

Part 1

A Definition of Internally Displaced Persons

...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 generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border.

Definition of the Representative of the Secretary-General on Internally Displaced Persons (1998)

Conclusions

- Important to recognise that it is a descriptive definition not a legal designation.
- Coerced or involuntary movement within national borders is the key feature of internal displacement.
- It does not encompass persons who migrate because of economic causes. However, persons forced from their homes because of economic injustice and marginalisation tantamount to systematic violation of the economic rights would come under the definition.



Application of the Definition – Items for Discussion

Developing a profile

According to the UN definition, try and develop a profile of the internally displaced in your region or country. Describe who is displaced, where are they displaced from and where are they displaced to. Where possible explain the causes and nature of displacement particularly if there are peculiarities or extenuating circumstances to the application of the definition.

In the process of discussions you may wish to consider some of the following questions in developing a profile. The list is meant to stimulate discussions on applying the definition and developing a profile but is not exhaustive.

Limits on Duration or Frequency of Displacement

- i) When does the status of displaced begin or end? Does it depend on the number of times one is displaced?
Does it depend on whether the circumstances causing the displacement have changed?
Does it depend on return time?
- ii) Does, for example, a family living in a permanent structure for several years within a camp setting satisfy the definition of displacement or could they be considered resettled?
- iii) If persons have been forced to leave their homes for a week and have not yet returned, are they displaced?
- iv) Are persons who are forced or obliged to flee their home every night displaced?

Vulnerability

- i) Does someone who has just returned home from being internally displaced and is still considered vulnerable meet the definition of an internally displaced person, if so for how long?
- ii) If the male of the family returns home to farm a plot of land but the female and children stay in a camp, is the family displaced?
- iii) If a single mother afraid for the security of her children goes to stay with her mother, is she displaced?

Coercion

How do you define what is considered voluntary departure because of unacceptable living conditions such as a shrinking economy, declining security or official harassment and involuntary forced displacements. Is the line clearly defined in your region?

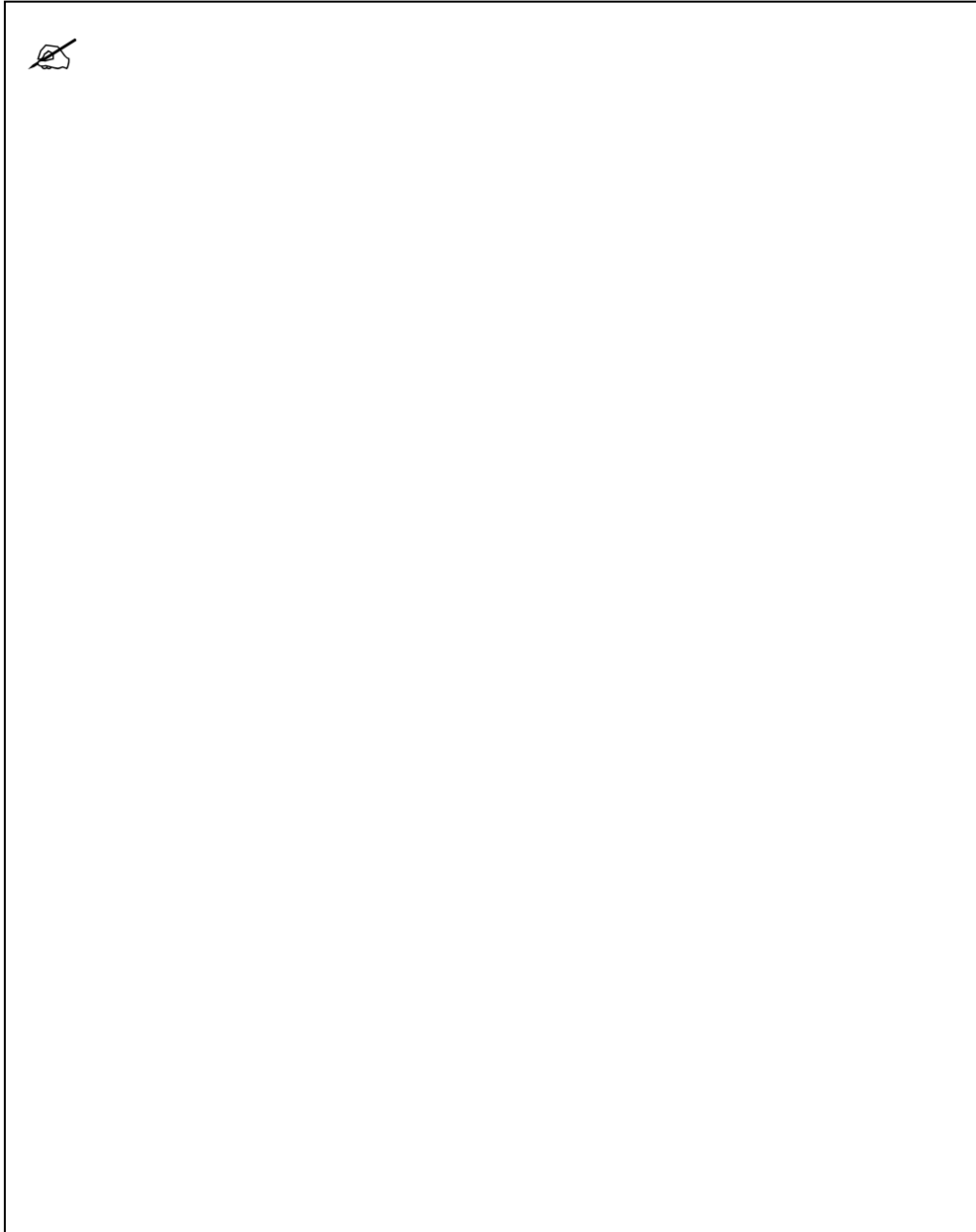
What you can do

Field staff of development, human rights and humanitarian agencies can promote the *Guiding Principles*. In co-ordination with agencies with designated responsibilities, field staff can:

- *Disseminate the Guiding Principles* and information about the *Guiding Principles*, especially in languages used by the internally displaced and relevant authorities.
- *Advocate* widely for the application of the *Guiding Principles*.
- *Support training on the Guiding Principles* and on international humanitarian and human rights law for staff, for the displaced themselves, and for relevant authorities and partner organisations.
- *Monitor and disseminate information on compliance* with the *Guiding Principles*.
- *Support data gathering* that provides accurate information on the numbers of internally displaced persons and their condition, taking due note of requirements for security, protection and privacy.
- *Promote, participate in, and support inter agency co-ordination* focused on the internally displaced, ensuring that local organisations – including organisations of the displaced themselves – are partners in such co-ordinated efforts.
- *Ensure that programme interventions are based on a sound understanding* of the *Guiding Principles* and international humanitarian and human rights laws.
- *Design “rights based” programmes* that focus on the displaced as possessors of the rights rather than as victims.
- *Plan programme activities* to ensure that benefits reach internally displaced persons equally with other persons in the country.
- *Ensure that programmes do not, intentionally or unintentionally, restrict the rights* of internally displaced persons under international law, including the right to seek asylum.
- *Take into account, in programme design, “special needs” groups* within the displaced population whose rights might be subject to abuse.
- *Advocate vigorously* with national authorities to ensure that they accept their responsibilities regarding the internally displaced.
- *Support through training* and other support, efforts by national authorities to accept responsibility for internally displaced persons.
- *Facilitate channels for internally displaced individuals, families, communities and leaders to approach national authorities* to seek protection and assistance.

Handbook for Applying the Guiding Principles on Internal Displacement

Now that you have read, spend a few minutes making some notes on what you have gathered and posing questions



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Part 2

Legal Origins and International Obligations

Key Concepts

- Full Equality and Non discrimination
- The duty to observe Human Rights by Authorities, Groups and Individuals
- The Right to leave one's country and the Right to seek asylum
- State Responsibility and Humanitarian Assistance
- Identification of Special Needs

The Geneva Conventions and Common Article III refer to all of the above

ANNOTATIONS



These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:

1. The Representative of the Secretary-General on Internally Displaced Persons in carrying out his mandate;
2. States when faced with the phenomenon of internal displacement;
3. All other authorities, groups and persons in their relations with internally displaced persons; and
4. Intergovernmental and non-governmental organisations (NGOs) when addressing internal displacement.

Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.

Key elements of the principle

Full equality - non-discrimination (see Part 4)

There are two fundamental aspects in the right to non-discrimination and equality before the law which are reinforced in the Guiding Principles, namely that internally displaced persons:

1. must not be discriminated against on the basis of their race, religion, gender, colour, age, disability etc, (see Principle 4); and/or
2. must not be discriminated against on the basis of their status as "internally displaced persons".

ANNOTATIONS



Principle 1, Paragraph 1: The principles of equality and non-discrimination are firmly rooted in international law. Article 7 UDHR recognises that “all are equal before the law and are entitled without any discrimination to equal protection of the law.” Similarly, Article 26 CCPR, Article 24 ACHR and Article 3(2) AfCHPR set forth the principle of equality and prohibit discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Humanitarian law addresses the issue of equal treatment in several provisions. Thus, common Article 3 states that persons not taking part in the hostilities shall be treated humanely, without any adverse distinction founded on race colour, religion or faith, sex, birth, wealth or any other similar criteria. Similar provisions are found in Articles 2 (1) and 4 (1) Protocol II as well as in Article 27 (3) Geneva Convention IV and Article 75 Protocol I.

An explicit prohibition of discrimination against internally displaced persons because of their being displaced does not exist in human rights law. However, Article 7 UDHR, Article 2 CESC, Articles 2 and 26 CCPR and other human rights treaties stress that it is not only discrimination based on race, colour, sex, language, religion, national origin and similar reasons that is prohibited, but also discrimination based on ‘other status’. This last term, which was intended to be interpreted broadly (and today applies, e.g., to disability), arguably covers the status of those who are internally displaced.

Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.

2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Key elements of the principle

The duty to observe human rights by authorities, groups and individuals

The right to leave one's country and seek asylum (see also Principle 15)

Merely on account of being displaced to another part of their country, persons do not lose the right to leave their country. Internally displaced persons like all persons within a territory have the freedom to leave their country.

Except: This right may not be restricted except in circumstances provided by law which are necessary to protect:

- National security
- Public order (ordre public)
- Public health or morals
- The rights and freedoms of others [ICCPR 12(2 -3), 12(2) African Charter]

The right to seek asylum

The right to seek and enjoy asylum from persecution in other countries is particularly important for internally displaced persons. The UDHR sets forth this right.

