimes in Sri Lanka*, 17 May 2010, p. 9 (citing the 18 May 2009 statement by the Minister for Disaster Management and Human Rights that “all Tamil civilians have been rescued without shedding a drop of blood.”)

same as adherence to them.²² In 2009, the International Crisis Group stated: “The UN’s ‘Guiding Principles on Internal Displacement,’ while formally accepted by the government, are being ignored.”²³

Further, while such high-level statements do serve to raise awareness, government engagement is often framed in terms of providing for the material needs of IDPs and facilitating their swift return at the expense of taking the rights-based approach embodied by the Guiding Principles.²⁴ The government thus presumes that IDPs’ vulnerabilities result directly from their displacement, rather than from the complex mix of factors—many of which, in Sri Lanka as elsewhere, are linked to government and military activities—that in fact cause displacement and contribute to IDPs’ insecurity.

The national media, which are largely state controlled or state influenced, regularly address internal displacement.²⁵ However, it has proven difficult since April 2008 for international media to cover displacement as the government has often denied journalists access to the North.²⁶ During the assault on Northern Province,

the government “attempted to suppress independent (and as it turned out more accurate) reporting on the scale of the catastrophe and restricted access by national and international journalists to the conflict zone,” according to Amnesty International.²⁷ Sri Lanka ranks 158 among the 178 countries in the latest Press Freedom Index, which is issued by Reporters Without Borders.²⁸

3. Collect Data on the Number and Conditions of IDPs

Do the national authorities collect data on the number and conditions of IDPs?

The national authorities collect data on the number and, to a lesser extent, on the conditions of IDPs. However, data collection is neither systematic nor uniform. While the central government claims to aggregate data regularly, the most timely and accurate data are available from international actors, who work with local officials to regularly compile nationwide statistics. The government has been accused of misrepresenting actual conditions by using incorrect terminology that suggests IDPs in transit and those living with host families have achieved a durable solution to their displacement.

In Sri Lanka, enumeration of IDPs is tied to registration, and the government generally registers the conflict-induced “new” IDP caseload. The Government Agent (GA), the official appointed by the government as the administrative representative and head of public services, is responsible for IDP registration at the district level. Newly arriving IDPs typically register with the GA, Divisional Secretary (administrator of a sub-division within a district) or camp official soon after arrival, as registration is required to receive material assistance.

²² This study does not purport to broadly assess the credibility of public statements issued by the government of Sri Lanka or its officials. It does, however, discuss several instances in which the government deliberately implemented policies in violation of the Guiding Principles on Internal Displacement.

²³ International Crisis Group, *Development Assistance and Conflict in Sri Lanka: Lessons from the Eastern Province*, 16 April 2009, p. 26 (www.crisisgroup.org).

²⁴ For more on the government’s desire to swiftly return IDPs, see Benchmark 3, below.

²⁵ For a brief overview of media in Sri Lanka, see BBC News, “Sri Lanka Profile: Media,” 21 January 2011 (www.bbc.co.uk/news/world-south-asia-12000330).

²⁶ Reporters Without Borders for Press Freedom, *World Report: Sri Lanka*, March 2010 (<http://en.rsf.org/report-sri-lanka,79.html>); see also *Report of the Secretary General’s Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, p. 113, which discusses media restrictions more generally as well as the assassination, disappearance, conviction and sentencing of Sri Lankan journalists in 2009 and 2010 and notes “press freedom was circumscribed during the conflict, especially in the latter stages.”

²⁷ Amnesty International, *Sri Lanka: Unlock the Camps in Sri Lanka: Safety and Dignity for the Displaced Now—A Briefing Paper*, ASA 37/016/2009, August 2009, pp. 10–11 (www.amnesty.org).

²⁸ Reporters Without Borders for Press Freedom, *Press Freedom Index 2010*, October 2010 (<http://en.rsf.org/press-freedom-index-2010,1034.html>).

With some exceptions, IDPs are registered whether they are living in camps, with host families or in emergency transit sites; this is considered to result in the relatively efficient and accurate district-wide enumeration of IDPs (at least vis-à-vis the “new” IDP caseload).

The most reliable and timely overall numerical data concerning internal displacement therefore exist first with government officials on the district level. The central government does not appear to aggregate this data in any timely, systematic way. The district-level numerical data are instead collected from GAs by humanitarian actors—typically UNHCR—then aggregated and published in the UN-OCHA Joint Humanitarian Update (JHU) on a regular basis.²⁹ One offshoot of this process is that humanitarian actors often encourage local authorities, with whom many enjoy a good relationship, to update figures.

In this respect, the government has made some progress in understanding the scope of displacement through data, although it appears to be as much incidental as intentional. In 2007, following a mission to Sri Lanka, RSG Kälin noted:

Presently there is no comprehensive, uniform system of registration, resulting in a number of difficulties, since registration is used to establish entitlement to government assistance. Varying standards are applied for registration and deregistration. IDPs staying with friends or families, as well as those originating from areas approved for return, are not registered. In accordance with the principle of non-discrimination, where aid eligibility is dependent upon registration status, all IDPs meeting the factual description in the *Guiding Principles* should be eligible for registration, regardless of date or place of displacement or place of accommodation. . . . Finally, procedures should

²⁹ UNHCR collects and updates figures on a biweekly basis. The JHU is published monthly before June 2010, the updates were twice monthly.

be simplified and information centralized such that IDPs can move freely and not risk losing their assistance.³⁰

By 2009, local officials and international agencies had a much better grasp of the number of IDPs living with host families. That resulted partially from the fact that “new” IDPs who had deregistered and departed the camps for host families were required to register again with local officials in order to receive food rations.³¹ (“Old” IDPs living with host families, displaced from Eastern Province during the 2007 mission of the RSG, did not systematically receive food rations.) Otherwise, the government has failed to implement most of the recommendations Kälin made following his mission.

Some commentators have further alleged that IDP statistical data have been manipulated for political purposes. The terms “return” and “resettlement” are used interchangeably by government officials to refer to release from closed camps.³² The Guiding Principles, however, distinguish between them: Principle 28 provides for

³⁰ UN Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Mission to Sri Lanka*; see also Brookings-Bern Project on Internal Displacement, *Protection of Internally Displaced Persons in Situations of Natural Disaster: A Working Visit to Asia by the Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons Walter Kälin, 27 February to 5 March 2005*, April 2005, in which Kälin praises the government for its stated willingness to create a comprehensive registration system for all tsunami-displaced persons (www.brookings.edu/projects/idp/rsg_info.aspx#Kalin).

³¹ According to several sources, not all IDPs with hosts were receiving food rations as of mid-2010, including over 25,000 individuals living with hosts in Vavuniya and Mannar districts—most of whom were released from Menik Farm under a special program for people with specific needs (elderly, pregnant, or disabled individuals or those with infants).

³² Centre for Policy Alternatives, *Commentary on Returns, Resettlement and Land Issues in the North*, 14 May 2011, p. 5 (www.cpalanka.org).

IDPs “to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.” The government’s conflation of the two durable solutions “has resulted in a situation where upon returning to the district of origin subsequent to release from camps, regardless of whether a person has returned to one’s own home and land, there is an assumption that return is complete.”³³

National commentators further observe,

The rush to return IDPs and reduce IDP figures is a political one. By reducing displacement, the government is able to demonstrate that there is a transition from humanitarian assistance to early recovery and development. The fewer IDPs in camps and the ability to state that significant numbers have returned is used as a tool by the government to demonstrate success since the war ended.³⁴

On 7 July 2010, at the UN Security Council Debate on the Protection of Armed Civilians, the permanent representative of Sri Lanka to the UN stated, “In my country, we have resettled nearly 90% of the [“new”] IDPs within one year of concluding a 27-year-long conflict.”³⁵ At the same time, statistics compiled by the UN from government data showed that 292,081 individuals (“new” IDPs) had been “released or returned,” while 34,946 individuals remained in camps. But according to the same data set, only 216,262 IDPs had returned

to their place of origin, while 71,264 were living with host families, 3,288 were accommodated in temporary transit facilities and 1,267 were in institutions.³⁶ The government’s use of the blanket term “resettle” to encompass both release from camps and return to place of origin conceals—intentionally or not—that 75,819 individuals had been released from camps and were still unable to return to their place of origin.

This is not merely an issue of semantics. The permanent representative’s quote, given at greater length, is illustrative:

The Resettlement issue is also politicized. In my country, we have resettled nearly 90% of the IDPs within one year of concluding a 27-year-long conflict. Resettlement necessitated clearance of uncharted mine fields laid by the terrorist group in civilian residential areas, farmlands and roads. Whilst assistance for de-mining and resettlement is miniscule, there are those who hypocritically preach to us about the need for early resettlement.³⁷

Landmines and unexploded ordnance riddle residential and agricultural land in the Northern Province and are among the most serious threats to human security there (see Benchmark 10, below). If accurate data are crucial to programming, as recognized by the RSG during his mission to Sri Lanka in 2007, and if assistance for de-mining and other programs is lacking, the motivation for continued misrepresentation of statistical data on the part of the government remains unclear.

Data regarding such characteristics as gender, age, family size and household composition are generally

³³ Ibid.

³⁴ Ibid., p. 25.

³⁵ Permanent Representative of Sri Lanka to the UN, “Protection of Civilians,” Security Council Open Debate on Protection of Civilians in Armed Conflict – 7th July 2010, Statement by the delegation of Sri Lanka (www.slmission.com/news/news-from-other-sources/17-other-news/462-protection-of-civilians.html?tmpl=component&print=1&page). That statement was repeated verbatim two days later in the second line of a in a major government-controlled newspaper, *Daily News*, in an article entitled “Rule of Law: Terrorists Pay Scant Attention” (www.dailynews.lk/2010/07/09/sec01.asp).

³⁶ UN Office for the Coordination of Humanitarian Affairs, *Sri Lanka, Joint Humanitarian Update*, August 2010 (www.humanitarianinfo.org/srilanka_hpsl/Catalogues.aspx?catID=74).

³⁷ Permanent Representative of Sri Lanka to the UN, “Protection of Civilians,” Security Council Open Debate on Protection of Civilians in Armed Conflict – 7th July 2010, Statement by the delegation of Sri Lanka.

collected by local government officials during registration but are typically neither aggregated by authorities at the local level nor regularly compiled at the national level by international agencies.

Similarly, data for events for which the displaced need certification, such as deaths and births, for national identity cards, and for lost land titles and missing family members are not systematically collected, and the scope of the need for documentation can only be extrapolated from samples.³⁸ A serious impediment to quantifying the need is its political character. For example, death certification is required for family members to inherit the property and assets of the deceased, to claim pensions and compensation and to legally remarry. But the government publicly acknowledging the number of death certificates needed among the “new” IDPs would be tantamount to enumerating the number of casualties resulting from its assault on the Northern Province—which it is loath to do for political reasons. Rather than encourage the government to quantify the need, international agencies have instead urged it to streamline the process for issuing documentation.³⁹

4. Support Training on the Rights of IDPs

Has there been any training of the authorities on the rights of IDPs?

Regional and to a lesser extent national government

officials have participated in numerous training sessions in recent years on both the rights of IDPs and other issues related to internal displacement. However, the number, duration and frequency of those sessions are very difficult to measure on a national level. There is little systematic, accurate reporting on training and its modalities and no centralized reporting mechanism. Quantitative reports on training in the Sri Lankan setting should be taken in this light.

The government generally permits training of its personnel—most notably, the police and military—by national and international humanitarian organizations. Much of the Northern Province, where displacement is most extensive, was formerly governed and administered by the LTTE; in the conflict and post-conflict period, it has been, in effect, under the administration of the military. Only recently have many areas in the North transitioned to civil administration. The primary obstacle to training government officials during this time has been the lack of consistent humanitarian access (See Benchmark 12, below). However, a significant number of small-scale training sessions have been conducted throughout the country since 2002.

Sri Lankan NGOs, such as the Consortium of Humanitarian Agencies in Sri Lanka (CHA), have conducted workshops with financial support from international actors. For example, in 2002 the CHA, with financial support from the Brookings-Bern Project on Internal Displacement, conducted a series of training and assessment workshops in Trincomalee, Vavuniya, Mullaitivu, Kilinochchi, Jaffna, Mannar, Batticaloa and Ampara.

The Human Rights Commission of Sri Lanka (HRC), established initially as an independent body to protect and promote human rights, holds ongoing training for government authorities on the rights of IDPs. Since its creation in 2002, HRC’s National Protection and Durable Solutions for Internally Displaced Persons Project (NPDS for IDPs Project) has conducted training programs for the protection and promotion of IDP rights. Training is carried out for government officials,

³⁸ One humanitarian worker stated that only 10 percent of respondents in a small survey of displaced families who had lost family members reported success in acquiring a death certificate. Author interview, early 2011.

³⁹ See also the *Report of the Secretary General’s Panel of Experts on Accountability in Sri Lanka*, 31 March 2011, pp. 108–10, which describes as “slow and cumbersome” the process for obtaining death certification despite the government’s December 2010 passage of a temporary provision establishing new definitions and procedures (www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf).

government security forces (army, navy, air force and police), NGOs, IDPs and host communities, HRC protection staff and private sector actors. In 2008, the NPDS for IDPs Project reported that it trained 4,936 people in 200 sessions using the Rights-Based Disaster Response training program, which focuses on the rights and protection of conflict- and disaster-induced IDPs in all stages of displacement. The NPDS for IDPs Project includes reports of its training sessions in monthly and annual reports.⁴⁰ HRC continued to conduct training throughout the country in 2009 and 2010.⁴¹

While the HRC has been the primary trainer on the rights of IDPs in Sri Lanka, the government has permitted other training initiatives, generally targeting the North, that have benefited IDPs.⁴² Foreign government agencies such as USAID have sponsored training on human rights and the Tamil language for local government and security officials.⁴³ UNHCR, UNICEF and local government officials (women and children's desk officers, judicial medical officers and mental health officers) provided a substantial number of capacity-building training sessions throughout the North to enable local officials to address sexual and gender-based violence (SGBV).⁴⁴ Government SGBV counselors and members of the military and the police often attended the sessions.

⁴⁰ Available on the NPDS for IDPs Project website (www.idpsrilanka.lk).

⁴¹ However, see Benchmark 8, below, on government actions to incapacitate HRC during these years.

⁴² In an effort to refrain from favoring specific groups, most post-conflict humanitarian assistance programming in the North has targeted specific geographic areas, as opposed to specific groups.

⁴³ International Crisis Group, *Development Assistance and Conflict in Sri Lanka: Lessons from the Eastern Province*, p. 3 in footnotes, 16 April 2009 (www.crisisgroup.org).

⁴⁴ "Sexual and Gender-Based Violence: A Summary of UNHCR Activities in Sri Lanka" (UNHCR, March 2010).

5. Ensure a Legal Framework for Upholding IDPs' Rights

Does national legislation address the specific needs arising in situations of internal displacement and support IDPs to realize their rights?

There is no national law in Sri Lanka directly addressing internal displacement; consequently, IDPs have no special legal status.⁴⁵ A draft bill on the protection of internally displaced persons was developed but had yet to be passed at the time of writing. The internment of civilians in the final stages of the conflict violated several provisions of national law enshrined in the Sri Lankan constitution.⁴⁶ The government justified the violations, as well as many other instances of arrest without due process and indefinite detention, by appealing to a set of temporary legal measures known collectively as the Emergency Regulations, which have drawn fierce criticism from the international community.

A draft bill on protection of internally displaced persons was submitted to the Ministry of Disaster Management and Human Rights in August of 2008 by the Human Rights Commission's National Protection and Durable Solutions for Internally Displaced Persons Project. It covers all phases of displacement due to conflict, disasters and development. There are specific provisions in the draft legislation to protect extremely vulnerable groups among the displaced, such as children and persons with disabilities. It would establish an Internally Displaced Persons Authority as the lead agency for issues related to displacement and designate other responsible institutions.⁴⁷

⁴⁵ UN Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin— Addendum: Mission to Sri Lanka, 14 to 21 December 2007*, A/HRC/8/6/Add.4, 21 May 2008, para. 19, p. 9 (http://ap.ohchr.org/documents/dpage_e.aspx?m=71).

⁴⁶ The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978.

