

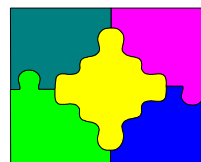
***Training Modules on Internally Displaced
Persons and the Guiding Principles on
Internal Displacement***

**Global IDP Project
of the
Norwegian Refugee Council**



Module One:

**A Definition of
Internally Displaced
Persons**



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Key Themes/Concepts Covered by this Module

- Different ways to define an IDP:
 - Guiding Principles
 - National IDP legislation
 - ICRC and others

- The definition in the UN Guiding Principles:
 - Displacement within own country
 - Forced or obliged to flee
 - Caused by armed conflict, human rights violations, and sometimes as a result of natural disasters and misguided development projects
 - Economic migrants not included

Introduction

This module is the first in a series of documents making up the Global IDP Project training package on the UN Guiding Principles on Internally Displaced Persons. The training package is divided into several modules. This module focuses on the descriptive definition of an internally displaced person. It looks at how the Representative of the UN Secretary-General on Internally Displaced Persons has defined the term and how other agencies who work closely with internally displaced persons define or choose not to define the term.

Arriving at a definition of an internally displaced person

The definition in the UN Guiding Principles

It is important to acknowledge that there are several ways of describing who is an internally displaced person and that they fulfill different purposes. The definition presented in the Guiding Principles is generally acknowledged to be the current UN definition, but it is rather a descriptive definition than a legal definition. It does not assign special rights to IDPs under international law, simply restates and reflects already existing rights. The coverage of the definition in the Guiding Principles will be discussed in more detail below.

Definitions of IDPs under national legislation

Countries affected by internal displacement sometimes develop national IDP legislation or decrees defining who is entitled to special assistance and protection by the state. Such a person may be granted emergency assistance in the form of food rations, immediate access to health care and temporary shelter. The definition of a displaced person used in national legislation sometimes differs from the one in the UN Guiding Principles. The Colombian IDP legislation for example is somewhat narrower than the Guiding Principles. It includes victims of war and human rights violations, but does not include individuals displaced as a result of natural disasters or misguided development projects. National IDP legislation generally affords specific legal rights to assistance and protection for those who fall within the definition, while the UN Guiding Principles simply uses the definition to identify vulnerable groups in need of special attention by the national and international community.

Civilian victims of war targeted for support by the ICRC

Since its formation the ICRC has been providing protection and assistance to non-combatants affected by war and internal conflict, many of whom are internally displaced. The ICRC however extends its services to all civilian victims of conflict whether they have been obliged to move or not, so they do not treat internally displaced persons as a special category.

The Definition in the UN Guiding Principles on Internal Displacement

This definition is generally recognized as the UN definition. For the purposes of the Guiding Principles (1998), internally displaced persons are defined as:

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

Further more, Principle 6.2 (c-d) reads:

“The prohibition of arbitrary displacement includes displacement:

(c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;

(d) In cases of disasters, unless the safety and health of those affected requires their evacuation;”

As already mentioned above, the definition of an internally displaced person under the Guiding Principles is not a legal definition conferring special legal status in the same way the Refugee Convention assigns special status to refugees. Walter Kalin has explained this difference in his annotations to the Principles:

“In international law, refugees are granted a special legal status because they have lost the protection of their own country and, therefore, are in need of international protection not necessary for those who do not cross international borders. Internally displaced persons do not need such a substitute protection. Rather, as human beings who are in a situation of vulnerability they are entitled to the enjoyment of all relevant guarantees of human rights and humanitarian law, including those that are of special importance to them.” (Kalin, p.3)

The two most important components of the definition in the Guiding Principles are: 1) the fact that the **victims have not crossed an international state border**, and 2) the element of **coerced or forced movement**. These and other aspects of the definition are quoted and briefly commented on below:

1) “*have not crossed an internationally recognized State border.*”

- The most obvious characteristic of the internally displaced persons is the fact that they still remain within the borders of their country, as opposed to refugees who have crossed an internationally recognized border.

2) *“Forced or obliged to flee or to leave their homes or places of habitual residence”*

- Forced or obliged to flee does also include the possibility of being expelled or intimidated to leave by threat. Most importantly, displacement is coerced or involuntary in this case.
- Someone voluntarily leaving their home to seek better economic conditions in a different part of the country would therefore not fall within the definition.
- Habitual residence is not necessarily a house or a building, but could also be a territory, which for example nomadic groups consider their “habitual residence”.

3) *“As a result of or in order to avoid”*

- This phrasing allows for a person who has fled threats of violence to fall under the definition of the Guiding Principles. It is clear that “...as a result of” implies that the violent acts have already taken place while “in order to avoid” implies fear that they will take place. It is of course understandable that many people flee before the fighting reaches their area, which does not make them less of an IDP under the definition in the Guiding Principles.

4) A very important element of the definition and GP 6.2(c) is the delineation of causes:

“In particular as a result of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters”

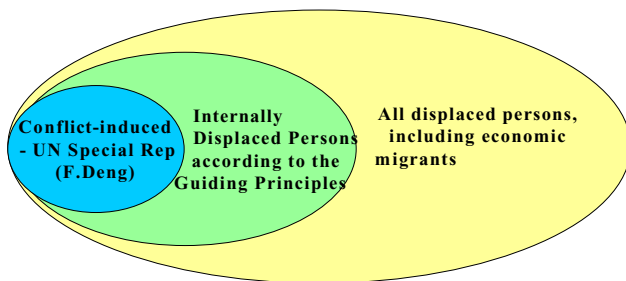
- The Guiding Principles list the causes of displacement falling within the definition. Most are self-explanatory. However, “situations of generalized violence” leave open the nature and extent of the violence. Such situations are not considered armed conflict but involve the use of force by government agents to restore public order.¹
- Natural disaster is included because in some disasters governments respond by discriminating against or neglecting certain groups of victims on political or ethnic grounds or by violating their rights in other ways.