Except: However, this right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations [UDHR 14(2)].

ANNOTATIONS



Principle 2, Paragraph 1: By calling for observance by all authorities, groups and persons irrespective of their legal status, paragraph 1 might go beyond human rights provisions, which usually impose direct obligations only on states and state actors. However, certain human rights norms place such obligations upon non-state actors as well. Thus, for example, Article 4 Genocide Convention explicitly stipulates that persons committing genocide shall be punished irrespective of “whether they are constitutionally responsible rulers, public officials or private individuals.” Humanitarian law applicable in situations of non-international conflicts (common Article 3 Geneva Conventions and Protocol II) binds not only state actors but all parties to the conflict.

The second sentence of paragraph 1 seeks to pre-empt the use of the Guiding Principles for political ends by stressing that their observance does not affect the legal status of anyone.

Principle 2, Paragraph 2: The first sentence of paragraph 2 underscores that the Guiding Principles **constitute a minimum standard** and that more favourable provisions of human rights law, humanitarian law or domestic law shall not be restricted, modified or impaired by their application.

Principle 3

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

2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

Key elements of the principle

State responsibility

The Guiding Principles recognise **the central duties and responsibilities of States in promoting and protecting the rights** of internally displaced persons within their territory in relation to both protection and humanitarian assistance. Adequate domestic protection is the prime responsibility of a sovereign State, however if that State is unable or unwilling to fulfil its duties, it is obliged to invite or accept international assistance.

Humanitarian assistance from the authorities

This principle recognises the right of all internally displaced persons to humanitarian assistance - which is outlined in later principles. It also **recognises that the duty to do so rests with the State.**

ANNOTATIONS



Principle 3, Paragraph 1: The wording of this paragraph is based on Principle 2(2) of the San Remo Principles. It reflects the generally recognised principle of sovereignty which is contained, *inter alia*, in Article 2(7) UN Charter, which prohibits intervention in matters that are essentially within the domestic jurisdiction of any State. Providing protection and humanitarian assistance to nationals, including internally displaced persons, is a primary duty and responsibility of the State.

In situations where national authorities, that is, the official authorities of the State, are too weak to fulfil this duty or are no longer operative due to the particular situation in the country, Principle 5, which addresses the duties of all authorities, including non state authorities and agencies and international actors, becomes especially important.

Principle 3, Paragraph 2: The right of internally displaced persons to request and receive protection and humanitarian assistance from national authorities is the corollary of the State's duty to provide protection and assistance to internally displaced persons.

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.

2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

Key elements of the principle

Identification of special needs groups

Even within internally displaced group there are particular categories of persons who are vulnerable to human rights violations and have particular needs based on their vulnerability.

- Children - especially unaccompanied minors
- Mothers - expectant or with young children
- Female heads of households
- Persons with disabilities
- Elderly persons

Obligation to provide special treatment

The Guiding Principles recognise that these groups of people are entitled to assistance, which takes into account their special needs.

ANNOTATIONS

Principle 4, Paragraph 1: The wording of the non-discrimination clause of paragraph 1 closely follows formulations of human rights and humanitarian law provisions that prohibit discrimination.

Like all these non-discrimination clauses, but unlike the general prohibition of discrimination in Principle 1, paragraph 1 does not guarantee an independent right to freedom from discrimination, but rather an accessory right. Thus, its scope is restricted to protecting internally displaced persons against discrimination only with respect to the provisions set forth in the Guiding Principles.

Principle 4, Paragraph 2: According special treatment to some groups of internally displaced persons does not violate the principle of equality, as equality does not mean that the same treatment must be accorded to everyone. Rather, the principle of equality requires that objectively unequal situations not be treated equally. Similarly, human rights law deals with the special needs of vulnerable categories of persons in specific instruments such as the CRC and the CEDAW.

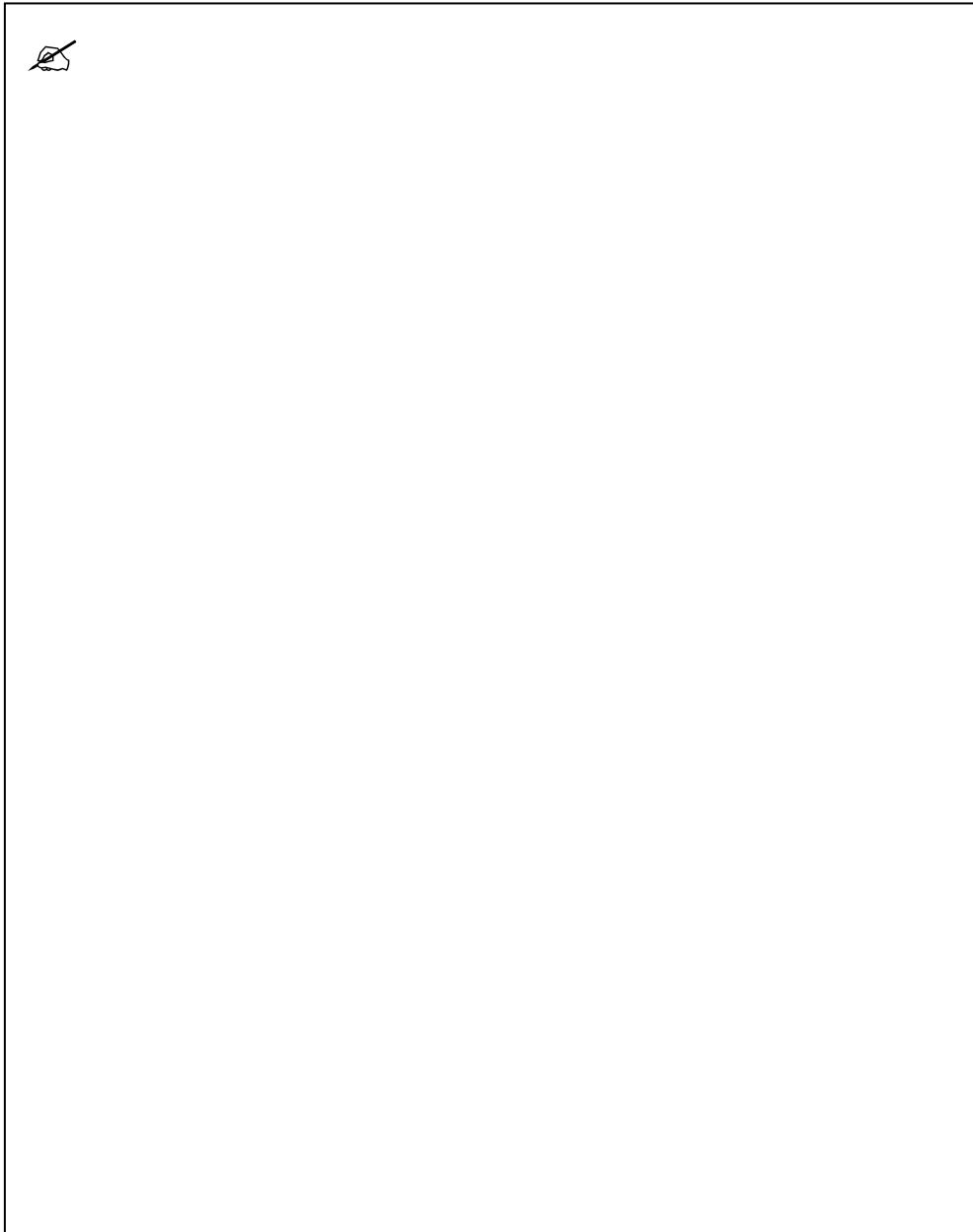
What you can do

Field staff are often the first to observe violations of the rights and responsibilities outlined in the *Guiding Principles*. Among the steps that field staff can take, in co-ordination with agencies with designated responsibilities, are:

- *Confirm the facts* to document that the violations have indeed taken place.
- *Report the facts*, with as many details as possible, to your headquarters and the international organisations specifically mandated to protect internally displaced persons, if these agencies are present.
- *Determine in consultation with headquarters, who else to inform* for example, other field organisations, international organisations, donor governments, legal rights groups, community leaders and journalists.
- *Consider joint activities with other organisations*, when possible, to maximise the effectiveness of actions taken to redress violations of the rights of internally displaced persons. In particular, consult with international organisations specifically mandated to protect internally displaced persons.
- *Develop options*, in consultation with headquarters, including private communications to the offending parties, formal representations to national authorities, public statements of concern, legal aid to internally displaced persons who are victims of abuse.
- *Asses the effects* of each option, including the likeliness of success in reversing the violations, the ability to carry out co-programme activities, the ability to maintain a presence in areas with internally displaced persons, the safety of staff, and other similar considerations.
- *Adopt and implement strategy*, in consultation with headquarters, based on the assessment of the advantages and disadvantages of the options.
- *Monitor the effectiveness* of the activities undertaken, consulting with headquarters to make changes to increase the likelihood of success.

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Part 3

Protection from Displacement, and Protection during Displacement

Key Themes

- **Theme 1: Non Discrimination**
- **Theme 2: Movement related rights**
 - Issue I: Protection against being displaced**
 - Issue II: Movement during displacement**
 - Issue III: Leaving one's country and return**
- **Theme 3: Physical Security**
 - Issue I: Life, acts of violence**
 - Issue II: Personal liberty – closed camps**
 - Issue III: Forced recruitment**
- **Theme 4: Special Needs**
 - Issue I: Subsistence needs**
 - Issue II: Health related needs**
 - Issue III: Need for identification and documentation**
 - Issue IV: Need for family unity**
 - Issue V: Property**

Note:

The difference between “themes” and “issues” is that the former identifies a segment of the problematic situation in a general manner while the latter narrows the said problem to its microscopic components.

Theme 1: Non discrimination on account of race, religion, ethnicity, opinion, sex and language

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

(a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;

(b) The right to seek freely opportunities for employment and to participate in economic activities;

(c) The right to associate freely and participate equally in community affairs;

(d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and

(e) The right to communicate in a language they understand.

Principle 12

3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.

In some situations, the local authorities and residents may suspect internally displaced persons of collaborating with a dissident group. Arrest, detention or ill treatment of internally displaced persons by the authorities *on the basis of* their displacement is prohibited because it is considered discriminatory.

Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

Non discrimination on account of displacement

It is important to note that fundamental human rights are not suspended on account of persons being displaced and therefore internally displaced persons are entitled to the same freedoms as all other people.