⁴⁷ Draft Bill of Protection of Internally Displaced Persons

According to one national observer in 2009, “there appears to be no urgency on the part of the government to consider this bill as it has made no public comment on it nor listed it on the Order Paper of Parliament for debate.”⁴⁸ As of July 2011, the bill had not been introduced in Parliament and its status was unclear.

Several provisions of existing national law relate to IDPs, although they have not always proven successful in guaranteeing protection.⁴⁹ Many provisions were violated during the final stages of the conflict and in the period immediately following the conflict. The internment of IDPs at Menik Farm and other sites violated

several articles of the Sri Lankan constitution, and the following list is not exhaustive:

—Article 12(1). *Equal protection*: Inhabitants of closed camps were unable to access legal services or various structures established by law to provide remedies to those whose rights had been violated, such as the Human Rights Commission. Interned families of persons detained by security forces had no means of arranging legal assistance for the detained or determining their whereabouts.

—Article 14(1)(h). *Freedom of movement*: Camp inhabitants were prohibited from venturing out of the camps and accessing public spaces.

—Article 13(1). *Due process* (including the provision “Any person arrested shall be informed of the reason for his arrest”): Persons crossing into government-controlled areas at Omanthai checkpoint in Vavuniya district and persons residing within the camps were often separated from their families and detained without notification of family members by authorities.

The government’s legal basis for its actions during this period was a set of laws known collectively as the Emergency Regulations. Described by the International Commission of Jurists (ICJ) as “far-reaching,” “draconian” and “open to arbitrary use and abuse,” the most recent set of Emergency Regulations was passed after the assassination of Sri Lanka’s foreign minister in 2005.⁵⁰ Along with the similarly troublesome Prevention of Terrorism Act, the laws provide the government broad powers of arrest and detention, including the authority to detain persons indefinitely and without charge.⁵¹

(www.idpsrilanka.lk/html/SpecialProgrammes/IDP%20Bill/2008%20Aug%2008%20-%20Draft%20IDP%20Bill.pdf).

⁴⁸ B. Skanthakumar, “Window-Dressing? The National Human Rights Commission of Sri Lanka,” *Law and Society Trust Review*, no. 262, August 2009 (www.lawandsocietytrust.org/web/images/PDF/NHRC%20Report%202009.pdf).

⁴⁹ Including fundamental and language rights in the Constitution (1978); Act on the Rehabilitation of Persons, Properties, and Industries (1987); National Child Protection Authority Act (1988); Welfare Benefits Act (2002); Mediation (Special Categories of Disputes) Act (2003); Sri Lanka Disaster Management Act (2005); Tsunami (Special Provision) Act (2005); Registration of Deaths (Temporary Provision) Act (2005); Geneva Conventions Act (2006); and Resettlement Authority Act (2007). For full text of these laws, see Human Rights Commission of Sri Lanka, National Protection & Durable Solutions for Internally Displaced Persons Project, “IDP Related Domestic Laws,” (www.idpsrilanka.lk/html/IDP%20Related%20Norms%20and%20Laws/IDP%20Related%20Domestic%20Laws.html). These laws include overall provision of rights common in situations of displacement and have not been revised to include specific language on displacement, with the exception of the Resettlement Authority Act, which created the Resettlement Authority to develop a national policy on internal displacement. Much of this legislation, however, was temporary in nature. National and international actors have, for example, urged the government to pass a provision on registration of deaths similar to the legislation passed shortly after the tsunami.

⁵⁰ International Commission of Jurists, *Briefing Paper: Sri Lanka’s Emergency Laws* (www.icj.org).

⁵¹ BBC, “Sri Lanka Government Relaxes War-Time Emergency Laws,” 5 May 2010 (<http://news.bbc.co.uk/2/hi/8661394.stm>).

While the laws were enacted in response to legitimate security concerns during times of serious political violence—and while some have been partially relaxed in the post-conflict period—according to the ICJ,

A wide variety of human rights organizations, including UN bodies, international non-governmental organizations and national groups, have criticized these laws for violating fundamental rights, enabling state repression of legitimate political activity and exacerbating conflicts.⁵²

6. Develop a National Policy on Internal Displacement

Has the national government adopted a policy or plan of action to address internal displacement?

Sri Lankan law provides for the formulation of a national policy for IDPs and refugees; however, there was no national policy to address internal displacement at the time of writing.

In 1999, the government initiated a process to address the challenges of ensuring effective programming for the conflict-affected population. In June 2002, after extensive consultations with multiple stakeholders, including IDPs, the government adopted the National Framework for Relief, Rehabilitation, and Reconciliation. The Framework establishes a set of policies and strategies related to human rights, specific rights of the displaced, relief and reconciliation/peace-building, to be followed up by relevant actors. Policy recommendations include adopting the Guiding Principles as official policy for assisting IDPs affected by conflict; regular surveys and assessments with a view to accelerating and expanding opportunities for return, resettlement and reintegration; and establishment of an independent humanitarian ombudsman system.⁵³

⁵² International Commission of Jurists, *Briefing Paper: Sri Lanka's Emergency Laws*.

⁵³ Government of Sri Lanka, *National Framework for Relief,*

After the adoption of the Framework, the government passed the Resettlement Authority Act (2007). The act established the Resettlement Authority, whose mandate is to formulate a “national policy and to plan, implement, monitor, and co-ordinate the resettlement of the internally displaced and refugees.”⁵⁴ As of July 2011, there was no such national policy.⁵⁵

7. Designate an Institutional Focal Point

Has the government designated a national focal point on IDPs?

There is no permanent designated focal point on IDPs in Sri Lanka. Instead, IDP issues have been addressed by both a variety of different line ministries and ad-hoc entities set up under presidential directives.

The presidential cabinet currently comprises nine senior ministers and forty-nine cabinet ministers, many of whom were newly appointed after a parliamentary election and cabinet restructuring in 2010.⁵⁶ Since the restructuring, a large number of ministries have been involved in addressing issues associated with internal displacement, as they were before. Prior to 2010, the primary ministries involved in IDP response were the Ministry of Resettlement and Disaster Relief Services

Rehabilitation, and Reconciliation, June 2002, available at Brookings-LSE Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Sri Lanka” (www.brookings.edu/projects/idp/Laws-and-Policies/sri_lanka.aspx).

⁵⁴ See Benchmark 3, above, for a discussion of the meaning if the term “resettlement” in the Sri Lanka context. Government of Sri Lanka, *Resettlement Authority Act, No. 9 of 2007*, available at Brookings-LSE Project on Internal Displacement, “National and Regional Laws and Policies on Internal Displacement: Sri Lanka.”

⁵⁵ Government of Sri Lanka, Ministry of Resettlement and Disaster Relief Services, “Resettlement Authority” (www.resettlementmin.gov.lk/resettlement-authority.html).

⁵⁶ ColomboPage (www.colombopage.com/archive_10C/Nov22_1290415176CH.php).

(responsible for camp administration and the provision of essential services; renamed in 2010 as the Ministry of Resettlement); the Ministry of Disaster Management and Human Rights (responsible for coordination between government actors as well as with international actors; renamed in 2010 as the Ministry of Disaster Management); and the Ministry of Nation Building and Development and Estate Infrastructure (responsible for registration of IDPs and food distribution; renamed in 2010 as the Ministry of Economic Development).⁵⁷

UNHCR's implementing partners as of December 2010 were the Ministry of Resettlement; the Ministry of Economic Development; and the Ministry of Finance and Planning. It listed as its operational partners the Presidential Task Force for Resettlement, Development and Security in the Northern Province (PTF); the Ministry of Child Development and Women's Affairs; the Ministry of Disaster Management; the Ministry of External Affairs; the Ministry of Justice; the Ministry of Public Administration and Home Affairs; the Ministry of Rehabilitation and Prison Reforms; and the Ministry of Social Services.⁵⁸

The current primary coordinating mechanism for all government and international assistance to IDPs, the PTF, was set up in May 2009. The PTF comprises some twenty ministerial and military officials and is chaired by Basil Rajapaksa, a member of Parliament and brother of the president. Its responsibilities include preparing "strategic plans, programs and projects to resettle IDPs [and] rehabilitate and develop economic and social infrastructure of the Northern Province."⁵⁹ Its main role

is "to coordinate activities of the security agencies of the government to support resettlement, rehabilitation and development and to liaise with all organizations in the public and private sectors and civil society organizations for the proper implementation of programs and projects."⁶⁰ The PTF is involved in and must approve all humanitarian and reconstruction efforts in the North (see Benchmark 12, below). It is a temporary entity; its mandate must be renewed every year.

8. Support NHRIs to Integrate Internal Displacement into their Work

Is there a National Human Rights Institution (NHRI) which gives attention to the issue of internal displacement?

The Human Rights Commission of Sri Lanka addresses internal displacement in its programming. However, the institution has been generally ineffectual for several years, leading to its downgrading by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. While it has proven effective in rights promotion activities such as conducting awareness training and counseling, it has not exhibited sufficient independence from the executive branch of the government, nor has it shown the capacity to fulfill its core mandate of preventing, investigating and assisting in the prosecution of human rights abuses.

The HRC was established in 1996 pursuant to the Human Rights Commission Act No. 21 and was subsequently constitutionalized in the 17th Amendment (3 October 2001). In June 2002, the HRC launched the National Protection and Durable Solutions for Internally Displaced Persons Project to "protect and promote [the] rights [of] persons under threat of displacement, internally displaced, and returned."⁶¹

⁵⁷ UN Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin—Addendum: Mission to Sri Lanka*, A/HRC/8/6/Add.4, 21 May 2008, para. 20, p. 9 (www.brookings.edu/projects/idp/rsg_info.aspx).

⁵⁸ UNHCR, "Sri Lanka" in *UNHCR Global Appeal 2011(Update)*, 1 December 2010 (www.unhcr.org/4cd96f2a9.html).

⁵⁹ Government of Sri Lanka, "President Appoints New Task Force to Rebuild North," 14 May 2009 (<http://reliefweb.int/node/308858>).

⁶⁰ Ibid.

⁶¹ Human Rights Commission of Sri Lanka, "Establishment"

The NPDS for IDPs Project has five broad thematic areas: protection monitoring, coordination, training, advocacy and studies. Specific activities include investigating complaints; conducting monitoring visits; conducting training programs for members of the military, NGOs/community-based organizations, IDPs and host communities and government officials; working with the Department of the Registrar General to issue documents to IDPs; and publishing handbooks, studies and advocacy materials on the rights of IDPs.⁶²

In 2006, the NPDS for IDPs Project began drafting the Bill to Protect the Rights of the Internally Displaced Persons, and in August 2008, the draft was submitted to Parliament by the Ministry of Disaster Management and Human Rights (see Benchmark 5, above).⁶³

While the HRC originally aimed to comply with the Paris Principles,⁶⁴ it has come under fire in recent years for its perceived ineffectiveness and lack of independence from the executive branch. In June 2006—less than one year after the current president, Mahinda Rajapaksa, assumed office and only one month after he directly appointed five new commissioners, in violation of the Sri Lankan constitution—the HRC stopped investigating disappearances, a phenomenon that most observers in Sri Lanka have attributed to government intelligence and security services. Despite receiving at least 2,000 reports of disappearances, the HRC stated that it would discontinue investigations “for the time

being, unless special directions are received from the government.”⁶⁵

As a result of that and other apparent failures to meet international standards for independence and effectiveness, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights downgraded the HRC to Grade B—the status of “observer”—in late 2007. From early 2008 onward, the HRC proved generally ineffective in fulfilling its core mandate of preventing human rights abuses and bringing cases for prosecution.⁶⁶ During the final stages of the war, authorities did not give notice to HRC of persons detained at Omanthai checkpoint or arrested at camps, which is a requirement even under the Emergency Regulations.⁶⁷ HRC was not allowed access to multiple places of detention, and families in Menik Farm and other closed camps could not contact HRC for a substantial period of time.⁶⁸ HRC did receive reports of disappearance, illegal arrest and detention, torture and harassment during this time, although the extent to which it acted on the reports is unclear and many of the cases are still unresolved.

Still, the NPDS for IDPs Project continued to carry out activities during this period with financial support from international agencies. Through its Human Rights

(http://hrcls.lk/english/?page_id=615). Human Rights Commission of Sri Lanka, NPDS for IDPs Project, “About Us,” (www.idpsrilanka.lk/html/npdsproject.php).

⁶² Human Rights Commission of Sri Lanka, NPDS for IDPs Project, *Monthly Report*, November 2009 (www.idpsrilanka.lk/html/npdsproject.php).

⁶³ Human Rights Commission of Sri Lanka, NPDS for IDPs Project, *Annual Report 2008* (www.idpsrilanka.lk/html/npdsproject.php). NPDS for IDPs Project, *Protection of Internally Displaced Persons Bill* (www.idpsrilanka.lk/html/SpecialProgrammes/IDP-Bills.htm).

⁶⁴ “UNDP Sri Lanka” (www.undp.lk/SubNew_Initiatives/Pages/Detail.aspx?itemid=12).

⁶⁵ Human Rights Watch, “Sri Lanka: Human Rights Commission Downgraded,” 18 December 2007 (www.hrw.org/en/news/2007/12/17sri-lanka-human-rights-commission-downgraded).

⁶⁶ Ibid.

⁶⁷ Regulation 20(9).

⁶⁸ See Human Rights Watch, *Legal Limbo: The Uncertain Fate of Detained LTTE Suspects in Sri Lanka*, 02 Feb 2010, p. 11 (www.hrw.org): “Security forces carrying out the arrests at Menik Farm and other camps often refuse to inform the families or government representatives (*grama sevakas*) in the camps where they take those arrested. Even the Human Rights Commission of Sri Lanka, which needs to be informed about an arrest according to the Presidential Directives on Arrest and Detention, has not been informed in the cases documented by Human Rights Watch. The families, particularly those held in the camps, have no ability to search for their missing relatives.”

Defenders program, HRC trained many groups, including especially villages with high IDP concentrations, in basic human rights principles. It conducted training on voting rights for IDPs and returnees and on child protection for government and non-government national child protection actors. Through its mobile legal clinics, it encouraged local officials to meet with IDPs and returnees to offer legal counseling and provide referrals to NGOs dealing specifically with legal, land and documentation issues.

Recently, following the direct appointment by President Rajapaksa of five new commissioners to the HRC, prominent domestic groups have spoken out against both the process by which the appointments were made and the suitability of some appointees to serve on the commission.⁶⁹ In particular, it was noted that the abolition of the Constitutional Council—a result of the passage the 18th Amendment to the Constitution,⁷⁰ widely considered to unduly consolidate power in the presidency—allows for direct, unchecked appointments to the HRC by the president. Also noted was the perceived unsuitability of the appointees, among them a former government analyst and a former inspector general of police.⁷¹

In summary, while the NPDS for IDPs Project has the ability to undertake much IDP-related programming with the support of international donors, it currently lacks the institutional capacity to seriously and effectively function as a guarantor of rights under Sri Lankan law. Until the HRC itself undergoes genuine reform vis-à-vis its relationship with the Office of the President, the work of the NPDS for IDPs Project will be limited to the promotion of rights.

⁶⁹ Jayantha Dhanapala, “Human Rights Commission of Sri Lanka,” *Sri Lanka Guardian*, 27 March 2011 (www.srilankaguardian.org/2011/03/human-rights-commission-of-sri-lanka.html).

⁷⁰ The Constitution of the Democratic Socialist Republic of Sri Lanka, 1978.

⁷¹ Dhanapala, “Human Rights Commission of Sri Lanka,” *Sri Lanka Guardian*.

9. Facilitate IDPs’ Participation in Decisionmaking

(a) Do the national authorities encourage and facilitate the ongoing participation of IDPs in the planning and implementation of policies and programs for addressing internal displacement?

National authorities have sought to enable the participation of IDPs to some degree in the planning and implementation of policies and programs that affect them, with limitations reported in terms of women’s participation in decisionmaking and consultation of women in camps. In addition, the government did not give adequate information or notice about options, conditions and modalities related to return movements that the government organized following the end of the conflict.

