



## Guidance Note 5

# Legal assistance

## 1. Legal assistance in the context of internal displacement


As internally displaced persons seek remedies to address rights violations, they may need assistance to understand local laws and procedures, to choose and access appropriate mechanisms, or to obtain legal counsel and representation. Legal information and advice can be particularly important to IDPs unfamiliar with the law in the region to which they have been displaced, who have lost or lack the necessary documentation to access remedies, or who do not have sufficient financial resources to pursue the enforcement of their rights. In such circumstances, legal assistance programmes can play a crucial role to support IDPs in accessing public services, humanitarian assistance programmes or the justice system itself (see Part V.10). 

Legal assistance programmes can also contribute to building a protection environment conducive to finding durable solutions. For example, by resolving property disputes, IDPs may be able to return to their area of origin (see Part VI). 

In general, when designing legal assistance programmes, it may be useful to pursue a local remedy under alternative dispute mechanisms, if these exist. Confidentiality and informed consent should form the basis of all programmes.

## 2. Key types of legal assistance programmes for IDPs

### 2.1. Legal Information Programmes

Legal information programmes seek to familiarize IDPs with existing formal legal systems (regulations, laws and customs regulating civil/administrative, criminal and human rights matters), particularly as they relate to their displacement (see Part IV.6). 

Through legal information programmes, one may:

- Set up legal information offices or mobile clinics in displaced communities;
- Facilitate communication between IDP communities to overcome legal barriers, particularly if one community has had prior success;
- Publish reports on issues relating to the rights of IDPs;
- Create and support information networks of national partners, including public officials, institutions, lawyers, NGOs, and community elders to ensure understanding of their duties vis-à-vis IDPs;
- Collect and distribute information on precedent-setting cases, new procedures, state programmes specifically benefiting IDPs, etc.; and
- Conduct mass information campaigns using radio, TV, press, newsletters, posters, or leaflets to distribute important information to displaced communities.

### 2.2. Legal Counselling

Legal counselling programmes seek to advise IDPs on their legal options to address a specific rights violation or to claim a legal entitlement. Such programmes can provide individual


<sup>1</sup> This chapter is largely based on and takes excerpts from the Handbook on Information, Counselling, Legal Assistance (ICLA), Norwegian Refugee Council, 2004 edition.

counselling through mobile units or in permanent centres. While some programmes specifically target services to relevant minority or sub-groups with specific needs within the IDP population, in some circumstances, broader meetings with IDP and host community populations may be appropriate to address certain legal issues. The primary functions of a legal counsellor would be to:

- Provide individual advice to displaced persons by listening to the situation, explaining the situation in legal terms, and discussing potential legal mechanisms to address the problem;
- Explain potential benefits and risks associated with various options, and provide guidance about the best method to address challenges;
- Clarify incorrect information that may be circulating in the community.

### 2.3. Legal Aid Programmes

Legal aid programmes provide direct support to IDPs to overcome legal obstacles, access entitlements, obtain redress for rights violations and resolve disputes through appropriate channels. When providing legal assistance, one may:

- Act as legal counsel for the displaced person/s in relevant administrative procedures. Administrative procedures are commonly used to address cases involving human rights, property restitution or land tenure rights, documentation required for citizenship or identity documentation, or social benefits such as employment or pension rights.
- File legal complaints with courts and provide in-court representation through staff or outside counsel. Legal representation may be particularly useful in cases of neglect, deliberate obstruction of justice, or unlawful actions such as arbitrary arrest or detention.
- Exercise power of attorney or accompany client/s to gather documents from public offices or documentation centres in the area of displacement or in the IDP's area of origin.
- Prepare and file “test cases” in domestic, regional and international courts and human rights bodies<sup>2</sup> on behalf of IDP clients (*see also Part I.2*). 
- Assist clients with the submission of cases, representation and mediation in ‘informal’, ‘traditional’ or ‘tribal’ justice mechanisms.

### 2.4. Related activities

#### 2.4.1 Capacity Building activities can: (*see Part IV.4*)


- Strengthen the knowledge of national and local governmental actors about their obligation to respect, protect and fulfill the rights of IDPs in a manner consistent with international law.
- Provide technical assistance and advice on legislation, implementation regulations and procedures.
- Give financial support to start legal/administrative proceedings (i.e. legal services, administrative fees, expenses or ‘incentives’ that may be necessary to broaden legal aid programs to IDPs).
- Strengthen local organizations’ capacity and skills to assist IDPs and promote respect for their human rights.