Should any of these rights be denied to internally displaced persons and not to other persons, such treatment will be considered discriminatory because it applies to one portion of the population unequally – on the basis of their situation of being displaced.



ANNOTATIONS

Principle 9: Article 13(1) of ILO Convention No. 169 concerning Indigenous and Tribal Peoples recognises that "governments shall respect the special importance for the cultures and spiritual values of the peoples concerned, of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship." Thus, when relocation of such peoples is deemed necessary, Article 16(3) of ILO Convention No. 169 stipulate that the "peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist." If return is not possible, "these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development" (Article 16(4) ILO Convention No. 169).

Theme 2: Movement related Rights

Issue 1: Protection against being arbitrarily displaced

The right not to be displaced

States are required to take all measures to avoid conditions which might lead to displacement.

Principle 6(1)

- 1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.**

All people have the right to freedom of movement and the right to choose their place of residence. In situations of internal displacement the right to freedom of movement and freedom to choose one's place of residence is restricted during the period of displacement.

ANNOTATIONS



Principle 6, Paragraph 1: As explained in the 1998 Report of the Representative of the Secretary-General on Internally Displaced Persons:

“An express prohibition of arbitrary displacement is contained in humanitarian law and in the law relating to indigenous peoples. In human rights law, by contrast, this prohibition is only implicit in certain provisions, in particular those pertaining to freedom of movement and choice of residence, freedom from arbitrary interference with one's home, and the right to housing. These rights, however, fail to provide adequate and comprehensive coverage of all instances of arbitrary displacement since they do not spell out the circumstances under which displacement is permissible and furthermore, are subject to restriction and derogation. They do nonetheless, jointly point to a general rule according to which forced displacement maybe undertaken only exceptionally and even then, may not be effected in a discriminatory manner nor arbitrarily imposed.” (E/CN.4/1998/53, para A.2.).

Principle 5

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

Limitations or restrictions to this right

Most human rights instruments permit States to place restrictions on freedom of residence and movement during situations of tension and disturbance in limited situations. However failure to comply with the limited restrictions will make a decision to displace population *arbitrary* – in other words a decision that was not in accordance with the law and incompatible with standards protecting liberty and security of person will be in violation of the right to freedom of movement. Freedom of movement may only be limited where such restrictions are:

1. provided by law - that is to say the power to move a population is written in national legislation, **and**
2. are necessary to protect:
 - national security – which is only endangered in cases of grave political or military threat to the entire nation;
 - public order (*ordre public*) – which can only be justified in situations of certain development and infrastructure projects where the interest of general welfare are clearly overriding;
 - public health or morals – which can only be justified if the health dangers are acute
 - the rights and freedom of others – which may only be justified in cases of eviction to respect private property in which cases states must ensure that interference in favour of private owners is proportional, reasonable and applied in a non discriminatory way: **and**
3. must not be inconsistent with other state obligations under international law. [ICCPR 12 (13)]

Therefore any interference with the rights to freedom of movement and choice of residence must be *balanced*. It must pursue a legitimate aim and be proportional to that aim. In the event that a decision to displace is made, the displacement should not last longer than is required.

Principle 6(2) of the Guiding Principles further elaborates when limitations on people's freedom of movement are considered arbitrary.

Principle 6(2)

2. The prohibition of arbitrary displacement includes displacement:

(a) When it is based on policies of apartheid, "ethnic cleansing" or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;

(b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;

(e) When it is used as a collective punishment.

ANNOTATIONS



Principle 6, Paragraph 2, Subparagraph (b): By stating that displacement of civilians would be arbitrary in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand, subparagraph (b) reflects the already cited articles of Geneva Convention IV and the Protocols. With regard to these two exceptional circumstances in which forced displacement might be permissible, the ICRC Commentary to Article 17 Protocol II explains that “[I]t is self-evident that a displacement designed to prevent the population from being exposed to grave danger cannot be expressly prohibited... The situation should be scrutinised most carefully as the adjective ‘imperative’ reduces to a minimum case in which displacement may be ordered.”

Principle 6, Paragraph 2, Subparagraph (e): Finally, forced displacement is arbitrary if it is used as a collective punishment. The prohibition of collective punishment is firmly rooted in humanitarian law. Thus, Article 33(1) Geneva Convention IV, Article 75(2)(d) Protocol I and Article 4(2)(b) Protocol II expressly state the prohibition of collective punishments.

In human rights law, a prohibition of collective punishment is not explicitly mentioned. Nevertheless, such punishment could violate multiple human rights, including the presumption of innocence, the right to security and prohibitions of arbitrary detention and cruel or inhuman punishment.

Principle 6(3)

Displacement shall last no longer than required by the circumstances.

ANNOTATIONS

Principle 6, Paragraph 3: This requirement is an expression of the general principle of proportionality, and is to be respected whenever the rights of human beings are limited.

Since, according to humanitarian law, forced movements of civilians in cases of armed conflict are permissible only if the security of civilians or imperative military reasons so demand, return has to be allowed as soon as these reasons have ceased to exist. Similarly, human rights norms guaranteeing the right to freedom of movement and of residence allow for restrictions only if the measure meets the criteria of necessity and proportionality.

Principle 7

- 1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimise displacement and its adverse effects.**
- 2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.**

“Ensure that all feasible alternatives are explored in order to avoid displacement”

Since internally displaced persons, like all other persons within a territory, have freedom of movement, which can only be restricted in limited situations provided by law, all feasible alternatives must be explored before a decision to displace a population can be taken. It might include considerations of reinforcing local security or diverting conflict from the area.

“Where no alternative exists - minimise displacement and its adverse effects”

If internal displacement is deemed necessary in situations of non-international armed conflict, States must take particular measures to ensure that “all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition”. [Protocol II article 17] (see concept 4).

Principle 7 therefore specifies that the authorities shall ensure to the "greatest practicable extent" that internally displaced person receive:

- Proper accommodation is provided (*Principle 18*)

- Satisfactory conditions of safety, nutrition, health and hygiene
(*Principle 19*)
- Family unity (*Principle 17*)

States must also ensure that protection is provided during displacement.

ANNOTATIONS

Principle 7, Paragraph 1: This provision reflects the requirement Of Article 12(3) CCPR and similar human rights guarantees that restrictions on the rights to freedom of movement and residence must be necessary and proportional.

Principle 7, Paragraph 3: For cases of involuntary displacement that are not related to emergency situations during armed conflicts or disasters, paragraph 3 provides a number of procedural safeguards and guarantees, with a view to ensuring the fairness of the process of displacement and the decision-making procedures related to it.

Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty, and security of those affected.

Principle 7 (3)

**If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:
A specific decision shall be taken by a State authority empowered by law to order such measures:**

- (a) Adequate measures shall be taken to guarantee those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;**
- (b) The free and informed consent of those to be displaced shall be sought;**
- (c) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;**
- (d) Law enforcement measures, where required, shall be carried out by competent legal authorities; and**
- (e) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.**

E.g.: Authorities would provide full information to displaced persons on issues surrounding their displacement. Full transparencies of the process also allow displaced persons to prepare for orderly relocation.

1. The decision to displace a population must be made by the authorities authorised to make that decision on behalf of the State. This ensures accountability, transparency and adherence to certain guarantees.

ANNOTATIONS

Principle 7, Paragraph 3: For cases of involuntary displacement that are not related to emergency situations during armed conflicts or disasters, paragraph 3 provides a number of procedural safeguards and guarantees, with a view to ensuring the fairness of the process of displacement and the decision-making procedures related to it.



What you can do

Field staff are often the first to observe signs of arbitrary displacement. In co-ordination with agencies with designated responsibilities, field staff can:

- *Collect accurate data* on the populations and conditions in communities at risk of displacement and on the factors impelling displacement.
- *Establish “early warning” systems* that alert communities, authorities and organisations to the risk of displacement.
- *Suggest alternatives to displacement*, through studies, analyses, and discussions with community leaders and authorities.
- *Identify groups with special needs* among populations at risk or communities with a special dependency on or attachment to their lands and target assistance or protection to those groups.
- *Advocate* among the displaced and with authorities, donors, international organisations, and others for the rights of communities at risk of displacement.
- *Open channels of communication* between displaced communities and national and local authorities who may be able to prevent displacement or ensure that it is accomplished with respect for the rights of the displaced.
- *Establish a presence* in communities threatened with displacement to reduce the risk of displacement.
- *Preposition staff, transport, shelter materials* and other supplies that may be necessary if displacement appears inevitable.
- *Ascertain optimal locations* where communities can settle during the period of displacement, taking into account their need for protection and basic services during the period of displacement, and prepare those sites.
- *Conduct studies on the potential environmental impact* of displacement, when necessary, and seek ways to minimise damage.

Issue II: Movement during displacement

The right to freedom of movement and choice of residence does not cease when a person is displaced.

Principle 14

- 1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.**
- 2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.**

E.g.: Liberty and security of a person refer not to the physical well being of a person , but instead to the physical security of a person.

ANNOTATIONS



Principle 14, Paragraph 1: This paragraph does not address the question of protection against displacement (see Principle 6); rather, it concerns movement rights during displacement.

Principle 12

- 1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.**
- 2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.**
- 3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.**

Generally a violation of the right to security of a person occurs when a person is arrested, detained, abducted or confined by the State (public official or any person acting in an official capacity) and where the State refuses to acknowledge the arrest or admit knowledge of the person's whereabouts or where the State fails to permit the person access to his or her rights. In these situations any confinement would be considered arbitrary arrest or detention because the right to liberty is restricted.

The ICCPR, states that:

- An arrested person shall be informed, at the time of arrest, of the reasons for arrest and shall be promptly informed of any charges against him or her.
- Anyone arrested or detained on criminal charges will be brought promptly before a judge or other authorised officer within a reasonable time.
- Anyone arrested or detained shall be entitled to proceedings before a court in order that the court may decide without delay on the lawfulness of the detention and order release if the detention is not lawful.
- Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. [ICCPR 9 (2-5)].

Detention will *not* be considered “arbitrary” if the State confines a person on the following basis:

“On such grounds and in accordance with such procedure as are established by law”. [ICCPR 9(1)] – that being in accordance with domestic and international law.