During the consultation process to develop the National Framework on Relief, Rehabilitation, and Reconciliation, “conflict-affected populations were given the space to discuss their grievances pertaining to their districts, the existing impasse in humanitarian relief, and the weaknesses of past rehabilitation projects.”⁷² That occurred at the district level in thematic workshops organized by the Consortium of Humanitarian Agencies, which then presented the findings to the government steering committee drafting the Framework.⁷³

In 2004, the NPDS for IDPs Project initiated the concept of “human rights animators,” IDPs chosen to represent the IDP population before government and NGO bodies. In 2008, the NPDS for IDPs Project developed the concept further by establishing a Human Rights Defenders Program, which was formulated to

⁷² Andres Angel, *National Legal Framework for IDPs in Sri Lanka: A Critical Analysis* (New Delhi: Institute of Peace and Conflict Studies, September 2008) (www.ipcs.org/pdf_file/issue/1905030534RP17-Andre-SriLanka.pdf).

⁷³ Ibid.

create a group of people who can identify the numerous problems of the people whom they represent and to coordinate with the responsible parties either governmental or non-governmental in order to search for solutions to the problems they identified and to ensure life with dignity for IDPs and for the host communities.

Since 2008, the project has trained over 1,700 human rights defenders in the Puttalam, Jaffna, Trincomalee, Vavuniya, Anuradhapura and Batticaloa districts.⁷⁴ However, the program must be viewed against the backdrop of almost total impunity for serious human rights violations in Sri Lanka.

A 2007 fact-finding mission report found that

in camp situations the men were better positioned to negotiate with authorities and were more likely to be consulted in decision making or asked to assist with camp matters. There was no definitive mechanism in place to ensure that women were also part of decision making processes in relation to camp administration and in relation to decisions with regard to the well-being of the displaced.⁷⁵

Further, following the end of the conflict, IDPs in camps frequently voiced concern about a lack of information sharing by the government. Information about conditions in IDPs' places of origin was not systematically shared, nor was information about planned returns. While some IDPs were allowed to undertake "go-and-see" visits, that was by no means the case for all groups. The return process was government-driven, and while most returns were deemed by observers to be voluntary

in nature, the government did not sufficiently take into account IDPs' preferences regarding the modality or timing of returns.⁷⁶

In general, returns took place through government-organized convoys. The convoys were scheduled almost immediately after residential areas had been "released for return."⁷⁷ Despite calls by the international community and IDPs themselves, the government did not give adequate notice of impending releases. During 2009 and early 2010, notice was given to IDPs an average of one to three days in advance. Later—following repeated requests for better forewarning—the average notice increased to about one week. After the introduction of the pass system in December 2009 (permitting temporary movement in and out of camps), the short advance notice served as a de facto limit on how long an IDP could stay outside the camp for fear of missing a return convoy.

(b) Are IDPs able to exercise their right to political participation, in particular the right to vote, without undue difficulties related to their displacement?

By law, IDPs registered to vote before displacement can vote in the district where they are registered.⁷⁸ They can return to their district to vote or apply to vote as a displaced voter to the Department of Elections, which requires the submission of several documents. If the application is approved, IDPs can cast their ballots at poll-

⁷⁴ Human Rights Commission of Sri Lanka, NPDS for IDPs Project, "Human Rights Defenders Programme" (www.idpsrilanka.lk/html/SpecialProgrammes/HRDProgramme.html).

⁷⁵ South Asians for Human Rights (SAHR), *Report on the Fact Finding Mission to the North and East of Sri Lanka to Assess the State of Displaced Persons*, 8 August 2007 (www.internal-displacement.org).

⁷⁶ Internal Displacement Monitoring Center, *Sri Lanka: IDPs and Returnees Remain in Need of Protection and Assistance*, 14 January 2011, p. 39 (www.internal-displacement.org).

⁷⁷ The term "released for return" does not necessarily connote mine clearance had taken place in the residential areas. Some areas were released for return after completion of a nontechnical survey for the presence of mines. Agricultural areas surrounding the residential areas were not assessed as part of this process (see Benchmark 10, below).

⁷⁸ Human Rights Commission of Sri Lanka, NPDS for IDPs Project, "Voting Rights" (www.idpsrilanka.lk/html/SpecialProgrammes/VotingRights.html).

ing stations in the district within which they currently reside (IDP camps are included).⁷⁹ However, serious difficulties, illustrated below, have appeared in practice.

For the 2000 parliamentary elections, 216 “cluster polling stations” were set up in “cleared areas” to accommodate the 250,000 eligible voters residing in “uncleared areas” (not under government control). However, movement in and out of the “uncleared areas” was canceled on election day, preventing IDPs from reaching polling stations to vote.⁸⁰ A number of obstacles prevented IDPs from realizing their right to vote in the 2004 parliamentary elections and the 2005 presidential elections, including difficulties securing documentation and lack of access to polling centers in LTTE-controlled areas.⁸¹ Nonetheless, the International Organization for Migration (IOM) observed in 2006 that in light of the “impressive” mechanisms developed for IDPs voting in the 2004 and 2005 elections, “with the exception of some important technical flaws and localized problems of inadequate implementation, the legal framework governing IDP voting could serve as an example of best practices for other countries with substantial numbers of IDPs.”⁸²

In the January 2010 presidential elections, only 25,541 of 45,542 displaced voters in the North took part.⁸³ Lack of identity documentation and transportation to polling stations impeded full electoral participation. IDPs without identity documents recognized by the election commissioner were issued temporary camp cards to be

used as identity documents allowing them to cast their votes.⁸⁴ However, the election commissioner did not announce that he would accept the temporary cards as a valid document until the day of polling. While the district of Vavuniya made arrangements to transport IDP voters from camps to polling centers within their district and to the districts of Kilinochchi and Mullaitivu for the presidential elections, many IDPs were unable to vote due to delays and other shortcomings in transportation.⁸⁵

In March 2010, the Colombo-based Center for Policy Alternatives (CPA) filed a “fundamental rights application” before the Supreme Court, alleging that authorities failed to ensure that IDPs living in the Northern and Eastern Provinces could exercise their right to vote. CPA requested the Court to direct the Commissioner of Elections to develop IDP-specific guidelines on voting rights for the April 2010 parliamentary elections and other elections to be held in the Northern and Eastern provinces to ensure that those allowed to vote were able to do so.⁸⁶ On 13 March 2010, the Supreme Court directed the Commissioner of Elections to recognize the temporary camp cards in the parliamentary elections in April 2010.⁸⁷ Nonetheless, the executive director of the Sri Lanka-based Campaign for Free and Fair Elections said that in the elections, “Many IDPs still in camps in the North were told they did not have the right documentation for voting. Moreover, election officials were

⁷⁹ IOM, *Sri Lanka: The Voting Rights of Internally Displaced Persons, Refugees and Economic Migrants*, April 2006 (www.geneseo.edu/%7Eiompress/Archive/Outputs/Sri_Lanka_Final.pdf).

⁸⁰ IDMC, *Profile of Internal Displacement: Sri Lanka*, June 2001 (www.internal-displacement.org).

⁸¹ IOM, *Sri Lanka: The Voting Rights of Internally Displaced Persons*.

⁸² *Ibid.*, p. 4.

⁸³ Campaign for Free and Fair Elections (CaFFE), “About 700,000 Did Not Vote in North,” 1 February 2010 (www.caffesrilanka.org/About_700,000_did_not_vote_in_North-5-1743.html).

⁸⁴ CaFFE, “Special Identity Cards: Charles Accuses Elections Commissioner,” 1 February 2010 (www.caffesrilanka.org/Special_Identity_Cards_Charles_accuses_Elections_Commissioner_5-1738.html).

⁸⁵ Center for Monitoring Elections, “CMEV Briefing: Inability of Authorities to Address the Voter Rights of IDPs and Others in the North,” 31 January 2010 (<http://cpalanka.org/>).

⁸⁶ S. S. Selvanayagam, “Fr [Fundamental Rights] Violation Petition Filed Seeking Voting Rights for IDPs,” *Daily Mirror*, 3 March 2010 (<http://print.dailymirror.lk/news/news/5075-fr-violation-petition-filed-seeking-voting-rights-for-idps.html>).

⁸⁷ CaFFE, “No change in IDP Identity Stance at April 8 Polls,” 12 March 2010 (www.caffesrilanka.org/No_change_in_IDP_identity_stance_at_April_8_polls_5-1931.html).

unable to give the IDPs clear directions about what to do when their camp identification was not accepted.⁸⁸

10. Establish the Conditions and Means for IDPs to Secure Durable Solutions

Is the government working—or has it worked—to establish conditions enabling IDPs to secure a durable solution to displacement?

While the government of Sri Lanka has worked to establish appropriate conditions for the return of IDPs, often return areas are not conducive to achieving durable solutions; in many cases, they are not conducive to sustaining returning IDPs over even the short or medium term.

The government stated its commitment to establishing conditions for the return of IDPs in its National Framework for Relief, Rehabilitation, and Reconciliation (2002). The Framework calls for regular surveys and assessments of conditions in places of origin to increase information about conditions for return. The Framework also advocates for the “option of voluntary relocation of families who cannot return to their original places of residence due to prevailing security concerns.”⁸⁹

The government also demonstrated its commitment to identifying durable solutions by establishing the Resettlement Authority and the Ministry of Resettlement and Disaster Relief Services. The ministry has reported that to facilitate the return of IDPs to their places of origin, it undertook several reconstruction projects in the areas of water and sanitation, electricity, rehabilitation of roads, education and community development.⁹⁰ In 2008, a National Consultation on

IDPs and Durable Solutions was held in Colombo (in response to RSG Kälin’s 2007 mission recommendations) under the leadership of the Minister of Disaster Management and Human Rights.⁹¹

Immediately following the end of the conflict, the government vowed to resettle the approximately 280,000 IDPs and outlined a 180-day plan to return the majority to their “original places of habitation.”⁹² The plan was perhaps overly ambitious. As alluded to by Sri Lanka’s permanent representative to the UN (see Benchmark 3, above), de-mining residential areas in the North was an urgent priority following the end of the conflict. At the same time, the government was under pressure—both self-imposed and international—to release IDPs from the closed camps, a concept that the government closely equated with return. The subsequent government-managed returns often took place before return areas had been adequately de-mined.⁹³

The government and international community prioritized the de-mining of residential areas throughout the North. Consequently, many IDPs were returned to residential areas surrounded by minefields, where it was impossible to conduct agricultural and other livelihood activities. Returned IDPs therefore remained dependent on aid, but because many locations had not been de-mined to the security standards required by most UN and humanitarian agencies, it was not possible for the international community to access their areas of return.⁹⁴

Disaster Relief Services, “Provision for Infrastructure Development,” no date (www.resettlementmin.gov.lk/projects-funds-resettlement.html).

⁸⁸ IRIN, “Sri Lanka: Very Low Voter Turn-Out among IDPs,” 12 April 2010 (www.irinnews.org/report.aspx?ReportID=88772).

⁸⁹ Government of Sri Lanka, *National Framework for Relief, Rehabilitation, and Reconciliation*.

⁹⁰ Government of Sri Lanka, Ministry of Resettlement and

⁹¹ Walter Kälin, “Finding Durable Solutions for Sri Lanka’s Displaced,” speech delivered at the National Consultation on IDPs and Durable Solutions, Colombo, Sri Lanka, 23 September 2008 (www.brookings.edu/speeches/2008/0923_sri_lanka_kalin.aspx).

⁹² Government of Sri Lanka, “India and Sri Lanka Agree on IDP Timetable, Political Solution,” 22 May 2009 (<http://reliefweb.int/node/310259>).

⁹³ ICG, *Sri Lanka: A Bitter Peace*, Update Briefing, Asia Briefing No. 99, 11 January 2010, p. 4 (www.crisisgroup.org).

⁹⁴ *Ibid.*; and Internal Displacement Monitoring Center, *Sri*

Infrastructure was heavily damaged throughout the North, and many IDPs were returned to their places of origin to find that homes and public buildings had been looted or completely destroyed.⁹⁵ All of this resulted in a large number of IDPs having to stay with host families or in temporary transit camps for protracted periods of time (see Benchmark 3, above).

Much more will need to be done to create durable solutions for those who have been displaced. Creating conditions conducive to livelihood activities (including the demining of agricultural areas), settling outstanding land claims and establishing a functioning civil administration in the North will require substantial time and effort.

Further, as RSG Deng reported following his 1993 mission to Sri Lanka, some government officials acknowledged that durable solutions would not be sustainable until the root causes of the conflict and displacement were addressed.⁹⁶ Nearly two decades later, while the twenty-six-year conflict has ended, the government of Sri Lanka has demonstrated little progress in addressing the root causes of the long-standing conflict.

11. Allocate Adequate Resources to the Problem

Do the authorities prioritize internal displacement in allocating budgetary resources and in mobilizing international support?

Government budget expenditure is only a small percentage of overall spending used to address internal

displacement, and the government emphasizes mobilizing international donor support to cover the remaining costs.

According to government data for 2007-2013, the expenditures by the Ministry of Resettlement rose annually between 2007 and 2009, peaking in 2009, and were projected to decrease annually beginning in 2010 (see figure 2-9). However, the ministry's expenditure includes some foreign financing as shown below. The reduction in total expenditure beginning in 2010 is indicative of the government's stated position (see Benchmark 3, above) that it has successfully "resettled" (returned) a vast majority of IDPs and is concluding what it views as extensive reconstruction and demining activities in the North. In a speech presenting the 2010 budget, President Rajapaksa stated:

Hon. Speaker, even in the liberated areas, the progress we have achieved since the date of liberation is remarkable. The Government has been able to resettle 263,000 people. Only 15,000 people remain to be resettled. A vast area of farm lands, public places, and residential areas have been demined. Provision of electricity, irrigation facilities, construction of roads and bridges, restoration of schools, health facilities and other public places have turned the Northern and the Eastern provinces to normalcy. . . . The Government has implemented a \$2 billion reconstruction program in the North. These major reconstruction activities are expected to be completed by 2012.⁹⁷

Lanka: IDPs and Returnees Remain in Need of Protection and Assistance, 14 January 2011, p. 23.

⁹⁵ ICG, *Sri Lanka: A Bitter Peace*.

⁹⁶ UN Commission on Human Rights, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Francis Deng—Addendum: Profiles in Displacement: Sri Lanka*, 25 January 1994, E/CN.4/1994/44/Add.1 (www.brookings.edu/projects/idp/rsg_info.aspx).

⁹⁷ Board of Investment of Sri Lanka, *Budget 2011, His Excellency Mahinda Rajapaksa President*, 22 November 2010, para. 11 (www.boi.lk/Budget_speech_2011/budgetspeech2001-eng.pdf); on 2011 estimates, see also a state media report: Sri Lanka Broadcasting Corporation, "The Expenditure of the Government for Next Year Exceeds One Thousand and 80 Billion Rupees [\$9.85 billion]," 18 October 2010.

Figure 2-9. Ministry of Resettlement: Expenditure 2007-2013 (billions \$)^a

	2007	2008 Revised budget	2009	2010 Revised budget	2011 Estimate	2012 Projection	2013 Projection	2007-2013 Total
Domestic Financing	28.3	24.2	36.7	14.2	6.8	2.0	1.7	113.9
Foreign financing	1.5	14.2	8.5	14.2	9.1	4.3	0.1	51.9
Total expenditure	29.8	38.4	45.2	28.4	15.9	6.3	1.8	165.8
Foreign financing (% of total)	5.03%	36.98%	18.81%	50.00%	57.23%	68.25%	5.56%	31.30%

Source: Government of Sri Lanka, Ministry of Finance and Planning

- a US dollar equivalents were calculated using the exchange rate of SLR (Sri Lankan rupee) to USD (US dollar) at 109.668 on 1 July 2011 (www.oanda.com/currency/converter). For original rupee values, see: Government of Sri Lanka, Ministry of Finance and Planning, Department of National Budget, “Ministry of Resettlement and Disaster Relief Services,” in *Budget Estimates 2009* for 2007 and 2008 figures (www.treasury.gov.lk/BOM/nbd/budgetestimates2009.htm) and “Ministry of Resettlement,” in *Budget Estimates 2011* for 2009-2013 amounts (www.treasury.gov.lk/BOM/nbd/budgetestimates2011.htm).