<sup>2</sup> This includes taking cases to international courts such as the European Court of Human Rights in Strasbourg, international treaty bodies such as the United Nations Human Rights Council in Geneva, or UN committees guarding treaties like Minority Rights, Elimination of all Racial Discrimination and the Committee on Economic and Social Rights.

### 2.4.2 Advocacy (see Part IV.3)

Based on understanding of individual cases, advocacy campaigns can be launched for the protection of particular rights of the displaced. Experience has shown that specific and actual case-based advocacy programmes have greater impact and stronger credibility. Given the sensitivity of many IDP rights-related issues, advocacy campaigns should be discussed, agreed upon and supported throughout the relevant organization.

## 3. Key considerations for effective legal assistance programmes

<p><b>Assessing the feasibility and sustainability of a project</b></p>	<p>A legal assistance programme is generally considered <b>feasible</b> if:</p> <ul style="list-style-type: none"> <li>• Personnel and financial resources are available.</li> <li>• The security situation allows the relevant organization to operate in reasonable security.</li> <li>• The organization has access to the affected population/target groups, noting that if access is limited, mobile units and other alternatives can be considered.</li> <li>• If the activities have a reasonable chance of improving the situation of the target group.</li> </ul> <p>The project is <b>sustainable</b> if:</p> <ul style="list-style-type: none"> <li>• Once the relevant organization departs, there is local capacity to continue providing the same kind of service, if needed.</li> <li>• The project has built-in knowledge and skill transfer mechanisms to local communities, government authorities and the staff members themselves.</li> </ul>
<p><b>Strategically combining different types of legal assistance projects</b></p>	<ul style="list-style-type: none"> <li>• Establish credibility and acceptance before taking on individual case work. As the situation improves and possibilities for seeking legal remedies develop, the project can initiate concrete legal actions to solve legal problems of individuals.</li> <li>• Determine the right mix and type of information, counselling and assistance activities. This is a challenging balancing act. In particular, organizations must choose between: <ul style="list-style-type: none"> <li>– Providing more individual counselling versus disseminating information to groups;</li> <li>– Providing legal assistance to many people versus prioritizing a test case for the courts; or</li> <li>– Concentrating on an “easy” issue where a solution is likely (e.g. obtaining documents) versus systemic issues which take longer to change (e.g. discrimination in the courts).</li> </ul> </li> <li>• The choice for one or another type of programme will depend on the potential positive impact on IDPs of particular activities. Generally, legal aid programmes should combine information and counselling, as both are integral to successful legal interventions.</li> <li>• In conflict and immediate post-conflict situations, legal assistance activities often target a large number of clients and focus on providing general information in the absence of legal and civil infrastructure to pursue individual cases.</li> <li>• If individual cases become repetitive, this may indicate a systemic problem with a particular law or institution; in such cases,  information and advocacy campaigns may be useful (see Parts IV.3 and IV.6).</li> <li>• If solutions to individual claims are achieved, legal information and training programmes can contribute to enable broader groups also benefit from the same solution or strategy to address the problem. ➔</li> </ul>

