



Part I

FOUNDATIONS OF IDP PROTECTION

*Photo UNHCR / G.M.B. Akash / June 2006,
Young Biharis attend primary school in a government-run camp in Dhaka.*

The fundamentals of protection



Key message

Protection aims to ensure the full and equal respect for the rights of all individuals, regardless of age, gender or ethnic, social, religious or other background. This requires a common understanding of protection and the means by which it is achieved. This chapter provides a definition of protection, explains who internally displaced persons are and why they need protection and assistance, and outlines the key approaches and core principles that should guide and underpin all protection efforts.

1. What is protection?

Protection is defined as all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and spirit of the relevant bodies of law, namely human rights law, international humanitarian law and refugee law.¹

Protection can be seen as having three different dimensions:

- Protection as an **objective**
- Protection as a **legal responsibility**
- Protection as an **activity**

Protection is an objective, which requires full and equal respect for the right of all individuals, without discrimination, as provided for in national and international law. Protection is not limited to survival and physical security but covers the full range of rights, including civil and political rights, such as the right to freedom of movement and to political participation, and economic, social and cultural rights, including the rights to education and health.

Protection is a legal responsibility, principally of the State and its agents. In situations of armed conflict, that responsibility extends to all parties to the conflict under international humanitarian law, including armed opposition groups. Human rights, humanitarian and development actors play an important role as well, in particular when States and other authorities are unable or unwilling to fulfill their protection obligations.²

Protection is an activity because action must be taken to ensure the enjoyment of rights. The three types of protection activities can be carried out concurrently:

- *responsive* – to prevent or stop violations of rights;
- *remedial* – to ensure a remedy to violations, including through access to justice and reparations; and
- *environment-building* – to promote respect for rights and the rule of law.³

¹ This definition, which was originally developed over a series of ICRC-sponsored workshops involving some fifty humanitarian and human rights organizations, has been adopted by the IASC. See *Protection of Internally Displaced Persons*, Policy Paper Series, No. 2 (2000) and *Strengthening Protection in War: A Search for Professional Standards* (ICRC, 2001).

² Several international organizations, namely OHCHR, UNHCR, UNICEF and ICRC, have specific protection mandates. All UN and partner agencies however have a responsibility to integrate human rights into their work and to approach their work with due regard to protection issues. See *Renewing the United Nations: a Programme for Reform*, Report of the Secretary-General to the United Nations General Assembly (UN doc. A/51/950) and *Protection of Internally Displaced Persons* (IASC, 2000). See also Part I.3 of the handbook.

³ *Strengthening Protection in War*, 2001, p. 20 (ICRC, 2001).



In our work

Protection requires working with all relevant stakeholders, including populations at risk, local communities and the authorities, to:

- *prevent* violations of rights from occurring or recurring;
- *stop* ongoing violations;
- *provide remedies*, through reparation and rehabilitation, if violations have occurred; and
- *foster* an environment conducive to respect for the rights of women, men, girls and boys in accordance with the law.

2. Who are internally displaced persons?

All persons, including those who are internally displaced, are equally entitled to protection. As defined by the *Guiding Principles on Internal Displacement*,⁴ internally displaced persons are:

Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human made disasters, and who have not crossed an internationally recognized State border.

Involuntary departure and the fact that the individual **remains within his/her country** are the two defining elements of an internally displaced person (IDP). The first element distinguishes IDPs from individuals who left their homes out of choice and could have otherwise safely remained where they lived.⁵ The second element explains why IDPs are not refugees. Refugees, by definition, are *outside* of their country of nationality or habitual residence.⁶ In other respects, however, both categories of displaced persons often face similar risks and deprivations.

The definition mentions some of the main causes of internal displacement, including **armed conflict, violence, violations of human rights and disasters**. This is not an exhaustive list; the phrase “in particular” means that it does not exclude the possibility that other situations might meet the two key criteria of involuntary movement within one’s country.

It is important to understand that the IDP definition is a **descriptive definition** rather than a legal definition. It simply describes the factual situation of a person being uprooted within his/her country of habitual residence. It does not confer a special legal status in the same way that recognition as a refugee does. This is not necessary for IDPs because, unlike refugees who require being formally recognized as such by the country of asylum or UNHCR under its mandate, IDPs remain entitled to all the rights and guarantees as citizens and other habitual residents of a particular State.⁷

The purpose of highlighting the situation of IDPs and working to enhance their protection is not to privilege IDPs over other groups; IDPs have the same rights as others in their country. They often experience many of the same risks as other civilians caught in conflict, who also are in need of protection. Yet, the experience of internal displacement also creates heightened as well as **distinct protection risks**. These particular risks need to be understood and addressed so that the rights of IDPs are protected *along with* those of other civilians.

⁴ See Annex 1: “Guiding Principles on Internal Displacement.”

⁵ It is important to keep in mind that persons who did not leave might face similar risks as those who left, but were simply unable to travel due to health reasons or because they were trapped in the conflict. Some might find it even more dangerous to move out of their places of origin because of tension with surrounding communities, or insecurity along the way.

⁶ A refugee is defined as a person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality or habitual residence, and is unable, or owing to such fear, is unwilling to avail himself/herself of the protection of that country. See Art. 1 of the 1951 Convention Relating to the Status of Refugees.

⁷ Some countries do accord IDPs, or certain groups of IDPs, a status under national legislation. However, this does not affect the rights enjoyed by *all* internally displaced persons under international human rights and humanitarian law.

IDPs have been compelled to leave their homes and often cannot return because they face risks at their places of origin from which State authorities are unable or unwilling to protect them, because they might have been specifically prohibited to return, or because their homes have been destroyed or are being occupied by someone else. They also may face the risk of forced return to an area that is unsafe.

The **particular factors of internal displacement** that tend to heighten protection risks include:

- IDPs have lost their homes and, as a result, may be in need of shelter. In some cases they may be compelled to seek shelter in crowded camps or settlements, which can give rise to various protection risks.
- They have often lost access to their land and other property and are cut off from their normal livelihoods and sources of income. As a result they may suffer poverty, marginalization, exploitation and abuse.
- Access to adequate food, safe water and public services, such as education and health care becomes difficult, often leading to high levels of hunger, malnutrition and disease.
- Family and community-structures often collapse and family members become separated. Unaccompanied and separated children, single-headed households (in particular when headed by women or children), older persons and persons with disabilities are often at heightened risk of abuse, including sexual exploitation, child labour or forced recruitment into armed forces or groups.
- Identity documents often are lost, destroyed or confiscated in the course of displacement. As a result, IDPs often face difficulties in accessing public services, such as education and health care, limits on freedom of movement and heightened risk of harassment, exploitation or arbitrary arrest and detention.
- In many cases, IDPs are displaced into areas where they face marginalization, discrimination and hostility, are exposed to landmines or explosive remnants of war, or are targeted for abuse and attack.

3. Who is responsible for protecting internally displaced persons?

Primary responsibility for protecting internally displaced persons, and all persons within their own country, rests with the national authorities of the country. National responsibility is a core concept of any response to internal displacement. It is a fundamental operating principle of the international community and is routinely emphasized by governments themselves, as a function of their sovereignty.

Yet, it is sometimes the very governments responsible for protecting and assisting their internally displaced populations that are unable or even unwilling to do so, and might even be directly involved in forcibly uprooting civilians.

Even then, however, the **role of international actors is to reinforce, not replace, national responsibility**. This requires a two-pronged approach of encouraging States and other authorities to meet their protection obligations under international law while also supporting the development of national and local capacities to fulfill these protection responsibilities.

The Framework for National Responsibility identifies twelve steps that governments should take towards ensuring an effective national response to internal displacement.⁸ These are elaborated in detail in Part IV.4 and are summarized below.

⁸ See *Addressing Internal Displacement: Framework for National Responsibility*, The Brookings Institution-Bern Project on Internal Displacement, 2005.

National responsibility in situations of internal displacement

In addition to ensuring the protection of rights in accordance with international law, national responsibility in situations of internal displacement entails:

1. Preventing displacement and minimizing its adverse effects
2. Raising national awareness of the problem
3. Collecting data on the number and condition of IDPs
4. Supporting training on the rights of IDPs
5. Creating a legal framework upholding the rights of IDPs
6. Developing a national policy on internal displacement
7. Designating an institutional focal point on IDPs
8. Encouraging national human rights institutions to address internal displacement
9. Ensuring that IDPs participate in decision making
10. Supporting durable solutions
11. Allocating adequate resources to addressing internal displacement
12. Cooperating with the international community when national capacity is insufficient

In situations of armed conflict, all parties to the conflict, both State and non-State actors, have a responsibility to respect and ensure respect for international humanitarian law, including by providing protection and assistance to the civilian population.

4. Operationalizing protection

Effective field-based protection strategies are built around three common and inter-connected approaches:

- **Protection must be rights-based** (a rights-based approach);
- **Individuals and communities are active and equal partners in their protection** (a community-based approach);
- **Protection promotes full and equal respect for the human rights of all individuals**, without discrimination of any kind.

Use of these approaches is fundamental to ensuring that a protection perspective is integrated throughout all the different sectors of humanitarian response.

4.1. Protection is about realizing human rights (a rights-based approach)

Because protection is about respect for rights, it requires an approach grounded upon and geared towards the full and equal enjoyment of rights.

This way of working requires that we recognize individuals as **rights-holders** with legal entitlements to protection and assistance. Unlike “needs,” rights generate responsibilities to ensure the protection and well-being of individuals. The State and other authorities are **duty-bearers** with responsibilities to respect and protect individuals’ rights.

These rights and responsibilities are firmly rooted in international law, particularly human rights and international humanitarian law, and refugee law, where relevant.⁹

A rights-based approach means that all of our policies, programmes and activities:

- are based on rights, as provided in international law;
- further the realization of rights; and

⁹ Refugee law does not apply to the protection of internally displaced persons, although some refugee law principles are relevant, by analogy. The international legal framework for the protection of IDPs is discussed in Part I, Chapter 2.

- seek to strengthen the capacities of rights-holders (women, men, girls and boys) to claim their rights, and the capacities of duty-bearers (State and other authorities) to meet their obligations to respect, protect and fulfill those rights.

A rights-based approach can strengthen our work by anchoring it in a system of rights and corresponding obligations established by international law. By empowering people to claim their rights and strengthening the capacities of duty-bearers to fulfill these rights, a rights-based approach also promotes and strengthens the sustainability of our efforts.



In our work

Applying a rights-based approach in situations of internal displacement requires that we:

- Be familiar with international legal standards, that is rights and obligations, that underlie protection;
- Use rights as the basis for our activities, including situation analysis and participatory needs assessments, strategy development, protection activities and programme planning, design, implementation, monitoring and evaluation;
- Analyze why individuals or groups cannot enjoy their rights, including by examining underlying and structural obstacles, and barriers based on age, gender or diversity;
- Ensure that our policies, programmes and activities aim to support internally displaced women, men, girls and boys in enjoying their rights; and
- Strengthen the capacity and accountability of national and local authorities to meet their protection responsibilities.

While a “rights-based approach” to humanitarian action is a relatively recently coined expression, the concept behind it is based on decades-old principles. According to the Charter of the United Nations, one of the core purposes of the United Nations is to promote and encourage “respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.” Human rights are therefore a concern that cuts across humanitarian and development activities, entailing a responsibility for all parts of the UN and NGOs to integrate human rights into their work.¹⁰

4.2. Individuals and communities are equal partners in protection (a community-based approach)

Internally displaced persons, like other civilians at risk, develop their own strategies to reduce exposure to and mitigate the effects of protection risks. Such coping mechanisms are based on local knowledge and build upon existing capacities and resources within the community. Experience has shown that for protection efforts to be effective and sustainable, they must be designed to recognize, support and strengthen the protection capacities of individuals and communities themselves.

A community-based approach¹¹ is a way of working that:

- ensures that women, men, girls and boys of all ages and diverse backgrounds are regarded and engaged as active partners in all aspects of our work;
- recognizes their resilience, capacities and resources; and
- mobilizes and builds on the capacities of communities to enhance their own protection.

By recognizing that all members of the community are active participants in decision-making, a community-based approach reinforces the dignity and self-esteem of people and promotes their empowerment. People are empowered when they are able to become informed and active agents in addressing their own situation.

¹⁰ UN Programme for Reform, 1997. See also *Frequently Asked Questions on a Human Rights-based Approach to Development Cooperation*, OHCHR, Geneva, 2006, p. 35.

¹¹ See *A Community-Based Approach in UNHCR Operations: Handbook*, UNHCR, forthcoming 2007.

This way of working requires a thorough understanding of the context of displacement, including the socio-economic context, gender roles, and power dynamics within the community as well as the role of other actors, such as armed groups or the host population. It seeks to understand the community's protection concerns and priorities and to identify its existing capacities to access and enjoy human rights.



In our work

Applying a community-based approach in situations of internal displacement requires that we:

- Understand gender roles, power relations and community dynamics (among different generations, among diverse groups, and between internally displaced persons and the local community) and how this affects their protection;
- Recognize the ways in which internally displaced persons enhance their own protection and enjoy their rights, and work to reinforce these efforts;
- Build an equal and active partnership with internally displaced women, men, girls and boys by ensuring that they participate in identifying and addressing protection risks and priorities, including through participatory assessment and in decision-making on programme design, implementation, monitoring and evaluation.

Our role as international humanitarian and development actors is to build or rebuild and strengthen the community's capacity to respond to its own concerns and to take decisions as to how best to address these concerns. We must recognize the temporary nature of our presence, our role as facilitators, and our limitations in capacities, resources and local knowledge.

Applying a community-based approach is widely recognized within the international humanitarian community as an essential element of humanitarian response, including in situations of internal displacement.¹²

4.3. Protection promotes full and equal respect for the human rights of all individuals, without discrimination of any kind (age, gender and diversity mainstreaming)

Conflict and displacement can affect individuals in different ways depending on factors such as age, gender, and ethnic, social, religious and different backgrounds. Certain groups of persons, including women, children, older persons and minorities, are often marginalized within communities and less represented in formal decision-making structures. As a result, their specific concerns are often overlooked in needs assessments and in programme planning.