¹ “Examples of tensions and disturbances include riots, such as demonstrations without a concerted plan from the outset, isolated sporadic acts of violence, as opposed to military operations carried out by armed forces or armed groups; and violent ethnic conflicts not amounting to hostilities” (Francis Deng, *Compilation and Analysis of Legal Norms*, par.28)

- Human-made disasters (nuclear, chemical accidents, etc.) or large-scale development projects (which are not justified by compelling and overriding public interests) are included for the same reason. In other words, persons displaced by for example a large hydroelectric dam would fall under the definition of the UN Guiding Principles if the project can not be considered of “compelling and overriding public interest”, or if the government does not resettle or compensate those displaced.
- “In particular” emphasizes that other causes may be considered.

Categories of people that have left their homes

The definition of an internally displaced person according to the UN Guiding Principles has been provided above. Below, this definition (middle circle) has been compared to a narrower group of IDPs prioritized by the UN Representative on Internal Displacement (conflict-induced IDPs), and a very broad category made up of economic migrants. The UN Representative actively uses the Guiding Principles in carrying out his mandate but has so far focused on conflict-induced displacement.



To summarize...

- The definition of an internally displaced person in the Guiding Principles seeks to provide a balance between being inclusive enough to capture complex and interrelated causes of displacement and narrow enough to be manageable.
- It is important to recognize that it is a descriptive definition, not a legal designation. The Guiding Principles do not provide additional rights to IDPs that are not enjoyed by other citizens. However, national IDP legislation sometimes includes a definition of those persons entitled to special assistance and protection as displaced persons.
- Some international organizations, particularly the ICRC, prefer to not classify the displaced as a separate group. The ICRC provides assistance to all persons affected by war, including a large number of internally displaced.
- The Guiding Principles apply to persons displaced by armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters and large-scale development projects, which are not justified by compelling and overriding public interests.
- The definition of an IDP in the Guiding Principles can be applied to many situations, although not all situations will be of concern to the international community. Only in situations where government asks for assistance or if IDPs are facing “persecution, discrimination or neglect”² for example, would international community become involved.
- The definition does not encompass persons who migrate because of economic causes. Persons forced from their homes because of economic injustice and marginalisation tantamount to systematic violation of the economic rights would however come under the definition.

Why do we need a definition?

- Internally displaced share problems and characteristics specific to their situation that need to be delineated
- Up to now the protection and assistance needs of internally displaced persons have often been overlooked and cannot be addressed if the beneficiaries themselves and the nature of their situation is not defined.
- The development of a normative framework requires a definition.

² The terms used in “*Masses in Flight*” the Brookings Institution, 1998 pg 18 to denote when the representative of the secretary general on IDPs has a responsibility.

Application of the definition – Items for Discussion

Developing a profile of an internally displaced person in your region

According to the UN definition try and develop a profile of the internally displaced in your region or country. If national legislation or government policy provides a different definition, please compare that to the one in the Principles. Describe who is displaced, where are they displaced from and where are they displaced to. Where possible, explain the causes and pattern of displacement (rural to urban, individual and mass displacement etc.).

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 and 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?
- 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) Is someone who is forced or obliged to flee his or her home every night displaced?
- iv) 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?

Forced displacement vs. economic migration

- i) How do you define what is considered voluntary departure because of difficult living conditions and what is involuntary forced displacement. Is the line clearly defined in your region?

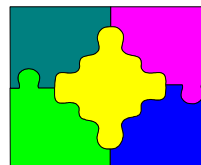
Discrimination and neglect

- i) In your region, are you aware of discrimination against displaced victims of natural disasters?
- ii) If large numbers of citizens have been displaced by development projects, have they been resettled or compensated?



Module Two:

Legal Origins and International Obligations



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Introduction: The aim of this Module

This module will introduce participants to the legal basis for the Guiding Principles on Internally Displaced Persons in international law. Participants will gain an understanding of human rights law, humanitarian law and refugee law, by analogy applicable to internal displacement situations. It will also highlight the parallel provisions of the Guiding Principles in regional human rights instruments and national law.

Legal Origins to the Guiding Principles

The Guiding Principles have not been developed, signed and ratified by States and are therefore not considered binding international law. However, they restate and reflect international conventions in the fields of Human Rights Law, Humanitarian Law and Refugee Law. Practically all Principles can be traced to a particular instrument under one of these three categories of binding international law. Some general rights have been developed and made more explicitly relevant to displaced persons (See Example 1-2 in Annex No.1). For practical purposes, rights relevant to the internally displaced but scattered in a number of conventions have been gathered in one instrument: the UN Guiding Principles on Internal Displacement. However, one could defend these same rights making reference to their original source (Human Rights Law, Humanitarian Law and Refugee Law). Thanks to the drafters of the Principles we now have a comprehensive tool, which not only gathers all rights relevant to the displaced but also expands and make them more explicitly applicable to IDPs.