Therefore, it may be a violation of the right to liberty to hold an internally displaced person inside a closed camp without freedom. In addition it may amount to *arbitrary detention*, *unless*:

1. it is imposed on such grounds and in accordance with such procedures as are established by domestic legislation; and
2. is reasonable and necessary in all circumstances, [HRC] which might include security interests or imperative public necessity; and
3. there is a right to take proceedings before a court against the lawfulness of detention, which means there is access to a court to seek review of the confinement; and
4. there is a situation of an officially proclaimed national emergency.[ICCPR 4]

If an internally displaced person is held in a closed camp, which is lawful under these grounds, he/she has the right to be treated with humanity and with respect for the inherent dignity of the human person. [ICCPR 12(1)]



Issue III: Leaving one's country and return

Internally displaced persons often find security in their own country. However because of religion, race, ethnic origin or political opinion, they sometimes face persecution and therefore need to find protection abroad. They also might wish to emigrate in order to find a better future for themselves and their families in another more peaceful country. Therefore, an underlying issue of these principles is to maintain the right of internally displaced persons to seek asylum or to leave their country.

Principle 15

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;**
- (b) The right to leave their country;**
- (c) The right to seek asylum in another country; and**
- (d) The right to be protected against forcible return or resettlement in any place where their life, safety, liberty and/or health would be at risk.**

E.g.: Internally displaced persons lawfully within the territory of a state have the right to liberty of movement and freedom to choose their place of residence. They are free to leave their own country. This right may only be limited if restrictions are:

1. Provided by law, and
2. Are necessary to protect
 - national security
 - public order
 - public health or morals
 - the rights and freedoms of others, and
3. Must be consistent with other rights recognised by international law.

The right to seek asylum

The right to seek and enjoy asylum from persecution in other countries is particularly important for internally displaced persons.

The right of internally displaced persons to seek asylum cannot be claimed in cases where the persons fear criminal prosecution genuinely arising from a non-political crimes or have committed acts contrary to the purposes and principles of the United Nations.

ANNOTATIONS



Principle 15, Subparagraph d: Protection against forcible return to situations of danger is well established in the refugee law principle of *non-refoulement*, and in major human rights

protections relating to torture and the deportation or extradition of aliens. As prohibiting the return of internally displaced persons to situations of danger can contribute significantly to their physical protection and sense of security, subparagraph (d) meets an important need by applying, by analogy, the authority of existing refugee - and alien - related human rights law to the field of internal displacement. The wording of this subparagraph therefore echoes various existing refugee law and human rights sources.



Theme 3:Physical Security

Issue I: Threats to life – and other acts of violence

Principle 10

- 1. Every human being has the inherent right to life, which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:**
 - a) Genocide;**
 - b) Murder;**
 - c) Summary or arbitrary executions;**
 - d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.**

Threats and incitement to commit any of the foregoing acts shall be prohibited.

- 2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:**
 - a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas where in attacks on civilians are permitted;**
 - b) Starvation as a method of combat;**
 - c) Their use to shield military objectives from attack or to shield, favour or impede military operations;**
 - d) Attacks against their camps or settlements;**
 - e) The use of anti-personnel landmines.**

Note:

It is prohibited to attack, destroy, remove or render useless, for the purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works. Protocol II article 14).

All civilians must be protected against dangers arising from military operations [Protocol II 13 (1)]. Use of civilians as a military shield may be regarded as the use of torture, cruel, inhuman and degrading treatment or punishment (CAT). (Internally displaced persons have the same protection against attacks and other violence inside a camp or settlement as outside. This Principle recognises that the situation of displacement does not diminish the protection needs of displaced persons – indeed the nature of relocation makes them particularly vulnerable to attacks.)

Some acts which violate the right to life:

a. Genocide

The act of genocide is an internationally recognised crime. The convention on the prevention and punishment of the crime of genocide defines “genocide” in article II:

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

The crime of genocide applies to any public official or private individual [Genocide Convention article IV]

b. Summary or Arbitrary Executions

Outside of their normal home regions and communities, internally displaced persons may be particularly vulnerable to summary or arbitrary executions.

An *arbitrary execution* is the killing of a person perpetrated by an agent of the State or any other person acting under government authority or with its complicity, tolerance or acquiescence, and without any judicial process. Executions resulting from a death sentence issued by a court are also arbitrary executions if the fair trial guarantees provided in articles 14 and 15 of the ICCPR are not respected.

Arbitrary executions are often killings under suspicious circumstances with the following characteristics:

- death occurred when the person was in the hands of law enforcement officials, public officials, or other persons acting in an official capacity; and
- if the death was not followed by an official enquiry. The authorities did not carry out an adequate autopsy of the victim or did not take the necessary steps to obtain relevant evidence (medical report, signs of torture, etc.).

c. Enforced Disappearances

One of the risks facing internally displaced persons, whether they are adults or children, is enforced involuntary disappearances caused by government paramilitary, dissident forces or groups. Enforced disappearances violate many fundamental rights including those relating to killings, ill treatment, personal liberty and the exercise of one’s legal rights. In particular forced disappearance may violate the right to life [6(1) ICCRP, according to the HCR]. *The Declaration on the protection of all persons from enforced disappearances*, which may be considered to form part of customary international law, considers enforced disappearance to be an offence to human dignity. The preamble describes forced disappearance as a situation in which:

Persons are arrested, detained or abducted against their will or otherwise deprived of their lives by officials of different branches or levels of government or by organised groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, thereby placing such persons outside the protection of the law.

In the case of missing persons the authorities should establish effective facilities and procedures to investigate thoroughly the disappearance in circumstance which may involve a violation of the right to life [HRC].

Threats and incitement to commit these offences

The Guiding Principles protect internally displaced persons from threats or incitement to commit genocide, murder, summary or arbitrary executions or enforced disappearances.

Violence against those who do not or who no longer take part in hostilities

Internally displaced persons who never participated in the hostilities or who *no longer take part in the hostilities* are entitled to protection against acts of violence and must *in all times* be treated humanely [Protocol II article 4(1)].

Those who *no longer* take part in the hostilities include:

- Armed forces who have laid down their arms
- Those who are *hors de combat* by sickness, wounds or detention [common article 3]

Issue II: Personal Dignity

Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.

2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:

(a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;

(b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and

Slavery

Freedom from Slavery is a non-derogable right, which applies to internally displaced persons at all times.

Sale of women equated to slavery

The sale of women into marriage or forced marriage violates the right to be free from slavery and slavery like practices.

(c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

Gender specific violence includes any act of violence that results in or is likely to result in physical, sexual or psychological harm or suffering on account of one's gender, including threats of such acts. The term will cover violence perpetrated by the State, family members or others in the community. States have an obligation to protect women from gender violence perpetrated by state agents and private individuals. Women should be particularly protected against discrimination, trafficking in women and exploitation for prostitution. [2-6 CEDAW].

“Forced labour of children” and forced or compulsory labour does not include:

1. Work or service which is normally required of a person who is under detention as a consequence of a lawful order of a court.
2. Service of a military character and in countries where conscientious objection is recognised, any national service required by law of conscientious objectors.
3. Any service exacted in cases of emergency or calamity threatening the life or well being of the community.
4. Any work or service which forms part of normal civil obligations.

Issue III: Forced recruitment

Principle 13

1. In no circumstances shall displaced children be recruited or be required or permitted to take part in hostilities.

2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

Recruitment of Children

Principle 13 restates the international protection afforded to all children. The CRC requires States to take measures to ensure this right is protected. Under humanitarian law, both States and dissident groups are prohibited from conscripting children under 15 years of age in situations of armed conflict.

Military service is permitted by States. However the practice must *not* be carried out in a fashion that:

1. Discriminates against internally displaced persons. [implied from ICCPR 26]
2. Amounts to cruel, inhuman or degrading treatment in order to compel compliance or punish non-compliance.

Forced military service on conscientious objectors is considered forced or compulsory labour under article 8(3)(ii) of the ICCPR.



What you can do

Among the steps that field staff can take, in co-ordination with agencies with designated responsibilities in the field, to protect the lives, security, and dignity of internally displaced persons are:

- *Disseminate information about the rights of displaced persons* during displacement to displaced populations and to relevant authorities.
- *Advocate with authorities* for the protection of the rights of internally displaced persons and provide support to local non-governmental organisations or other groups advocating for these rights.
- *Train military personnel*, including national and peacekeeping forces, in principles of protection.
- *Establish monitoring and reporting systems* that document violations of the rights guaranteed to internally displaced persons.
- *Report food blockages* or other serious violations of the right to an adequate standard of living.
- *Gather information and report unwarranted restrictions on freedom of movement* of internally displaced persons.
- *Implement landmine programmes* to raise awareness of their threat and when possible to remove them.
- *Maintain a presence* in or near displaced communities to enhance protection and advocacy activities.
- *Ensure that management of camps established for internally displaced persons reflect the principles* relating to protection during displacement.
- *Reduce the threat of attacks* by identifying and implementing steps to prevent camps from becoming the targets of attacks.
- *Identify factors that prevent internally displaced persons from seeking asylum* or from seeking safety in another part of their country and work to address any such factors.

Minimising displacement and its adverse effects

If no appropriate alternatives to population movement can be found, all efforts should be made to minimise the extent of displacement and to ensure that movements occur in as satisfactory a manner as possible. Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected. Authorities must ensure that proper accommodations are provided and displacements are effected in satisfactory conditions of safety, nutrition, health, hygiene and family unity.

En Route

The adverse effects of displacement can be reduced by carrying out the actual movements under conditions that maximise the safety and well-being of the displaced population, with due regard to women, children, elderly, disabled and others who may have special needs en route.

Relocation Sites

Choice of relocation sites also will help protect rights and minimise disruption. Choosing relocation sites that are as close to the home community as possible, will reduce the travel needed, maintain residence in familiar surroundings and facilitate return when it become possible. Relocation sites should permit the displaced population to resume economic, social and other activities as quickly as possible.

Planning

To the extent possible, displacement should not take place without careful planning. Even in the case of an emergency, prior contingency planning will permit careful consideration of all factors when a crisis develops.

Decision-making

Also needed is a deliberative process by which final decisions on displacement take place. Ultimately, it is the responsibility of the authorities undertaking displacement to carry them out in a proper manner. The decisions on displacement shall be made by a governmental body that has legal powers to order population movements to take place. Should law enforcement activities be required – for example, because of resistance to a legitimate evacuation order – they should be carried out by competent legal authorities. Training law enforcement personnel to carry out their responsibilities in the least disruptive manner would be a useful part of the planning process.

Review of Decisions

Part of the process through which non-emergency displacements are planned and implemented, should be a mechanism by which affected populations can appeal the decisions and have such appeals heard by competent judicial authorities.