Expenditure of the Human Rights Commission is set to increase slightly according to the government’s budget estimates for 2011-2013. Expenditure stood at 90 million Sri Lankan rupees in 2008 (\$835,000), nearly 99 million rupees in 2009 (\$860,000) and was 119 million rupees according to the 2010 revised budget (approximately \$1.1 million). Projected expenditure for 2012 and 2013 was around 120 million rupees (\$1.1 million).⁹⁸ As mentioned in Benchmark 8, the HRC’s National Protection and Durable Solutions for Internally Displaced Persons Project has been supported by international funding, particularly from UNHCR.⁹⁹

⁹⁸ US dollar conversions are estimates calculated using 1 July exchange rates for each year up to 2011 (www.oanda.com/currency/converter/). Government of Sri Lanka, Ministry of Finance and Planning, Department of National Budget, “Human Rights Commission of Sri Lanka,” in *Budget Estimates 2010* and *Budget Estimates 2011*.

⁹⁹ See the latest available annual report of the HRC, for the year 2008 available at the commission’s Web site (http://hrcl.lk/english/?page_id=135). Also, the government’s budget estimates for 2010 and 2011 report a small amount of “foreign financing.”

The above figures probably do not account for the government’s entire financial contribution to displacement generally or to durable solutions in the East and the North in particular. However, that overall funding for addressing internal displacement cannot be readily quantified is, in part, symptomatic of the larger issue (see Benchmark 7, above) that there is no single entity within the government dealing specifically with displacement.

12. Cooperate with the International Community When Necessary

Does the government facilitate efforts by international organizations to address internal displacement?

The government has invited and accepted substantial participation from the international community in addressing internal displacement in all its phases. However, it actively works to exclude rights-based programming from the international agenda. The government also severely impedes humanitarian access to the

North of the island, despite the relative lack of security risks following the end of the conflict.

The RSG carried out missions or working visits to Sri Lanka in 1993, 2005, and 2007 and in April and September 2009.¹⁰⁰ Sri Lanka was originally pointed to as a model (to a certain extent) for promoting and enabling humanitarian access in situations of internal armed conflict, particularly in RSG Deng's 1993 mission report.¹⁰¹ In contrast, RSG Kälin reported following his 2007 mission that "some humanitarian organizations still do not enjoy full access to all areas of return, and access in the North is increasingly difficult."¹⁰²

¹⁰⁰ For related documents, see Brookings-LSE Project on Internal Displacement, "Items from Walter Kälin, Former Representative of the UN Secretary-General on Internally Displaced Persons" (www.brookings.edu/projects/idp/rsg_info.aspx#Kalin) and OHCHR, "Country Visits" (www2.ohchr.org/english/issues/idp/visits.htm). See also Walter Kälin's speech presenting his 2009 report before the Sixty-Fourth Session of the UN General Assembly, "The Human Rights of Internally Displaced Persons," 26 October 2009 (www.brookings.edu/speeches/2009/1026_internal_displacement_kalin.aspx), in which he discusses his April 2009 visit to Sri Lanka and the report itself: UN General Assembly, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, 3 August 2009, A/64/214, paras. 58-64, pp. 16-17 (http://ap.ohchr.org/documents/dpage_e.aspx?m=71). From 27 February to 5 March 2005 RSG Kälin traveled to Colombo, Sri Lanka, and Bangkok, Thailand, to attend a number of working meetings and seminars on the issue of the protection of IDPs with a particular focus on the response to the tsunamis of 26 December 2004. The mission did not have a fact-finding component and as such was not characterized as an official visit. However, the Permanent Missions of Sri Lanka and Thailand had been contacted and informed prior to the mission, and both agreed that the Representative attend the meetings in both countries.

¹⁰¹ See UN Commission on Human Rights, *Internally Displaced Persons: Report of the Representative of the Secretary-General, Mr. Francis Deng—Addendum: Profiles in Displacement: Sri Lanka*, E/CN.4/1994/44/Add.1, pp. 25-28, 34-35 (http://ap.ohchr.org/documents/dpage_e.aspx?m=71).

¹⁰² UN Human Rights Council, *Report of the Representative of the Secretary-General on the Human Rights of Internally*

Humanitarian space in Sri Lanka has diminished considerably since 2006.¹⁰³ In 2008, the government ordered the withdrawal of agencies from the North. As Human Rights Watch reported that year:

Aggressive public statements from senior government officials continued against international agencies, including the UN, with many accused of being LTTE supporters or sympathizers. Humanitarian aid agencies' operations were significantly affected, with restrictions on movement and difficulties obtaining visas and work permits for expatriate staff.¹⁰⁴

Inconsistent access has led to gaps in the delivery of aid and to a decrease in the presence of humanitarian actors, leaving IDPs at a higher risk of human rights violations by camp security forces.¹⁰⁵

Despite large-scale involvement of the international community in Sri Lanka, humanitarian access to and within the country, especially to the North, has often been restricted or even denied by administrative obstacles. The approval of the Presidential Task Force for Resettlement, Development and Security in the Northern Province (see Benchmark 7, above) is required, on a project-by-project basis, for international and national organizations to carry out any activity on the island. In 2010, another impediment was introduced whereby even after PTF approval was granted, explicit permission was required from the Ministry of Defense

Displaced Persons, Walter Kälin—Addendum: Mission to Sri Lanka, 14 to 21 December 2007, 21 May 2008, A/HRC/8/6/Add.4, para. 68, p. 20 (www.brookings.edu/projects/idp/rsg_info.aspx).

¹⁰³ IDMC, *Sri Lanka: Continuing Humanitarian Concerns and Obstacles to Durable Solutions for Recent and Longer-Term IDPs: A Profile of the Internal Displacement Situation*, 10 November 2009 (www.internal-displacement.org).

¹⁰⁴ Human Rights Watch, "Sri Lanka: Events of 2008" (www.hrw.org/en/node/79245).

¹⁰⁵ Amnesty International, *Stop the War on Civilians in Sri Lanka: A Briefing on the Humanitarian Crisis and Lack of Human Rights Protection*, 15 March 2009 (www.amnesty.org).

(MoD) for both individual staff members (especially internationals) and their vehicles to enter the North. This clearance was seldom granted until forty-eight or even twenty-four hours before a planned mission.

The process for obtaining PTF approval alone is lengthy, and the MoD clearance process further impedes access to the North substantially. Together, they render the planning of activities in the North highly cumbersome and in many cases, due to the medium-term nature of humanitarian assistance programming generally, infeasible.

Moreover, international agencies to a certain extent self-regulated their activities out of legitimate concern that purely rights-based programming (such as human rights or protection monitoring) would be denied PTF approval. For example, UNHCR's website (alluding to the process for registering recipients of the shelter grants issued to IDPs released from camps) states that,

UNHCR is the lead for the protection sector and has direct access to beneficiaries, although some of its NGO operational partners often face restrictions. The shelter grant registration process provides an invaluable opportunity for UNHCR to collect baseline protection information, monitor returns, and identify the specific protection needs of returning families, particularly the most vulnerable.¹⁰⁶

In May 2009, the UN High Commissioner for Human Rights reported that “unrestricted humanitarian aid will make the difference between life, illness or even death to many, and yet access for the UN and NGOs to the IDP camps continues to be hampered.”¹⁰⁷ In April 2009, during his visit to Sri Lanka, RSG Kálin asked the government to facilitate unhindered access for humani-

tarian agencies and organizations to all IDP sites.¹⁰⁸ In July 2009, the government ended ICRC's access to IDP camps for protection work pending a renegotiation of its postwar mandate.¹⁰⁹ As of February 2010, the ICRC still had no access to IDPs in camps, and in November 2010 the government asked ICRC to close its offices in the North and to operate only from Colombo.¹¹⁰

In January 2011, Catherine Bragg, the UN Deputy Emergency Relief Coordinator, raised the issue of humanitarian access with the government. At that time—despite the passage of almost two years since the end of the conflict—permission for UN staff to work in the North was granted for a limited duration of only one month, after which individual staff members were required to reapply. Despite Bragg's contention that communities in the North “remain extremely vulnerable and have critical humanitarian needs that we must address immediately,” the government did not then grant her request to extend the one-month period to three months.¹¹¹

¹⁰⁶ UNHCR, “2011 Country Operations Profile: Sri Lanka” (www.unhcr.org).

¹⁰⁷ OHCHR, “Message of the High Commissioner of Human Rights to the Human Rights Council Special Session on the Human Rights Situation in Sri Lanka,” 26 May 2009 (<http://reliefweb.int/node/310706>).

¹⁰⁸ UN General Assembly, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons*, 3 August 2009, A/64/214, para. 60, p. 16 (http://ap.ohchr.org/documents/dpage_e.aspx?m=71).

¹⁰⁹ U.S. Department of State, *2009 Human Rights Report: Sri Lanka*, 11 March 2010 (www.state.gov/g/drl/rls/hrrpt).

¹¹⁰ ICRC, “Sri Lanka: ICRC Continues to Respond to Humanitarian Needs,” Operational Update, 24 February 2010 (www.icrc.org). ICRC, “Sri Lanka: ICRC to Operate Exclusively from Colombo—Interview,” 25 March 2011 (www.icrc.org).

¹¹¹ Agence France-Presse, “UN Seeks Greater Humanitarian Access for S. Lanka,” 21 January 2011.



Nepal/ Internally displaced woman in the Terai region.
Photo: Lee Ali / November 2007

CHAPTER 3

Translating National Responsibility into Response: Further Observations

This study seeks to shed light on how and to what extent the fundamental responsibility of governments toward IDPs is translated into effective response by fifteen governments by using the twelve benchmarks of the Framework for National Responsibility as an assessment tool. In chapter 1, each of the benchmarks is summarized and compliance with each benchmark is analyzed for all of the fifteen countries in this study while a more in-depth analysis of government response in four of these countries is given in chapter 2. But it also is important to explore similarities and differences in the extent of compliance with the benchmarks by different governments in addition to assessing countries responses benchmark by benchmark. Further, certain issues arise that lie beyond the benchmarks but that also require consideration in assessing national approaches to internal displacement. In this concluding chapter, we step back from the details of government policies to draw some observations on trends in national responses with respect to the twelve benchmarks, to reflect on the determinants of effective national response, to analyze the utility of the Framework as an assessment tool and to suggest areas for future research, before turning in chapter 4 to some brief recommendations to governments seeking to effectively protect and assist IDPs.

Political Will and National Response

Before proceeding with this analysis, we want to emphasize the overriding importance of political will in determining whether a government fulfills its responsibility to IDPs. Governments cannot always control the factors that cause displacement, but they can take measures to improve the lives and uphold the rights of IDPs. If national authorities are convinced of the importance of addressing internal displacement, they can take actions to respond to the needs of those who are displaced and to support durable solutions to displacement. In the fifteen countries surveyed in this study, the motivation to address displacement does not seem to be based primarily on humanitarian concerns but rather on political calculations and pressures.

Most obviously in Myanmar and to a slightly lesser extent in Sudan and Turkey, the national governments have not been motivated to respond to IDPs, in part because of a desire to deny their own role in causing or

at least condoning the conditions that created the displacement. At the other end of the spectrum is the government of Georgia, which acknowledges and indeed draws attention to the suffering of IDPs, at least in part because of political considerations. At the same time, it could be that Georgia is keen to be portrayed as “doing the right thing” for IDPs in order to curry favor with the international community. In Colombia, concerns about the international reputation of the country appear to have motivated the government to take a number of measures on IDP issues, most notably with the adoption of a law on IDPs. At the same time, it is legal pressure resulting from close monitoring of and reporting on the government’s response by the country’s Constitutional Court as well as by the Ombudsman that has proven critical to efforts to ensure that government measures for IDPs are actually implemented. The country’s strong legal tradition has facilitated such efforts.

Moreover, government policies toward IDPs are not static; they evolve in response to changes in the political context. For example, in Georgia the government became much more concerned about the “old” IDPs after “new” IDPs were created in 2008 due to the conflict with Russia in South Ossetia. However, even then, international pressure proved critical to convincing the Georgian government of the importance of adopting policies that address the needs of IDPs in protracted situations. Similarly, in the six months following the end of the conflict with the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka, the government was keen to demonstrate responsiveness, especially after extensive international criticism of its military operations against civilians during the final stages of the conflict and of its internment policies. Thus it moved quickly to return IDPs to their places of origin (although as the case study points out, this practice raised serious concerns). In many instances, governments undertake policies as a result of international initiatives. This study found many cases in which governments undertook actions in response to suggestions made by the Representative of the UN Secretary-General on Internally Displaced Persons or his successor (RSG), the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons (RSG)

during missions and working visits. For example, after years of non-engagement on the issue of IDPs, the government of Turkey decided, for the first time, to collect data on the number of IDPs in the country. In several other countries, governments have decided to develop or modify IDP policies and legislation as a direct result of a visit and advocacy by the RSG. A general list of missions and working visits conducted by the RSGs and the UN Special Rapporteur on the Human Rights of Internally Displaced Persons is provided in figure 3-1.

With the above points in mind, we do not assume that assessing a government’s performance on each of the twelve benchmarks of the Framework for National Responsibility provides an accurate picture of political will. For example, a government may collect data on internal displacement, set up an institutional focal point on IDPs, adopt an IDP law or take action toward meeting many or most of the benchmarks without necessarily having the genuine political will to protect the rights of IDPs and assist them in a sustainable manner. Certain governments’ efforts in the areas covered by the benchmarks may amount to nothing more than “window dressing.” Even the indicators developed for each benchmark cannot give a complete picture of a government’s exercise of its responsibility toward IDPs. That said, it does seem that action on the benchmarks can indicate a certain degree of political will; certainly it suggests that a government is ready to acknowledge IDPs as an issue and understands that doing so raises expectations for a government response. Furthermore, taking no action on certain benchmarks—for example, Benchmark 2 on acknowledgment of the existence of internal displacement—indicates a lack of political will to take certain actions on the issue. That is in and of itself quite revealing.

Using the Framework for National Responsibility as an Assessment Tool: Trends in National Response

Chapter 1 examines the ways in which each of the twelve benchmarks set out in the Framework for National

Figure 3-1 Special Procedures on IDPs: Missions and working visits to the 15 countries assessed in this study^a

Country	Missions and working visits
Afghanistan	Working Visit: 2007
Central African Republic	Working Visit: 2009; Missions: 2010, 2007
Colombia	Working Visit: 2008; Missions: 2006, 1999, 1994
Democratic Republic of the Congo	Mission: 2008
Georgia	Working Visit: 2006; Missions: 2010, 2009, 2008, 2005, 2000
Iraq	Mission: 2010
Kenya	Working Visits: 2008, 2011
Myanmar	N/A
Nepal	Mission: 2005
Pakistan	N/A
Sri Lanka	Working Visits: 2009 (2), 2005; Missions: 2007, 1993
Sudan	Missions: 2005, 2004, 2002, 2001, 1992
Turkey	Working Visits: 2006, 2005; Mission: 2002
Uganda	Working Visits: 2009, 2006; Mission: 2003
Yemen	Working Visit: 2010

^a Francis Deng, Representative of the UN Secretary-General on Internally Displaced Persons (1994-2004); Walter Kälin, Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons (2004-2010), Chaloka Beyani, Special Rapporteur on the Human Rights of Internally Displaced Persons (2010-present). See OHCHR, “Country Visits,” (www2.ohchr.org/english/issues/idp/visits.htm); Brookings-LSE Project on Internal Displacement, “Items from Chaloka Beyani,” “Items from Walter Kälin,” and “Items from Francis M. Deng,” (www.brookings.edu/projects/idp/rsg_info.aspx).

Responsibility are being met—or not met—in the fifteen countries surveyed by this study. This comparative analysis has revealed certain trends for each benchmark in terms of the readiness and capacity of the included governments to mount an effective national response and in terms of the modality of response. In looking at the overall results of this analysis, it must be said that no one government performed well on all twelve of the benchmarks; conversely, most governments were taking at least some measures in line with at least some of the benchmarks, at least for certain groups of IDPs. Overall, governments performed much better on the three benchmarks on legal frameworks, policies and institutional focal points (Benchmarks 5, 6 and 7, respectively) than the others, at least with respect to taking the basic minimum actions recommended; very often, however, effective implementation was limited.