Failure to acknowledge the particular risks faced by diverse members of a community not only results in a failure to address those concerns, but it might lead to actions that inadvertently increase these risks and reinforce discrimination and exclusion.

Incorporating diversity analysis into all aspects of our work is essential to understanding and addressing the different protection risks within a community.¹³

In practical terms, mainstreaming diversity involves:

- recognizing that, within a community, different members face particular inequalities, risks and needs, depending on their age, gender and social or other background;
- identifying and analyzing the different protection risks faced by women and men of different ages and backgrounds. This includes protection risks arising from their particular situation and the protection implications of our own activities; and

¹² *Guidance Note on Using the Cluster Approach to Strengthen the Humanitarian Response*, IASC, November 2006. A community-based approach also is part of the Terms of Reference for Sector Leads at the Country Level.

¹³ The IASC has highlighted the importance of mainstreaming age, gender and diversity into all aspects of humanitarian response, including into all sectors and clusters within the "cluster approach." See *Guidance Note on Using the Cluster Approach to Strengthen the Humanitarian Response*, IASC, November 2006.

- taking targeted action to address and prevent these risks and inequalities and to empower groups within the community to claim their rights.

4.3.1 Gender

The term “**gender**” refers to the socially constructed and assigned characteristics, roles and responsibilities of women and men in any given culture. These social characteristics are constructed on the basis of sex combined with other factors, such as age, religion, national, ethnic and social origin. Gender is not static; it responds to changes in the social, political and cultural environment.

Gender equality refers to the equal rights, responsibilities, treatment and valuation of women and men, and girls and boys. There is gender equality when each individual’s rights and opportunities are not dependent on being female or male. When there is gender equality, women’s and girls’ interests, needs and concerns shape political, social and economic decisions as much as do those of men or boys. All humanitarian agencies have a responsibility to mainstream a gender perspective into their work.¹⁴

Conflict and displacement can affect women and men, girls and boys, in different ways, and often result in changes in gender roles and power dynamics. Gender, too often perceived strictly as a “women and girls’ issue,” also relates to men and masculinity. A gender analysis will help identify not only the particular protection risks that women and girls face, but also those faced by men and boys.

Sexual violence and exploitation, which primarily targets women and children, has become one of the most disturbing and common features of contemporary armed conflict and displacement crises. Displaced women, girls and boys are often forced to take on different and/or additional responsibilities as a result of being separated from their families. During displacement, there is usually a dramatic increase in the number of women and children who head households and who, as a result, are at particular risk of rights violations. At the same time, because of existing, even exacerbated, inequalities within the community, women and children might have even less social, economic and political power and be less represented in formal leadership structures, with the result that their rights and particular needs often are overlooked.

4.3.2 Age

Displacement also affects individuals in different ways, depending upon their age. Children, adolescents and older people are often excluded from formal decision-making structures, with the result that the specific risks that they face are not taken into account.

- **Children**, generally defined as persons under 18, are exposed to a range of risks when forced to flee from their homes. Children, in particular when separated from their families, are often at risk of neglect, abuse or exploitation, forced recruitment into armed forces or groups, child labour, deprivation of access to food, shelter, education and health care, and other violations of their rights. Such factors seriously threaten their well-being and undermine their cognitive, emotional and social development.
- **Adolescents**, generally considered to be children aged 10 and older, face distinct risks compared with younger children but are often neglected within displaced communities. Seen as young adults, they are at high risk of sexual violence or exploitation and forced recruitment into armed forces or groups. When separated from parents or adult care-takers they often take on the daunting responsibility of caring for younger siblings but may lack sufficient resources and support to manage a household.

¹⁴ ECOSOC, Agreed Conclusions on Gender Mainstreaming, 1997/2. These Conclusions identify principles for mainstreaming gender equality throughout the UN system and contain specific actions that should be implemented by UN agencies in order to institutionalize gender mainstreaming. Security Council Resolution 1325 (2000) on the protection women in armed conflict as well as resolutions on protecting children in armed conflict, call upon all States, UN actors and other agencies to mainstream a gender perspective in their work.

- **Older persons** often suffer social and economic hardship as a result of displacement, in particular where they become separated from their families and other support structures. In some cases, they may have been unable to flee along with other members of their family. They may also be at increased risk of violence, exploitation or abuse and often lose their traditional role or standing within the community.

4.3.3 Diversity

In addition to gender and age, other factors might lead to significant inequalities and place persons at risk. These include ethnicity, language, culture, religion, disability, family status and socio-economic status.

Other differences, such as between newly-displaced and long-term displaced, between internally displaced persons in camps compared with those in urban settings, and between internally displaced persons and the local host community, might also arise.



In our work

Mainstreaming age, gender and diversity in situations of internal displacement requires that we:

- Understand how conflict and internal displacement affects individuals of different ages, gender and backgrounds differently, and how this affects the relationships between them and the realization of their rights;
- Incorporate age, gender and diversity analysis into assessments, analysis, strategy development, design, implementation and monitoring of protection programmes and activities;
- Work in partnership with internally displaced women, men, girls and boys to identify protection risks faced by different members of the community, and to prevent and address such risks through targeted action to empower disadvantaged groups to enjoy their rights;
- Work towards the elimination of violence in all its forms, including sexual and gender-based violence, in close collaboration with internally displaced persons, local communities, civil society and the national government; and
- Ensure that our strategies, programmes and activities do not inadvertently lead to or reinforce discrimination or exclusion of different groups, but rather promote equality and rights for all.

Communities, culture, tradition and rights

The universality of human rights often is challenged on the grounds that local culture and tradition should take precedence. For example, some humanitarian workers have resisted taking action to promote and protect the rights of women and girls on the grounds that doing so “would interfere with local culture.”

However, cultural beliefs are not homogenous and cultures are not static; they are continually being renewed and reshaped. Cultural change is the result of many factors, including conflict and displacement. Change also results from deliberate efforts to influence values through revisions of law or government policy.

International law provides that States are obliged to take measures to modify cultural patterns of conduct when this is required to eliminate customary and other practices that are based on the superiority or inferiority of either sex or on stereotyped roles for women and men. When a tradition or practice is considered by the United Nations’ relevant human rights organ to be directly contrary to an international human rights instrument or standard, humanitarian staff is to be guided by the relevant human rights instrument or standard, and work to promote its application.

As humanitarian actors, we have an obligation to respect and promote the rights of all. Working with the community is critical to ensure respect for the rights of all of its members. Because many human rights violations occur within the community, and because individuals and groups may be stigmatized or isolated by their communities based on their age, gender and diversity, it is only by *working with* communities that we will be able to ensure their protection.

5. The core principles of humanitarian action

Several core principles guide all humanitarian action and should be respected by all staff and partners at all times. Respect for these principles is critical for the integrity of our work and the credibility and safety of humanitarian operations.

- **Do No Harm:** Action, as well as inaction, can have unintended negative consequences. We must ensure that our actions and interventions (or lack thereof) do not adversely affect individuals and their communities, our partners or colleagues, or expose them to harm. Before taking action, we must anticipate the consequences and assess any potential risk factors, and take measures to eliminate and minimize such risks.
- **Humanity and the humanitarian imperative:** The prime motivation and purpose of our work is to save lives and to prevent and alleviate human suffering, wherever it is found. Individuals must be treated humanely, with dignity and respect, and have a full and equal right and ability to receive humanitarian assistance.
- **Impartiality:** Humanitarian action must be taken without any adverse distinction based on nationality, ethnic origin, religion, class, political opinion or other ground. Priorities for humanitarian action must be determined on the basis of rights and needs alone. The principle of impartiality therefore establishes two clear rules of conduct for humanitarian work: non-discrimination and proportionality according to need.
- **Independence:** Humanitarian action must be free from interference, whether political, ideological, economic or military.
- **Neutrality:** Humanitarian action must not take or be perceived to take sides in an armed conflict or other dispute. The principle of neutrality does not prevent us from taking action, nor does it provide an excuse for inaction; indeed, failure to take action could even amount to taking sides. Rather, it provides important guidance on *how* we should act, by considering how our actions might be interpreted by others. We therefore need to be aware of our own prejudices as well as the ways in which aid can be manipulated, diverted or exploited for political or military purposes. Our actions and activities must be transparent, balanced and based on objective criteria.

In addition to the core principles, several key considerations should guide us in our work.

- **Confidentiality:** Respecting confidentiality and guaranteeing the privacy and security of individuals, their families and wider communities must be of paramount consideration at all times. Breach of confidentiality or careless handling of information can have serious consequences for persons of concern as well as for our partners, our colleagues and even the humanitarian operation as a whole. We must always assess potential risk factors and seek informed consent for the gathering and use of information. Vigorous data-protection methods must be in place to guarantee the security of recorded information.
- **Sensitivity:** Many internally displaced persons have experienced violence, abuse and other forms of personal harm. We should be sensitive to their suffering, treat them with respect and dignity, and avoid creating more harm by requiring them to relive painful experiences through repeated interviewing. We must also be careful to avoid creating false hopes and unrealistic expectations about what protection and assistance we can offer; failure to do so risks increased anxiety and hopelessness, and might even put people at greater risk by giving them a false sense of security.
- **Strengthen local capacities:** The role of humanitarian actors is not to substitute, but rather to support and strengthen, local capacities: both the capacity of individuals to claim their rights and the capacity of States and other authorities to fulfill their responsibilities to ensure protection of these rights. To this end, humanitarian actors should identify and work to strengthen effective local coping strategies and protection mechanisms.

- **Understand the context**, including as it is perceived by others: To ensure that we “do no harm” and act in an impartial, independent and neutral manner, it is essential that we have a sound understanding of the country, the culture and the communities in which we work. This must include an awareness of the political agendas, interests and perceptions of all those with whom we work. Information must come from a wide range of sources and be verified to ensure that we gain an objective picture of the situation.
- **Professionalism**: Our actions and activities must be consistent with and guided by the highest standard of personal and professional integrity. In particular, we need to ensure that our conduct, and that of our colleagues and partners respects the dignity and worth of all women and men, girls and boys of concern; that it is consistent with national laws and customs; and that it respects international human rights and humanitarian law standards. Any form of sexual abuse or exploitation, including entering into sexual relations with a beneficiary or exchanging aid for sexual favours, is unlawful and amounts to gross misconduct.



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The legal framework



Key message

Protection is about ensuring that all women, girls, boys and men are able to enjoy their rights on an equal basis, in safety and dignity, including in times of internal displacement. National laws constitute the primary legal framework for protection activities, and should reflect a State's international legal responsibilities. An understanding of the rights of IDPs and the legal obligations of States and other authorities under international law is therefore essential when working within domestic legal systems.

This does not mean that one must have the specialist knowledge of a lawyer: in fact, protection often requires non-legal skills and practical initiatives. Protection efforts nonetheless must be anchored in national and international law, and be based on rights.

This chapter provides an overview of the legal framework and gives guidance how that framework can be mobilized to support and strengthen protection.

1. How international law is relevant to our work

International law sets out the rights of every individual and the responsibility of States and other authorities to ensure the protection of these rights, and is essential to carrying out protection activities at the national and international level. When working within domestic legal systems and alternative dispute resolution mechanisms, international law provides clear and objective criteria for protection, that can help to:

- Assess to what extent human rights are being respected and identify the risks or obstacles that individuals face in exercising their rights;
- Clarify the responsibility of the national authorities and the actions that must be taken to fulfill that responsibility;
- Develop a sound operational response to humanitarian crises, using rights- and community based approaches that strengthen the capacity of individuals to protect themselves;
- Provide a basis for advocacy, awareness-raising, training, capacity-building and other similar activities;
- Guide our own activities, conduct, and interactions with populations of concern.

What is international law?

International law is the body of law which governs the conduct of and relations between States. International law is derived from two primary sources: international treaties and customary law.

- **International treaties** are agreements between States. A treaty is legally binding on all States that have agreed to be bound by it, for instance by way of ratification or accession. A treaty can also be known as a covenant, convention, charter or protocol.
- **Customary international law** or **custom** results from a general and consistent practice of States followed out of a sense of legal obligation. It is binding on all States, unless a State has persistently objected to the practice.

In addition, international law contains **peremptory norms** (*jus cogens*) which are accepted and recognized by States as norms from which no derogation can ever be permitted. These include, for instance, the prohibition against genocide, slavery and racial discrimination. Resolutions of the UN Security Council are also binding on States when adopted under Chapter VII of the UN Charter. Resolutions and declarations of States, such as those adopted in the UN General Assembly and the UN Human Rights Council, although non binding, can be important normative statements and might even provide an indication of emerging international custom.

2. The rights of internally displaced persons

Internally displaced persons are entitled to enjoy, equally and without discrimination, the same rights and freedoms under international and national law as do other persons in their country. International law does not specifically address the plight of internally displaced persons, but this does not mean that they are not protected under the law. In fact, the following three bodies of law provide a comprehensive legal framework for protection in all situations of internal displacement, including during armed conflict:

- **international human rights law;**
- **international humanitarian law;** and
- **international criminal law.**

As citizens or habitual residents¹ of their country, IDPs remain entitled to full and equal protection under the State's **national law**, which should be compatible with the State's obligations under international law.

The challenge for international agencies, NGOs, and States has been to identify the rights and guarantees dispersed in the rich body of international law that respond to the particular needs and protection risks that arise during displacement.

Internally displaced persons are entitled to enjoy, equally and without discrimination, the same rights and freedoms under international and domestic law as do other persons in their country.

The **Guiding Principles on Internal Displacement**² bring together in one document the main rules of international law, drawn from international human rights law and international humanitarian law, and, by analogy refugee law,³ that are relevant to protection in situations of internal displacement. The Guiding Principles set out the rights of IDPs and the responsibilities of States and other authorities towards them. To fully understand and most effectively use the Guiding Principles, it is important to situate them within the broader international legal framework.

3. International human rights law

Human rights are freedoms and entitlements that *every* individual should enjoy.

International human rights law, which consists of both customary and treaty law, guarantees these rights and obliges States to respect, protect and fulfill the human rights of all persons without discrimination of any kind, such as on the grounds of age, gender, ethnic origin, language, religion, political or other opinion, national or social origin, property, birth or other status, including on the grounds of being or having been internally displaced.