Indigenous peoples and other special populations

The Guiding Principles recognise that some populations have a special attachment to or dependency on their lands. Specifying indigenous people, minorities, peasants and pastoralists, the Guiding Principles call on States to make efforts to protect these populations from displacement.

(Handbook for Applying the Guiding Principles on Internal Displacement)

Minimising the adverse effects of displacement: Planning Checklist

Have all alternatives to displacement been considered?

Has consultation taken place with the affected populations, especially women?

Have members of the displaced community visited proposed relocation sites?

Have the protection and assistance needs while in transit been considered?

- Physical safety and security
- Food and other supplies
- Shelter
- Sanitation
- Family unity
- Vulnerable populations
- Emergency medical care

Have the protection and assistance needs in the relocation site been considered?

- Physical safety and security
- Food and other supplies
- Shelter
- Sanitation
- Family unity
- Vulnerable populations
- Medical care
- Education
- Income generation
- Documentation
- Community decision making structures

Have mechanisms to protect property left behind been considered?

Handbook for Applying the Guiding Principles on Internal Displacement

Theme 4: Special Needs

Internally displaced persons, on account of being displaced, have particular needs.



Issue I: Subsistence needs

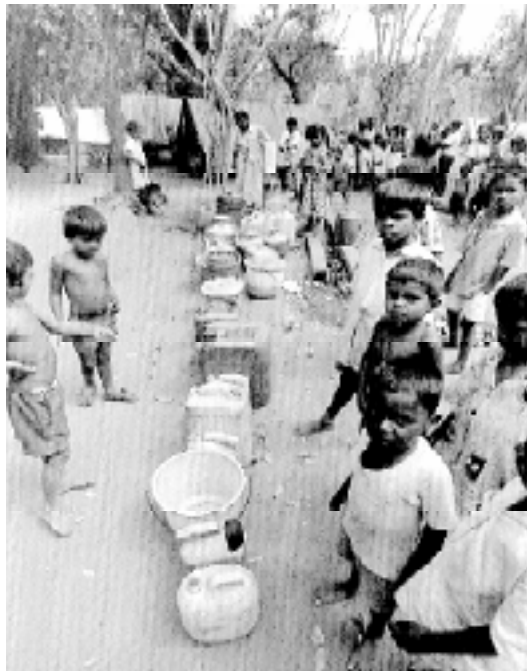
Principle 18

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - a) Essential food and potable water;
 - b) Basic shelter and housing;
 - c) Appropriate clothing; and
 - d) Essential medical services and sanitation.
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

E.g.: 2a) The right to food is non-derogable under the right to life. States with limited resources are required to make maximum efforts to use all resources at their disposal to satisfy these essential needs [Committee CSCR]. Such resources will include not only those within the State but will include those available from the international community. Starvation of civilian populations as a method of combat is prohibited.

ANNOTATIONS

Principle 18, Paragraph 2, Subparagraph (d): states that internally displaced persons are entitled to have access to "essential medical services and sanitation" and, thus, reiterates various provisions of human rights law and humanitarian law. Article 25(1) UDHR sets forth a right to medical care. Furthermore, Article 12(1) CESCRC recognises "the right of everyone to the enjoyment the highest attainable standard of physical and mental health." With regard to children, a similar provision is laid down in Article 24(1) CRC. Additionally, issues of access to medical care are addressed in Article 12(1) CEDAW, Article 11 ESC, Article 16(1) AfCHPR and Article XI American Declaration. Furthermore, several provisions of humanitarian law deal with medical care. Thus, common Article 3 obliges the parties to collect and care for the wounded and sick. Therefore, wounded and sick persons who are under the control of a party to a conflict are entitled to medical care. Article 7(2) Protocol II elaborates on this provision and states that wounded and sick persons "shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them founded on any grounds other than medical ones." Furthermore, Article 8 Protocol II obliges the parties to a conflict to search for and collect the wounded and sick and to ensure their adequate care. Finally, in situations of international conflict, according to Article 10 Protocol I, "(a)ll the wounded, sick and shipwrecked, to whichever Party they belong, shall be respected and protected" and "receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition." Medical care is also provided for in Articles 16, 23, 55 and 56 Geneva Convention IV.



Issue II: Health related needs

Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.

2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.

3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

Special needs groups

- **Wounded and sick internally displaced**

Common article 3 calls for the humane treatment of those persons who do not take part in the hostilities and obliges the parties to care for the wounded and sick without distinction.

In situations of armed conflict Protocol II 8 requires that whenever circumstances permit and particularly after an engagement all possible measures shall be taken without delay to search for and collect the wounded, sick and ship wrecked and to protect them against pillage, ill-treatment and to ensure adequate care.

- **Disabilities**

Persons with disabilities may require special services and other kinds of assistance on a continuous basis. Article 25 of the UDHR provides that everyone has the right to security in the event of... sickness, disability... or other lack of livelihood in circumstances beyond his/her control.

Disabled children should not be discriminated against on the basis of their disability [article 2 CRC]. A disabled child must receive education, training, health care, and rehabilitation to achieve the fullest possible social integration [23(3) CRC].

- **Women**

Special attention to the health needs of women was highlighted in the CEDAW 12 - whereby it was stated that for equality, States must ensure to women appropriate services in connection with pregnancy, confinement and postnatal period.

- **Contagious and infectious diseases**

Realisation of the right to an adequate standard of living includes prevention, treatment and control of epidemics, occupational or other diseases [ICESCR 12(2)(d)].

ANNOTATIONS



Principle 19, Paragraph 3: A further aspect of medical care is the prevention of contagious and infectious diseases. Paragraph 3 reflects Article 12(2)(c) CESC, which recognises that the steps to achieve the full realisation of the highest attainable standard of physical and mental health shall include "[t]he prevention, treatment and control of epidemic, endemic, occupational and other diseases." The necessity of taking preventative measures for health protection is furthermore acknowledged in Article 16(2) AfCHPR, where it is stated that steps should be taken "to protect the health of ... people." Similarly, Article 11 ESC calls upon states to take appropriate measures "to prevent as far as possible epidemic, endemic and other diseases."



What you can do

Among the steps that field staff can take, in co-ordination with agencies with designated responsibilities in the field, to protect the economic, social and cultural rights of internally displaced persons are:

- *Monitor access to humanitarian assistance* by internally displaced persons, for example through programmes to identify increasing malnutrition, diseases and death rates.
- *Protect the right to an adequate standard of living* by ensuring that basic needs for food, water, health care, sanitation, shelter and clothing are being met.
- *Assess the appropriateness and the effectiveness of humanitarian assistance*, for example, that the size and composition of the food basket is nutritionally and culturally appropriate and that shelter, food and supplies are provided in a manner that heightens the security of women and children.
- *Promote economic opportunities* by designing and implementing programmes to enable internally displaced persons to earn an income and also to produce their own food or clothing.
- *Advocate for the full participation of women* in all assistance, education, and income generating programmes for the internally displaced.
- *Support access to education* for displaced children, including their enrolment in local schools and where possible promote higher education and skill training for adolescents and adults.

Handbook for Applying the Guiding Principles on Internal Displacement

Issue III: The need for identification and documentation

Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.

2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

E.g.: it “means that the individual is a person (and not a thing) and furthermore is endowed with the capacity to be a person before the law” (Nowak, CCPR Commentary, Article 16, para.2)]



What you can do

Among the steps that field staff can take, in co-operation with agencies with designated responsibilities in the field, to protect the civil and political rights of internally displaced persons are:

- *Support programmes to replace lost documentation*, such as the birth certificates or property titles.
- *Consult* with, seek views of, and otherwise engage the displaced in all programme activities.
- *Promote the civil rights* of internally displaced persons, in particular the right to vote, and assists them in exercising their rights to freedom of thought, assembly, conscience, religion or belief, opinion and expression.

Handbook for Applying the Guiding Principles on Internal Displacement

Issue IV: Need for family unity

Principle 17

- 1. Every human being has the right to respect of his or her family life.**
- 2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.**
- 3. Families, which are separated by displacement, should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organisations engaged in the task of family reunification.**
- 4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.**

Maintain family unity

With the right to family unity comes freedom from interference with the family unit. Internally displaced persons are entitled to protection against any kind of interference with a person's privacy, family, home and correspondence [UDHR 12 and ICCPR 17].

During any stage of internal displacement it is important for internally displaced families to remain together. The same is true for those communities which are culturally considered to be extended families. If these internally displaced persons are dispersed and separated from one another they must be able to reunite as quickly as possible. Children in particular suffer from separation.

Special needs of children

Given a child's particular vulnerability and dependence on parents and family, children enjoy special protection. Children have the right to know and to be cared for by their parents (CRC 7), maintain family relationships including with the extended family (CRC 8), and the right to cross a border to allow access to their parents (CRC10).

In times of non-international armed conflict, children must be provided with the "care and aid they require" in particular to ensure "all appropriate steps are taken to facilitate the reunion of families temporarily separated" [Protocol II 4 (3)(b)]. In time of hostilities it might be necessary for a child to be removed from his or her parents temporarily for his or her safety [Protocol II article 4(3)(e)]. However, this may only apply when:

- Hostilities so require for the safety of the child;
- The relocation is temporary;
- Relocation is within the country;
- Consent of the parents or guardians is obtained.

Searching for missing relatives

During displacement many families are separated. Attempting to find missing relatives to learn of their fate or whereabouts can be undermined by anything from a lack of co-operation to a lack of permanent address.

Principle 16

- 1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.**
- 2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and co-operate with relevant international organisations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any results.**
- 3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.**
- 4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the gravesites of their deceased relatives.**

E.g.: In the event that displaced persons die or are missing as a result of a disaster or any kind of violence other than enforced disappearances or hostility, the authorities should search and where possible account for missing persons and when possible they should dispose of the remains of the dead in a dignified manner. Family members have the right to be informed.

E.g.: This principle also respects the bereavement of relatives.

Article 13 of the Declaration on the Protection of All Person from Enforced Disappearance provides for an effective investigation into the fate of the disappeared persons by competent and independent State authorities.

Special rights for children

If the State is responsible for the detention, imprisonment, exile, deportation or death of a child's parents, the State, on request, must provide essential information to the child [CRC 9(4)].