To fully understand the Guiding Principles it is useful to have a clear idea of their sources. Let us therefore look at the three main sources mentioned above:

International Human Rights Law

Human Rights Law consists of a large number of instruments addressing general and specific human rights. The most important being:

- Universal Declaration of Human Rights (UDHR)
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention on the Rights of the Child (CRC)
- Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment (CAT)

The Universal Declaration of Human Rights has not been signed and ratified by States, but it is considered an interpretation of the human rights articles in the UN Charter (Art.55-56), which has become somewhat of a constitution for the international community. The UDHR could therefore be seen as binding on UN member states.

The two international covenants on civil/political rights and economic/social/cultural rights make up the basis for many of the more thematic and specialized human rights conventions. The right to life and freedom from torture are some of the most important civil rights, while the right to vote is an example of an important political right. States are expected to implement these rights as soon as they become a State Party to the covenant.

The implementation of the Covenant on Economic, Social and Cultural Rights often requires resources (to improve access to food, health care, and housing for example), which are not at hand in many countries. The implementation of these rights is therefore likely to be progressive and often in close collaboration with the international community. However, State parties to this covenant have the obligation to prioritize vulnerable groups and to take steps to the maximum of its available resources to realize all the rights covered by this covenant.

Among the more specialized conventions, four of them have constituted particularly important sources for the Guiding Principles: Convention on the Rights of the Child, Convention against Torture and the two conventions against racial discrimination and discrimination against women.

In addition to the international human rights instruments developed by member states of the United Nations, a number of regional human rights instruments have been drawn on during the development of the Principles. These conventions – the Inter-American Convention on Human rights, the European Convention on Human rights and the African Charter on Human and Peoples' Rights – have been developed by the respective regional intergovernmental body. A regional human rights instrument for Asia is yet to be developed.

Who does international human rights apply to?

- States generally owe human rights to individuals. State parties to the UN conventions have the obligation to respect, protect and fulfill the rights included in the human rights conventions and in the Universal Declaration of Human Rights. This concept is clearly linked to the States' traditional monopoly on the use of legitimate force to maintain law and order in a democratic society. Consequently, only state agents, and sometimes individuals acting on the instigation of or with the consent or acquiescence of a public official, are said to violate human rights. On the other hand, violent acts committed by private individuals would normally be classified as a common crime and would therefore fall under the Criminal Code of a particular country.
- Some exceptions apply to this traditional concept of human rights. For example, the Convention on the Prevention and Punishment of the Crime of Genocide explicitly applies to individuals, whether they are state agents or not. Furthermore, the possible responsibility of illegal groups under human rights law has long been the subject of discussion.

International Humanitarian Law (IHL)

Humanitarian law can somewhat simplified be characterized as the internationally accepted norms determining certain limitations on how warfare can be conducted by the warring parties. These international laws strive to protect non-combatants from the effects of war and to limit the use of certain methods of warfare. The main instruments are made up of the four Geneva Conventions and their two additional protocols.

The fourth Geneva Convention is explicitly dedicated to the protection of civilians and therefore contains important protection provisions applicable to internally displaced persons. In the fourth Convention, Article 3 dealing with internal conflicts and the treatment of persons taking no active part in the hostilities is particularly relevant to IDPs.¹ The full text of this article is reproduced in an annex to this module (Annex No.2).

The content of Article 3 is developed in more detail in the II Additional Protocol to the Geneva Conventions, the Protocol on Protection of Victims of Non-International Armed Conflicts. In the II Additional Protocol to the Geneva Conventions, particular attention should be paid to Article 17, which explicitly prohibits the displacement of the civilian population “unless the security of the civilians involved or imperative military reasons so demand”. The full text of this article as well as a commentary by the International Committee of the Red Cross is included in the box below. Also, from the IV Geneva Convention you will see that persons evacuated for their own protection have the right to be returned as soon as possible.

Because internal displacement so often occurs in situations of internal armed conflicts, the Geneva Conventions and their additional protocols have been an important source for the UN Guiding Principles.

II Additional Protocol to the Geneva Conventions

Art 17. Prohibition of forced movement of civilians:

1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, 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.
2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

ICRC commentary to Art 17 of the II Additional Protocol:

Clearly, imperative military reasons cannot be justified by political motives. For example, it would be prohibited to move a population in order to exercise more effective control over a dissident ethnic group.

Art 49 IV Geneva Convention:

...Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased.

¹ Because the third article in each of the four Geneva Conventions reads exactly the same, this article is often referred to as “Common Article 3”.

Who does international humanitarian law (IHL) apply to?

- IHL applies to Contracting Parties to the Geneva Conventions and the additional protocols. In addition, armed opposition groups (as citizen of a country Contracting Party to the conventions) are also bound by international humanitarian law, particularly Article 3, Common to the four Geneva Conventions (see above). Armed opposition groups fulfilling certain minimum conditions regarding military capacity and capacity to implement IHL are also bound by the II Additional Protocol on Protection of Victims of Non-International Armed Conflicts (see II Additional Protocol Art.1.1).
- In addition, the 1998 Rome Statue of the International Criminal Court provides for individual responsibility for war crimes committed in internal or international conflicts.