¹ Internally displaced persons are often but are not necessarily citizens of the country in which they are displaced. They can also be habitual residents, which for instance can include stateless persons (on statelessness see chapter 5.1).

² Prepared by the Representative of the UN Secretary-General on Internally Displaced Persons, at the request of the UN General Assembly and UN Commission on Human Rights, UN Doc. E/CN.4/1998/53/Add.2. Reproduced in Annex I.

³ Refugee law, which applies to persons fearing persecution who are displaced *outside* of their country, does not directly apply to IDPs. However, given its focus on issues arising during displacement, some of its principles are instructive by analogy, in particular that of *non-refoulement*, the core principle of international refugee law, which prohibits forcible return of refugees to a place where their lives or freedom would be at risk. In fact, this principle has its basis in human rights law, particularly the rights to freedom of movement, life, liberty, and protection against torture or cruel, inhuman and degrading treatment. On these grounds, IDPs similarly have the right to be protected against forcible return or resettlement to a place where their life, safety, liberty and/or health would be at risk.

3.1 Key human rights instruments

The **Universal Declaration on Human Rights (UDHR)** of 1948, the first human rights instrument developed by the United Nations, establishes the main civil, political, economic, social and cultural rights to which all persons are entitled, without discrimination of any kind. Although not a binding instrument in itself, many of its principles constitute customary law and/or have been incorporated into treaties, thus gaining binding force.

Building upon the UDHR and incorporating its principles into legally binding instruments are two Covenants that, together with the UDHR, constitute what is regarded as the “International Bill of Rights.” These are:

- **International Covenant on Civil and Political Rights (ICCPR)** and
- **International Covenant on Economic, Social and Cultural Rights (ICESCR).**

Several additional instruments reinforce the protection of human rights relating to:

- **particular issues**, such as torture or racial discrimination, or
- **specific groups of persons** who may face particular obstacles to the full and equal enjoyment of their rights, including women, children and indigenous persons.

Although none of these instruments specifically addresses internal displacement, they do cover a range of risks that IDPs often face and reinforce protection for particular groups of persons who tend to be disproportionately affected by displacement (see Table 1).

Protection of human rights is also reinforced in a number of **regional human rights instruments** (see Annex 1 at the end of the chapter).

Many human rights are also part of **international customary law**. Norms of customary international law include, for example the rights to life, freedom from torture, freedom from discrimination on grounds of gender, race or ethnic origin, freedom from slavery, and freedom from genocide – all of which also are affirmed in international conventions.

States have the duty to respect customary international human rights law as well as all those human rights treaties that they have committed themselves to implement. They must ensure that their domestic laws, policies and practices are consistent with these obligations.

DO YOU KNOW that you can find the text of all international human rights instruments online? Go to the link below to find them:
<http://www2.ohchr.org/english/law/>

DO YOU KNOW which international human rights instruments the State in which you work has committed itself to respect? You can find out at:
<http://www.ohchr.org/EN/Countries/>

Table 1: Overview of selected international human rights instruments

Name	Description
Universal Declaration of Human Rights 1948 (UDHR)	Worldwide instrument setting out the basic human rights of all persons on the basis of equality and non-discrimination.
International Covenant on Civil and Political Rights 1967 (ICCPR)	Sets forth a broad catalogue of civil and political rights, including the rights to life, physical integrity, recognition before the law, political participation, freedom of movement and choice of residence, and protection of the family.
International Covenant on Economic, Social and Cultural Rights 1967 (ICESCR)	Sets out economic, social and cultural guarantees, including the rights to adequate food, shelter, clothing, health care, an adequate standard of living, and guarantees concerning work, social welfare, education and participation in cultural life.
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT)	Defines and prohibits torture under all circumstances. Stipulates that States cannot transfer a person to another State if there are grounds for believing that s/he will be tortured (principle of <i>non-refoulement</i>).
International Convention on the Elimination of All Forms of Racial Discrimination 1965 (CERD)	Prohibits racial discrimination: when a person or group is treated differently because of race, colour, descent, national origin or ethnic origin with the aim or effect of denying their human rights and fundamental freedoms.
Convention on the Prevention and Punishment of the Crime of Genocide 1948	Defines genocide as acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, and declares it as a crime, whether committed during peacetime or war.
Convention on the Elimination of All Forms of Discrimination against Women 1979 (CEDAW)	Sets a framework for national action for ensuring women enjoy, on an equal footing with men, their rights in all fields, including employment, education and administration of property, and for ensuring the protection of women, especially against threats to their physical safety and against rape and sexual exploitation.
Convention on the Rights of the Child 1989 (CRC), together with: • Optional Protocol on the sale of children , child prostitution and child pornography 2000 • Optional Protocol on the involvement of children in armed conflict 2000	A comprehensive code to protect the rights and best interests of children (under 18 years of age). Obliges States to take measures to ensure protection, care, psychological recovery and social reintegration of children affected by armed conflict, including unaccompanied or separated children. The optional protocol on the involvement of children in armed conflict prohibits compulsory recruitment and direct use in hostilities of persons under 18.
Convention on the Rights of Persons with Disabilities 2006 (CPD)	Reaffirms human rights and emphasizes their importance for persons living with disabilities. Also provides guidance to States on ways to ensure that those with disabilities, including survivors of landmines and ERW, can exercise their rights on a full and equal basis with others.
International Convention for the Protection of all Persons against Enforced Disappearances 2006 (CED)	Defines and prohibits enforced disappearance under any circumstances and obliges States to prevent such acts, to prosecute and punish or extradite those responsible, and provide reparations for victims and their families.
Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No. 182) 1999	Obliges States to take all necessary measures to eliminate the worst forms of child labour, such as slavery, trafficking, prostitution or forced labour, including recruitment of children (under 18 years) for use in armed conflict.

International Convention on the Protection of all Migrant Workers 1990 (CMW)	Provides a framework for the protection of the human rights of migrant workers during all stages of the migration process; before departure, during transit and in the country of employment.
Indigenous and Tribal Peoples (ILO Convention No. 169) 1989	Sets a framework for ensuring indigenous and tribal peoples enjoy their rights on an equal footing with other persons. Specifically addresses the issue of relocation of peoples, establishing conditions and guarantees to be fulfilled for this to be lawful.
The text of these and other instruments is available online at www2.ohchr.org/english/law/	

3.2 The responsibility of the State

States have a responsibility to ensure the full and equal enjoyment of human rights of all individuals on their territory or under their jurisdiction. This duty extends to all agents of the State, including the military and the police, and all public authorities, whether at the national, regional or local level.⁴

This responsibility has three dimensions: to **respect, protect and fulfill human rights**.

- The **duty to respect** requires the State to ensure that all agents of the State act in compliance with human rights law and refrain from any act that might interfere with or impair the exercise of rights. As an example, the State must not restrain freedom of movement: people must be allowed to flee to safer areas within or outside the country and IDPs must be able to move freely in and out of camps and settlements.
- The **duty to protect** obliges the State to take all necessary measures to prevent or put a stop to any violations of rights by third parties, including other individuals or groups. The State must also investigate, prosecute and punish violations of rights and ensure that victims/survivors have access to an adequate and effective remedy under domestic law. As an example, if the State is aware, or reasonably should have been aware, that women are being raped or that children are being recruited into a guerilla group, but does not take action to prevent and put a stop to such acts, it would have failed to fulfill its duty to protect.
- The **duty to fulfill** requires the State to take all possible measures to ensure that individuals under its jurisdiction are able to exercise their human rights. This requires the State to put in place a legal and administrative framework that respects human rights and build national capacity to support the implementation of rights. As an example, ensuring the right to a fair trial requires that an effective judicial system be put in place and ensuring the right to freedom from torture requires that police and prison guards are adequately trained and supervised. In other words, to ensure the realization of rights, a State must often invest its resources.

Many countries experiencing conflict and displacement have significant resource constraints. Human rights law recognizes that States with very limited resources might not have the capacity to ensure full realization of certain economic, social and cultural rights. However, a State cannot use a lack of resources as an excuse to do nothing. A State is obliged to take steps “to the maximum of its available resources, with a view to achieving progressively the full realization” of such rights.⁵ It must:

- at a minimum, ensure access to rights essential to survival, that is, food and water, basic shelter, medical services and sanitation; and
- request international assistance when State resources are insufficient.

⁴ For a more detailed discussion on State’s obligations under international human rights law see e.g. General Comment No. 31(80) of the Human Rights Committee on the nature of the general legal obligation imposed on States Parties to the Covenant (CCPR/C/21/Rev.1/Add.13).

⁵ ICESCR, Article 2(1). For further discussion see e.g. General Comments of the Committee on Social, Economic and Cultural Rights No. 12(1999) on the right to adequate food (E/C.12/1999/5) and No. 14(2000) on the right to the highest attainable standard of health (E/C.12/2000/4).

Although human rights instruments are not formally binding on **non-State actors**, the latter can be expected to uphold the values that underpin these instruments.⁶

Can human rights be restricted?

Some human rights instruments allow States to restrict or limit the effects of certain rights for specific purposes, such as to protect other rights and freedoms. Such restrictions are subject to strict conditions. They must always be provided for by law and be necessary and proportionate to achieve a legitimate aim, such as to protect national security or public order, safety, health or morals, or the rights and freedoms of others. Restrictions must be consistent with other human rights, including that of non-discrimination, and with the State's other international legal obligations, including international humanitarian law, where applicable.

Can human rights be suspended?

The duty of the State to respect, protect and fulfill human rights applies **at all times**, including during armed conflict and disasters.

In certain circumstances, such as during a declared **state of emergency**, the State may temporarily derogate from (suspend) certain rights. Such derogations are exceptional measures that are subject to strict requirements. There must be an actual or imminent danger that threatens the physical safety of the population or the political independence or territorial integrity of the State. Any derogation of rights must not go beyond what is necessary to address this danger; must not last longer than required by the circumstances; and must not be inconsistent with the State's other obligations under international law. In addition, such measures may never be discriminatory, that is, applied solely to members of a particular race, religion, ethnic, sex, linguistic or other group.

However, a **number of human rights can never be suspended**, whatever the situation, including in armed conflict. In addition to the principle of non-discrimination, these include:

- the right to life,
- the prohibition of genocide,
- freedom from torture and cruel, inhuman and degrading treatment or punishment,
- freedom from slavery,
- freedom of thought, conscience and religion,
- the right to due process of law, and
- the prohibition of punishment for any act that was not a crime when the act was committed.⁷



In our work

As a general rule, human rights law applies equally in times of peace and war. While a State can temporarily suspend the fulfillment of certain rights during war or other public emergency it can only do so to a limited extent and subject to strict conditions. National authorities should be encouraged to continue to respect human rights at all times. Where rights have been lawfully suspended we can continue to monitor and advocate for respect of those rights which cannot be suspended.

⁶ While human rights law applies primarily to States, non-state actors, in particular when in charge of territory, are increasingly being seen as having an obligation to respect and protect human rights. In some cases, such actors have expressly agreed to be bound by human rights law, for instance when concluding cease-fire and peace agreements. Depending on the context it may thus be possible and appropriate to undertake human rights advocacy with non-state actors.

⁷ See e.g. Article 4(2) of ICCPR. Some regional treaties, such as the American Convention on Human Rights (ACHR), contain a more extensive list of non-derogable rights, including the rights of the child and of the family right to juridical personality, the rights to a name, nationality and to participate in government.

3.3 Monitoring respect for international human rights law

There are several mechanisms charged with monitoring and encouraging State compliance with human rights law at the international, regional and national levels. At the international level, the UN treaty-monitoring bodies and the “Special Procedures,” created by the UN Human Rights Council, are of particular importance.⁸

3.3.1 UN treaty-monitoring bodies:

For each of the main human rights treaties, there is a corresponding committee, composed of independent experts, charged with monitoring State compliance with the treaty.⁹ In general, the Committees fulfill this role in three ways:

- by examining State reports and issuing concluding observations that outline the main concerns and provide recommendations to the State;
- by issuing general comments that provide guidance on the interpretation of particular rights; and
- by examining individual complaints of alleged violations of human rights, subject to the consent of the State to do so.¹⁰ The treaty-monitoring bodies have been devoting increasing attention to the obstacles that impede the enjoyment of human rights during internal displacement.



In our work we can ...

- Consult the treaty-monitoring reports for the country where we work, in particular the recommendations for improving respect for human rights, including those of IDPs;
- Promote, monitor and support follow-up to the recommendations, including by strengthening the State’s capacity, through training, to respect human rights; and
- Provide information about protection concerns when the State report is reviewed (your office might have a focal point for this).

The treaty-monitoring reports are available at www.universalhumanrightsindex.org.

3.3.2 UN Human Rights Council’s Special Procedures:¹¹

A whole network of independent human rights experts has been appointed by the UN Human Rights Council to examine, monitor, advise and publicly report on particular human rights themes or country situations.

- **Thematic experts** cover a range of issues relevant to the protection of internally displaced persons, such as: violence against women, minority issues, the rights of indigenous peoples, and the rights to education, to adequate housing, to food, and to physical and mental health. One mandate specifically focuses on promoting the rights of internally displaced persons (see next page).
- **Country-specific experts** address particularly serious situations of human rights violations. Such situations almost inevitably include large numbers of internally displaced persons. Country situations currently covered include: the Democratic Republic of Congo, Myanmar, Somalia, and the Sudan.

⁸ For more guidance on how you can make use of these mechanisms to support your efforts to protect the rights of IDPs see the Guide to International Human Rights Mechanisms for Internally Displaced Persons and Their Advocates, Brookings-Bern Project on Internal Displacement, 2006. Available at www.brookings.edu/projects/idp/2006_guidebook.aspx

⁹ The UN human rights treaty-monitoring bodies are: the Human Rights Committee (ICCPR), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee against Torture and other forms of Inhuman or Degrading Punishment (CAT), the Committee on the Elimination of Racial Discrimination (CERD), Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on the Rights of the Child (CRC), and the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMR).