What you can do

Among the steps that field staff can take, in co-ordination with agencies with designated responsibilities in the field to protect family unity are:

- *Design programmes* that enable families to stay together.
- *Support training programmes* that provide the displaced with information about the location and circumstances of family members.
- *Help families locate children* separated during displacement.
- *Refer internally displaced persons to Red Cross programmes that help them communicate* with family members.
- *Promote family reunification* by advocating with responsible authorities and providing transport and logistical support.

Handbook for Applying the Guiding Principles on Internal Displacement

Issue V: Property

Internally displaced persons regularly lose much of their property when displaced. Owing to their vulnerability, such persons need protection for the property left to them or acquired during displacement.

Principle 21

- 1. No one shall be arbitrarily deprived of property and possessions.**
- 2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:**
 - (a) Pillage;**
 - (b) Direct or indiscriminate attacks or other acts of violence;**
 - (c) Being used to shield military operations or objectives;**
 - (d) Being made the object of reprisal; and**
 - (e) Being destroyed or appropriated as a form of collective punishment.**
- 3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.**

Everyone, including internally displaced persons, has the right to own property alone or in association with others. Property must not be subject to arbitrary deprivation, which means that a person can not have his or her land taken away with disregard for the law.

However, the right to own property can be limited. It is subject to:

- Certain interests of society provided by law.
- Just requirement of morality, public order and general welfare in a democratic society [UDHR 29(2)].

Yet ownership of property cannot be interfered with on the basis of discrimination [CERD 5(d)(v)] nor denied to women on the basis of their gender [CEDAW 16(1)(h)].

Domestic laws normally provide for legal protection of property and protection against interference. They will restore property to their rightful owners in case of dispute.

What you can do

Among the steps that field staff can take, in co-ordination with agencies with designated responsibilities in the field, to protect the economic, social, and cultural rights of internally displaced persons are:

- Support steps to guarantee property rights and resolve property disputes concerning internally displaced persons.

Handbook for Applying the Guiding Principles on Internal Displacement

Working groups

Taking the central protection and assistance concepts raised in the module, participants are asked to identify and discuss the main problems facing internally displaced persons in their region. Identification of the problems should relate to concerns arising before and during displacement and should be organised according to the four themes raised in the module.

1) Non Discrimination

2) Movement related Rights

- Protection against being displaced
- Movement during displacement
- Leaving one's country and return

3) Physical Security

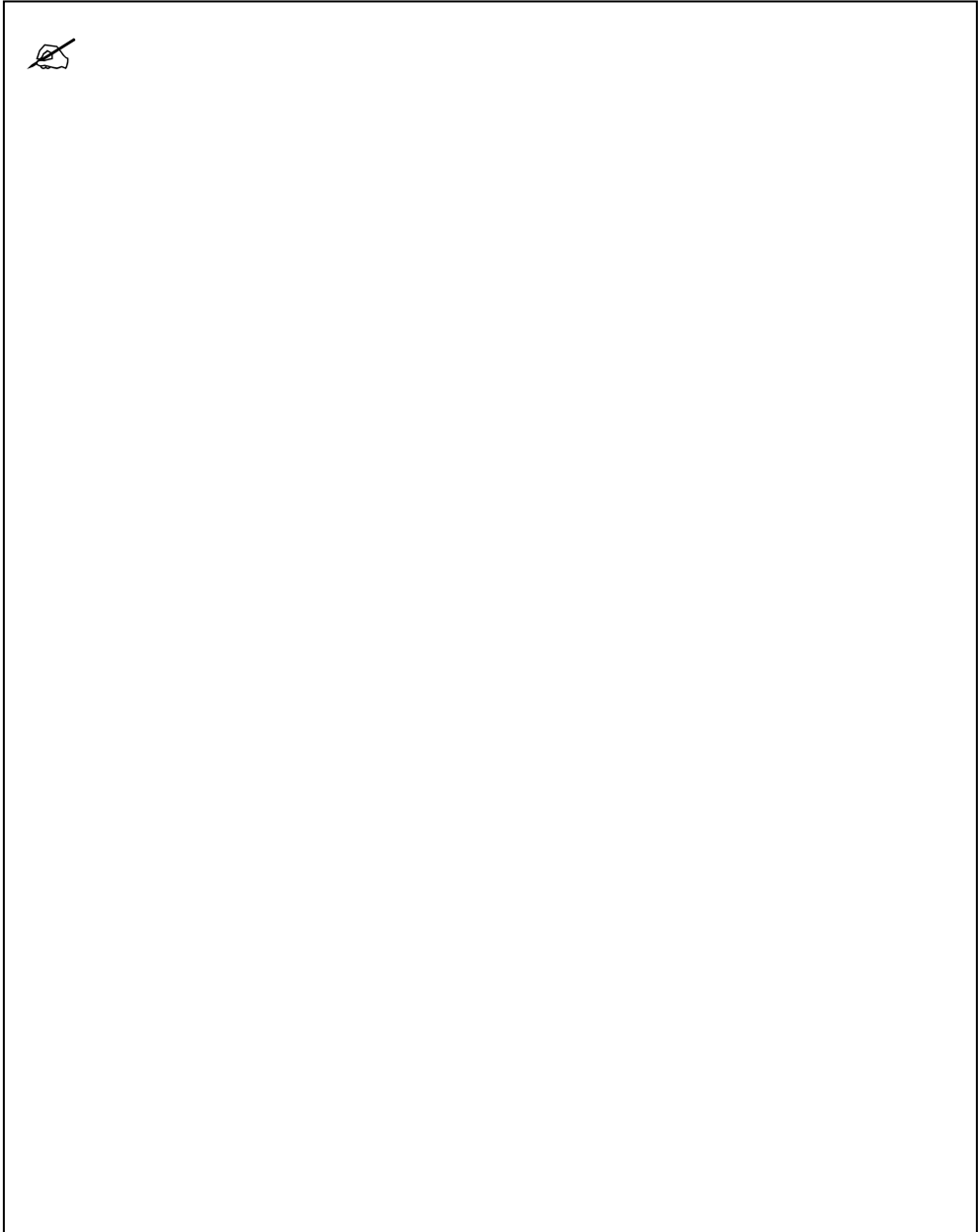
- Life, acts of violence
- Personal liberty – closed camps
- Forced recruitment

4) Special Needs

- Subsistence needs
- Health related needs
- Need for identification and documentation
- Need for family unity
- Property

Participants are encouraged to refer to the Guiding Principles during their discussions.

Now that you have read, spend a few minutes making some notes on what you have gathered and posing questions

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Part 4

Return, Resettlement and Reintegration

Key Concepts/Themes

- ❑ **Defining return, resettlement and reintegration**
- ❑ **Themes**
 - **Voluntary return in conditions of safety and dignity**
 - **Participation and management of return by IDPs**
 - **Non discrimination**
 - **Recovery of property or compensation**
 - **Access by humanitarian organizations**
- ❑ **Some ideas to consider**
- ❑ **Preparing a return/resettlement plan**

Definitions

Return is used to define the process of going back to one's original place of residence.

Resettlement (*different from refugee resettlement*) is used to define the process of starting a new life in another part of the country.

Reintegration is used to describe the re-entry of formerly internally displaced people into the social, economic, cultural and political fabric of their original community or a new community.

Theme I: Voluntary Return in Conditions of Safety and Dignity

Principle 28 (1)

Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.

Definitions

Safety

Return in safety is one that takes place under conditions of :

- Legal safety: such as amnesties, public assurances of personal safety, integrity, freedom from fear of persecution or arbitrary punishment on return and citizenship status.
- Physical security: including protection from armed attacks and mines.
- Material security: access to land and property, means of a livelihood, education, and for children as well.

Dignity

According to UNHCR, in practice dignity means that: returning refugees are not manhandled, they can return unconditionally and if they are doing so spontaneously they can do so at their own pace, they are not arbitrarily separated from family members, they are treated with respect by the authorities and full acceptance by the national authorities, including the full restoration of their rights.

Presenters Notes:

Within the Principle highlight:

- The role of government authorities as having the *primary duty and responsibility to establish conditions and provide the means...*
- Such authorities *shall endeavour to facilitate* reintegration or integration which leaves and reflect the open nature of the reintegration process and the wider role of the local community.

Theme II: Joint participation in planning and management of return

Principle 28(2)

Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.



Theme III: Non discrimination and Equality of Participation and Access

Principle 29(1)

Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.

Definitions

Although not many of the treaties define "discrimination", the term is commonly understood to imply:

any distinction, exclusion, restriction or preference based on any specified grounds, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.

Not every distinction, however, constitutes discrimination but only those that are not based on reasonable and objective criteria.

Areas where non discrimination is most important

- “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.” (art. 26 of the ICCPR).
- Access to public services such as education and health services.
- Access to public affairs.
- Freedom of access and non-discrimination of vulnerable groups such as women within internally displaced communities.
- Returning IDPs not considered or treated as “enemies.”

Theme IV: Recovery of Property or Compensation

Because of their vulnerability, internally displaced persons need protection for the property left to them or acquired during displacement.

When internally displaced persons return to their homes they may find their properties occupied by other people. This is frequently an obstacle to return, and it raises questions concerning the right to restitution for the property or compensation for its loss. There is a certain trend in general human rights instruments, along with the progressive development of international law, to allow for restitution or compensation.

Principle 29 (2)

Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions, which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Theme V: Access by Humanitarian Organisations

Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organisations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

ANNOTATIONS

The provisional standards embodied in Principles 24-27 of these Guiding Principles apply *mutatis mutandis*.



Some Ideas to Consider

- Assist representatives of displaced communities to assess conditions in potential areas of return or resettlement, by supporting visits to independently assess conditions.
- Convene consultations with: populations residing in areas of return or resettlement to determine attitudes towards returnees; leaders of displaced groups prior to return, ensuring representation of women and all important segments of the displaced community; leaders of displaced communities, local authorities and international organisations that will be involved with return.
- Prepare for landmine removal or awareness campaigns, where landmines are an issue.
- Assess legal statutes or other relevant documents to identify problems to recovery of property paying particular attention to the needs of female heads of household.
- Design programmes to rebuild community infrastructure in areas of return/resettlement.
- Design programmes for women-headed households and other special needs groups in areas of return / resettlement.
- Consider the needs of resident, as well as returnee, populations in programme design, to prevent stigmatisation or resentment.