International Refugee Law

We have already seen in Module 1 that one of the key elements in the definition of an internally displaced person is the fact that he/she has not crossed an international border, as opposed to refugees who by definition have left their country. Therefore, refugee law is not directly applicable to IDPs. However, given the similarities of the causes for flight, the living conditions in reception areas and the challenges faced during return and resettlement, refugee law provided important guidance when the Principles were elaborated. The most important source is the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol.

The application of refugee law by analogy has clearly enriched the content of the Guiding Principles. One crucial concept borrowed from the refugee regime is the protection against forcible return to situations of danger, the principle of non-refoulement. The prohibition against forced return of IDPs is based on refugee law, by analogy, but also has its counterpart in human rights law.

Who does international refugee law apply to?

- Refugee law applies to State parties to the 1951 Convention Relating to the Status of Refugees.

What rights are applicable in your country?

Binding conventions and the Universal Declaration of Human Rights

Most basic rights enjoyed by all citizens, including IDPs, are universally applicable in all UN member states (see Customary Law below). However, not all states have signed and ratified the most important human rights and humanitarian law conventions listed in this

Module. In case your country is not a State Party² to one or several of the conventions on which the Guiding Principles are built, you still enjoy protection through the Universal Declaration of Human Rights (UDHR). The UDHR, which contains some of the basic human rights concepts, applies to all UN member states. Furthermore, the UDHR is seen as an authoritative interpretation of the human rights provisions in the UN Charter (Art. 55-56), which is legally binding on all UN member states.

Customary International Law

In international law, universally accepted and applied norms have developed and gradually become part of binding international law. This law, referred to as customary international law, has developed based on its moral force and on its widespread acceptance in different national and international judicial systems. A growing body of international human rights law can be classified as customary international law. Many of the most important rights under the UDHR are today considered customary law. These rights are therefore binding on states, despite the UDHR not being signed and ratified by States as other binding human rights instruments. As a minimum, the following violations would be prohibited under customary international law: genocide, murder, forced disappearances, torture, arbitrary detention, racial discrimination, forced return of IDPs and refugees (“refoulement”).

Who do the Guiding Principles apply to?

Given that the Principles build heavily on international humanitarian law, which applies to state and non-state actors, they are designed to give guidance to both these groups of actors. As stated in the introduction to the Principles, they are intended to provide guidance to states, other authorities (e.g. armed insurgent groups), intergovernmental organizations (UN etc.), non-governmental organizations, groups and individuals.

Even if the Principles are designed to provide guidance to a broad group of players interacting with IDPs, the primary responsibility to protect and assist IDPs lays with the national authorities. This is clearly spelled out in Principle 3:

Guiding 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.**

² To become a so-called “State Party” to an international human right or humanitarian law treaty, a governments signs the international instrument, followed by the ratification of that decision by the national parliament.

The Guiding Principles recognize 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 fulfill its duties, it is obliged to invite or accept international assistance.

To summarize.....

- Even if the Guiding Principles themselves are not binding international law, they are derived from binding instruments
- The Principles are consistent with and derived from human rights law, humanitarian law and refugee law (by analogy)
- Most governments have formally committed to respect human rights and humanitarian law (signed and ratified conventions), others are responsible through the UN Charter and Customary Law
- The Guiding Principles apply to both state and non state actors

Exercise

As a group, participants are asked to familiarize themselves with the Guiding Principles and the international instruments from which the Principles are derived.

Each group will be assigned a number of Guiding Principles to work with. First, all members of the group read and make sure they understand the Principles assigned. Participants should then look fore and identify one or several original sources of each respective Principle in a number of key human rights and humanitarian law instruments. For that purpose the following main instruments will be distributed:

- Universal Declaration of Human Rights (UDHR)
- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- Convention on the Rights of the Child (CRC)
- Convention against Torture, Cruel, Inhuman and Degrading Treatment or Punishment (CAT)
- Protocol II of the Geneva Conventions (Protocol II)

The purpose of the exercise is to:

1. Make participants aware that the Guiding Principles are derived from international law.
2. Provide the participants with a hands-on experience with international law
3. Demonstrate the clear and plain language used in international law
4. Ensure participants understand the relevance of human rights and humanitarian law to internally displaced persons.

Annex No.1

The Guiding Principles further develop existing rights and make them more explicit to IDPs

Example 1:

Discrimination based on a person's status as displaced is not explicitly prohibited in international law. However, both human rights law and international humanitarian law prohibit discrimination based on conditions such as for example race, color, sex, language, religion, national origin or "other status" or discrimination based on "similar criteria". It has therefore been considered that discrimination based on a person's situation as displaced fits into these last categories, and would therefore be prohibited under international human rights and humanitarian law. The Guiding Principles makes this prohibition explicit in Principle 1.

Guiding 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.

Example 2:

The general rights of freedom of movement and right to choose one's residence are expressed in Guiding Principle 14.1. In the same Principle, an important consequence of this right is applied to the IDP situation in camps. Principle 14.2 explicitly guarantees the residents of camps the right to freely move in and out of these, prohibiting the arbitrary detention of IDPs in closed camps.

Guiding 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.

Annex No 2

**Geneva Convention relative to the protection of Civilian Persons in
Time of War**

Common Article 3

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) Taking of hostages;
- (c) Outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2. The wounded and sick shall be collected and cared for.

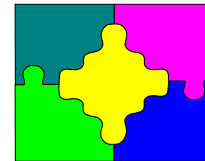
An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.



Module Three:



Protection from Displacement, and Protection during Displacement.