Overall Observations and Comparisons of Benchmarks

Chapter 1 raises the question of whether certain characteristics of a particular instance of internal displacement might explain why a government proves to be more or less responsive to addressing internal displacement. By no means did the discussion provide an exhaustive list of potential determinants; it simply offered a set of hypotheses based on common and easily measurable (mostly quantitative) features of displacement, such as the number of IDPs and the length of time of displacement, and whether those features appeared to influence the government response, positively or negatively. In particular, six points were considered: different causes of displacement; magnitude of displacement; duration of displacement; where IDPs live; UNHCR engagement; and government capacity, as measured by the Human Development Index.

Although, as explained in the introduction to this volume, the data simply are not robust enough for quantitative analysis, we began this study with the idea of looking for determinants of good government policy. While we had originally hoped to be able to come up with an overall assessment of government capacity based on the twelve benchmarks, in fact the findings did not lend themselves to such definitive assessments. Among the fifteen governments, four seem to have taken their responsibility more seriously—Colombia, Georgia, Kenya and Uganda—although there are deficiencies in the responses of all four. The governments of Myanmar, Yemen and the Central African Republic seem to have had particular difficulties in fulfilling their responsibilities toward IDPs. In the case of Myanmar, the obstacles are overwhelmingly political; in Yemen and the Central African Republic, the limitations appear to arise primarily from inadequate government capacity. The remaining eight governments fall somewhere in between. Some, such as in Nepal, have demonstrated a significant commitment at one particular point in time but have failed to follow through. Some, such as in Sri Lanka, have at times demonstrated blatant disregard for their responsibility to protect and assist IDPs and have moved swiftly to try bring an end to displacement. Sudan, Pakistan, and to a certain extent Turkey have very problematic records with respect to preventing displacement in one part of the country yet have supported efforts to bring an end to displacement in others. In some cases, such as Afghanistan and Yemen, the continuing conflict and the role of nonstate actors have made it difficult for the government to respond effectively to IDPs. (However, there is little evidence that those two governments would have given priority to displacement issues even if they had not been embroiled in ongoing conflicts.)

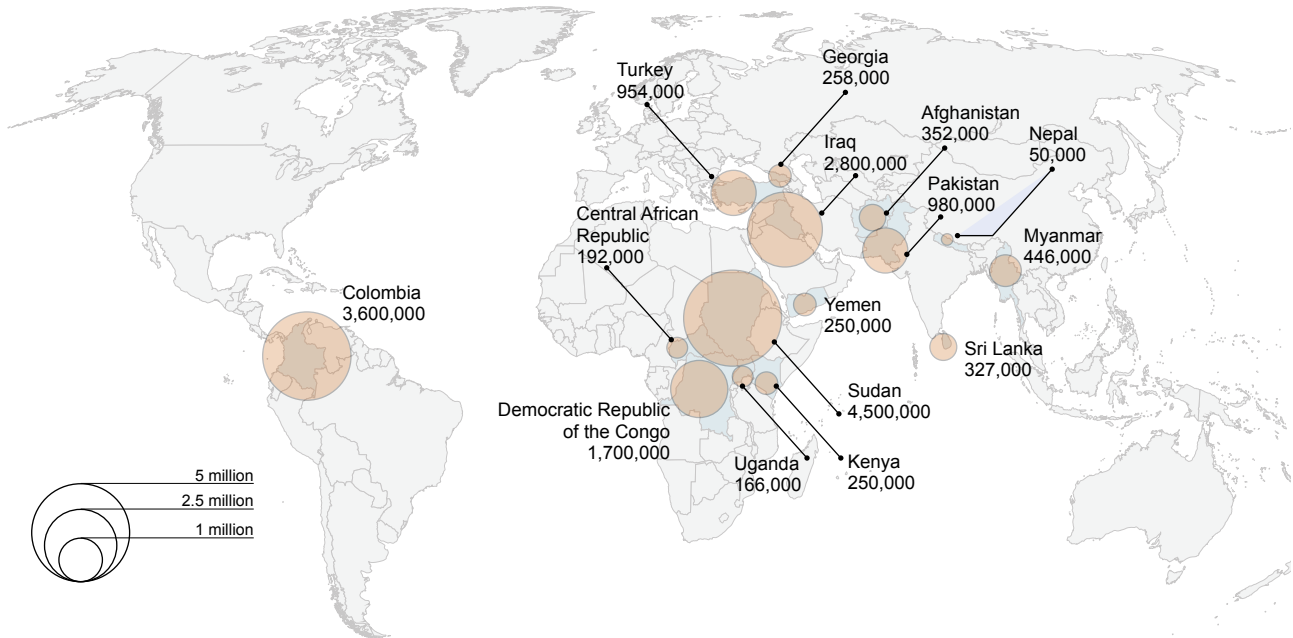
Since it was not possible—or desirable—to “score” or even rank governments in terms of their efforts to fulfill their responsibility to IDPs, the analysis of the role of the six dependent variables (different causes of displacement; magnitude of displacement; duration of displacement; where IDPs live; UNHCR engagement; and government capacity) is descriptive rather than analytical in nature.

Different Causes of Displacement

This study focuses on displacement due to conflict, violence and general human rights violations but seeks to examine to a limited degree any similarities and differences in how governments respond to displacement caused by other causes. In several of the cases surveyed (for example, Georgia, Sudan and Yemen), the country in fact was experiencing conflict-induced displacement in more than one context.

Thus another potential variable in national responses relates to different conflicts occurring within the country. Especially given the issue of national responsibility, one could expect a government to adopt consistent approaches and policies toward those displaced by different conflicts occurring within the country’s borders. Perhaps unsurprisingly given that consistency of response is not a primary concern of governments (or always of the international community), the reality is quite different, as in the case of Georgia, where the government tended to give priority to Abkhaz IDPs, as they are much more numerous than those from South Ossetia. After the renewed conflict and new mass displacement in August 2008, the government proved much more responsive to securing decent durable housing for the “new” IDPs while IDPs displaced since the early 1990s continued to languish in dilapidated collective centers. On the plus side, one could conclude that the government was better equipped to deal with the new cases and that this was a case of “lessons learned”; on the other hand, the government opened itself up to charges of discriminating against the protracted cases and creating a two-tiered system of assistance to IDPs. National authorities in Pakistan, Iraq, Uganda, Yemen and Sri Lanka have responded differently to displacement due to different conflicts or to a conflict occurring in different parts of the country. Further comparative analysis of the national response within countries would be helpful in understanding the reasons for different government policies regarding people displaced in different parts of the country.

Estimated IDP populations in 15 countries assessed in this study^b
Circles are sized according to estimated IDP population



^b Population estimates are from government, UN and NGO sources. The lowest estimate was used. For sources, see IDMC, *Internal Displacement: Global Overview of Trends and Developments in 2010*, March 2011 (www.internal-displacement.org).

In several cases, countries experiencing conflict-induced displacement also experienced significant displacement due to natural disasters (in particular, Pakistan, Afghanistan, Sri Lanka and Myanmar). Such cases afforded the opportunity to explore any similarities and differences in how governments respond to different causes of displacement. As discussed, the response of many, perhaps most, governments to natural disasters differs from their response to conflicts.¹ The case of Myanmar in particular is striking in this regard.

Magnitude of Displacement

In this study we were interested in exploring whether there appeared to be any correlation between the magnitude of

displacement and efforts to fulfill national responsibility to IDPs. Simply put: did the number of IDPs in a country influence the responsiveness of the government to internal displacement? The answer to that question could cut both ways. On one hand, it might be expected that where there was a large number of IDPs, the government would be all the more aware of the situation and therefore moved to respond. On the other hand, the existence of many IDPs in a country could be an indicator of the failure of the government to meet its responsibility, whether because of its inability to prevent arbitrary displacement or to respond adequately due to capacity constraints or even because of its unwillingness to do so.

As discussed in chapter 1, the countries surveyed for this study were fifteen of the twenty countries worldwide reporting the highest number of IDPs: nine of the top ten countries and six countries from those ranked 11 to 20 were included. The lack of case studies of countries falling in the lower range of numbers of IDPs limits the ability to

¹ For further analysis of the applicability of the benchmarks to natural disasters, see Elizabeth Ferris, “The Framework for National Responsibility and Natural Disasters,” Brookings-LSE Project on Internal Displacement, forthcoming.

test this hypothesis, and we recommend further research in assessing national responsibility in such countries. Yet, even among the fifteen countries selected for this survey, there is a broad range of numbers of IDPs: from just over an estimated 200,000 IDPs in the Central African Republic at the peak of displacement there to millions in, for example, Sudan and Colombia. Examining those cases could provide at least preliminary findings until a wider range of cases can be examined. Moreover, in selecting the additional six countries to survey, consideration was given to the magnitude of the IDP population relative to the total population of the country. Especially with respect to raising national awareness and mobilizing adequate resources, the relative size of the IDP population would seem to be more important than the absolute number of IDPs.

Yet, it also must be noted that the magnitude of an IDP population can change—often dramatically—over time. For example, the number of reported IDPs in Afghanistan fell from a high of 1.2 million in 2002 to around 350,000 in 2010 while the number of IDPs in Pakistan fell from a reported 3 million in 2009 to “at least 980,000” in 2010 (see figure 3-2 below). But all such figures need to be treated with caution. Both government and international statistics are estimates and, at best, a snapshot at a particular moment in time. Moreover, IDPs in general are a mobile population. Figures may either decrease or increase simply due to improvements in data collection methods rather than any objective change in the situation. Moreover, IDPs’ own experience tends to be highly dynamic—they may move back and forth between different host communities, return to their original communities for a while and then move back to host communities, or move to spontaneous settlements or other locations—which complicates the compilation of reliable figures.

Returning to the question posited, the findings do not reveal any clear, reliable connection between the number of IDPs and the degree of national responsibility exercised. If anything, the magnitude of displacement has tended to be a precursor of poor government performance overall, as evident in particular in the cases of Sudan, Turkey and Colombia, all of which surpass the 1 million IDPs mark. That said, the size of the IDP population nonetheless may

indirectly help to develop the national response inasmuch as a large number of IDPs often is a major trigger of international concern and pressure (for example, in Sudan, Turkey and Colombia), which may trigger a better government response.

Duration of Displacement

In chapter 1 of this study, we posited a possible correlation between duration of displacement and government response, noting that governments might be unable to implement all or many of the benchmarks in the immediate emergency phase of displacement but that as displacement became protracted, they would be more likely to take measures to address IDPs’ needs. However, we also noted that it could be that a protracted displacement signaled poor performance in terms of the exercise of national responsibility. Figure 3-3 indicates the time when the first known major internal displacement first began.

Analysis of internal displacement in the fifteen countries assessed in this study reveals that the process of fulfilling national responsibility to IDPs tends to be dynamic. It also tends, in general, to be gradual, with incremental steps taken toward implementing the benchmarks over time. However, it is not necessarily a linear process: while generally there tends to be gradual progress, there also are examples of “backsliding” caused, for instance, by a change in the political context, such as change in government. In other cases, a certain “compassion fatigue” may set in as displacement becomes protracted, especially if resource constraints increase.

Internal displacement may be protracted for various reasons: conflicts drag on, peace processes are non-existent or become stalled and durable solutions are elusive.² About two-thirds of the world’s IDPs have been

² See Elizabeth Ferris, *Resolving Internal Displacement: Prospects for Local Integration* (Washington: Brookings-LSE Project on Internal Displacement, June 2011); Alex Mundt and Elizabeth Ferris, “Durable Solutions for IDPs in Protracted Situations: Three Case Studies” (www.brookings.edu/papers/2008/1028_internal_displacement_mundt.aspx).

Figure 3-2. For the 15 countries assessed in this study: Basic IDP population estimates^c

Country	Number of IDPs	Percentage of total population	Peak number (year)
Afghanistan	At least 352,000	At least 1.2	1,200,000 (2002)
Central African Republic	192,000	4.30	212,000 (2007)
Colombia	3,600,000 – 5,200,000	8 – 11.6	3,600,000 – 5,200,000 (2010)
Democratic Republic of the Congo	1,700,000	2.5	3,400,000 (2003)
Georgia	Up to 258,000	Up to 6.1	Undetermined
Iraq	2,800,000	9.00	2,840,000 (2008)
Kenya	About 250,000	0.60	650,000 (2008)
Myanmar	At least 446,000	At least 0.9	Undetermined
Nepal	About 50,000	About 0.2	200,000 (2005)
Pakistan	At least 980,000	At least 0.5	3,000,000 (2009)
Sri Lanka	At least 327,000	At least 1.6	520,000 (2006)
Sudan	4,500,000 – 5,200,000	10.5 – 13	Darfur: 2,700,000 (2008); Southern Sudan: 4,000,000 (2004)
Turkey	954,000 – 1,201,000	1.3 – 1.6	1,201,000 (1992)
Uganda	At least 166,000	At least 0.5	1,840,000 (2005)
Yemen	About 250,000	About 1.0	342,000 (2010)

c As of December 2010, for displacement due to conflict, generalized violence and human rights violations. Source: IDMC, *Internal Displacement: Global Overview of Trends and Developments in 2010*, March 2011 (www.internal-displacement.org).

Figure 3-3. First major wave of displacement for current IDP caseloads^d

Country	Date
Afghanistan	2001
Central African Republic	2005
Colombia	1960
Democratic Republic of the Congo	1996
Georgia	1992; 2008 (S. Ossetia); 1994, 2008 (Abkhazia)
Iraq	1968
Kenya	1991
Myanmar	1962
Nepal	1996
Pakistan	2006
Sri Lanka	1983
Sudan	1983 (S. Sudan); 2003 (Darfur)
Turkey	1984
Uganda	1988
Yemen	2004

d Of the 15 countries assessed in this study. Source: IDMC, *Internal Displacement: Global Overview of Trends and Developments in 2010*.

displaced for more than five years, and most refugees and displaced persons have been displaced for nearly eighteen years, on average.³ But displacement is rarely a one-off event. In almost all of the fifteen countries surveyed here, displacement has occurred at several distinct points in time. Different waves of displacement has meant that there are different groups of IDPs at the same time, sometimes known as “old” IDPs and “new” IDPs, as in Georgia (which had waves of displacement in 1991, 1998, and 2008); Sri Lanka (which had experienced displacement since the 1980s resulting from its long-standing conflict with the LTTE and then again in 2009 when the government-led counteroffensive brought the conflict to an end); and Kenya (which experienced periodic displacement, often in the context of electoral violence or land disputes, during the 1990s and early to mid 2000s followed by the new, massive displacement that followed widespread electoral violence in late 2007 to early 2008). In some countries, such as Colombia, displacement has occurred since the 1960s and continues today. Sometimes people leave their communities as individuals; sometimes whole communities are displaced. Lack of clarity about when displacement ends further complicates understanding how successive waves of IDPs should be treated.⁴ Although

³ Brookings-Bern Project on Internal Displacement, *Expert Seminar on Protracted IDP Situations, 21–22 June 2007, Geneva: Summary Report* (www.brookings.edu/events/2007/0621_displacement.aspx); Elizabeth Ferris, “Durable Solutions for IDPs in Protracted Situations: A Work in Progress,” 1 June 2007, background paper prepared for the Expert Seminar on Protracted IDP Situations, UNHCR and Brookings-Bern Project on Internal Displacement, Geneva, 21–22 June 2007.

⁴ In 2002, the question of when it would be appropriate to stop considering an IDP as such was posed to RSG on IDPs Francis Deng by the Office of the UN Emergency Relief Coordinator as one on which the international community required guidance. The RSG turned to the Brookings Project on Internal Displacement (which he co-directed), which, together with Georgetown University, undertook an in-depth research project to answer that question. The research project included a series of consultations with international humanitarian, development and human rights agencies and NGOs, donors, affected governments and civil society, including IDPs. For an overview of

the Framework on Durable Solutions for Internally Displaced Persons specifies criteria for understanding both the process and the conditions needed to provide durable solutions for IDPs, they have not been used to determine to what extent IDPs, such as Colombians displaced in the 1970s, have found lasting solutions or whether they remain in limbo as IDPs.