What you can do

Among the steps that field staff can take, in co-ordination with agencies with designated responsibilities in the field, to assist in the return, resettlement and reintegration of internally displaced persons are:

- *Assist representatives of displaced communities to assess conditions* in potential areas of return or resettlement by supporting visits and by visiting areas of potential return or resettlement to independently assess conditions.
- *Convene consultations with leaders of displaced groups* prior to return or resettlement, ensuring representation of women and all important segments of the displaced community to determine that return or resettlement is voluntary.
- *Convene consultations among leaders of displaced communities, local authorities and international organisations* involved with return or resettlement to ensure that the move will be conducted with safety and dignity.
- *Prepare landmine removal or awareness campaigns* where landmines are a concern in areas of return or resettlement.
- *Conduct environmental impact studies* of return or resettlement plans and seek ways to minimise environmental damage from the return process and to plan for environmental repair at displacement sites when necessary.
- *Identify and help eliminate potential conflicts* between communities by convening consultations between internally displaced persons and populations residing in areas of return or resettlement, considering the needs of resident-as well as returnee-populations in programme design, and taking steps to prevent stigmatisation or resentment.
- *Assess legal statutes* or other relevant documents to determine returnees claim to land and property upon return, designing programmes to ensure that internally displaced persons property rights are protected and that they gain access to legal assistance if needed to reclaim property.
- *Prepare for well-organised transport*, with active participation of the displaced community, so they can travel with dignity to their homes or places of resettlement.
- *Design programmes to rebuild community infrastructure* in areas of return or resettlement.
- *Design programmes for women headed households* and other special groups in areas of return or resettlement.
- *Implement programmes to monitor human rights* conditions in areas of return or resettlement, with international presence if required.
- *Plan for long-term reintegration activities* recognising that the economic and social disruption of return or resettlement may be present for years.

Items for Discussion - Key Concepts/Themes

Focusing on the situation within Sri Lanka, identify and discuss possible durable solutions for the internally displaced. While in some cases it may be premature to implement a plan, it should still be possible to identify the elements of realistic and plausible solution-scenarios. Where necessary refer directly to the 'profiles' developed for explanations of causes and locations.

In the process of discussion the following questions are provided for general guidance. The questions are not exhaustive but are supposed to be an indication of some of the issues you may wish to consider in identifying solutions.

Voluntary return/resettlement in conditions of safety and dignity

- (i) How can freedom of choice be ensured?
- (ii) What can be done to encourage informed decision making on behalf of returning or resettling IDPs?
- (iii) What can authorities do to establish conditions of safety and dignity?

Participation and management of return/resettlement by IDPs

- (i) What can be done to encourage participation and management by IDPs?

Non Discrimination

- (i) In what sectors or issues is the principle of non discrimination most important? What can be done to eliminate discrimination in those areas? For example, if access to education or political participation pose the greatest challenges, what can be done?

Recovery of property or compensation

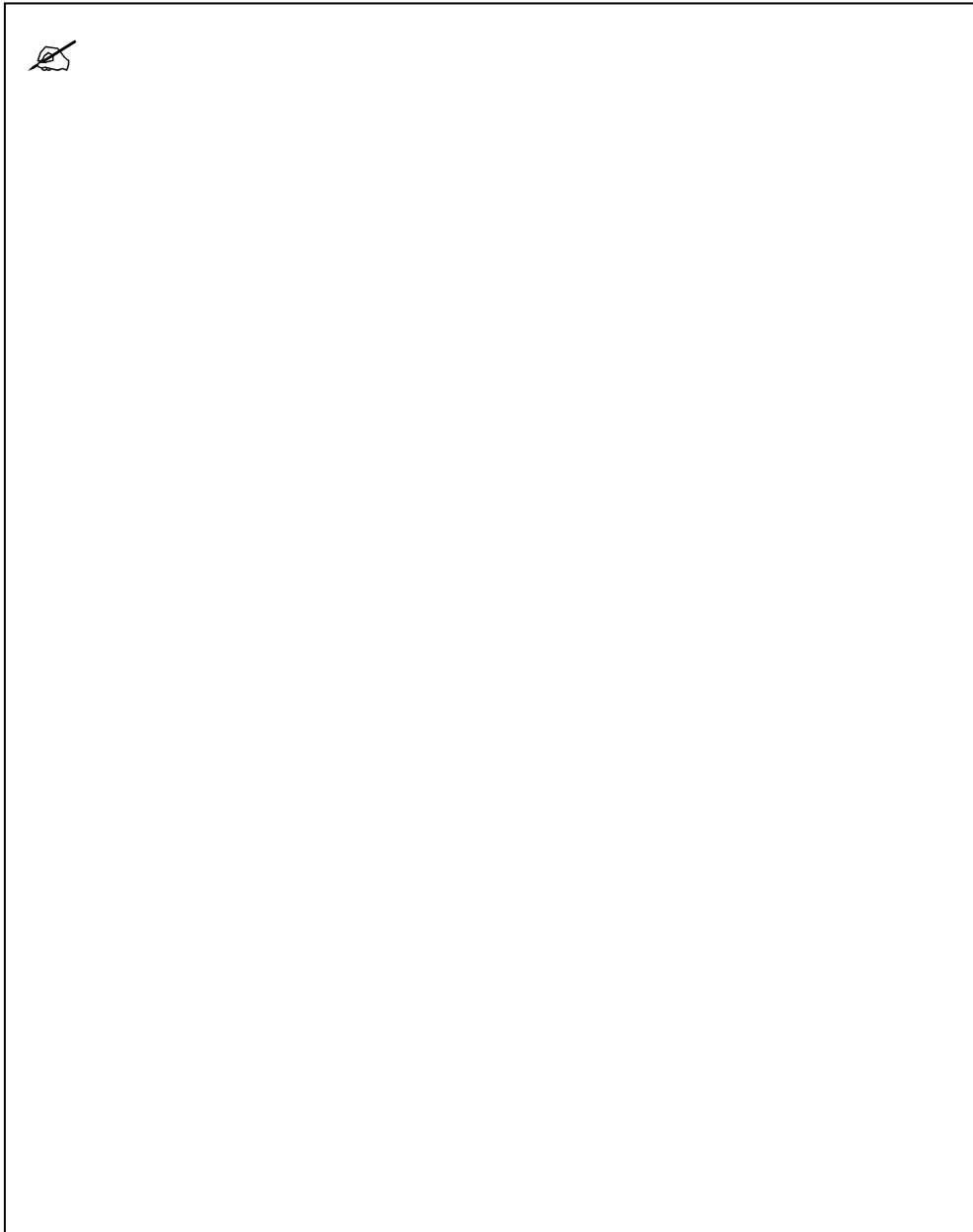
- (i) What are the property issues locally, if any?
- (ii) Are there local methods of conflict resolution? How can they be supported?
- (iii) What should local authorities be doing?

Access by Humanitarian Organisations

- (i) Do humanitarian organisations have unlimited access? If not what are the constraints to access: security, distance, and terrain? What can be done to overcome the constraints?
- If access is restricted, who is restricting access and are the reasons valid?

(Handbook for Applying the Guiding Principles on Internal Displacement)

Now that you have read, spend a few minutes making some notes on what you have gathered and posing questions

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Part 5

“Recipients” as Resources: A Community-based Perspective for Program Response

Key Themes

Themes

- Preserving family and community links
- Supporting strategies of self help
- Empowering IDPs in the protection of their rights
- Involving IDPs in decision making
- Promoting self reliance

Important

IDPs are not passive but key actors in identifying and addressing their own needs

To see “Recipients” as Resources

Responses to internal displacement need to take into account the perspectives of the displaced and draw as well as build upon their capacities



Theme 1: Preserving family and community links

Community structures represent the most fundamental source of protection for internally displaced persons.

“ Practical protection is provided first of all by and thorough the local community, through a complex social network including family, clan, village or tribe”.

(UNHCR)

Preserving family links:

Principle 17

- 1. Every human being has the right to respect of his or her family life.**
- 2. To give effect to this right for internally displaced persons, *family members who wish to remain together shall be allowed to do so.***
- 3. Families, which are separated by displacement, should be reunited as *quickly as possible.* All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organisations engaged in the task of family reunification.**
- 4. Members of internally displaced families whose personal liberty has been restricted by *internment or confinement in camps shall have the right to remain together.***

Principle 16 (1) and (2)

- 1. All internally displaced persons have the right to *know the fate and whereabouts of missing relatives.***
- 2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organisations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any results.**

Preserving the community links:

Regarding the preservations of community links, there are two facets to consider:

1. Preservation of community identity among groups of internally displaced persons
2. Participation of internally displaced persons in community affairs

Principle 22

Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

- (a) the rights to *freedom of thought, conscience, religion or belief, opinion and expression;***
- (e) the right to *communicate* in a language they understand.**

Principle 23(2)

... the authorities concerned shall ensure that ... in particular displaced *children, receive education Education should respect their cultural identity, language and religion.*

E.g.: Situations of displacement may result in the loss of skills. Opportunities for income-generation may vary from their areas of origin, therefore the development of new skills may be required.

The rights of internally displaced persons in community affairs also are affirmed in the Guiding Principles.

Principle 22

Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

- (f) the right to *associate freely and participate equally in community affairs;***
- (g) the right to *vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right.***

Theme 2: Supporting strategies for self-help

Equally important as enabling internally displaced persons to retain or recreate their previous family and community links is to recognise that the shared experience of displacement can create a sense of community among displaced persons who previously did not share family or community links.

This new sense of community is manifested in efforts by internally displaced populations to organise themselves to collectively undertake efforts to address their needs. Community structures often develop among the displaced to address their basic needs for protection, health care, psychosocial support and education, for example.

In the return phase, displaced communities may send representatives to undertake preliminary assessment visits to areas of potential return or resettlement.

Conflict resolution and reconciliation initiatives undertaken within displaced populations as well as with local communities in areas of return or resettlement can contribute to the security of the internally displaced and facilitate their reintegration into these communities. Indeed, reinforcing community structures is a particularly important element of post conflict reconstruction and reconciliation efforts.

The authorities and the international community can encourage the formation of self help initiatives among the displaced as well as support and collaborate with those already in existence.



Theme 3: Empowering the displaced in the protection of their rights

Principle 3(2)

Internally displaced persons have the right to *request and to receive protection and humanitarian assistance* from these [national] authorities. They shall *not be persecuted or punished for making such a request*.



Theme 4: Involving the displaced in decision making

Internally displaced should, as a matter of course, be involved in the decisions that affect their lives. They know better than anyone else what their needs are, and may have cultural preferences as to how those needs should be addressed.