¹⁰ Specifically: the HRC, CERD, CAT and CEDAW, though the procedural requirements vary. For guidance, see <http://www.ohchr.org/english/bodies/petitions/index.htm>

¹¹ For more information on the Special Procedures, see <http://www.ohchr.org/english/bodies/chr/special/index.htm>

A Global Advocate for IDPs: The Representative of the Secretary General on the Human Rights of Internally Displaced Persons, who reports to the UN Human Rights Council and the UN General Assembly, engages in dialogue and advocacy with governments and other actors concerning the rights of IDPs, and works to strengthen the international response to internal displacement. Activities include:

- Promoting the rights of IDPs as articulated in the *Guiding Principles on Internal Displacement*;
- Engaging governments and other actors on specific situations of internal displacement and the human rights of IDPs, including by undertaking **country visits**; and
- Sponsoring **national and regional seminars and undertaking research on issues related to internal displacement**.

The reports and recommendations are available at www.ohchr.org/english/issues/idp/index.htm



In our work we can ...

- Consult reports by Special Procedures that address the human rights situation in the country where we work. These provide valuable insight into the range of protection concerns and can assist in developing a protection strategy;
- Provide information to specific country and thematic experts. In response, they might send a written communication to the State concerned, conduct a country mission and raise the issue directly with national officials, make a public statement, and/or report on the issue to the UN Human Rights Council and/or General Assembly;
- Seek technical guidance and advice, as needed, from Special Procedures on issues related to their mandate, such as on national legislation;
- Suggest a country mission by a Special Procedure to examine and discuss the human rights situation with national authorities and other stakeholders, including IDPs, NGOs, and national human rights institutions;
- Disseminate the recommendations (which might be directed not only to States but also to non-State actors and UN agencies) among relevant stakeholders, including the government, civil society, IDP associations, international agencies, and donors;
- Promote, monitor and support follow-up to the recommendations, including by strengthening the State's capacity, through training, to respect human rights.

The reports of the Special Procedures are available at www.universalhumanrightsindex.org

At the **regional level**, in Africa, the Americas and Europe, there are also human rights monitoring mechanisms that provide important protection, especially since rights can be enforced in regional human rights courts (see Annex 1 at the end of the chapter). Regional mechanisms have become increasingly engaged in addressing human rights issues in situations of internal displacement and in protecting the rights of IDPs.

At the **national level**, national courts and human rights institutions have a critical role to play in providing a channel for individuals to claim their rights. These institutions also can work to ensure that domestic legislation, policies and programmes respect and protect human rights, including during situations of internal displacement.

4. International humanitarian law

In situations of armed conflict, international humanitarian law comes into effect together with human rights law. Also known as the law of armed conflict or the law of war, IHL aims to limit human suffering in times of armed conflict. This body of law:

- **protects persons who do not, or no longer, take part in hostilities**, namely civilians, prisoners of war, and sick, wounded or shipwrecked combatants; and
- **regulates the method and means of warfare** between parties to a conflict, such as by prohibiting particularly barbarous weapons and tactics, including the use of chemical

and biological weapons, military attacks on civilian targets and “indiscriminate attacks” that strike military objects and civilians without distinction.

IHL applies **in all situations of armed conflict**, both **international conflict** (between States) and **non-international conflict** (between a State and a non-State actor, or between two or more such actors). It is binding on **all parties to an armed conflict**: States, their armed forces and non-State armed groups, whether these are insurgent groups opposing the State or groups such as paramilitary groups supported by the State.

Because some human rights can be temporarily limited or suspended during armed conflict, the protection provided by IHL is particularly important. The more specific rules of IHL also assist in interpreting applicable human rights principles in situations of conflict. For example, evacuations of civilians on grounds of military necessity that are permissible under IHL are a legitimate limitation of the right to freedom of movement under human rights law.

4.1 Key instruments of IHL

The core instruments of international humanitarian law are the four **Geneva Conventions of 1949** and their **two Additional Protocols of 1977**.¹² Many of the key principles contained in these instruments also constitute customary international law, which means that they are automatically binding in *all* situations of armed conflict and on *all* parties to a conflict.

Type of conflict	Description	International humanitarian law applicable
International armed conflict	Armed conflict between two or more States	<ul style="list-style-type: none"> • Customary law • The four Geneva Conventions, in particular the Fourth Convention on Protection of Civilians • Additional Protocol I to the Geneva Conventions
Non-international armed conflict	Armed conflict between the State and a non-State actor, or between two or more such actors	<ul style="list-style-type: none"> • Customary law • Article 3 common to the Four Geneva Conventions • Additional Protocol II to the Geneva Conventions

In addition, several important treaties prohibit or regulate the use of certain weapons, such as the **Mine Ban Treaty** and the **Conventional Weapons Convention** and its Protocols.

4.2 Protection of Civilians: Key principles of IHL

Fundamental to international humanitarian law is the distinction between the **civilian population**, persons who do not take a direct part in hostilities, and **combatants**. The parties to a conflict must at all times distinguish between the civilians and combatants, in order to spare the civilian population and civilian property. The civilian population shall not be the object of attack; attacks shall be directed solely against military objectives.

Internally displaced persons, provided they are not taking a direct part in hostilities, are entitled to the same protection under IHL as any other civilians.

¹² The text of these instruments is available at: www.icrc.org. In 2006, the Geneva Conventions achieved universal ratification, meaning that every State in the world is now a party to, and therefore has committed itself to respect, these instruments.

Key Principles of IHL

Parties to the conflict must distinguish at all times between combatants/fighters and military objects, on the one hand, and civilians and civilian property on the other. Any attacks must be directed only against military objects and all feasible measures must be taken to protect civilians from the indiscriminate effects of hostilities.

The following acts are prohibited at all times:

- targeted or indiscriminate attacks against civilians or civilian objects;
- starvation of civilians as a method of warfare, and attacking, destroying, removing or rendering useless any objects indispensable for the civilian population's survival;
- reprisals or collective punishments against civilians;
- using civilians to shield military objectives from attack or to shield, favour or impede military operations;
- acts of violence intended to spread terror;
- using weapons that are inherently indiscriminate, cause superfluous injury or unnecessary suffering, or cause wide-spread, long-term and severe damage to the environment;

Principles of humane treatment:

- Persons who do not, or have ceased to, take part in hostilities must be treated humanely and protected against violence to life, health and physical or mental well-being, including murder, mutilation, torture and cruel, humiliating or degrading treatment;
- Rape, enforced prostitution and any form of indecent assault as well as sexual slavery, exploitation and abuse are prohibited in all circumstances and at all times;

Forced displacement:

- Unless essential for the security of civilians or imperative military reasons, parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory. Parties to a non-international armed conflict may not order the displacement of the civilian population;
- Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.
- States may not deport or transfer parts of their own civilian population into a territory they occupy;

Assistance and basic living conditions:

- All parties to the conflict must grant and facilitate the unimpeded passage of relief assistance necessary for the survival of civilians;
- All possible measures must be taken so that displaced civilians receive satisfactory conditions of shelter, hygiene, health, safety and nutrition;

Individuals and groups with specific rights or needs:

- The specific protection, health and assistance needs of women must be respected;
- Children are entitled to special respect and protection. Children under 15 must not be recruited into armed forces or armed groups or be allowed to take part in hostilities, whether directly or indirectly;
- Older persons and persons with disabilities or other health problems are entitled to special respect and protection;
- The sick and wounded must be protected and provided with needed medical care and attention with the least possible delay and to the fullest extent practicable;
- The family should be protected. Measures should be taken to ensure that family members are not separated, and if separation occurs, that they are reunited as soon as possible.

4.3 International humanitarian law and internal displacement

Because internal displacement so often occurs in situations of armed conflict, IHL is especially important for the protection of internally displaced persons and other affected populations. Indeed, in many instances, respect for IHL would prevent the displacement of civilians.

IHL prohibits any party to an armed conflict from compelling civilians to leave their places of residence. Temporary evacuations may be carried out *only* if the security of civilians or military imperatives absolutely require it; and even then, such evacuations are subject to strict conditions. All possible measures must be taken to ensure that family members are not separated and that the displaced population is received under satisfactory conditions of shelter, hygiene, health, safety and nutrition. Moreover, such evacuations must be temporary; those affected have the right to return in safety to their homes as soon as the reasons for their displacement cease to exist.¹³

In addition to this express prohibition of displacement, the rules of IHL that are intended to spare civilians from the effects of hostilities help prevent forced displacement. It is often the violation of these rules that cause civilians to flee their homes and become displaced.

If displacement does occur, IDPs, like all other civilians, are entitled to protection and assistance, as required. Parties to a conflict have a duty to allow humanitarian access and assistance to civilian populations in need.

“When civilians flee a conflict zone, this is a good indication that the warring parties are indifferent to their rights under IHL or, worse, are deliberately targeting them.”

ICRC, 2007

4.4 Responsibility to respect and ensure respect for IHL

Each party to a conflict has an obligation to respect and ensure respect for IHL by its armed forces and any other persons or groups acting on its instructions, or under its direction or control. In particular, States must:

- Provide instruction and training on IHL to the armed forces and the public.
- Criminalize violations of the law and put in place adequate legal, administrative and disciplinary structures to prevent, monitor and investigate violations.
- Prosecute and punish or extradite those responsible for serious violations of the law.

The International Committee of the Red Cross (ICRC) is an independent and neutral organization mandated by IHL and its Statute to provide assistance and protection to victims of armed conflict and to promote and monitor respect for IHL. For further information see www.icrc.org.

In addition, IHL obliges other (neutral) States to work to ensure that the parties to a given conflict respect IHL. This can be accomplished through advocacy, capacity-building, support to humanitarian operations, and prosecution or extradition of those responsible for violations of the law.

All States, regardless of whether or not they are parties to a given conflict, have the duty to prosecute and punish in their own courts, or to extradite, those responsible for serious violations of IHL, such as war crimes and/or grave breaches of the law, regardless of where the crime took place or the nationality of the perpetrator.¹⁴ Members of armed forces and groups can be held individually responsible for violations of IHL, regardless of their rank and whether

¹³ See Rules 129-133 of Customary International Humanitarian Law: Volume I (ICRC, 2005). See also Art. 49 of the Fourth Geneva Convention and Art. 17 of Additional Protocol II.

¹⁴ Grave breaches are defined in each of the four Geneva Conventions, Articles 50, 51, 130 and 147 respectively, and Additional Protocol I, Articles 11 and 85. They include willful killing, torture and inhuman treatment, willfully causing great suffering or serious injury to body or health, and unlawful deportation or transfer of populations.

or not they were acting under orders. Military commanders can also be held responsible for either ordering or failing to take measures to prevent such violations from taking place. Individual criminal responsibility has been further developed under international criminal law, which is discussed below.

5. International criminal law

National authorities have an obligation to criminalize violations of international human rights and humanitarian law in national legislation and to prosecute and punish those responsible before national courts and tribunals. In some cases, individuals can be brought to justice under international criminal law.

The Statute of the International Criminal Court (ICC)¹⁵ defines a number of crimes that are considered to be of international concern and which can be investigated and prosecuted by the court, provided that the Court has jurisdiction over the act. These include:

- **War crimes**, which include grave breaches of the Geneva Conventions and serious violations of international humanitarian law; cover a range of acts, including wilful killing, torture and inhuman treatment, rape and sexual slavery, starvation of civilians, recruitment of children under 15 into armed forces or groups or using them to participate in hostilities, launching attacks against the civilian population or civilian objects, and ordering the displacement of the civilian population, unless required for the security of civilians or military imperatives.¹⁶
- **Crimes against humanity**, which are acts committed as part of a widespread or systematic attack directed against a civilian population, whether in times of war or peace, including murder, extermination, enslavement, deportation or forcible transfer of population, arbitrary imprisonment or other severe deprivation of liberty, rape and sexual violence, persecution, enforced disappearance, and other inhuman acts intentionally causing great suffering or serious injury to body or to mental or physical health.¹⁷
- **Genocide**, which involves acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, including killings, inflicting serious bodily or mental harm, imposing conditions of life calculated to bring about the group's destruction, preventing births, and/or forcibly transferring children to another group.¹⁸

International criminal law is complementary to national law in the sense that international courts, such as the ICC, generally only exercise jurisdiction when national courts have proven unwilling or unable to prosecute and punish the crimes in question. To date the ICC has opened investigations into four situations, in Northern Uganda, the Democratic Republic of the Congo, the Central African Republic, and in Darfur.

The international community has also established a number of *ad hoc* criminal tribunals, whose decisions may be drawn upon for interpretations of international criminal law. These tribunals include the International Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda, which were established by the UN Security Council and use foreign judges. The UN has also supported the creation of hybrid tribunals such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia, which have both foreign and domestic judges.

¹⁵ Statute of the International Criminal Court, 1998, UN Doc. A/CONF.183/9. For further information, including the text of the Statute, visit www.icc-cpi.int.

¹⁶ Article 8 of the Statute of the International Criminal Court.

¹⁷ Article 7 of the Statute of the International Criminal Court.

¹⁸ Article 6 of the Statute of the International Criminal Court. See also the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

6. The Guiding Principles on Internal Displacement

The Guiding Principles on Internal Displacement bring together the rights of IDPs and the responsibilities of national authorities and non-State actors towards them. Although not a binding document, like a treaty, the Guiding Principles are **based on and reflect existing standards of international law**, which *are* binding.¹⁹

The Guiding Principles on Internal Displacement have been translated into over 40 languages, including: Arabic, Dinka, Georgian, Luo, Nepali, Pashtu, Sinhala, Somali, Spanish, Swahili, Tamil and Turkish. They are available online at www.brookings.edu/projects/idp/gp_page.aspx and have been reproduced in Annex 1 at the end of this Handbook.

The Principles' authority is reinforced by the wide international acceptance that they have received. They are recognized by States as "an important international framework for the protection of internally displaced persons," as well as a "tool" and "standard" to guide governments, international organizations and all other relevant actors in situations of internal displacement.²⁰

The Guiding Principles provide a definition of an IDP and a comprehensive statement of what protection should mean during internal displacement. It covers all phases of displacement:

- the pre-displacement phase, providing protection from unlawful displacement;
- protection and assistance during displacement; and
- durable solutions, namely return, local integration at the place of displacement or resettlement in another part of the country and reintegration.