We were interested in exploring in this study the connections between old and new cases of displacement in the same country. Various questions were investigated: Does prior experience of displacement make a government better equipped (politically, legally or institutionally) to address a new wave of displacement in a more effective and timely manner? What, if any, lessons are learned and improvements noted in the government’s approach? Conversely, does having to address one major situation of displacement make a government less inclined or capable of devoting (at least to the same extent) continued attention and resources to recurring internal displacement, particularly when both old and new IDP caseloads coincide?

Almost all countries affected by new displacements over the last five years had experienced earlier periods of displacement, even though they received little public

the research project, spearheaded by Erin Mooney and Susan Martin, see, for instance, *Forced Migration Review*, no. 17 (May 2003) (www.fmreview.org). This project culminated in the publication of *When Displacement Ends: A Framework for Durable Solutions* (Brookings-Bern Project on Internal Displacement, June 2007) which was presented by RSG Kalin to the Inter-Agency Standing Committee (IASC) and was disseminated by the IASC to all UN Country Teams. This document, together with feedback and examples of best practices received from field operations, provided the basis for the revised version endorsed by the IASC and published as the *IASC Framework on Durable Solutions for Internally Displaced Persons* (Washington, D.C.: Brookings-Bern Project on Internal Displacement, April 2010), which also was presented to the UN Human Rights Council by the RSG. Both the provisional and final edition of the Framework on Durable Solutions are available at: www.brookings.edu/idp.

attention. In Kenya, for example, there was widespread displacement resulting from post-election violence in late 2007 and early 2008, but analysis (see chapter 3) shows that in fact the country had experienced multiple series of displacements since the early 1990s. In Pakistan, over 2 million people were internally displaced due to military operations in the Swat Valley initiated in May 2009, adding to the existing caseload of around 1 million IDPs. But there have been multiple waves of displacement in Pakistan since 2001, affecting hundreds of thousands, due to fighting between the armed forces and militant groups.⁵ In Iraq, large numbers of people were displaced after 2006, but the country had also experienced extensive displacement under the Saddam Hussein regime. Given that the government registers only IDPs displaced since 2006, the focus of international efforts (by UNHCR and IOM) and reporting on Iraqi IDPs has been on those cases—despite the fact that most of those displaced before 2003 have yet to achieve durable solutions. Indeed, as one in every eleven Iraqis was still internally displaced at the end of 2010, the problem of internal displacement in Iraq cannot be reduced to one specific “caseload.”

Where IDPs Live

Another feature of displacement that we wanted to explore was the location and general living arrangements of IDPs during their displacement—that is, whether they were living in camps or other forms of organized settlements. On one hand, it might be expected that because camps congregate IDPs into large groups at locations that often are established especially for them and usually are easily identifiable, IDPs themselves would be more visible to the government and public as a group and also easier to access and organize for delivery of assistance and services. Would we therefore find greater and more effective government engagement in countries in which a large number of IDPs are found in

camps? On the other hand, it cannot be assumed that conditions in camps are better than in non-camp situations. This assessment is difficult because IDPs living with host families or in other non-camp arrangements are not easy to identify because they are dispersed. More important, does the government draw a distinction between IDPs in camps and those in other living arrangements in responding to their needs?

In many situations of internal displacement, governments set up camps or settlements (including collective centers) for IDPs, typically shortly after large-scale movements of people occur because of conflicts or natural disasters. But in all the countries surveyed here, IDPs also have formed informal settlements on their own, without government planning or management. Such settlements have characteristics in common with both camp and community settings.

Available data indicate that a significant majority of the displaced in twelve of the fifteen countries surveyed lived outside of formal camps. Countries where a majority of IDPs seem to have lived in planned camps or collective centers (at least at one point in time) include Uganda, Kenya, Sri Lanka and perhaps Sudan. In contrast, there were no camps in Colombia or Turkey and also very few in Pakistan and, until recently, in Yemen. While there is a dearth of information about living conditions for IDPs generally, much less is known about IDPs living outside of camp settings—for example, whether they are sharing a house with relatives or friends, whether they are squatting on public property, or whether they have joined the ranks of the urban poor. And little is known about their specific needs for protection and assistance. Are they generally eking out a living? Are they exploited and threatened? Do they face discrimination any different from that experienced by the urban poor? Answers to these important questions are simply unknown.

It does seem that IDPs living in camps are more visible than those dispersed among the population. In Sudan, for example, much more attention has been given to IDPs living in camps in Darfur than to those living on the margins of urban centers; similarly, IDPs from

⁵ On displacement since 2001 in Pakistan, see Internal Displacement Monitoring Centre, *Millions of IDPs and Returnees Face Continuing Crisis: A Profile of the Internal Displacement Situation*, 2 December 2009 (www.internal-displacement.org).

Southern Sudan living in camps get more attention than all those who have crowded into informal settlements on the outskirts of Khartoum since the 1990s. In Iraq, it was the movement of IDPs into squatter settlements that seemed to trigger government action; when they lived dispersed and largely invisible among communities, it was perhaps easier for the government to ignore them. Similarly, if the 1 million displaced Kurds in Turkey had been concentrated in consolidated settlements, it is likely that the government would have been under more pressure to act than when it was they were dispersed in many communities and were all too easily dismissed as “economic migrants,” as the government did throughout the 1990s.

And what if living in a camp essentially becomes a requirement for or at least a determining factor in receiving humanitarian assistance? In Yemen, the government is rightly criticized for focusing on and providing assistance only to IDPs in camps, although the draft national strategy on IDPs sets out, at least in principle, the importance of redressing the imbalance. In Georgia, just under half of IDPs were living in collective centers while the majority lived in private accommodations of different types, but it was the IDPs in the collective centers who came to epitomize the plight of IDPs in the country. Moreover, the IDPs living in private accommodations have been a major “blind spot” with respect to data collection. To be sure, the delivery of services is by and large logistically easier when populations are in concentrated groups (though when camps are overcrowded, security and other issues can easily occur during assistance delivery). However, under international law, as reflected in the Guiding Principles, the rights of IDPs certainly are not contingent on their living in a certain location.

The issue of camps is further complicated by problems in defining what constitutes a camp. In Iraq only 1 percent of IDPs lived in camps, but many more of the almost 3 million IDPs (at the height of displacement) lived either in squatter settlements or in public buildings. In Myanmar, about 25 percent of conflict-displaced IDPs lived in government-run camps while 20 percent lived

in camps or settlements administered by ethnic authorities. Similarly, in the Democratic Republic of the Congo, while 2 percent of the country’s 3.5 million IDPs lived in camps administered by UNHCR, the figure jumped to 33 percent when informal settlements were included. That gives rise to the question of what a camp or settlement is—is it defined by the fact that IDPs live in distinct concentrations with other IDPs? Or is it that someone—the government or, for example, UNHCR—takes responsibility for the settlement?⁶

UNHCR Engagement

In the introduction to this volume, we posited that UNHCR engagement with IDPs could be related to the exercise of government responsibility because UNHCR seeks to support government response. UNHCR has a long history of engaging with IDPs, although until the last decade, most of that involvement was ad hoc, depending on needs, whether UNHCR was present in the country working with refugees, whether there was a formal request from the UN Secretary-General and whether resources were available.⁷ Following the

⁶ Note that the Global Cluster on Camp Management and Coordination explicitly states that it is involved in all types of camps and settlements for both conflict- and disaster-induced displacement, including planned camps, collective centers, self-settled camps and reception/transit centers (<http://onerresponse.info/GlobalClusters/Camp%20Coordination%20Management/Pages/default.aspx>).

⁷ See the various real-time evaluations of UNHCR’s IDP operations by the office’s Policy Development and Evaluation Service and IDP Advisory Team (for example, on operations in the Democratic Republic of the Congo, Liberia, Eastern Chad, and Uganda). See also the following key UNHCR policy documents pertaining to its role in situations of internal displacement: *UNHCR’s Operational Experience with Internally Displaced Persons*, September 1994; *UNHCR’s Role in IASC Humanitarian Reform Initiatives and in the Strengthening of the Inter-Agency Collaborative Response to Internally Displaced Persons Situations*, 20 September 2005; *UNHCR’s Expanded Role in Support of the Inter-Agency Response to Internal Displacement Situations*, 36th Meeting of the Standing Committee, 8 June 2006 (EC/57/SC/CRP.18); *UNHCR’s Expanded Role in Support of the Inter-Agency*

implementation of humanitarian reform initiatives in 2005, UNHCR was designated the cluster lead in the areas of protection, camp management and coordination, and emergency shelter in conflict situations, so its involvement has since become more systematic and visible.

While UNHCR generally tries to strengthen the government's capacity to respond to internal displacement, including by supporting data collection and the development of laws and policies, its support needs to be finely balanced. It must keep the role of the government front and center in order to ensure that its support does not veer into substitution for government action; otherwise, UNHCR involvement risks absolving governments of their responsibility.

One of the difficulties in collecting data on this indicator is that UNHCR has different forms of engagement. The earliest record of UNHCR involvement with IDPs appears in the case of Sudan, where it was involved in assisting IDPs in 1972, when its activities focused on providing assistance but not protection to IDPs.⁸ As shown in figure 3-4 below, UNHCR involvement with

IDPs in some of the countries surveyed had already begun in the 1990s: in Sri Lanka (1988), Afghanistan (1992), Georgia (1993) and Colombia (1998), followed by UNHCR's involvement in Yemen in 2009 which represented involvement in a relatively new displacement situation. In cases in which the cluster approach has been applied, UNHCR has assumed lead responsibility for IDP protection in Afghanistan, the Central African Republic, Colombia, the Democratic Republic of the

Figure 3-4. Year of earliest UNHCR involvement with IDPs in the 15 countries assessed in this study^e

Country	Year
Afghanistan	1992
Central African Republic	2006
Colombia	1998
Democratic Republic of the Congo	1999
Georgia	1993
Iraq	1991
Kenya	2008
Myanmar	2006
Nepal	2006
Pakistan	2008
Sri Lanka	1988
Sudan	1972 (South Sudan)
Turkey	1974
Uganda	1979
Yemen	2007

Response to Internal Displacement Situations, Informal Consultation Meeting, 12 September 2006; *The Protection of Internally Displaced Persons and the Role of UNHCR*, 27 February 2007; *UNHCR's Role in Support of an Enhanced Humanitarian Response to Situations of Internal Displacement: Update on UNHCR's Leadership Role within the Cluster Approach and IDP Operational Workplans*, 25 May 2007; *Policy Framework and Implementation Strategy: UNHCR's Role in Support of an Enhanced Inter-Agency Response to the Protection of Internally Displaced Persons*, 4 June, 2007; *Real-Time Evaluations of UNHCR's Involvement in Operations for Internally Displaced Persons and the Cluster Approach: Analysis of Findings*, 29 August 2007 (EC/58/SC/CRP.23); *UNHCR's Role in Support of the Return and Reintegration of Displaced Populations: Policy Framework and Implementation Strategy*, 11 February 2008 (EC/59/SC/CRP.5). All documents are available at UNHCR's website (www.unhcr.org).

⁸ On the evolution and history of humanitarian agencies' engagement in protection the world over, see Elizabeth Ferris, *The Politics of Protection* (Washington, D.C.: Brookings Institution Press), 2011.

^e Source for Afghanistan, Georgia, Iraq, Sri Lanka, Sudan, Turkey and Uganda: UNHCR, *UNHCR's Operational Experience with Internally Displaced Persons*, September 1994 (www.unhcr.org/refworld/docid/3ae6b3400.html); Central African Republic and Nepal: *UNCHR Statistical Yearbook 2006*; Democratic Republic of the Congo in: *UNHCR Global Report 1999*; Kenya and Pakistan: *UNHCR Statistical Yearbook 2008*; Myanmar and Yemen: *UNHCR Statistical Yearbook 2007*; Colombia: "UNHCR field office opens in Colombia," 7 December 1999 (www.unhcr.org/3ae6b82130.html) and Frédérique Prunera, "Personnes déplacées en Colombie et personnes d'origine colombienne cherchant refuge dans les pays voisins," ["Displaced Persons in Colombia and Colombian Refugees in Neighboring Countries"], *Revue internationale de la Croix-Rouge [International Review of the Red Cross]*, no. 843 (September 2001), p. 769.

Congo, Georgia, Pakistan, Sri Lanka, Sudan, Uganda and Yemen. There certainly are cases in which UNHCR's long involvement in the country has supported government efforts to exercise responsibility toward the displaced; Georgia, Colombia and Uganda stand out in this regard. In other cases, such as Myanmar and Pakistan, there are government restrictions on UNHCR's engagement with conflict-induced IDPs while in cases such as Sri Lanka, UNHCR has not played the leading UN role with respect to IDPs. There are also cases, such as Afghanistan, Yemen and Kenya, in which UNHCR has played an important role in supporting the development of national laws and policies, even though such policies have yet to be adopted. By contrast, in Nepal, human rights and development actors take the lead on IDPs. In Turkey, UNHCR is entirely absent from engagement on IDPs, despite advocacy by NGOs for more than a decade that it become involved.⁹ The United Nations Development Program (UNDP), by contrast, has been providing technical assistance to the Van governorate for years on development of an action plan on IDPs and compensation scheme.

Government Capacity

Finally, while recognizing that ongoing conflict or years of war had a negative impact on the capacity of nearly all of the countries surveyed, we hypothesized that governments of countries scoring high on the Human Development Index (see figure 3-5) would have greater capacity to take measures to address displacement than those scoring lower. The results were inconclusive. For example, Colombia and Georgia are both countries where displacement has been protracted, and both score relatively high on the human development index (.807 and .798 respectively) and both have a rich body of IDP laws and policies. But in Colombia,

⁹ U.S. Committee for Refugees *The Wall of Denial: Internal Displacement in Turkey*, 1999. This paper, written by Bill Frelick, was commissioned as a case study for the conference entitled, "Tough Nuts to Crack": Dealing with Difficult Situations of Internal Displacement," held on 28 January 1999, co-sponsored by the Brookings Project on Internal Displacement and the U.S. Committee for Refugees.

Figure 3-5. Human Development Indicator rank by level of development of the 15 countries assessed in this study^f

Low human development	Rank (2010)
Kenya	128
Myanmar	132
Yemen	133
Nepal	138
Uganda	143
Sudan	154
Afghanistan	155
Central African Republic	159
Democratic Republic of the Congo	168
Medium human development	Rank (2010)
Sri Lanka	91
Pakistan	125
High human development	Rank (2010)
Georgia	74
Colombia	79
Turkey	83
Other countries	Rank (2010)
Iraq	N/A

^f Source: UNDP, *Human Development Report: The Real Wealth of Nations: Pathways to Human Development* (<http://hdr.undp.org/en/reports/global/hdr2010>).

the nature of the internal conflict means that successive governments also bear some responsibility for the displacement of populations, although the passage of the Victims and Land Restitution Law under the Santos administration was a historic and positive step in addressing internal displacement and, potentially, in achieving durable solutions. Meanwhile in Georgia, political considerations were the driving factor determining the government's narrow approach to durable solutions focusing exclusively on the right to return; only in recent years and after intense international advocacy has this changed. In both countries, therefore, the dynamics of the conflict rather than the level of development have played the most important role in

determining the government's response.

At the same time, the level of development of a country, including in terms of governance structures, does appear to have better equipped some government institutions to respond. Colombia, with an active Ombudsman, a well-established judiciary and an activist Constitutional Court, was the first country in the world to develop a comprehensive law on internal displacement. Over the years it also has developed a sophisticated system for responding to IDPs, though one that many observers consider still inadequate to address the scale of displacement. In Georgia, the government reforms that were ushered in following the Rose Revolution of 2003 were followed by a gradual shift in government policy that led to amendment of laws and development of national strategies and action plans to address IDP issues. In particular, the government made efforts to ensure that IDPs do not face undue hardship while they remain displaced while retaining its long-standing primary goal of reestablishing its control of the occupied territories and advocating for the right of IDPs to return.