(Produced by the Norwegian Refugee Council in association with the Office of the UN High Commissioner for Human Rights)

Key Concepts in this module:

- Non Discrimination
- Movement related rights
 - Protection against being displaced
 - Movement rights during displacement - closed camps
 - Leaving one's country and return
- Physical Security
 - Life, acts of violence
 - Personal liberty
 - Forced recruitment
- Special needs:
 - Subsistence needs
 - Health related needs
 - Need for identification and documentation
 - Property

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Introduction

Internally displaced persons all share general protection and assistance needs. Protection needs are those relating to ensuring that basic human rights are respected in other words protecting the physical, material and mental security of all individuals including internally displaced persons. Assistance needs are those that relate to the delivery of humanitarian aid. In practice, protection and assistance needs are inextricably linked – both affecting the other.

In this module we will consider sections II and III of the Guiding Principles, namely the principles relating to protection *from* displacement and protection *during* displacement. While the Guiding Principles themselves are structured through the phases of displacement – before and during displacement and return/resettlement - this module will look at the Principles by considering the major themes which cut across all phases of displacement, namely:

- Non discrimination
- Movement related rights
- Physical security
- Special needs of internally displaced persons.

It should be noted that most of these concepts reoccur throughout the Guiding Principles however, this module will consider how these themes relate specifically to protection from and during displacement.

Theme 1: Non Discrimination

The fundamental right to equality and non-discrimination is the pillar of human rights law and, as such, is reflected throughout the Guiding Principles. Internally displaced people must not be discriminated against on the basis of:

1. their status as internally displaced persons; or
2. their race, sex, colour, language, religion, political or other opinion, national or social origin, property, birth or other status.

Later Principles reiterate this right in the context of particular situations to reinforce the concept that internally displaced people are entitled to be treated in the same way as all other persons in a given territory.

Discrimination is generally defined as “any distinction, exclusion, restriction or preference based on race, colour, decent, or national ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”. [CERD, article 1]

Non discrimination on account of race, religion, ethnicity, opinion, sex, 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.

Human rights protect all people against being treated in a different way to others, entitling all people to enjoy their human rights in the same way. All persons are equal before the law and are entitled without any distinction to the equal protection of the law. Distinction means that a persons is treated in a different way based on their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

This is closely linked with the rights of women to be treated equally to men. Temporary special measures aimed at accelerating the equality between men and women, sometimes referred to as “affirmative action”, is permitted and not considered discriminatory.

Non discrimination on account of displacement

As internally displaced persons are frequently forced to relocate to unfamiliar surroundings, they are often viewed with suspicion by local authorities or residents. Sometimes the cause of discrimination may be their race, religion, ethnicity or lack of common language, but internally displaced persons can also face discrimination merely on account of their displacement. It is important to note that fundamental human rights are not suspended on account of a 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.

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 12

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

Theme 2: Movement-related Rights

The most obvious need of internally displaced persons is protection against violations of their right to choose their own residence and to move freely within their own country. Likewise, they need also protection against forced relocation and mass transfers, which can be considered movement-related rights. Finally, circumstances may require displaced persons to leave their own country and they therefore need to exercise their rights to seek asylum elsewhere.

This section will therefore examine how the right to freedom of movement applies to internally displaced persons according to these issues.

Key issues

Protection against being displaced Movement during displacement Leaving one's country and return
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Issue I: 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. The Guiding Principles require States to adhere to international law as so to prevent or avoid situations that might lead to displacement.

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.
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All people have the right to freedom of movement and the right to choose his or her 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. The right to freedom of movement is reflected in Principle 6 of the Guiding Principles which elaborates the right of all people not to be displaced arbitrarily – or in other words to protect their freedom of movement.

Principle 6

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.

Legal Foundations of the Principle



The right to protection from displacement is derived from the right to freedom of movement and choice of residence contemplated in the Universal Declaration of Human Rights (UDHR-see list of acronyms in annex) and the International Covenant on Civil and Political Rights (ICCPR) which guarantees that "everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence". A similar guarantee exists in the African Charter. Protection against displacement is also derived from the right to housing under the Covenant on Economic, social and Cultural Rights (CESCR). In situations of armed conflict Additional Protocol II of the Geneva Conventions specifically states that "displacement of the civilian population shall not be ordered for reasons related to the conflict...".

Displacement by *force* is a denial of the right to freedom of movement and choice of residence since it deprives a person of the choice of moving or not and of choosing where to reside.

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 a 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*)
 - 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 case States must ensure that interference in favor 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.

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(3)

Displacement shall last no longer than required by the circumstances.

Derogations from rights in situations of public emergency

The right to freedom of movement and choice of residence can be derogated from according to the ICCPR. However there are strict limitations including that any derogation is not inconsistent with a States obligations under international law and does not involve discrimination. For example, a population therefore cannot be displaced in times of emergency based on discrimination.

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;**
- (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;**
- (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and**
- (e) When it is used as a collective punishment.**

In situations of non-international armed conflict persons are protected from forced displacement in international humanitarian law under article 17 of Additional Protocol II of the Geneva Conventions, which state that:

The displacement of civilian population shall *not* be ordered for reasons related to the conflict *unless*:

1. The security of the civilians so demands, or

2. For imperative military reasons.

Imperative military reasons require a meticulous assessment of a situation, which could not be justified on political motives. The burden of justifying such action falls on the initiating party.