The Guiding Principles address a range of particular needs and protection risks that typically arise in situations of internal displacement, such as family separation, loss of documentation, freedom of movement in and out of camps, and loss of property, and identify the corresponding rights and guarantees to address these concerns. Incorporating civil and political rights as well as economic, social and cultural rights, the Principles cover the broad spectrum of rights, including those not typically at the forefront of humanitarian action. It covers rights relating to:

- **physical security and integrity** (such as the rights to life, protection from torture and rape);
- **basic necessities of life** (such as the rights to food, water, shelter, health and sanitation);
- other **economic, social and cultural protection needs** (such as access to education, property restitution or compensation); and
- other **civil and political protection issues** (such as the rights to personal documentation and to political participation).

¹⁹ The basis in international law for each Principle is summarized in: Walter Kaelin, *Annotations. Guiding Principles*, American Society of International Law (2000), available at: http://www.asil.org/pdfs/study_32.pdf.

²⁰ United Nations General Assembly, 2005 World Summit Outcome resolution adopted by Heads of State, UN doc. A/RES/60/1, 15 September 2005, para. 132. See also UN Commission on Human Rights Resolution 2003/1, 23 April 2003; and UN General Assembly Resolution 58/177, 22 December 2003.

Guiding Principles on Internal Displacement: Overview

Section	Key Points
Introduction	<ul style="list-style-type: none"> • Provides a definition of internally displaced persons • Affirms that the Principles reflect international human rights law and IHL • Explains that the purpose of the Principles is to provide guidance in situations of displacement
I. General Principles (Principles 1-4)	<ul style="list-style-type: none"> • National authorities have the primary responsibility to protect and assist IDPs within their jurisdiction • IDPs are entitled to enjoy in full equality the same rights and freedoms as other persons in their country and shall not be discriminated against • Certain IDPs, especially unaccompanied minors, expectant mothers, mothers with young children, female heads-of-households, persons with disabilities and the elderly, might require specific attention
II. Protection from Arbitrary Displacement (Principles 5-9)	<ul style="list-style-type: none"> • Articulates a right not to be arbitrarily (unlawfully) displaced and spells out the situations in which displacement is absolutely prohibited • States have a duty to avoid the displacement of populations unless absolutely necessary and to protect against the displacement of groups with a special dependency on their lands • When displacement is unavoidable, certain guarantees must be established for displacement to be lawful
III. Protection and Assistance during Displacement (Principles 10-23)	<p>All persons, including IDPs, should enjoy, a broad range of civil, political, economic, social and cultural rights, including the rights:</p> <ul style="list-style-type: none"> • to life and to protection against acts of violence and torture, sexual and gender-based violence, landmines, and recruitment of children into armed forces or groups and their participation in hostilities • to safe access to essential food, potable water, basic shelter, appropriate clothing, medical services and sanitation • to freedom of movement, including in and out of IDP camps • to seek asylum in another country • to personal documentation • to respect for family life and unity • to education and training, equally for women and girls • to employment and participation in economic activities • to vote and participate in government and public affairs
IV. Access to Humanitarian Assistance (Principles 24-27)	<ul style="list-style-type: none"> • When State authorities are unable or unwilling to provide assistance to the displaced, international organizations have the right to offer their services and to enjoy rapid and unimpeded access to the displaced • Humanitarian assistance shall be provided consistent with the principles of humanity and impartiality and without discrimination • Humanitarian actors should take into account and work to address not only the assistance but also the protection concerns of IDPs
V. Durable Solutions (Principles 28-30)	<p>IDPs should have access to a durable solution to displacement, namely rights to:</p> <ul style="list-style-type: none"> • return to their place of origin, integrate locally at displacement site, or resettle elsewhere in the country – voluntarily, safely and in dignity • participate in planning their return or settlement and reintegration • return of lost property or, where not possible, to receive compensation • equal access to public services

6.1 The Guiding Principles as a Protection Tool

The Guiding Principles are more than a simple compilation and restatement of legal rules. They provide a comprehensive framework for identifying protection concerns and for planning, implementing and monitoring protection activities in situations of internal displacement. They can be used by governments, international agencies, NGOs and IDPs themselves to promote and protect the rights of internally displaced persons.



IN OUR WORK

The Guiding Principles on Internal Displacement can be used to support our work in a number of ways. The Principles help us to:

- **Monitor and assess** the extent to which IDPs are able to enjoy their rights and identify what protection risks they face;
- **Collect data** using a systematic frame of reference to identify and gather information about protection concerns, causes of displacement, and groups with particular vulnerabilities;
- **Develop strategies** and determine programming priorities for a coordinated national and international response to internal displacement;
- **Raise awareness of and advocate** with national authorities and other actors for respect for the rights of IDPs;
- **Provide training** for displaced individuals and communities, national authorities, including the military and the police, non-State actors where relevant, civil society and human rights, humanitarian, development and peacekeeping staff;
- **Inform IDPs of their rights and empower** them to claim respect for their rights;
- **Build the capacity of States and other authorities** to support them in fulfilling their protection responsibilities. This can include training, technical assistance and advisory services; and
- **Offer advice on national law, policy or action plans relating to IDPs** to ensure that these respect the rights of IDPs (see also section below on the National Legal Framework).


In addition to the *Guiding Principles on Internal Displacement*, there are other principles and guidelines that address specific protection issues that can arise or certain types of internal displacement. These include:

- Principles on **Housing and Property Restitution** for Refugees and Displaced Persons (2005)
- Basic Principles and Guidelines for **Development-based Evictions and Displacement** (1997) and Comprehensive Human Rights Guidelines on **Development-based Displacement** (2006)
- Protecting Persons Affected by **Natural Disasters**: IASC Operational Guidelines on Human Rights and Natural Disasters (2006)
- Paris Principles: Principles and Guidelines on **Children Associated with Armed Forces or Armed Groups** (2007)

7. The national legal framework

National laws form the primary legal basis for IDP protection. However, all States have a responsibility to ensure that their national laws and policies respect and reflect their obligations under international law, including those contained in international human rights and humanitarian law. States must therefore take action, by all appropriate means, to give effect to their international legal obligations at the national level.

More specifically, national legislative and policy frameworks should respect the rights and guarantees to which IDPs are entitled under international law, and be consistent with the State's international legal obligations. Protection strategies and activities should also take into

account relevant domestic traditional, customary, or religious dispute resolution mechanisms, which are discussed in more detail in the Access to Justice Action Sheet (*see Part V.10*). 

7.1 National legislation on internal displacement

States are generally encouraged to strengthen legal frameworks for the protection of IDPs and to promote the Guiding Principles on Internal Displacement through national legislation.²¹ This does not mean that it is necessary or even appropriate in all contexts to adopt IDP-specific legislation. IDPs are citizens or habitual residents of the country in which they live and, as such, are entitled to the same rights and freedoms as other persons in the country.

Internal displacement can however create specific problems and obstacles for IDPs and action may thus be required to ensure that they can exercise their rights on a full and equal basis with others.

Two distinct types of national legislation should be considered in any given situation of internal displacement:

- a. **Generally applicable laws**, which, although they will probably not explicitly address internal displacement, nonetheless relate to issues affecting internally displaced persons. Examples include administrative laws determining how individuals can regain lost personal documents; property laws setting out rules and procedures for claiming compensation; electoral codes determining voter eligibility criteria; and education laws defining admissibility criteria and languages of instruction.
- b. **Laws specifically focused on addressing situations of internal displacement**²²
These could take a number of forms. In some instances, governments have adopted laws on a specific phase of displacement, for instance, spelling out minimum standards to be observed during the return or settlement elsewhere and reintegration process. In other cases, governments have adopted comprehensive national laws on internal displacement covering all phases of displacement, from prevention to solutions, and all causes of displacement, including conflict and disasters.

Any specific legislation on internal displacement must have as its aim and effect to ensure that IDPs enjoy their rights *equally* with other citizens or habitual residents of the country. Caution must be exercised to ensure that the consequence of an IDP-specific law is not to isolate IDPs as a separate legal category, which, in extreme cases, might lead to their marginalization from the rest of the community and even the violation of their rights.

Whether IDP-specific legislation would be necessary to ensure the protection of IDPs' rights will depend upon the context. In many cases, modification of existing legislation might well be sufficient to address the particular protection concerns that arise in situations of internal displacement. Indeed, even when there is IDP-specific legislation, amendments to general legislation often will be essential. For instance, to address the particular obstacles that IDPs face in enjoying their rights to property, documentation, education or political participation, simply affirming these rights in an IDP law will usually not be sufficient; rather, it will be necessary to amend the relevant piece of general national legislation (e.g. civil status legislation, education act or electoral code) to remove the legislative impediments that IDPs face or to establish simplified procedures.

²¹ United Nations Economic and Social Council (ECOSOC) Resolution 2003/5 (15 July 2003), para. 8; *In Larger Freedom*, Report of the Secretary-General, 21 March 2005, A/59/2005, para. 210. Regional organizations have similarly encouraged States in this regard.

²² A number of countries have adopted national legislation specifically relating to internal displacement, including Angola, Bosnia and Herzegovina, Colombia, Georgia, Peru, Russia, and Turkey. These are available at the Database on National and Regional Laws and Policies on Internal Displacement at www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx

It is therefore important to review and analyze national legislation in terms of its compatibility with international legal standards and, on this basis, to identify any legislative reform needed to ensure respect for the rights of internally displaced persons. In some countries, local lawyers' groups have conducted studies of national legislation and then worked with the governments to revise national laws so that they conform with the Guiding Principles and the international standards that underpin it.²³ Indeed, national laws and policies will be most effective when developed in consultation with civil society, including IDPs themselves.

To assist such efforts, the Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons is developing a *Manual for Domestic Law and Policy Makers on Implementing the Guiding Principles on Internal Displacement*, providing guidance on key elements to consider in national legislation to ensure protection of the rights of IDPs. The Manual is due for publication in 2008.

International humanitarian and protection agencies can also help States ensure that their national laws and policies conform with international standards by providing technical assistance and advice.




IN OUR WORK

It is important to understand the national legal framework and its relevance to protecting the rights of IDPs. In particular, we should:

- Be aware of the national laws and policies that relate to internal displacement and to issues of concern to internally displaced persons;
- Understand the extent to which these policies are consistent with the State's obligations under international law and are in accordance with the Guiding Principles on Internal Displacement;
- Offer advice, as appropriate, to the government in strengthening national laws to ensure that IDPs do not face any legislative barriers to realizing their rights;
- Raise awareness among IDPs of those national laws and policies relevant to their protection, empowering them to advocate and claim their rights;
- Advocate for and monitor the implementation of national laws and policies of particular relevance in situations of internal displacement;
- Support the capacity of national authorities to implement national legislation and policies that would protect the rights of IDPs, including through training and awareness-raising, technical assistance and advice, programme support and resource mobilization; and
- Provide legal aid to assist IDPs with accessing legal mechanisms to protect their rights.

7.2 Ensuring respect for rights under national law

A number of different mechanisms for enforcing national laws and policies may exist within a State, and could include both formal (state-run) justice mechanisms such as courts, tribunals and quasi-judicial mechanisms, or alternative mechanisms such as religious courts, tribal councils, or grievance committees. For more guidance about how to work within national legal systems to defend human rights and ensure accountability for crimes, violence and abuse, see the Access to Justice action sheet (Part V.10). 

²³ See *The Guiding Principles on Internal Displacement and the Laws of the South Caucasus*, Studies in Transnational Legal Policy, no. 34, Cohen, R., Kaelin, W., and Mooney, E., (eds.), American Society of International Law and the Brookings Institution Project on Internal Displacement, 2003.

Annex I

Regional human rights law and mechanisms relevant to IDPs

Reinforcing international human rights law are several **regional human rights instruments** that enhance human rights protection for all persons in the region, including IDPs. In Africa, Latin America and Europe, the regional human rights framework is particularly important because rights can be enforced in regional human rights courts.

In Africa:

The **African Charter on Human and Peoples' Rights** affirms the range of civil, political, economic, social and cultural rights, including the right of every individual to freedom of movement and choice of residence, and the right to property.

Supplementing the Charter's provisions for the protection of the rights of women and children are the **African Charter on the Rights and Welfare of the Child** and the **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa**.

Both instruments include specific provisions relating to State obligations to respect human rights in times of armed conflict, and reiterate the responsibility of States to respect and ensure respect for international humanitarian law, including protection of civilians. *The Charter on the Rights of the Child* also affirms that **no child under 18 is to be recruited** or otherwise take direct part in hostilities, and makes express reference to the need to **protect and assist internally displaced children** and to ensure **family reunification** in situations of displacement. The *Protocol on the Rights of Women* also includes commitments to:

- **protect internally displaced women against all forms of violence, rape and sexual exploitation** and ensure perpetrators are brought to justice;
- ensure the increased **participation of displaced persons, particularly women, in the management of camps and settlements**; and
- devote attention to **widows' property rights**, which is key for women heads-of-households whose numbers tend to increase dramatically during displacement.

Monitoring the implementation of States' commitments under the African Charter is the **African Commission on Human and Peoples' Rights**. Individuals, including IDPs, can submit individual complaints of rights violations to the Commission for consideration by the **African Court on Human and Peoples' Rights**.

The Commission also has a **Special Rapporteur on Refugees, Asylum-seekers and Displaced Persons in Africa** who is mandated to: seek, receive, examine and act upon information concerning the rights of refugees, asylum-seekers and IDPs; undertake fact-finding missions to displacement situations; engage in dialogue with States and others relevant actors; develop strategies to better protect the rights of these groups; and raise awareness of the legal standards for their protection.

The **African Union** (formerly the Organization of African Unity) is developing a regional convention on internal displacement.

At the sub-regional level, there are instruments specifically relating to internal displacement, including:

- Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons and Model Law (2006) and the Protocol on the Property Rights of Returning Persons (2006) are legally binding on any country that ratifies them;
- the non-binding Khartoum Declaration of the Inter-Governmental Authority on Development (IGAD) Ministerial Conference on Internal Displacement (2003) contains important commitments by States in East Africa to protect the rights of IDPs.

In the Americas

The Organization of American States (OAS), composed of the governments of Latin America, the Caribbean, and North America, has adopted a number of human rights instruments, most notably the **American Convention on Human Rights** (1969).