The Utility of the Framework for National Responsibility in Assessing National Response to IDPs

Although the Framework for National Responsibility has been widely used by government and international practitioners, as discussed in the introduction to this volume, and has been employed to analyze specific government responses to internal displacement, as far as the authors are aware, this study constitutes the first time that the Framework has been used as a tool for both assessing and comparing government policies toward IDPs. Overall, the authors found the Framework to be a very useful instrument for conducting assessments, although the collection of data for some of the benchmarks was especially challenging. Problems with data collection for this study have hindered efforts to draw conclusions regarding the determinants of governments' effort to fulfill their national responsibility toward IDPs.

The easiest benchmarks to analyze were those with tangible indicators, in particular, the benchmarks related to data collection (Benchmark 3), national laws (Benchmark 5), policies (Benchmark 6) and institutional focal points (Benchmark 7). Data on these four benchmarks were for the most part publicly available, and it was relatively easy to find straightforward answers to questions such as whether a government had adopted a law on IDPs or had named an institutional focal point. It was more difficult to assess whether the data collected were comprehensive and whether laws, policies and focal points were active and effective. In several cases, such as Afghanistan, laws and policies that had been developed between 2003 and 2005 were virtually unknown to humanitarian practitioners in the country in 2010. Similarly, it was relatively simple to determine which ministry or office was responsible for IDPs but difficult to assess whether the office was an effective agent for IDPs or was simply a figurehead. For example, while the Ministry of Displacement and Migration in Iraq is clearly involved in IDP assistance, observers on the ground have been highly critical of both its capacity and the will of its leadership to take the steps necessary to protect and assist IDPs. While it was relatively easy to "tick the box" indicating that a government had established a focal point, it was much more difficult to assess whether the focal point was effective. Moreover, in this case—and indeed with many of the benchmarks—the situation is often fluid and using the benchmarks to assess responsibility is sometimes akin to taking a snapshot at a particular moment in time.

Benchmark 8, on national human rights institutions, and Benchmark 10, on durable solutions, proved especially difficult to analyze in depth. While it was relatively easy to assess whether a national human rights institution existed (although in both Kenya and Pakistan, there are NGOs with names that are similar to those of NHRIs, so doing so was not a straightforward task), its role, degree of political independence and stature were often unclear. Analysts differ in their assessment of whether an NHRI has even been established in the Central African Republic. The classification of NHRIs undertaken by OHCHR on the basis of the Paris Principles

was an important reference standard. With respect to IDP issues specifically, however, it was often difficult to ascertain whether the NHRI was active on IDP issues, whether it was truly independent of the government and whether it was effective.

It was also relatively easy to compile information on certain government policy statements and efforts to support durable solutions for IDPs (Benchmark 10), although the sustainability of reported returns could usually not be assessed, particularly in countries with ongoing conflict. As a benchmark, “support for durable solutions” is likely too broad. It encompasses a wide range of activities, such as negotiating peace agreements, ensuring that returning IDPs are not subjected to discrimination, supporting economic opportunities and resolving housing, land and property issues. In order to assess whether a government was supporting durable solutions, the net needed to be cast very wide. Cooperation with the international community (Benchmark 12) was another benchmark that was relatively easy to measure on the level of the government’s willingness to accept international financial assistance. But determining the extent to which the government facilitated access by international actors was more difficult. Finally, the issue of data collection turned out to be somewhat surprisingly difficult to assess, given the various different methodologies used and difficulties in tracking down existing datasets.

The most difficult benchmarks to analyze were those whose underlying concepts are very broad and those for which data simply were not publicly available. In the first category are the benchmarks on prevention (Benchmark 1), raising national awareness (Benchmark 2) and participation (Benchmark 9). As with finding durable solutions, preventing internal displacement includes a wide range of activities—from early-warning systems to disaster risk reduction to peace-building and tolerance-promotion activities in areas at particular risk. Such diverse activities make it difficult to assess the extent to which the government is trying to prevent displacement—if it is not actively involved in creating or continuing displacement.

Assessing the extent to which governments are trying to raise national awareness of displacement and accept their responsibility toward IDPs also is difficult. Political leaders can say the right things and publicly indicate their commitment to resolving displacement without in fact having any intention of doing so. Thus, the governments of Sudan and Sri Lanka have both given strong indications that they are committed to resolving displacement even while taking actions that undermine that goal. The indicators that we developed on participation of IDPs (Benchmark 9) proved to be difficult to use, both because the term “participation” encompasses components as diverse as IDP-friendly voter registration systems and mechanisms for needs assessment (which are likely to be covered under different aspects of government policy as well as by different parts of government.) As with other benchmarks, it is also difficult to assess the extent to which participation is meaningful or is token. In the second category were cases for which tracking down data proved to be especially difficult. The question regarding participation (Benchmark 9) proved challenging in this respect as well. It also was difficult to gather even basic information on whether the government was devoting adequate resources to IDPs (Benchmark 11), in part because no government had a budget in which all of its support for IDPs was included in a single figure (although Colombia came closest) and in part because of the time required to track down this information. The example of Transparency International’s work in Georgia was highlighted as especially useful in this regard, leading to a recommendation for similar work to be undertaken by specialized NGOs. The NHRI or judiciary in the country also could play a valuable role; in Colombia, it was the Constitutional Court that judged the resource allocations for IDP issues to be inadequate.

Limitations of the Framework for National Responsibility as an Assessment Tool

We found three areas in which the Framework for National Responsibility fell short as an assessment tool for understanding the exercise of government

responsibility for IDPs: accounting for the responsibility of nonstate actors; accounting for national responsibility for protection, particularly during displacement; and accounting for other causes of displacement.

Accounting for the Responsibility of Nonstate Actors:¹⁰

The first and perhaps most obvious shortcoming of the Framework is that, as international humanitarian law—which is reflected in the Guiding Principles—recognizes, national authorities do not always bear sole responsibility for the protection and assistance of all persons (including IDPs) in the territory under their effective control; responsibility may extend to nonstate actors in situations of armed conflict.¹¹ Millions of IDPs around the world have been displaced by nonstate armed actors and may find themselves under the control of those actors. There are more than fifty countries with conflict-affected IDPs, and in at least half of them there are active nonstate actors. Further, as Geneva Call and IDMC note,

In 2010, close to three million people fled their homes across the world, the majority displaced by conflict between governments and armed groups, or by generalised violence. While governments, or armed groups associated with the government, were the main agents of displacement in close to half of the situations of displacement, in more than a quarter of situations, the main agents of displacement were armed groups opposed to the government.¹²

¹⁰ In situations of armed conflict.

¹¹ See Geneva Conventions and Additional Protocols, as well as Jean-Marie Henckaerts, “Study on Customary International Humanitarian Law: A Contribution to the Understanding and Respect for the Rule of Law in Armed Conflict,” *International Review of the Red Cross*, vol. 87, no. 857, March 2005 (www.icrc.org); *Guiding Principles on Internal Displacement*; and Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, 2nd. ed., Studies in Transnational Legal Policy No. 38 (Washington, D.C.: American Society of International Law and Brookings Institution, 2008) (www.brookings.edu/reports/2008/spring_guiding_principles.aspx).

¹² Geneva Call and IDMC, *Conference on Armed Non-State*

At times governments simply do not have access to IDP populations (or returning IDPs) because the IDPs are in territory that is under the de facto control of nonstate actors. While this study did not find any cases in which governments are “doing everything they can possibly do” to address internal displacement, in countries such as Yemen, the Democratic Republic of the Congo, Afghanistan, Iraq, Colombia and Georgia continuing conflict inevitably limits to some extent the opportunities for and impact of government action. However, the fact that IDPs may prefer displacement in or return to areas under the control of nonstate actors indicates the inability or unwillingness of some states to fulfill their responsibility to provide the protection that IDPs need.¹³

There are examples, however, of some nonstate actors (the Sudan People’s Liberation Movement (SPLM), the Justice & Equality Movement (JEM) of Sudan and the Liberation Tigers of Tamil Eelam (LTTE) of Sri Lanka and separatist authorities (Abkhaz) that themselves have taken steps that are in line with some of recommended measures set out in the Framework. Most notable, in Southern Sudan, the Sudan People’s Liberation Movement welcomed and participated in training on internal displacement, had its own focal point office for IDP and refugee issues, and adopted its own policy on addressing internal displacement.¹⁴ The impact of its involvement is especially notable because in this case the group, a nonstate actor, has become the government of a sovereign state. It is hoped that the more “responsible” policies and practices toward IDPs implemented during the long years of armed struggle

Actors and the Protection of Internally Displaced People (March 23–24, 2011), June 2011, p. 7. See further: *Forced Migration Review—Feature: Armed Non-State Actors and Displacement*, no. 37, March 2011 (www.fmreview.org/non-state.pdf).

¹³ This was a finding of Geneva Call and IDMC, *Conference on Armed Non-State Actors and the Protection of Internally Displaced People*.

¹⁴ See Brookings-SAIS Project on Internal Displacement, *Seminar on Internal Displacement in Southern Sudan, Rumbek, Sudan, 25 November 2002* (www.brookings.edu/reports/2003/02humanrights_idp.aspx).

will serve as a reference for the government of South Sudan.

Accounting for National Responsibility for Protection, Particularly during Displacement: While protection is central to the Framework for National Responsibility and is implicit in many of the benchmarks, a benchmark explicitly focused on protection and specifically on protection as physical security would emphasize the central responsibility of governments to protect IDPs. For example, even if a government has a sound legal framework for IDP protection and assistance, consults with IDPs, supports training, and so forth, if it cannot prevent armed attacks on IDP camps, it is failing to meet its responsibility to protect IDPs. In part, this is covered in some of the benchmarks (for example, Benchmark 1 on prevention) and certainly is an existing responsibility in the Guiding Principles on Internal Displacement, but the issue is of such importance that there should be a specific benchmark on and indicators of IDPs physical security. Surely, the clearest and ultimate test of a responsible government is that it protects the physical safety of IDPs, and that is the least that IDPs should expect of their government. Equally, a benchmark on physical security could include a stronger reference to the responsibility of the government to protect the security of humanitarian workers working to protect and assist IDPs. IDPs, in and outside of camps, face ongoing and intensifying physical security issues, as do the humanitarian workers who assist them but who in nearly all the countries surveyed face access problems and in many instances must curtail their physical presence due to insecurity (see the Benchmark 12 analysis in chapter 1). A benchmark explicitly focused on physical protection could shed further light on the national response to this issue and the adequacy of the response.

Accounting for Other Causes of Displacement: The Framework, in line with the Guiding Principles, explicitly states the importance of ensuring national responsibility in all IDP situations—noting that to be truly “national,” the response must be comprehensive.¹⁵

However, the main text of the Framework—the set of benchmarks—was developed on the basis of experience with IDP situations caused by conflict, generalized violence and systematic human rights violations. Indeed, the Framework seems most useful in assessing government responsibility toward those displaced by conflict, violence and persecution. Even so, several individual benchmarks—such as training on the rights of IDPs (Benchmark 4), ensuring that a legal framework protects those rights (Benchmark 5), encouraging the NHRI to play a role in monitoring IDPs’ enjoyment of rights (Benchmark 8), data collection (Benchmark 3), ensuring IDPs’ participation in decisions affecting their situation (Benchmark 9), and securing durable solutions (Benchmark 10)—certainly would be relevant in assessing policies on other forms of displacement. However, they might require different approaches and indicators for analysis.¹⁶ For instance, it would always seem essential to clarify institutional responsibility (Benchmark 7), though the choice of institution may vary depending on the cause of displacement—and our research showed that it usually did. Further, any situation of displacement will require a durable solution for all the people uprooted (Benchmark 10), although the timing, approach and constraints to solutions likely will be different in cases of displacement induced by natural disaster, climate change or development.

Suggested Areas for Future Research

This research project has found that the Framework for National Responsibility is a valuable—although not perfect—tool for analyzing government efforts to prevent displacement, to respond to IDPs’ needs for protection and assistance and to support durable solutions. While we were often frustrated by the lack of reliable data and therefore unable to draw meaningful comparisons among countries, we found that the twelve benchmarks all directed attention to important issues in understanding the way that governments address internal displacement.

¹⁵ See introduction to the Framework.

¹⁶ See Ferris, *The Framework for National Responsibility: Natural Disasters*, forthcoming.

We therefore suggest a number of areas in which further research using the Framework is needed:

Evolution of the Exercise of National Responsibility for IDPs: While this study seeks to profile and assess governments' national responses to IDPs over the years, further in-depth analysis could be conducted on how governments' exercise of national responsibility develops and is manifested over time. In particular, research could focus on the timing and sequencing of actions taken on the twelve benchmarks of the Framework for National Responsibility and examine political changes over time and their implications for IDPs response. Questions this research would answer include the following: Is it more effective to take action on one benchmark before another? What motivates the government to initiate certain measures but not others? What role is played by national political institutions, political interests and civil society groups in bringing about change in response to IDPs? What role do international actors play in supporting such change? The research would also include analysis seeking to explain why governments treat "old" and "new" IDPs differently in law, policies and practice.

National versus Local Exercise of National Responsibility for IDPs: It would be helpful to look in more detail at the relationship between national and local administrative entities to determine how responsibility is divided among different levels of government and which models are most effective. A related and interesting point for comparative analysis would be the extent to which different systems of government—for example, federal versus unitary systems—exercise their responsibility toward IDPs differently.

Allocation of Financial Resources: As noted in the description of Benchmark 11 (allocation of resources), an excellent research project would be to "trace the money" to identify funds allocated to IDPs through different government ministries. Findings could serve as an important point of comparison of financial allocations made to IDPs and those made to other groups of vulnerable national citizens.

Countries with Lower Numbers of IDPs: Further research on countries with smaller numbers of IDPs could add an important dimension to our understanding of IDP issues. Sometimes it is assumed that it is easier for a government to respond effectively to a smaller caseload than to a larger one. But that is an untested assumption that needs to be studied. For example, there are reports of only a few thousand IDPs remaining in Armenia and Senegal; what are the particular obstacles to resolving these relatively small-scale cases of internal displacement? Are there particular political interests that prevent the government from taking the necessary action?

Data, Data, Data: Much greater attention is needed to both ensuring that data on IDPs exist and collecting data on the benchmarks of the Framework for National Responsibility. In addition to the United Nations and international organizations such as the International Organization for Migration, national governments, national human rights institutions, and relevant civil society groups should all commit the necessary effort and resources to improving the collection of data on internal displacement, particularly with regard to the attainment of durable solutions (return, local integration and resettlement to a third location). In addition, it would be very helpful if the Internal Displacement Monitoring Centre, in the course of its detailed monitoring of more than fifty countries experiencing internal displacement, collected data systematically on the various benchmarks of national responsibility. Given the breadth of IDMC's monitoring work, doing so would also enable and strengthen the basis for comparative analysis across countries where data exist. That in turn would serve as a useful advocacy tool, both for national and local civil society actors and for international agencies seeking to support government efforts to address internal displacement more effectively. This study has given some indication of how various governments have implemented each of the benchmarks, which could well serve as practical advice to other governments.

Other Causes of Displacement: As has been noted, this study applies the Framework primarily to cases of conflict-induced displacement. It would therefore be useful

to determine the extent to which the Framework can be used in cases of natural disaster and development-induced displacement.¹⁷

Recommendations

Our research on national responsibility and assessment of the relative importance of the different benchmarks set forth in the Framework for National Responsibility have resulted in a number of findings, recommendations and even several good practices that we hope can guide, motivate and assist governments in developing their own response to internal displacement. Beyond the more detailed findings and recommendations presented in this study and over and above the obligations of governments toward IDPs articulated in the Guiding Principles on Internal Displacement, we offer the following six short pieces of advice to political leaders seeking to translate their responsibility to IDPs into effective response.

Make responding to internal displacement a political priority. This means acknowledging the occurrence of internal displacement and all its various causes and raising awareness of the issue within both the government and the broader society. When a president or prime minister indicates that addressing displacement is a priority, a signal is sent throughout the government, from government ministries to local mayors, and to the population—not least the IDPs themselves—that this is an issue to be taken seriously. However, it is also necessary to translate such statements into concrete, tangible and effective national response, through the implementation of laws and policies to protect and assist IDPs in accordance with the Guiding Principles on Internal Displacement.