Procedures in the event of displacement

In light of the narrow circumstances in which a State can make a decision to displace a population the Guiding Principles provide for the following steps to be taken to ensure the protection of internally displaced persons from a violation of the right to freedom of movement.

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 minimize 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 - minimize 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]

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

- Proper accommodation (*see Principle 18: the right to an adequate standard of living*)
- Satisfactory conditions of safety, nutrition, health and hygiene (*see Principle 19 – the right to an adequate standard of care*)
- Family unity (*see principle 17 – family as the fundamental unit*)

States must also ensure that protection is provided during displacement:

Principle 8

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

Displacement in situations other than emergencies

If displacement takes place during times other than in emergencies or disasters, additional procedural guarantees are expected of States.

1. The decision to displace a population must be made by the authorities authorized to make that decision on behalf of the State. This ensures accountability, transparency and predictability.
2. The authorities must:
 - (a) Provide full information to displaced persons on issues surrounding their displacement. Full transparency of the process also allow displaced persons to prepare for orderly relocation. It also provides an opportunity for displaced persons to become involved in the matters that effect their lives.¹
 - (b) Authorities will gather the free and informed consent of those to be displaced
 - (c) Involve women in the planning and management of the relocation.²
 - (d) Law enforcement measures carried out by competent legal authorities.
 - (e) The authorities will respect the right to an effective remedy, including review of decision by appropriate judicial authorities.

Special protection of vulnerable groups

The Guiding Principles recognize a special dependency or attachment to the land among some members of the population compared to others. As such, the Principles place additional obligations on States to protect those people against displacement as the process would have additional negative impacts. Primarily the principle requires respect for the special importance of spiritual, cultural and moral connections to the land. [ILO Convention No 169 16 (1)]

To give effect to this Principle, States have additional responsibilities to the people in the event of displacement. If relocation of indigenous people is considered necessary, it must be in accordance with legal requirements³ and as an exceptional measure shall only take place with:

- the free and informed consent of the affected communities;

¹ This right is protected in the African Charter which states at article 9 that “Every individual shall have the right to receive information”.

² This issue is elaborated in Module 5

³ See Theme 2, section 1

or

- if consent cannot be obtained, the decision to displace can only be made *if* there was an opportunity for effective representation of the people concerned in the decision making process, which may also include public inquiries where appropriate. [ILO Convention 169 16(2)]

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.

Issue II: Movement rights during displacement

The right to freedom of movement and choice of residence does not cease when a person is displaced. The Guiding Principles acknowledge that this right applies equally to situations of displacement.

Principle 14 (1)

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.

Issues particular to camp situations

Principle 14 (2)

2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Relocation for internally displaced persons frequently involves internment in a compound or camp where their freedom of movement is sometimes illegally restricted. In situations of tension and civil disturbance, internally displaced persons have the right to freedom of movement during the period of displacement, which means that they have the right to move freely in and out of the camp.

The right to liberty and physical security

Freedom of movement for internally displaced persons is often closely connected with the right to liberty. There is a violation of the right to individual liberty when the State deprives a person, without a valid reason of his or her liberty by confining him or her in a prison or any other place such as a closed internal displacement camp.

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.**
- 4. In no case shall internally displaced persons be taken hostage.**

Legal Foundations of the Principle



The right to life and liberty is derived from UDHR article 3 which states the "everyone has the right to life, liberty and security of person" and similarly ICCPR 9 (1) and the African Charter. From this right stems the right not be subjected to arbitrary arrest or detention.

Generally a violation of the right to security of 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.

What is arbitrary detention?

Detention will be considered arbitrary where there is a denial of the right to challenge the loss of liberty. In accordance with the UDHR article 8, "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law". Similar safeguards exist in the ICCPR, which 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 authorized 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.

Issue III: Leaving one's country and return

Internally displaced persons often find security in their own country, however because of religion, race or 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 person 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 to or resettlement in any place where their life, safety, liberty and/or health would be at risk.**

(a) Right to seek internal safety

Frequently internally displaced persons are relocated several times during their period of displacement. This Principle recognizes that internally displaced persons maintain freedom of movement to relocate to another part of the country during displacement.

(b) The right to leave

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 also free to leave their own country.⁴This 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
3. And must be consistent with other rights recognized by international law.

⁴ [13(2) UDHR, 12(2) ICCPR which states that "everyone shall be free to leave any country, including his own. Article12(2) African Charter]

(c) 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 to seek asylum is derived from 14(1) UHDR which states that "everyone has the right to seek and enjoy in other countries asylum from persecution".

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

Theme 3: Physical Security

The physical security of internally displaced persons is a matter of grave concern. States have an obligation to protect internally displaced persons from a variety of attacks and human rights abuses, which violate their fundamental human rights. The duty of physical protection also means that a State is responsible to protect people from crimes committed by other persons in the territory of the State. If a State fails to take measures to investigate and punish the crimes of others, the State is considered to have failed in its prime protection obligations and is therefore responsible for those crimes.

Key Issues

Threats to life – and other acts of violence
Threats to personal dignity – closed camps
Forced recruitment

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

Internally displaced persons are frequently at risk from various acts of violence, which may include killings, torture, genocide, rape, the use of particularly dangerous weapons and land mines and forcible disappearance.

The right to life is guaranteed to all persons at all times. The right to life can never be *arbitrarily* restricted. Therefore internally displaced persons are guaranteed the right to life in the same way as all other citizens. This right is non-derogable and therefore States can never take measures to limit this right in times of national emergency. Arbitrary deprivation of life is never allowed, including use of force by law enforcement officials which is in excess of the principles of necessity and proportionality [HRC].