Monitoring implementation of the American Convention are the **Inter-American Commission on Human Rights** and, for judicial issues, the **Inter-American Court of Human Rights**.

- The **Commission**, composed of independent human rights experts, has been active in monitoring and reporting on situations of internal displacement, and making recommendations to governments for more effective national responses. Spearheading these efforts has been a **Special Rapporteur on Internally Displaced Persons** (1996-2004). IDPs can submit complaints of human rights violations directly to the Commission for referral to the Court.
- The **Court** has increasingly considered cases and issued decisions, which are binding on the State concerned, on issues relating to internal displacement. In particularly important cases, concerning IDPs in Colombia, the Court has concluded that arbitrary displacement violates Article 22 of the American Convention (concerning the right to freedom of movement) and has also insisted that governments must protect persons from displacement.

The OAS has called on all States in the region to address the causes of displacement and, if displacement occurs, to commit to providing IDPs with protection and assistance in accordance with the Guiding Principles on Internal Displacement (OAS resolution 2229 of 2006).

In Europe

The **Council of Europe** has adopted several human rights instruments, most notably the **European Convention for the Protection of Human Rights and Fundamental Freedoms** (1950) and its 14 Protocols, which contain important provisions relevant to IDPs, including the right to property.

The Council of Europe recommends that States confronted with internal displacement base their national legislation and practice on the **Guiding Principles on Internal Displacement** in addition to all relevant instruments of human rights and international humanitarian law. It has spelled out how the European Convention on Human Rights can be applied to the specific needs faced by IDPs, including safeguarding the civilian nature of camps, facilitating family reunification, and providing protection from forcible return to an area where IDPs' physical safety would be at risk. The Council of Europe has specifically affirmed the rights of IDPs to replacement documentation, compensation for deprivation of property, education, and political participation. See Recommendation 6 *on internally displaced persons* adopted by the Committee Ministers on 5 April 2006.

The **European Court of Human Rights** reviews cases of alleged violations of the Convention and its protocols. IDPs can bring cases directly to the European Court for consideration. In recent years, the Court has issued a number of important binding judgements relating to rights violations suffered by IDPs, particularly regarding the right to property, and awarded victims of such violations financial compensation.

Also relevant are the "human dimension" commitments adopted by the **Organization for Security and Cooperation in Europe (OSCE)**, comprising 56 States across Europe, including all the successor States of the former Soviet Union, Canada and the United States. Although not binding, these commitments reinforce and promote international human rights. The OSCE's Office for Democratic Institution and Human Rights (ODIHR) and its High Commissioner for National Minorities both undertake work relevant to IDP protection.



References

- *Guiding Principles on Internal Displacement*. English (original) plus their translation into 40+ languages. à www.brookings.edu/fp/projects/idp/gp_page.htm. Also annexed at the end of this Handbook.
- *Guiding Principles on Internal Displacement: Annotations*, by Walter Kälin, Studies in tional Legal Policy No. 32, American Society of International Law, 2000. www.asil.org/pdfs/study_32.pdf
- *Human Rights: A Basic Handbook for UN Staff*, Office of the United Nations High Commissioner for Human Rights. www.ohchr.org/english/about/publications/docs/handbook.pdf
- *Internally Displaced People*, ICRC, January 2007. www.icrc.org
- *Manual for Domestic Law and Policy-makers on Implementing the Guiding Principles on Internal Displacement*, Brookings Institution-Bern Project on Internal Displacement and American Society of International Law, forthcoming 2008.
- *Guide to International Human Rights Mechanisms for Internally Displaced Persons and Their Advocates*, Brookings Institution-Bern Project on Internal Displacement, 2006. www.brookings.edu/projects/idp/2006_guidebook.aspx
- *Customary International Humanitarian Law*, Volume I: Rules. ICRC, 2005. www.icrc.org



Useful websites

- Compilation of International Human Rights Law: <http://www2.ohchr.org/english/law/>
- International Humanitarian Law Database: www.icrc.org/ihl
- UN Treaty Body Database (Ratifications and Reservations): <http://www.ohchr.org/EN/Countries/>
- Universal Human Rights Index of United Nations Documents: www.universalhumanrightsindex.org
- Database on National and Regional Laws and Policies on Internal Displacement: www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx
- Websites of the UN Human Rights Bodies (Charter Bodies and Treaty-Monitoring Bodies): www.ohchr.org/english/bodies/index.htm

Chapter 3

The international institutional framework



Key message

Providing protection and assistance to internally displaced persons is first and foremost the responsibility of the State and its institutions. The international community also has an important role to play, in particular when the national authorities lack the capacity, or are unwilling, to ensure an effective response to a humanitarian crisis. This requires a well coordinated effort by a range of human rights, humanitarian, developmental, political and other actors. This chapter gives an overview of the collaborative response and the cluster approach, which guide humanitarian action at the global and country level.

1. A Collaborative Response

Internal displacement and humanitarian crises often occur in complex emergencies, characterized by a partial or even complete breakdown of State authority, including the capacity, and in some cases willingness, to ensure the protection of civilians. Responding to such crises typically requires a multi-dimensional response – humanitarian, human rights, development, security, political – and the combined efforts of an array of actors at both the national and international levels.

For the international community, the scale of such crises and the scope of human suffering call for a wide-ranging humanitarian response that lies beyond the mandate or capacity of any single agency or organization. In fact, a great number of international humanitarian, human rights and development actors, from both within and outside of the UN system, undertake activities in support of IDPs and other civilians at risk. It is a joint, or collaborative, effort that requires coordination.

The **Emergency Relief Coordinator (ERC)**, who is also the UN Under-Secretary-General for Humanitarian Affairs, is responsible for ensuring inter-agency coordination of humanitarian action, both in complex emergencies and in natural disasters. A core function of the ERC is to ensure that all humanitarian issues are effectively addressed. The ERC advocates for protection and assistance, mobilizes political and financial support for humanitarian action, provides briefings to the Security Council, and engages in dialogue with governments, humanitarian agencies, and other relevant actors.

The **Inter-agency Standing Committee (IASC)**, which is chaired by the ERC, is the principal inter-agency forum for coordination and decision-making on issues of humanitarian action. It brings together a broad range of UN and other international humanitarian, human rights and development actors.¹ The IASC develops humanitarian policies and tools, advocates for the respect of humanitarian principles, agrees on a division of responsibility for various humanitarian actions, and works to bridge any identified gaps in the overall response.

¹ Participants in the IASC include UN humanitarian, human rights and development agencies, the International Organisation for Migration (IOM), three consortia of major international NGOs, the UN Representative of the Secretary-General on the Human Rights of Internally Displaced Persons and, as observers, the Red Cross Red Crescent Movement represented by the International Committee of the Red Cross (ICRC) and the International Federation of Red Cross and Red Crescent Societies (IFRC).

IASC policies and tools relevant to IDP protection include:

- Protection of Internally Displaced Persons, Policy Paper (1999)
- Implementing the Collaborative Response to Situations of Internal Displacement: Guidance for United Nations Humanitarian and/or Resident Coordinators and Country Teams (2004)
- Growing the Sheltering Tree: Protecting Rights Through Humanitarian Action (2002)
- Gender Handbook for Humanitarian Action (2007)
- Operational Guidelines on Human Rights and Natural Disasters (2006) and Manual (2007)
- Guidelines on Mental Health and Psycho social Support in Emergency Settings (2007)

The publications are available in various languages at: www.humanitarianinfo.org/iasc/content/default.asp

The collaborative response is about working as a team. It draws upon the different mandates, expertise and operational capacities of the wide range of humanitarian, human rights and development actors, pooling their efforts to ensure a comprehensive and predictable response.²

In practice, however, this has been easier said than done. At times, there has been no clear delineation of responsibilities, coordination among the different actors has been inconsistent, and critical gaps have resulted, particularly regarding protection of IDPs.³ In order to bridge those gaps the IASC agreed to a comprehensive reform of the humanitarian response system in 2005, including strengthening the collaborative response through what is called the “cluster approach.”

2. The Cluster Approach

The cluster approach⁴ aims to ensure greater leadership and accountability in key sectors where gaps in humanitarian response have been identified, and to enhance partnerships among humanitarian, human rights and development actors, including the UN, NGOs and other organizations. The cluster approach also aims to address repeated calls for a more predictable, effective and accountable inter-agency response to ensuring protection and assistance for internally displaced persons.

The collaborative response and the cluster approach, through which that response is applied, operate at two levels: the global (headquarters) level and the country-level.⁵

2.1 Global Clusters and Sectors of the Humanitarian Response

Protection is one of the several “clusters,” or areas of humanitarian activity, that were identified as being in critical need of a strengthened coordination and response (see Table 1).

Each cluster/sector is led by an international agency or organization with particular expertise in the area. This agency is accountable to the Emergency Relief Coordinator (ERC) for ensuring predictable and effective inter-agency preparedness and response within the particular cluster or sector of activity.

In addition, the cluster lead is responsible for chairing and coordinating the work of the relevant global cluster working group, which

The clusters complement a number of pre existing “sectors” of humanitarian activity, such as food and refugees, for which clear leadership and accountability already existed and thus did not require a new coordination arrangement. Indeed, a **cluster essentially is a sector group**. The objectives are the same: filling gaps and ensuring adequate preparedness and response in a particular area of humanitarian activity.

² See also *Implementing the Collaborative Response to Situations of Internal Displacement*, IASC, Sept 2004.

³ See e.g. *Protect or Neglect* (Brookings-SAIS Project on Internal Displacement and OCHA, 2004) and the *Humanitarian Response Review*, OCHA, 2005.

⁴ For more information, see *Guidance Note on the Using the Cluster Approach to Strengthen Humanitarian Response* (IASC, Nov 2006).

⁵ The cluster approach is applied in all new major humanitarian emergencies, including disasters, and, as needed, in existing complex emergencies.

brings together all those international humanitarian, human rights and development actors that are engaged in the specific area of activity. The cluster working groups are responsible for:

- **Standard- and policy-setting** through the consolidation, dissemination and development of standards and policies, and identification of best practices;
- **Building response capacity**, in particular through training at the local, national, regional and international levels, establishing and maintaining surge capacity and standby rosters, and establishing and maintaining material stockpiles; and
- **Providing operational support**, including through timely assessments of needs for human, financial and institutional response capacity; emergency preparedness and long-term planning; securing access to appropriate technical expertise; advocacy; resource mobilization and pooling; and ensuring complementarity of efforts through enhanced partnerships.

Table 1: Overview of global clusters and sectors

	Area of activity	Lead agency	
CLUSTERS			
<i>Cross-cutting areas</i>	Protection	<ul style="list-style-type: none"> • IDPs (<i>from conflict</i>) 	UNHCR
		<ul style="list-style-type: none"> • Civilians affected by conflict (other than IDPs) • Disaster situations 	UNHCR / OHCHR / UNICEF ⁶
	Camp coordination and management	<ul style="list-style-type: none"> • IDPs (<i>from conflict</i>) 	UNHCR
		<ul style="list-style-type: none"> • Disaster situations 	IOM
	Early recovery		UNDP
<i>Technical areas</i>	Emergency shelter	<ul style="list-style-type: none"> • IDPs (<i>from conflict</i>) 	UNHCR
		<ul style="list-style-type: none"> • Disaster situations 	IFRC ⁷
	Health		WHO
	Water, sanitation and hygiene		UNICEF
	Nutrition		UNICEF
	Education		UNICEF / Save the Children
	Agriculture		FAO
<i>Common service areas</i>	Logistics		WFP
	Emergency telecommunications		OCHA / UNICEF / WFP
SECTORS			
	Food		WFP
	Refugees		UNHCR

⁶ UNHCR is the lead of the global Protection Cluster. In disaster situations or in complex emergencies without significant displacement, the three specialized UN protection agencies at the country level – UNHCR, OHCHR and UNICEF – will consult and, under the leadership of the HC/RC, agree which among them will assume the lead for protection. See below for further information on applying the cluster approach at the country level.

⁷ IFRC acts as a “convenor” rather than “lead” of the cluster for emergency shelter in disasters. In this capacity, it is committed to providing leadership, consolidating best practices, mapping capacity and gaps, and leading a coordinated response. However, IFRC does not accept obligations beyond those defined in its own Constitutions and policies; it is independent from and not accountable to the UN system.

Human rights, age, gender and diversity, HIV/AIDS and the environment are cross-cutting issues to be mainstreamed into the work of each cluster/sector and of each agency or organization. Focal points provide guidance and support for such efforts. Specifically:

Table 2: Cross-cutting Issues

	Focal point
Human rights	IASC Reference Group on Human Rights in Humanitarian Action ⁸ (led by OHCHR)
Age, gender and diversity	IASC Sub-Working Group on Gender and Humanitarian Action (led by UNFPA)
HIV/AIDS	Inter-agency Task-Team on HIV/AIDS (led by UNAIDS)
Environment	UN Environment Programme (UNEP)

2.1.1 The Protection Cluster

The Global Protection Cluster Working Group (PCWG) is the main forum at the global level for coordinating all protection activities in humanitarian action. Chaired by UNHCR as global protection cluster lead, the PCWG's members include UN humanitarian, human rights and development agencies as well as non-governmental and other international organizations active in protection.⁹

The role of the PCWG is to lead standard- and policy-setting relating to protection, identify and disseminate good practices, and support the development of strengthened protection capacity.¹⁰

The PCWG also can provide, within the limits of its capacity, operational field support to humanitarian country teams, in both cluster and non cluster countries, by:

- Undertaking **support missions** to assist country teams in identifying protection gaps and developing strategies for response;
- Providing guidance and support for mainstreaming **human rights, age, gender, diversity, and HIV/AIDS**;
- Supporting **advocacy** on protection;
- Providing **technical support and policy advice** on protection issues;
- **Strengthening the protection capacity** of humanitarian actors and other stakeholders, including, national and local authorities, and affected populations, through training programmes;
- Supporting efforts to **address identified protection concerns** in a given country; and
- Supporting **resource mobilization** for protection activities.

Since protection is such a wide-ranging activity, the PCWG has subdivided its work into a number of specific areas of responsibility, each led by a focal point agency.