Designate an institutional focal point with sufficient political clout to get things done. The

designated focal point should be adequately staffed and resourced to meet its responsibilities, including overseeing the process of collecting data on internal displacement to ensure sound programming, initiating legislation based on the Guiding Principles, developing policies and action plans, ensuring IDPs' access to information and their participation in all phases of displacement, organizing the necessary training programs and advocating for budgetary allocations.

Devote adequate resources. Addressing internal displacement—from preventing displacement to protecting and assisting IDPs to securing durable solutions—is an expensive task. National commitments to address internal displacement must be matched with a commensurate commitment of national resources. That includes making funds available to ensure not only that IDPs have access to food, water, shelter and medical care but also that, among other things, IDP children have access to quality education, that there are sufficient police personnel monitoring the safety of IDP camps and settlements, and that the national institutional focal point and national human rights institution have adequate human and financial resources to fulfill their roles. Where responsibility is assigned to a particular authority, such as local levels of government, it must be ensured that the authority is provided with the necessary financial means. These and other measures may be included in IDP laws and policies, or may require amending certain laws and regulations.

Look for help within the country. To address the sheer scale of displacement and related needs in many conflict-affected and post-conflict countries, external humanitarian and development assistance has become the norm. National and subnational efforts and mobilization of competent human capital are just as if not more important. It is critical for national authorities not

¹⁷ Ibid.

only to provide tangible financial support but also to lend meaningful political support and to engage in dialogue with regional, provincial and municipal authorities. Further, governments should appeal to and not obstruct the work of credible organizations in their countries that work to protect and promote IDP rights—they are usually the first responders in crises and the only ones with true staying power. The work of civil society groups and national human rights institutions is vital as it represents national ownership of efforts to respond to the plight of IDPs and can offer an effective conduit for the meaningful involvement of IDPs in advocating for their rights. Hence, national human rights institutions should be encouraged and allowed, in accordance with the standards set forth in the Paris Principles, to independently monitor displacement, report on the promotion and protection of the rights of IDPs and provide legal assistance to IDPs.¹⁸

Ask for international assistance when need it. International actors not only have concrete financial resources to contribute but also technical and legal expertise that can be used to support policies for IDPs. These various actors have important contributions to make. They should be seen as partners who can assist the government in meeting its responsibilities. As with national actors, it is essential that international actors are able to undertake their work addressing internal displacement without undue obstacles or delay and in full security.

Don't put off the search for durable solutions for IDPs—and involve IDPs in the process.

Resolving displacement while respecting basic human rights is not only a humane thing to do that enables people to more fully enjoy their rights and to get on with their lives, it is a responsibility of governments, set forth in the Guiding Principles. Resolving displacement sustainably can also be an important dimension of other national endeavors, including rebuilding after a natural disaster, reconciling after a conflict and preventing future conflicts. It is equally important to not delay measures for improving the living conditions of IDPs in their location of displacement even while exploring alternative durable solutions. It is further incumbent on governments to ensure the meaningful participation of internally displaced persons in the planning and management of durable solutions to their displacement.

We hope that our research and analysis of the ways in which governments have exercised their national responsibility toward IDPs will inspire further research, provide some concrete examples of responsible action to governments seeking to protect and assist IDPs, and lead governments to more effectively exercise the responsibility toward IDPs that has been entrusted to them.

¹⁸ See Principles Relating to the Status of National Institutions (the Paris Principles), in UN General Assembly, A/RES/48/134, 4 March 1994 (www2.ohchr.org/english/law/parisprinciples.htm); See other UN resolutions on NHRIs at OHCHR's website (www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx).



Kabul, Afghanistan/ A young girl waits in line with her mother at a UNHCR distribution event at Tamir Mill Bus site. Fifty-seven families eke out a living in a dilapidated warehouse building owned by the Ministry of Transportation that originally served as a storage facility for the national bus company. Tajik and Pashtun families live side by side without any major conflict. Over 70 percent of the families are returnees from the period 2002-2004 who are unable to achieve sustainable reintegration in their places of origin and subsequently drifted to Kabul City in search of work. There is a nearby school which is accessible to the children but the poor economic circumstances of the families oblige them to send their children out to work. Low levels of literacy, particularly amongst the women, limit their access to employment aside from the lowest paid daily wage labor.
Photo: UNHCR / J. Tanner / February 2011

ANNEX

Indicators for Measuring the Exercise of National Responsibility

For each country case study, the exercise of national responsibility for addressing internal displacement will be assessed on the basis of the 12 benchmarks, in the following 2 respects:

- (i) Strictly factual statement: Indicate whether the authorities have taken any measures in line with the recommended action, i.e. towards fulfilling the benchmark (YES/NO);

If YES:

- (ii) Qualitative assessment: Summarize the measures taken and assess their relevance and effectiveness.

1	<p>Prevent Displacement and Minimize its Adverse Effects</p>	<p>Do national authorities take measures to prevent arbitrary displacement and to minimize adverse effects of any unavoidable displacement?</p> <p>If YES, assess:</p> <ul style="list-style-type: none"> ■ What preventive strategies and measures have national authorities taken to prevent displacement, to minimize unavoidable displacement, to mitigate effects of displacement, and to ensure that displacement does not last longer than required by circumstances? ■ Have they created early warning or rapid response mechanisms to protect populations under threat of displacement, either by conflict or disasters? ■ Have these mechanisms proven effective in protecting populations at risk of displacement? ■ What, if any measures, have national authorities taken to mitigate the effects of disaster-induced displacement?
2	<p>Raise National Awareness of the Problem</p>	<p>Does the Government (at the highest Executive level, e.g. President/Prime Minister) acknowledge the existence of internal displacement and its responsibility to address it as a national priority?</p> <p>If YES, assess:</p> <ul style="list-style-type: none"> ■ In what ways have national authorities acknowledged existence of internal displacement, e.g. public pronouncements (at what level: including Executive?), radio and television, organizing meetings? ■ To what extent is this acknowledgement framed in terms of sensitivity to IDPs' plight/ vulnerabilities (vs. IDPs as a problem)? ■ In what ways has Government officially recognized its responsibility to address internal displacement? ■ Do awareness campaigns address importance of IDPs' protection/ rights issues as well as assistance needs?

3	<p>Collect Data on Number and Conditions of IDPs</p>	<p>Do the national authorities collect data on the number and conditions of IDPs?</p> <p>If YES, assess:</p> <ul style="list-style-type: none"> ■ Content of data collected (# IDPs? Locations: in camps / with host families/ other settlements? Returnee #s?) ■ To what extent are data disaggregated by age, gender, women/child heads of household and, if relevant, ethnicity or other characteristics? ■ Do data categorize IDPs according to cause of displacement, i.e. conflict, disasters, development etc. ■ Who collects and manages the data and how? Identify the competent authorities and the procedures. Are local and international organizations involved in data collection efforts? ■ How often are data updated? ■ Are the data (incl. numbers of IDPs) collected by the Government consistent with the data used by local NGOs and international agencies/NGOs, as a basis for programming? If there are discrepancies, specify on what issues.
4	<p>Support Training on Rights of IDPs</p>	<p>Has there been any training of the authorities on the rights of IDPs?</p> <p>If YES, assess:</p> <ul style="list-style-type: none"> ■ Content: Training on what issues (protection included? Guiding Principles?)? Phases? Causes of displacement? ■ Audience: Branches of Government (Executive, legislative, judiciary?), Police? Military? National as well as local/regional authorities? ■ Trainers: From Government? NHRI? Civil society? International organizations/NGOs? ■ Initiative: Specify (if information available) -- Did Government request and organize training? Or was it a training initiated and organized by another actor (e.g. civil society, UN) but which Government officials attended? ■ Duration and Frequency: How many days? How many trainings? ■ Any documented follow-up to the training?

5	<p>Ensure a Legal Framework for Upholding IDPs' Rights</p>	<p>Does national legislation address the specific needs arising in situations of internal displacement and support IDPs to realize their rights?</p> <p>If YES, assess:</p> <ul style="list-style-type: none"> ■ Have the authorities committed themselves to applying the Guiding Principles on Internal Displacement and/or IDP-specific regional standards (e.g. in statements, policies, legislation) as applicable in the country? ■ Is there a specific law on internal displacement? ■ What causes of displacement does the law cover? How are "IDPs" defined? ■ What phases of displacement (i.e. prevention, during displacement, solutions)? ■ How comprehensive and specific in addressing protection and assistance concerns? ■ To what extent has generic (not IDP-specific) national legislation been reviewed, and as necessary, revised in order to address any obstacles, resulting from displacement, that IDPs face in accessing their rights? ■ Any evidence of whether and how information about the legal instruments/provisions relevant to IDPs has been disseminated: To IDPs? To competent authorities? ■ Any evaluations (Govt., NHRI, civil society, international actor) available as to extent to which the relevant law/legal provisions are being implemented? ■ Is there a mechanism (Governmental and/or through NGOs) by which IDPs can access legal assistance in order to file legal cases/complaints about respect for their rights? Any data as to the main issues these cases concern? Any indication as to responsiveness of authorities to these complaints?
6	<p>Develop a National Policy on Internal Displacement</p>	<p>Has the national government adopted a policy or plan of action to address internal displacement?</p> <p>If YES, assess:</p> <ul style="list-style-type: none"> ■ Content: What causes of displacement (e.g. conflict, disaster) does it cover? What phases of displacement: prevention, protection and assistance during displacement, durable solutions (whether return or resettlement and reintegration)? ■ Institutional responsibilities: Does the policy identify the authorities responsible for its implementation? Which Ministries/Offices are so identified? Is the role of local authorities specified? ■ Does the policy/plan of action identify a mechanism for monitoring its implementation? Specify. ■ Any indications (reports, assessments) as to the level of implementation? ■ Has the policy/plan of action been disseminated to government, civil society and IDP populations (in a language they understand)?

7	<p>Designate an Institutional Focal Point on IDPs</p>	<p>Has the Government designated a national focal point on IDPs?</p> <p>If YES, assess:</p> <ul style="list-style-type: none"> ■ Specify the Ministry or office. ■ What is its mandate as regards IDPs? Is this defined by law? Does this mandate include both protection and assistance responsibilities for IDPs? ■ Does the institutional focal point have the capacity (operational, technical, resources – human and material) and political authority to fulfill its mandate? ■ Are there channels of communication and coordination between the focal point and: other relevant national government ministries/offices? Local authorities? With the international community? ■ What mechanisms or procedures exist for IDPs and civil society to dialogue with the national IDP focal point?
8	<p>Support NHRIs to Integrate Internal Displacement into their Work</p>	<p>Is there a National Human Rights Institution (NHRI) which gives attention to the issue of internal displacement?</p> <p>If YES, assess:</p> <ul style="list-style-type: none"> ■ Is there an NHRI in the country? If so, is it able to function independently from the Government? ■ To what extent does the NHRI play a role in protecting and promoting the human rights of IDPs? Specify the types of activities or programs that the NHRI has undertaken with regard to IDPs (e.g. monitoring and reporting on IDP conditions, investigating cases of alleged rights violations, reporting on implementation of national laws and policies on IDP issues, public awareness, trainings, etc) ■ Does the NHRI undertake these activities on a sustained basis or were these ad hoc initiatives? ■ What priority does the NHRI appear to give to IDP issues given the variety of human rights issues it is mandated to address? ■ Is there an IDP focal point among the NHRI staff? ■ What capacity does the NHRI have to undertake IDP-related actions?

9	<p>a) Facilitate IDPs' Participation in Decision-Making</p>	<p>Do the national authorities encourage and facilitate the ongoing participation of IDPs in the planning and implementation of policies and programs for addressing internal displacement?</p> <p>If YES, assess:</p> <ul style="list-style-type: none"> ■ Are IDPs able to make their concerns known to the authorities without risk of punishment or harm? ■ What are the processes, mechanisms or channels through which IDPs can: <ul style="list-style-type: none"> ■ Provide input to the development of national legislation, policies and programs addressing internal displacement; ■ Report their individual concerns to the authorities; ■ Participate in decisions related to the design and delivery of humanitarian assistance and food distribution, shelter, and IDP camp design and security? ■ Make their views known to authorities engaged in a peace process. ■ Are these opportunities for IDP participation systematically available or ad hoc? ■ Does consultation take place during all phases of displacement: prevention, during displacement and through to IDPs engaged in planning and managing their return, resettlement or reintegration? ■ With IDPs from all causes applicable in the country, i.e. conflict? Disaster? ■ What efforts are made to facilitate the participation of women and children in these consultations and decision-making?
9	<p>b) IDPs' rights to political participation, in particular to vote</p>	<p>Are IDPs able to exercise their right to vote without undue difficulties related to their displacement?</p> <p>If YES, assess:</p> <ul style="list-style-type: none"> ■ Are IDPs able to exercise their right to vote in both national and local elections? ■ Do IDPs face any specific obstacles to voter registration and voting? ■ What measures have the authorities taken to address the specific obstacles to voter registration and voting which IDPs have faced?

10	<p>Establish the Conditions and Provide the Means for IDPs to Secure Durable Solution</p>	<p>Is the Government working – or has it worked – to establish conditions enabling IDPs to secure a durable solution to displacement?</p> <p>If YES, assess: whether and to what extent the authorities:</p> <ul style="list-style-type: none"> ■ Actively seek to address the proximate causes of displacement, e.g. seek a peace agreement in the case of conflict? ■ Promote and respect IDPs’ right to choose to return OR to integrate locally OR to resettle in another part of the country, in safety and dignity? ■ Protect IDPs against forced return or resettlement? ■ Provide reintegration support to IDPs once they exercise their right to return, local integration or resettlement? ■ Ensure that IDPs, upon return or resettlement, are not subject to discrimination for having been displaced and enjoy equal access to public services and can participate fully and equally in public affairs? ■ Assist IDPs to recover land and property or, when this is not possible, to obtain compensation? ■ Support IDPs to regain a livelihood? ■ Address the root causes of displacement, e.g. promote inter-communal reconciliation, address fundamental, economic and political injustices etc.?
11	<p>Allocate Adequate Resources to the Problem</p>	<p>Do the authorities prioritize internal displacement in allocating budgetary resources and in mobilizing international support?</p> <p>If YES, assess:</p> <ul style="list-style-type: none"> ■ Does the national budget specifically earmark funds for addressing internal displacement? ■ Any other, i.e. extra-budgetary, state funds, resources made available specifically for addressing internal displacement? ■ Do regional or municipal government budgets earmark funds specifically for addressing internal displacement? ■ Are other funds, non-specific to IDPs, made available, whether at national, regional or local level, to address the broader causes of displacement (e.g. disaster response) and communities affected by displacement? <p>If YES to any of the above, specify:</p> <ul style="list-style-type: none"> ■ What types of activities or programs are any such funds to be used for? ■ Are they specific to a particular phase or cause of displacement? ■ To what government ministries/offices are these funds allocated? ■ Any monitoring and reporting as to how and with what results these funds actually have been spent? <p>When national resources are inadequate:</p> <ul style="list-style-type: none"> ■ To what extent and from which sources do the authorities seek, as a priority, to mobilize resources from the international community to address internal displacement? With what success? ■ For what types of programs and support?

<p>12</p>	<p>Cooperate with International Community when National Capacity is Insufficient</p>	<p>Does the Government facilitate efforts by international organizations to address internal displacement?</p> <p>If YES, assess:</p> <ul style="list-style-type: none"> ■ Do national authorities invite or accept assistance from the international community to help address internal displacement? Is this cooperation specific to a certain cause or phase of displacement or type of activity (e.g. food delivery vs. protection monitoring)? ■ Do the authorities cooperate with and ensure that international actors enjoy safe and unimpeded access to the internally displaced? If not, what are the main obstacles? Do the authorities prosecute persons who commit acts of violence against aid workers? ■ What coordination mechanisms, if any, are in place to facilitate cooperation between the authorities and international actors? ■ How have the authorities responded to any request by the RSG on IDPs to undertake an official visit to the country? Was the RSG able to visit? ■ In what ways do international and regional organizations support national efforts to address internal displacement (e.g. by providing technical assistance in data collection and, if applicable, registration, technical support in the drafting of national laws and policies, needs-assessments, training on IDP issues, capacity-building support to the national institutional focal point, facilitating dialogue between IDPs and national authorities etc.)? ■ Do the authorities allow international programs assisting IDPs in areas outside of government control?
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