To prevent violations of the right to life, States must take measures to:

- Prevent and punish deprivation of the right to life by criminal acts
- Prevent killing by their own security forces
- The law must strictly control and limit the circumstances in which a person may be deprived of life (death penalty).

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; and
 - 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 wherein 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; and
 - e) The use of anti-personnel landmines.

Legal Foundations of the Principle



The right to life is protected under UDHR 3, African Charter 4 and ICCPR 6(1), which states that "every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life". Further more, ICCPR 9(1) states that "everyone has the right to liberty and security of person".

Some acts which violate the right to life:

a. Genocide

The act of genocide is an internationally recognized 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 execution.

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
- 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 disappearance. Enforced disappearance violates 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) ICCPR, according to the HCR]. *The Declaration on the Protection of All Person 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 organized 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 offenses prohibited

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

A "threat" to commit the above offences is any action or statement explicit or implicit likely to instill in a person a justified fear of becoming the victims of one of the above crimes. The term "incitement" refers to actions or words which actively encourage others to commit offences.

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]

These minimum standards will apply regardless of whether or not a person who no longer takes part in the hostilities is in detention, or not [Protocol article 4 (1)]. In particular, all internally displaced persons are protected against:

a. *Direct or indiscriminate attacks or other acts of violence*

b. *Starvation as a method of combat*

Starvation of civilians as a method of combat is prohibited. It is therefore 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]

c. *Being used as a shield for military objective*

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 torture, cruel, inhumane and degrading treatment or punishment [CAT].

d. *Attacks against their camps or settlements*

Internally displaced persons have the same protection against attacks and other violence inside a camp or settlement as outside. This Principle recognizes that the situation of displacement does not diminish the protection needs of displaced persons - indeed the nature of relocation make them particularly vulnerable to attacks.

e. *The use of anti-personnel landmines*

Land mines pose two significant dangers to civilians both during and after the conclusion of hostilities. A party to the conflict might place land mines in an area populated by displaced civilians. Second, land mines constitute a continuing threat to non-combatants if they are not removed or do not self-destruct but remain active after their military purposes have ceased. Such mines are especially dangerous to internally displaced persons who are in unfamiliar terrain, relocating to camps, leaving camps for some reason, returning to places of residence or moving to safe havens.

On 1 March, 1999, the “Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction” entered into force.

Issue II: Personal Dignity

Internally displaced persons have the *right to dignity* in the same way as all other people in a territory. Dignity generally means that there is no human being who is more "human" than others and therefore dignity requires respect for an individual and equal concern for the protection of the individual. Human dignity is inherent. Physical acts such as rape, slavery, torture, inhuman and degrading treatment or punishment violate the right to dignity.

Personal *integrity* is the term used to refer to the body and mind of a person. A violation of the right to personal integrity occurs when the State applies torture or cruel, inhuman or degrading treatment, thus causing physical, psychological or moral suffering. The extent to which the pain and suffering are serious and intentionally inflicted, the greater the likelihood that the treatment involves an attack on the integrity of the person.

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**
 - (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.

Legal Foundations of the Principle



This principle is derived from the right to dignity which includes the non-derogable rights to freedom from torture, cruel, inhuman and other degrading treatment or punishment - and freedom from slavery guaranteed in article 8 ICCPR which states that "no one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited".

This principle is also based on provisions of the CRC and CEDAW relating to violence against women and children.

Principle 11(1) restates article 10(1) ICCPR which ensures "All persons who are deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person". Therefore, the principle applies to all internally displaced people regardless of whether they are in detention camps, prisons or hospitals [HRC].

11 (2) The right to dignity includes protection from:

Regardless of whether the liberty of an internally displaced person has been restricted, an internally displaced persons is particularly protected against the following violations:

"Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment and other outrages upon personal dignity"

"Gender-specific violence"

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. Prevalent forms of gender violence include rape and other sexual attacks, general physical attacks, domestic violence, exploitation of prostitution and sexual harassment. Gender-specific violence affects women disproportionately – physically and mentally- and may constitute torture. States have an obligation to protect women from gender violence perpetrated by State agents and private individuals.

States should eliminate all forms of violence against women by taking special protection measures, including legislation. Women should be particularly protected against discrimination, trafficking in women and exploitation of prostitution. [2-6 CEDAW].

In times of non international armed conflict parties are prohibited from discriminating on the basis of sex [ICCPR article 4, Common article 3, Protocol II article 2(1) - outrages on personal dignity, humiliating and degrading treatment includes gender specific violence]. Women who are internally displaced are also protected against rape, enforced prostitution and any form of indecent assault [Protocol II article 4(2)]

Slavery

Freedom from slavery is a non-derogable right, which applies to internally displaced persons at all times. The UDHR at article 4 states that "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms". The same right appears in the ICCPR article 8 which states that "no one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited", and "no one shall be held in servitude" [Protocol II article 4 (2) (f)].

Sale of women equal slavery

The sale of women into marriage or forced marriage violates the right to be free from slavery and slavery like practices. The right to freely enter or consent to marriage is recognized in several human rights documents. [UDHR 16(2), ICCPR 23(3), and CEDAW 16(1)(b).]