⁸ This Reference Group, which pre-dates the cluster approach, works closely with the Global Protection Cluster in supporting the integration of protection and human rights into all areas of humanitarian activity.

⁹ For further information on the participants and work of the PCWG, see <http://www.humanitarianreform.org/>

¹⁰ See *Mission Statement and Terms of Reference for the Protection Cluster Working Group*, March 2007.

Table 3: Particular Areas of Protection Activity

Area of Responsibility under the Global Protection Cluster	Focal Point(s)
Rule of law and justice	UNDP / OHCHR
Prevention of and response to gender-based violence	UNFPA / UNICEF
Protection of children	UNICEF
Protection of other persons/groups with specific needs	UNHCR
Prevention of and response to threats to physical safety and other human rights violations	OHCHR / UNHCR
Mine action	UNMAS
Land, housing and property rights	UN HABITAT
Promotion and facilitation of solutions	UNDP
Logistics and information management support for the cluster	UNHCR

Protection is not only the concern of the protection cluster; it is also a cross-cutting issue that should be integrated into the work of *all* aspects of humanitarian response. All humanitarian actors share a responsibility for ensuring that their activities do not lead to or perpetuate discrimination, abuse, violence, neglect or exploitation; they should promote and respect human rights and enhance protection. The Protection Cluster exercises a “*droit de regard*” in this respect, meaning it has a role in ensuring that protection is integrated into the work of other clusters and sectors.

The Global Protection Cluster can assist other cluster/sectors in mainstreaming protection in their activities by:

- Encouraging other cluster/sectors to establish **focal points for protection**;
- Offering **technical expertise and advice** to other clusters/sectors, individual agencies, organizations and governmental counterparts;
- Supporting and participating in **joint assessments** and analyses, development of joint strategies, monitoring exercises and evaluations;
- Providing or supporting **training** on protection and human rights, with a special focus on internal displacement;
- Participating in the **meetings of other clusters/sectors** and inviting their representatives to participate in the meetings of the protection cluster, as appropriate;
- Convening **joint meetings or workshops** among different clusters/sectors on themes of common concern; and
- Maintaining a **regular dialogue** and sharing information on issues of common concern.

2.2 Country-level Coordination

It is the responsibility of the UN Humanitarian Coordinator (HC) to ensure coordination of humanitarian action, including protection and assistance to IDPs, in complex emergencies at the country level. The HC is appointed by the ERC, in consultation with the IASC. In a number of cases, the UN Resident Coordinator (RC), who is the most senior UN official in the country, is also designated the HC. In countries affected by displacement, but where an HC has not been appointed, the RC is responsible for ensuring an effective international response to internal displacement.

The responsibilities of the Humanitarian Coordinator include:

- ensuring that any protection gaps are addressed;
- promoting respect for human rights and humanitarian law and for the *Guiding Principles on Internal Displacement*;
- advocating with the national authorities and other actors for respect for humanitarian principles, including unimpeded access to affected populations;
- promoting gender mainstreaming and women's rights at the policy, planning and implementation levels; and
- mobilizing resources for the humanitarian response.¹¹

In carrying out these responsibilities, the HC and/or RC should act in full consultation with organisations on the ground, including NGOs and the International Red Cross and Red Crescent Movement. Generally, an inter-agency Humanitarian Country Team is created to assemble these actors and facilitate consultation and coordination among them.

The Country Team, under the leadership of the HC/RC, and in consultation with relevant partners, will decide upon specific coordination arrangements to be put in place at the country level, including whether in the given situation the collaborative response would be strengthened by adopting the cluster approach.¹²

To enhance predictability and accountability, coordination structures at the field level should mirror those in place at the global level. This principle should be applied flexibly, however, depending upon the situation on the ground and taking into account the mandate, expertise and capacities of the organizations that are operating in the country or region concerned. In some cases, a particular cluster or sectoral group may not be necessary (for example, an Emergency Telecommunications or Logistics Cluster might not be required beyond the early stages of major new emergencies), or it might be appropriate for certain sectors to be merged (such as Health with Nutrition, or Food with Agriculture). For early recovery, the global-level cluster recommends that, rather than establishing a country-level cluster, early recovery planning should be integrated into the work of all field-level clusters/sectors, supported by the creation of an ad hoc "early recovery network," when necessary.¹³

2.2.1 Role and Responsibilities of Country-level Cluster Leads

In addition to its normal agency responsibilities, each cluster/sector lead agency is accountable to the HC/RC, at the field level, for ensuring effective and timely assessment and response in the particular area of activity. These responsibilities include:¹⁴

- Ensuring effective inter-agency coordination, including through: chairing and coordinating the work of the cluster; joint needs-assessments and analyses; contingency planning and preparedness; planning and strategy development; ensuring compliance with relevant international law, policies and

Cluster coordinators

Effective coordination requires an investment of time and experienced staff with solid leadership and managerial skills.

The cluster lead agency has a responsibility to deploy personnel with the necessary seniority, skills and technical expertise to perform the role of a cluster coordinator.

Many of the skills needed, particularly leadership, consensus building and diplomacy are discussed in Part VI.

¹¹ See *Revised Terms of Reference for the Humanitarian Coordinator* (IASC, Dec. 2003).

¹² Regardless of whether the cluster approach is formally adopted in a given country operation, it is recommended that the basic principles of the cluster approach, particularly the delineation of clusters/sectors, designation of an accountable lead agency, and the principle of partnership, are implemented to the extent possible. Country teams that do not apply the cluster approach should be guided by *Implementing the Collaborative Response to Situations of Internal Displacement: Guidance for United Nations Humanitarian and/or Resident Coordinators and Country Teams* (IASC, 2004).

¹³ See *Guidance Note on Using the Cluster Approach*, Nov. 2006.

¹⁴ *Generic terms of reference for sector/cluster leads at the country level*, IASC, 24 Nov 2006. See Annex 1 to this chapter.

standards; monitoring and reporting; advocacy; mobilizing resources; and supporting training and other capacity-building efforts;

- Coordinating with national and local authorities, state institutions, local civil society and other relevant actors, including displaced and other affected communities;
- Ensuring that participatory and community-based approaches are used in all needs assessments, analyses, planning, monitoring and response;
- Ensuring that cross-cutting issues, such as age, gender and diversity, human rights, HIV/AIDS and the environment, are integrated and mainstreamed in all activities. This must include gender-sensitive programming that ensures that the needs, contributions and capacities of women and girls, as well as those of men and boys, are addressed;
- Acting as both a **“first point of call”** for the HC and **“provider of last resort”** for the particular area of humanitarian activity. The lead agency is not expected to carry out all required activities in a cluster. However, where critical gaps exist, it is responsible for filling such gaps, provided that access, security and resources allow. If such constraints impede a response, the lead agency must work with the HC and relevant partners to mobilize resources, continue advocacy efforts and attempt to fill the gap to the extent possible.¹⁵

The cluster lead should also plan for and ensure a timely and effective transition from emergency relief to longer-term recovery and development, including by putting in place early recovery strategies and procedures for a gradual phasing out and seamless handover of activities.

The clusters are forums that bring together the various relevant humanitarian actors on the basis of an equal partnership. Participation in each cluster is based on each agency’s or organization’s mandate, expertise and operational capacity in the area of activity concerned. Participating agencies are expected to be responsive and active partners in all aspects of the response in the area of humanitarian activity concerned, including during assessments, development of strategies, implementation of joint projects and programmes, resource mobilization, and monitoring and evaluation.¹⁶

Any concerns about the way in which a lead or focal point agency carries out its responsibilities can be discussed within the cluster or brought to the attention of the HC/RC, who can recommend alternative arrangements if necessary. Should gaps still remain, the ERC can raise these concerns at the global level in the IASC.

2.2.2 Protection: A Key Area for Country-level Coordination

Experience has shown that an effective, collaborative country-level response to protection concerns, regardless of whether or not the cluster approach is applied, can best be ensured by identifying a protection focal point and by establishing a protection cluster or working group to ensure effective inter-agency coordination on protection issues.

→ Step 1: Identifying a Protection Focal Point / Lead Agency

In complex emergencies, such as during conflict, UNHCR should assume primary responsibility for the protection of internally displaced and other affected populations,¹⁷ in keeping with its role as lead agency for the global protection cluster.¹⁸

¹⁵ See *Guidance Note on Using the Cluster Approach*, Nov. 2006.

¹⁶ It might be valuable for the purpose of sharing information to enable certain agencies or organizations that are not formally participating in the cluster to participate as observers. ICRC and IFRC do this in the protection cluster.

¹⁷ The PCWG has defined the term “affected populations,” as it relates to internally displaced persons, to include host communities where IDPs are living, host communities in areas of return of IDPs, and persons or communities at risk of displacement if their protection problems are not addressed.

¹⁸ UNHCR’s role in any particular situation is subject to the agency’s criteria for operational involvement, including consent of the State and the agency’s ability to operate without undue political or military influence. UNHCR assumes the role of protection-cluster lead only after it has determined that doing so will not undermine the right to asylum or the protection of refugees, that is, that its work as lead agency will not interfere with UNHCR’s mandated responsibilities. In such cases, the protection-mandated agencies (UNHCR, OHCHR and UNICEF), in consultation with the HC/RC, agree upon alternative arrangements.

In other situations, such as complex emergencies without significant displacement or in situations relating to natural or human-made disasters, the protection-mandated agencies (OHCHR, UNHCR and UNICEF) and the HC/RC will decide together which agency is best placed to assume the lead role for protection. In the event that none of them can assume the lead, all relevant stakeholders are expected to contribute to the HC/RC's capacity to coordinate the protection response.

The Country Team should decide the extent to which the various focal points for particular protection areas, such as mine action or durable solutions, that have been established at the global level should be replicated at the field level. The decision will be based on the context, including an assessment of protection risks and gaps, which may change over time, as well as the presence, expertise and operational capacity of the different focal-point agencies.

→ Step 2: Establishing a Protection Working Group

Establishing a protection working group can be essential for ensuring that protection receives focused attention and is effectively addressed in the collaborative humanitarian response. Regardless of the particular format for such a group, including whether it is formally designated as a cluster, protection working groups should aim to bridge gaps, build partnerships, and improve the protection response through increased accountability, predictability and effectiveness.



IN OUR WORK: Specific areas of activity for a Protection Working Group might include:

- Carrying out joint needs-assessments and analyses using a participatory approach;
- Forging consensus on common priorities for response;
- Developing joint protection strategies and plans of action;
- Mapping operational capacity, agreeing on geographic areas of responsibility when appropriate, identifying gaps and mobilizing resources;
- Adapting and applying inter-agency tools to support operational responses;
- Raising awareness of the human rights situation and protection concerns;
- Advocating with relevant stakeholders, such as parties to a conflict, State authorities, UN bodies and donors;
- Measuring the protection impact of the inter-agency response; and
- Linking up with the Global Protection Cluster, as appropriate, regarding protection activities, impact, best practices, and challenges, to inform the global response and prompt efforts at the country level.

In general, a PWG should be established at least at the national level, tasked with overseeing and coordinating the country-wide protection response. In emergency situations that span across/over large geographical areas or where protection concerns differ significantly from one part of the country to another, it might be wise to establish PWGs at the provincial or local level as well. Close coordination between the national PWG and any regional/local level PWGs is essential.

- On the establishment and basic modalities of a Protection Working Group, see the Checklist in Annex 2 of this chapter.
- For specific guidance on facilitating the effective functioning of a PWG, see the Chapter on Facilitating Protection Coordination Meetings in Part II of this Handbook.

The national-level PWG should be chaired by the protection lead agency for the country. Ideally, this would also be the case for provincial or local PWGs. However, if the lead agency is not present in the area, this role can be delegated to other agencies or organizations, including NGOs, that are present and have the required expertise and operational capacity. In acute protection crises, coordinating and supporting the work of the country-level PWG might require a full-time staff with the necessary seniority, skills and expertise.

PWGs should bring together all relevant international human rights, humanitarian and developmental actors. Participation will vary in different contexts, depending on which protection actors are present and active on the ground. The nature of participation might vary, with some actors choosing to serve as observers.

In situations where peacekeeping or peace-support missions are present, particularly when they have a mandate to protect civilians,¹⁹ it can be useful to involve them in the PWG as observers. At the very least, the PWG should liaise closely with them.

In some cases, it might be appropriate and, indeed, beneficial for the national and regional or local authorities to participate (see box below).

National authorities and protection working groups

National authorities bear primary responsibility for the protection of all persons within their jurisdiction. In order to address root causes of protection concerns and ensure the sustainability of our protection efforts, it is important to engage national authorities and work to strengthen their capacity to fulfill their protection responsibilities.

To what extent and how should government officials be included in the work of the PWG?


This is a key question. The answer will depend on the context. In some cases, the participation of government representatives has proven beneficial to protection efforts, for instance in facilitating the PWG's access to populations. In other situations, such as when the government is involved in human rights violations, this would clearly not work; indeed, it might deter group members from discussing protection concerns or make them fear retaliation for doing so.

Defining an appropriate relationship between the national authorities and the PWG requires reflection and discussion among PWG members.

Depending on the context, the PWG can consider several steps in developing its relationship and working methods with national authorities:

- Encouraging the **national human rights commission**, where one exists, to participate in the work of the PWG. National human rights commissions are bodies officially established and recognized by the government, with varying degrees of independence and with membership that might include leading members of civil society. These bodies can play a valuable protection role and be an important partner and link for protection actors. In addition, national and local human rights NGOs should be actively involved in the work of the PWG when appropriate;
- **Informing** the national and regional/local authorities about the establishment of the PWG and encouraging them to regard it as a resource to support an enhanced national protection response;
- Offering **technical advice** and support to national and local authorities on protection initiatives, for instance in training national/local authorities or in the development of national laws and policies to enhance protection;
- **Exchanging information** about the PWG's activities and protection concerns in meetings with the national authorities and other relevant actors;
- Establishing a **regular forum**, such as a protection liaison group, to facilitate dialogue and cooperation;
- Inviting relevant authorities to attend and participate in **specific meetings** on particular protection issues of concern; and
- Considering inviting the relevant authorities to **regularly attend and potentially even to co-chair** the PWG, when the authorities are willing to participate and contribute constructively to the process.