Principle 7 (3)

If displacement occurs in situations other than during the emergency stages of armed conflict and disasters, the following guarantees shall be complied with:

- c) the *free informed consent of those to be displaced* shall be sought;**
- d) the authorities concerned shall endeavour to *involve those affected ...in the planning and management of their relocation.***

Principle 28 (2)

Special efforts should be made to ensure the full participation of internally displaced persons in the *planning and management of their return or resettlement and reintegration.*

Principle 7(3)

If displacement occurs in situations other than during the emergency stages of armed conflict and disasters...

- d) the authorities concerned shall endeavour to involve those affected, *particularly women*, in the planning and management of their relocation.**

Principle 18 (3)

Special efforts* should be made to *ensure the full participation of women in the planning and distribution of ... basic supplies.

Theme 5: Promoting self-reliance

Especially with a view to the long term, designing programmes in a way that draws and builds upon the resources and capacities of the displaced is essential. So long as the displaced lack the means to be self-reliant, they will remain dependent upon relief assistance, long after the emergency phase.

To be sure, the experience of displacement often poses particular challenges to efforts for promoting self-reliance. Displacement separates people from their means of livelihood, including their means of employment, markets and their land and livestock. Similar opportunities often do not exist in the areas to which they are displaced. The conditions in which the displaced live also can limit such opportunities. Closed camps with strict control over movement and activity, for example, will severely limit the options for self-sufficiency and income generation compared with open camps that allow the displaced regular access to cultivable land, employment opportunities and markets.

Principle 22

Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

b) the right to seek freely opportunities for employment and to participate in economic activities.

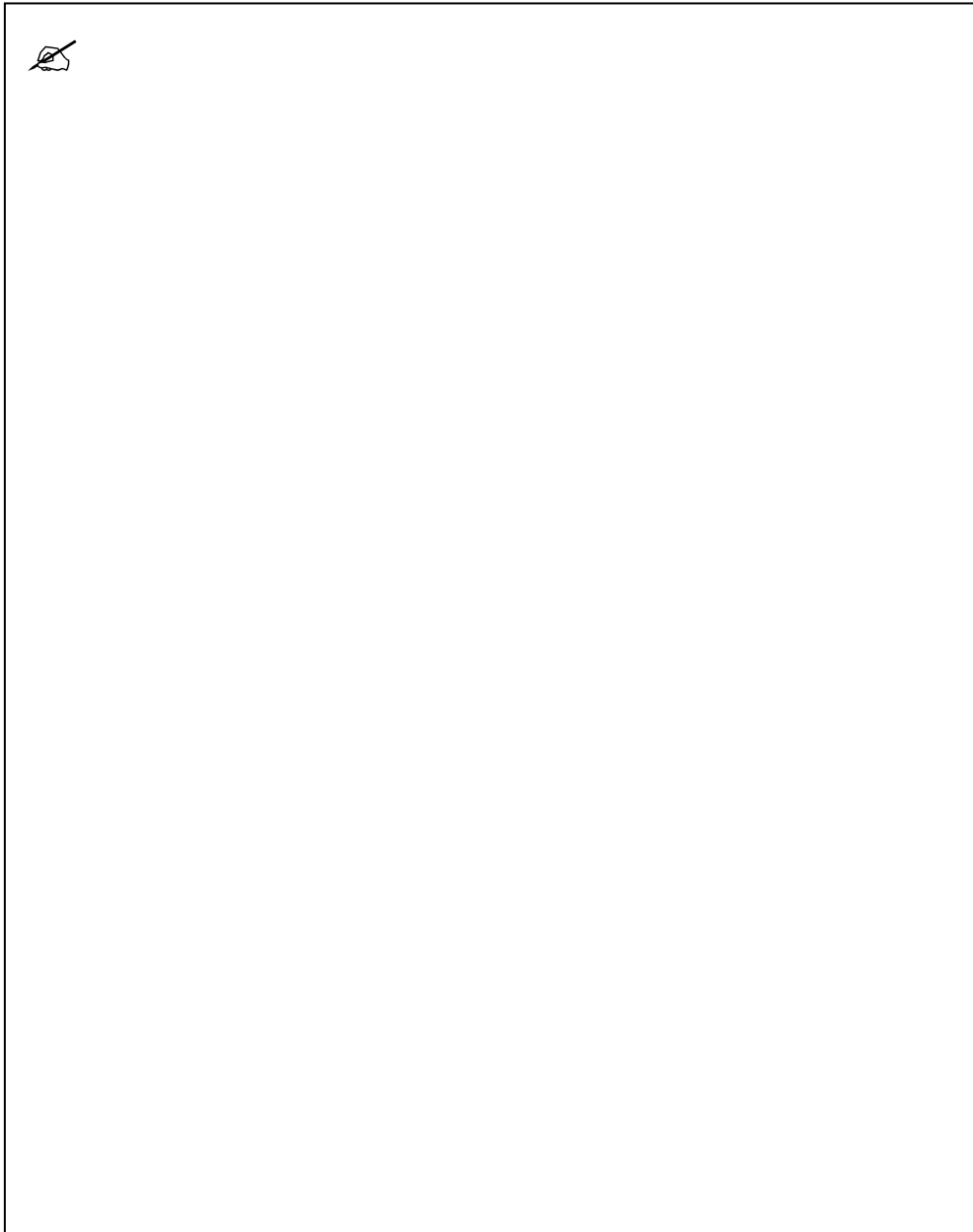
Principle 23(4)

Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

The above Principle places special emphasis on the right of women to have access to education and training facilities. Attention to the type of skills training to which women have access also is important. To support entrepreneurial initiatives made by these women, they require equal access to credit opportunities. Micro-credit programmes for women therefore can be particularly important for promoting self-reliance.

Assistance and development programmes for internally displaced populations also can and should, to the extent possible, employ the internally displaced in programmes undertaken on their behalf. “Food for work” programmes in areas as diverse as education, health care, psycho-social support and shelter construction can reduce the sense of dependency and frustration among the displaced, promote skills retention or development and have the added benefit of being more cost-efficient.

Now that you have read, spend a few minutes making some notes on what you have gathered and posing questions

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Conclusion

While there is increasing recognition of the importance of viewing internally displaced populations as “resources” rather than mere “recipients”, too often such a perspective actually is not applied, or at least not in a serious and systematic manner. However, adopting such a perspective from the outset in the design of programmes provides a number of important pieces of information that will help to ensure appropriate and effective responses to their plight:

- ✓ **Insight into their priority needs and concerns, as well as socio-cultural sensitivities**
- ✓ **Indication of their capacities**
- ✓ **Identification of the constraints (political, legal, social, economic etc...) limiting the full use of these capacities as well as the possible ways of minimising these**

To be sure, there is no blueprint for the programme response to emerge from such an analysis. Its exact nature will depend upon a number of situational factors, including the profile, perspectives and capacities of the displaced, their particular needs, their level of organisation and their relationship with the authorities. Nonetheless it is worth recalling the five main themes for strategic areas of activity that have been identified:

- ✓ **Preserving family and community links**
- ✓ **Supporting strategies of self help**
- ✓ **Empowering IDP’s in the protection of their rights**
- ✓ **Involving IDP’s in decision making**
- ✓ **Promoting self reliance**

What you can do

Among the steps that field staff can take, in co-ordination with agencies with designated responsibilities in the field, in providing humanitarian assistance to internally displaced persons are:

- *Design assistance and protection measures to ensure impartiality*, ensuring that neither displaced nor host populations are discriminated against by programme design.
- *Design assistance programmes in full respect* for the dignity and rights of the individual.
- *Advocate and establish codes of conduct* for humanitarian operations with donors, governments, international organisations and other relevant entities.
- *Establish regular consultation systems* among humanitarian agencies working with the displaced to ensure consistency in humanitarian assistance policies, developing and enforcing uniform policies regarding diversions of humanitarian assistance for military or political purposes.
- *Assist in the preparation of NGO registration laws* or other legal mechanisms to facilitate the work of humanitarian organisations working with the displaced.
- *Support technically and financially, attempts by cognisant authorities to fulfil their humanitarian assistance* responsibilities to the internally displaced.
- *Advocate vigorously for humanitarian access* to all displaced populations, documenting and reporting impediments to full and free access as well as attempts to divert aid from the civilian population.
- *Utilise non-traditional methods of access* – such as mobile teams, air transport, or cross border operations – to reach internally displaced persons.
- *Monitor human rights and protection needs* of displaced populations during humanitarian assistance operations, communicating regularly with organisations advocating for human rights and protection issues of the displaced.
- *Design plans to protect aid personnel*, including plans to prevent violence and to evacuate personnel who are endangered.

Handbook for Applying the Guiding Principles on Internal Displacement

Working Group Discussions

The toolkit has identified and given some examples of activities in five strategic areas of activity for applying a community-based perspective to programme response. The task of the working groups is to explore these themes in reference to the specific situation of internal displacement in which the participants are engaged.

Some questions to consider:

1. Family and community links

- a) In what ways has displacement affected family and community links? Have displaced families and communities been able to remain together? What efforts are being taken to reunite displaced families?

- b) To what extent have the displaced been able to integrate into their host communities? Do the displaced face discrimination impeding their integration?

2. Self-help strategies

- a) Provide an example of a self-help strategy used by the internally displaced to address their assistance needs.

- b) ...and one for addressing protection needs.

- c) Identify ways in which the authorities and international agencies have supported or could support these or other self-help strategies.

3. Empowering the internally displaced in the protection of their rights

- a) Suggest ways for raising awareness of the internally displaced of their rights. In what ways, for instance, could the **Guiding Principles on Internal Displacement** be effectively disseminated?

- b) Describe the current operating environment for local advocates of the rights of the internally displaced. Are there ways in which it could be made more conducive to such activity?

4. Involving the displaced in decisions that affect their lives

- a) What processes and mechanisms exist for consulting the internally displaced so as to ensure that their perspectives and concerns are taken into account in the design of programmes? To what extent are women represented in these consultation processes and mechanisms?

- b) Provide an example of how women are involved in the design, and in a separate example, the distribution of efforts to meet basic assistance needs.

5. Supporting self-reliance

- a) Identify the main obstacles impeding internally displaced persons from being self-reliant. Be sure to consider obstacles that women, in particular, face.

- b) Provide an example of a skills-training and, in a separate example, of an income-generating program presently being sponsored which assists the internally displaced in overcoming these obstacles. One of the examples should be of special efforts undertaken to ensure skills-training and income-generating opportunities for women.

c) To what extent do displaced children attend school? In cases of low school attendance, what factors account for this? What would be required to address these?