	<ul style="list-style-type: none"> <li>• In some situations it may be more appropriate to seek a remedy within an alternative dispute mechanism as opposed to formal legal mechanisms. As long as such remedies are in accordance with international human rights law and principles, they can be applied either as an interim measure, or in a manner that complements the existing official system (see Part V.9). </li> </ul>
<p><b>Coordination with other programmes and actors</b></p>	<ul style="list-style-type: none"> <li>• All agencies involved in protection, assistance and legal aid activities should work in a collaborative and concerted way to minimize overlap and to fill gaps. For example, if return becomes a durable solution for a large number of IDPs, information and counselling on land tenure, compensation or restitution could be key components in a shelter program.</li> <li>• IDPs and other actors' perceptions of the credibility of organizations providing legal assistance should also be monitored. Staff involved in legal aid projects should clearly set realistic expectations by stating how their organization can and cannot assist internally displaced persons.</li> </ul>
<p><b>Managing information</b></p>	<ul style="list-style-type: none"> <li>• Protecting the confidentiality of personal information and obtaining informed consent to share such information is essential to build trust and confidence and to ensure that affected populations are not put at risk.</li> <li>• Information used in legal aid projects must be reliable and accurate, which means that it must be verified and updated. This can be particularly difficult during conflict or in post-conflict situations, when things change quickly and transparency is often lacking.</li> <li>• While electronic recordkeeping, such as databases, can support assessment, monitoring and analysis, it is essential that all mechanisms safeguard confidentiality. Such information should also be cross-checked whenever possible, and evaluated in light of its source.</li> <li>• A system to refer potential clients or issues to specialized organizations should be established, both on a case-by-case basis and thematically.</li> <li>• A thematic compilation of good practices and relevant jurisprudence can also strengthen legal advice actions.</li> <li>• <i>Standard operating procedures</i> should be developed and disseminated to ensure access to legal redress or/and specialized legal assistance for different protection risks (i.e. for land, housing and property restitution cases; SGBV; documentation procedures, etc.).</li> </ul>
<p><b>Staffing the projects</b></p>	<ul style="list-style-type: none"> <li>• Recruiting local staff contributes to the sustainability of programmes, the development of local capacities, and a greater understanding of the local legal system.</li> <li>• When hiring local lawyers one should seek to avoid weakening state institutions by depleting local capacity.</li> <li>• Where appropriate, strike a balance between recruiting newly graduated lawyers and experienced local lawyers: while experienced lawyers may bring credibility and legitimacy to the project and facilitate dialogue with key actors, it is also important to expose a new generation of lawyers to the principles of human rights law to carry with them throughout their professional life.</li> <li>• Where possible, hiring practices should also aim to an appropriate ethnic and gender balance among national staff, taking into account political, cultural and any other possible sensitivities in the country or region.</li> </ul>



### Developing soft skills (see Part II.)



- Noting that many IDPs and affected populations seeking advice may have been traumatized by a conflict situation, all staff members need to develop basic knowledge of the symptoms of trauma, as well as general counselling techniques.
- Legal aid workers should also be equipped to deal with the personal stress that can result from being exposed to accounts of rights violations and trauma.
- All staff in legal assistance programmes should be aware of the limitations of their competencies when it comes to an IDP's need for professional psychological and medical counselling.
- Some basic tips:
  - Never turn anyone away. If approached by someone outside the target group, politely redirect the person to other organizations that may be of assistance.
  - Focus on key issues with clear and simple questions.
  - Be prepared and always answer questions accurately, even if it requires follow-up or research.
  - Provide comprehensive information, encouraging clients to ask follow-up questions. Many may not be aware of the information they need to know.
  - If needed, spread discussions over several meetings. It is not necessary to bring everything up in the first consultation.
  - Try to reach IDP sub-groups at high risk or those most in need of information and counselling.
  - Do not attempt to be *superhuman*. Even counsellors are allowed to admit that an issue is difficult to handle. If your organization does not have the capacity to answer a specific issue, contact a network colleague for advice, ensuring the query does not compromise confidentiality.



## Resources

- *Information, Counselling, Legal Assistance (ICLA)*, Norwegian Refugee Council, 2004 edition.
- “*National Human Rights Institutions and Internally Displaced Persons: Illustrated by the Sri Lankan Experience*” Brookings Institution-SAIS Project on Internal Displacement, (by Gomez, Mario), July 2002.
- “*Housing and Property Restitution for Refugees and Displaced Persons, Implementing the Pinheiro Principles*”, FAO, IDMC, OCHA, OHCHR, UN-HABITAT, UNHCR, 2007.
- “*Property restitution in practice: The Norwegian Refugee Council’s experiences*”, (by NRC, Ingunn Sofie Aursnes, and Conor Foley), April 2005.
- “*Implementation of the 1998 UN Guiding Principles on Internal Displacement in Domestic Law and Policy: Study on the Recovery of Personal Documentation*”, NRC, (by Conor Foley, Paul Nesse, Barbara McCallin), 28 February 2007; to appear in a forthcoming joint publication on domestic laws and policies on internal displacement by the Brookings Institution-University of Bern Project on Internal Displacement and the American Society of International Law.



## Useful websites:

- Norwegian Refugee Council (NRC): [www.nrc.no](http://www.nrc.no)
- Internal Displacement Monitoring Centre (IDMC): [www.internal-displacement.org](http://www.internal-displacement.org)
- Brookings Institution SAIS Project on Internal Displacement: [www.brookings.edu](http://www.brookings.edu)
- United Nations High Commissioner for Refugees (UNHCR): [www.unhcr.org](http://www.unhcr.org)
- Reliefweb (OCHA): [www.reliefweb.int](http://www.reliefweb.int)