¹⁹ Increasingly, international and regional peacekeeping, peace-building and peace-support missions are being mandated to protect civilians. The specific activities such missions may undertake in this regard depends on the context, particularly on the formal mandate of the mission and the capacities put at the disposal of the mission. Some activities include: ensuring the civilian character of IDP and refugee camps; undertaking patrols in communities at risk; and intervening directly with parties to the conflict when the security of civilians is threatened. In a number of cases, human rights officers and child-rights specialists are deployed to these missions to monitor and report on human rights concerns. Such missions also often include a civilian police component to help restore law and order.

In all cases, the PWG must ensure the confidentiality of information and maintain independence, neutrality, and impartiality in its work. Doing so is critical to the safety of internally displaced persons and other affected populations and to the security of humanitarian personnel, particularly national staff. A primary concern should be the protection of witnesses and other affected persons (see Part I.1.5). 

2.3 Joint funding mechanisms

During complex emergencies, the HC/RC oversees an annual **consolidated appeals process** (CAP). This entails formulating a common humanitarian action plan (CHAP): a joint strategy analyzing the political, social and security situation of the particular country or crisis; projecting short-term and long-term humanitarian needs; assessing the capacities of the agencies involved in addressing these needs; and proposing a common set of objectives, actions and indicators for success. A Consolidated Appeal then sets out the specific projects and resources required to meet these objectives. Together, these documents serve as the primary tool to mobilize resources at the field level, although agencies and organizations can also apply for bilateral funding. A shorter Flash Appeal can also be prepared to enable more rapid resource-mobilization and response.

In addition, grants and/or loans are available from the **Central Emergency Response Fund** (CERF) to support activities to respond to rapid onset or under-funded emergencies. Managed by the ERC, the CERF is intended to complement existing funding mechanisms by providing seed funds to jump-start critical operations and fund life-saving programmes that are not yet funded.

All appeals, as well as funding needs and contributions, can be accessed online through the Financial Tracking Service (FTS), hosted by OCHA, at <http://ocha.unog.ch/fts2>.



IN OUR WORK: The common funding mechanisms can be important channels to mobilize resources for our efforts to enhance protection. We should, for instance:

- Be familiar with the Consolidated Appeals Process (CAP) and work with partners to ensure timely submission of protection programmes and projects for inclusion in the CAP;
- Work with other clusters/sectors to identify and develop projects that directly or indirectly contribute to enhanced protection, and assist them in mainstreaming protection concerns into their project submissions to the CAP;
- Consider, if working in a rapidly evolving or under-funded emergency, whether certain projects could qualify for funding from the CERF; and
- Explore the possibility of seeking funding from the private sector.

2.4 Protection staffing and standby arrangements

Protection efforts require an adequate number of skilled, knowledgeable and experienced staff with a strong protection background. Several stand-by arrangements provide “surge” protection capacity, deploying personnel at short notice for temporary assignments with UN agencies of 3 to 11 months. This includes the International Rescue Committee’s Surge Project, the Danish Refugee Council (DRC), the Norwegian Refugee Council (NRC), Save the Children (Denmark, Sweden, Norway), and Austcare.

The Protection Capacity Project (ProCap) consists of a core team of Senior Protection Officers on permanent rotation to the field, deployed on a short-term basis (2-9 months) to support and strengthen the strategic and operational response of the Humanitarian Country Team and/or individual protection agencies. Further information about ProCap and other protection stand-by arrangements visit <http://ocha.unog.ch/ProCap/Online>.



References and Tools

General Collaborative Response

- *Human Rights Guidance Note for Humanitarian Coordinators*, IASC, June 2006.
- *Humanitarian Response Review*, OCHA, 2005.
- *Implementing the Collaborative Response to Situations of Internal Displacement: Guidance for United Nations Humanitarian and/or Resident Coordinators and Country Teams*, IASC, Sept. 2004.
- *Protect or Neglect: Toward a More Effective United Nations Approach to the Protection of Internally Displaced Persons*, OCHA/Brookings-SAIS Project on Internal Displacement, 2004.
- *Protection of Internally Displaced Persons*, IASC Policy Paper, 1999.
- *Revised terms of reference for the Humanitarian Coordinator*, IASC, 2003.

Cluster Approach

- *Generic Terms of Reference for Sector/Cluster Leads at the Country Level*, IASC, Nov. 2006.
- *Guidance Note on the Using the Cluster Approach to Strengthen Humanitarian Response*, IASC, 2006. Also available in Arabic and French.
- *Operational Guidance on Designating Sector/Cluster Leads in Major New Emergencies, and Operational Guidance on Designating Sector/Cluster Leads in Ongoing Emergencies*, IASC, May 2007.
- *Protection Cluster Working Group Mission statement and Terms of Reference*, 2007.
- *Questions and Answers on the Cluster Approach and Cluster Implementation Issues*, OCHA, 2006.

The above publications and other information is available at www.humanitarianreform.org



Useful websites

- Global Protection Cluster Working Group: www.humanitarianreform.org/humanitarianreform/Default.aspx?tabid=79
- Humanitarian Reform: www.humanitarianreform.org
- Inter-Agency Standing Committee: www.humanitarianinfo.org/iasc/content/default.asp
- Humanitarian Appeal: www.humanitarianappeal.net
- Central Emergency Response Fund: <http://ochaonline2.un.org/Default.aspx?tabid=8770>
- Financial Tracking Service (FTS): <http://ocha.unog.ch/fts2>
- Protection Standby Capacity Project (ProCap): <http://ocha.unog.ch/ProCapOnline>

ANNEX 1

Generic Terms of Reference for Sector/Cluster Leads at the Country Level IASC, November 2006

The Cluster Approach operates at two levels. At the global level, the aim is to strengthen system-wide preparedness and technical capacity to respond to humanitarian emergencies by designating global Cluster Leads and ensuring that there is predictable leadership and accountability in all the main sectors or areas of activity. At the country level, the aim is to ensure a more coherent and effective response by mobilizing groups of agencies, organizations and NGOs to respond in a strategic manner across all key sectors or areas of activity, each sector having a clearly designated lead, as agreed by the Humanitarian Coordinator and the Humanitarian Country Team (to enhance predictability, where possible, this should be in keeping with the lead agency arrangements at the global level).

The Humanitarian Coordinator, with the support of OCHA, retains responsibility for ensuring the adequacy, coherence and effectiveness of the overall humanitarian response and is accountable to the Emergency Relief Coordinator.

Sector/cluster leads at the country level are accountable to the Humanitarian Coordinator for facilitating a process at the sectoral level aimed at ensuring:

Inclusion of key humanitarian partners

- Ensure inclusion of key humanitarian partners for the sector, respecting their respective mandates and programme priorities.

Establishment and maintenance of appropriate humanitarian coordination mechanisms

- Ensure appropriate coordination with all humanitarian partners, including national and international NGOs, the International Red Cross/Red Crescent Movement, IOM and other international organizations, through the establishment/maintenance of appropriate sectoral coordination mechanisms, including working groups at the national and, if necessary, local levels;
- Secure commitments from humanitarian partners in responding to needs and filling gaps, ensuring an appropriate distribution of responsibilities within the sectoral group, with clearly defined focal points for specific issues where necessary;
- Ensure the complementarity of different humanitarian actors' actions;
- Promote emergency-response actions while at the same time considering the need for early recovery planning and prevention and risk-reduction concerns;
- Ensure effective links with other sectoral groups;
- Ensure that sectoral coordination mechanisms are adapted over time to reflect the capacities of local actors and the engagement of development partners; and
- Represent the interests of the sectoral group in discussions with the Humanitarian Coordinator and other stakeholders on prioritization, resource mobilization and advocacy.

Coordination with national/local authorities, State institutions, local civil society and other relevant actors

- Ensure that humanitarian responses build on local capacities; and
- Ensure appropriate links with national and local authorities, State institutions, local civil society and other relevant actors, such as peacekeeping forces, and ensure appropriate coordination and information exchange with them.

Participatory and community-based approaches

- Ensure utilization of participatory and community-based approaches in sectoral needs assessment, analysis, planning, monitoring and response.

Attention to priority cross-cutting issues

- Ensure integration of agreed priority cross-cutting issues, such as age, diversity, environment, gender, HIV/AIDS and human rights, into sectoral needs assessment, analysis, planning,

monitoring and response; contribute to the development of appropriate strategies to address these issues; ensure gender-sensitive programming and promote gender equality; ensure that the needs, contributions and capacities of women and girls, as well as men and boys, are addressed.

Needs assessment and analysis

- Ensure effective and coherent sectoral needs-assessment and analysis, involving all relevant partners.

Emergency preparedness

- Ensure adequate contingency planning and preparedness for new emergencies.

Planning and strategy development

Ensure predictable action within the sectoral group for:

- Identifying gaps;
- Developing/updating agreed response strategies and action plans for the sector and ensuring that these are adequately reflected in overall country strategies, such as the Common Humanitarian Action Plan (CHAP);
- Drawing lessons learned from past activities and revising strategies accordingly; and
- Developing an exit, or transition, strategy for the sectoral group.

Application of standards

- Ensure that sectoral group participants are aware of relevant policy guidelines, technical standards and relevant commitments that the government has undertaken under international human rights law; and
- Ensure that responses are in line with existing policy guidance, technical standards, and relevant government human rights legal obligations.

Monitoring and reporting

- Ensure adequate monitoring mechanisms are in place to review the impact of the sectoral working group and progress against implementation plans; and
- Ensure adequate reporting and effective sharing of information, with OCHA support, with due regard for age and sex disaggregation.

Advocacy and resource mobilization

- Identify core advocacy concerns, including resource requirements, and develop messages for broader advocacy initiatives by the HC and other actors; and
- Advocate for donors to provide funding for humanitarian actors to carry out priority activities in the sector concerned, while at the same time encouraging sectoral group participants to mobilize resources for their activities through their usual channels.

Training and capacity-building

- Promote/support training of staff and capacity-building of humanitarian partners; and
- Support efforts to strengthen the capacity of the national authorities and civil society.

Provision of assistance or services as a last resort

- As agreed by the IASC Principals, sector leads are responsible for acting as the provider of last resort (subject to access, security and availability of funding) to meet agreed priority needs and will be supported by the HC and the ERC in their resource-mobilization efforts in this regard.
- This concept is to be applied in an appropriate and realistic manner for cross-cutting issues such as protection, early recovery and camp coordination.

Humanitarian actors who participate in the development of common humanitarian action plans are expected to be active partners in assessing needs, developing strategies and plans for the sector, and implementing agreed priority activities. Provisions should also be made in sectoral groups for those humanitarian actors who may wish to participate as observers, mainly for information-sharing purposes.

ANNEX 2

Checklist: Establishing a Protection Working Group

Establishing an inter-agency forum where protection issues are regularly discussed can be critical for ensuring that these concerns are addressed effectively, comprehensively and in a coordinated protection response. In any given situation, the specific shape that such a protection working group takes will depend upon an assessment of the context, taking into account any other protection coordination forums at the local, national or international level that already exist. When setting up such a forum, it is essential to consult with the Humanitarian Coordination and Country Team.

Initial Phase: Establishing a Protection Working Group

- **Identify and assess any existing protection coordination arrangements and structures**, international and national, ensuring that any protection working group that is to be established complements and coordinates with these mechanisms.
- **Identify all relevant partners.** These should include all human rights, humanitarian and development actors that form part of the UN and broader international inter-agency country team. It might also include national partners, both government and NGOs (see below on Participation and the Box above on the relationship between national authorities and protection working groups).
- **Convene** all relevant stakeholders within the country team to discuss and come to agreement on the following issues:
 - **Terms of reference:** These should be based on the generic terms of reference for cluster/sector leads at country level (see Annex 1), adapted to the particular context and the common priorities of key protection actors. While information-sharing might be among the aims, the role of the PWG must not be limited to this, but be **strategic and action-oriented, focused on ensuring a coordinated and comprehensive protection response.**
 - **Chairing arrangements:** Various chairing arrangements are possible. Preferably, the cluster lead agency for protection will chair or at least co-chair with a partner agency/NGO. It might be decided to rotate responsibility for chairing periodically among the different participating agencies. However, overall responsibility and accountability for the work of the PWG rests with the lead agency.
 - **Coordination arrangements:** These should mirror arrangements adopted at the global level, taking into account the local context and existing operational capacities. The establishment of task-forces, sub-working groups or focal points on specific issues might facilitate the work of the group. It is important to consider whether a country-level PWG will suffice or will whether regional/local PWGs also be required and, if so, to ensure that these different levels of PWGs coordinate effectively with one another.
 - **Participation:** The PWG should be a broad-based inclusive forum for protection actors. All international agencies and NGOs that are engaged in protection should be invited, whether as participating agencies or as observers. The PWG should discuss and decide upon the participation of local NGOs/civil society and how the PWG will relate to national/local and other authorities.
 - **Meeting arrangements:** How often the PWG will meet and who will take responsibility for convening meetings, drafting the agenda, recording meeting notes and action points for follow-up must be clearly agreed upon. It will usually be most practical for the lead agency and chair of the PWG to assume these functions.

Ongoing:

- **Meet regularly;** at least monthly; in emergency contexts, meeting more frequently, even weekly, might be advisable; set clear agendas.
- Ensure that the discussion goes beyond information-sharing and is **action-oriented**, resulting in agreed action-points, with clearly defined responsibilities and time-frame for implementation.

- **Follow up** on agreed action points, revisiting these at subsequent meetings, particularly if implementation is outstanding.
- Maintain regular contact and close **cooperation and coordination with any other PWGs** established in the country, such as between the national PWG and any regional/local PWGs), sharing information on protection activities and concerns and developing, as appropriate, joint response strategies. Support and assistance may be sought from the global-level PWG as needed.
- Ensure that the work of the PWG is in line with international **standards, laws, policies and good practice**, including the humanitarian principles of independence and impartiality, and that adequate safeguards are put in place to maintain the confidentiality of protection information that could put individuals at risk.
- Ensure that **cross-cutting issues**, including age, gender and diversity, HIV/AIDS, the environment and early recovery issues, are mainstreamed into the work of the PWG and into the activities of individual partners.