"Forced labour of children"

Freedom from forced or compulsory labour is guaranteed in the ICCPR. In relation to children the CRC prohibits child labour (article 32) which recognizes the right of children to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. It further places an obligation on States to take legislative measure to implement that article.

"Acts of violence intended to spread terror"

In situations of non-international armed conflict the civilian population, including internally displaced persons, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population is expressly prohibited [Protocol II 13(2)].

Issue III: Forced recruitment

Among the many dangers facing internally displaced persons - both adults and children - is forcible and involuntary recruitment into the country's armed forces or into those of dissident groups. Such recruitment may also manifest itself in government coercion to form civil defense patrols.

Displaced persons are of course not exempt from compulsory military service, but IDPs are protected from discriminatory recruitment into armed forces or groups.

Principle 13

- 1. In no circumstances shall displaced children be recruited nor 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.**

Legal Foundations of the Principle



This Principle is derived from article 38(3) of the CRC, which calls upon States to refrain from recruitment of children under 15 and for those between 15 - 18 to select the oldest.

Since the Guiding Principles were drafted, an Optional Protocol to the CRC has been adopted, which calls on State Parties to “raise the minimum age in years” for voluntary recruitment (previously set at 15) and to set the minimum age for direct participation in combat at 18.

The non-discrimination articles discussed previously are also relevant to the situation for recruitment of adults.

Recruitment of children

Given the particular vulnerability of internally displaced persons Principle 13 restates the international protection afforded to all children - the right not to be recruited into the armed forces under the age of 15. 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 old in situations of armed conflict.⁵

Recruitment of adults

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 the ICCPR.

⁵ [Protocol II 4 (3)(c)]

Theme 4: Special Needs

Internally displaced persons, on account of being displaced, have particular needs. This is not to say that internally displaced persons should be treated in a different way to any other vulnerable group, like women, children, indigenous people or the disabled. Like other groups, internally displaced persons have special needs which the Guiding Principles highlight.

Key Issues

Subsistence needs
Health related needs
Need for identification and documentation
Property

Issue I: Subsistence needs

Whether resettled in temporary camps or still in transit, internally displaced persons in many cases are deprived of, and/or denied safe access to, one or more of the following key elements essential for a minimum standard of living: food, water, housing, clothing, health and sanitation. Such ingredients are necessary for an adequate standard of living.

In a situation of non-international armed conflict Common article 3 requires "human treatment", which includes access to subsistence means necessary for survival.

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.**

Legal Foundations of the Principle



This principle is derived from the right to an adequate standard of living. UDHR states that everyone has the right to a standard of living that is adequate for health and well-being of himself and of his family, including food clothing housing, medical care and necessary social services. There is also a right to security in the event of unemployment sickness, disability, widowhood, old age or other lack of livelihood in circumstance beyond his control. Similar provisions are included in CESC, CERD, and CEDAW.

a. Essential food and potable water

The right to food is a non derogable under the right to life. States have an obligation to ensure access to adequate food and water by using all the resources at its disposal, in an effort to satisfy its minimum obligation to prevent hunger.

States with limited resources are required to make maximum efforts to use all resources at its 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. This includes prohibition of attacks, destruction, removal or rendering useless of objects which are indispensable to the survival of the civilian population such as food stuffs, agricultural areas for the production of foodstuff, crops, livestock, drinking water installations and supplies and irrigation works.

Deprivation of food is a crime under the Genocide Convention.

b. Basic shelter and housing

The Universal Declaration on Human Rights as well as the Covenant on Economic, Social and Cultural Rights clearly guarantee the basic right to housing.

Furthermore, the UN Committee on Economic, Social and Cultural Rights, in its General Comment No.4, discusses various aspects to be considered when fulfilling this right. While adequacy of housing is determined by many factors, the Committee recommends States to consider the following: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; health threats; accessibility; location and cultural adequacy.

c. Appropriate clothing

d. Essential medical services and sanitation

(See Guiding Principle 19)

Issue II: Health related needs

One of the serious consequences of internal displacement is exhaustion and illness. Those among displaced populations who are most in need of urgent or regular medical care are frequently denied such assistance. Internally displaced persons may face a number of medical problems not only during the process of displacement where health care is hardly available but also in camps where access to health services may be limited. During hostilities, it is not unusual for internally displaced persons to become sick or wounded when caught in cross fire or subjected to indiscriminate weapons.

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 counseling 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.

Legal Foundations of the Principle



The right to medical care and necessary social services is enshrined in the UDHR as part of the right to an adequate standard of living. The ICESCR also recognizes the realization of "the right of everyone to the enjoyment of the highest attainable standards of physical and mental health"

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 Additional Protocol II 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. 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 control”.

Disabled children should not be discriminated against on the basis of his or her disability. A disabled child must receive education, training, health care, and rehabilitation to achieve the fullest possible social integration.

- **Women**

Special attention to the health needs of women is highlighted in the CEDAW whereby it is stated that for equality, states must ensure to women appropriate service in connection with pregnancy, confinement and postnatal period.

- **Contagious and infectious diseases**

Realization of the right to an adequate standard of living includes prevention, treatment and control of epidemics, occupational or other diseases.

Issue III: The need for identification and documentation

Internal displacement often results in the loss of personal papers and documentation. It also makes proper registration of events such as births and deaths extremely difficult, if not impossible. Although registration in camps and relocation sites is often required for purposes of documentation and to facilitate family reunification, many internally displaced persons are averse to being identified as internally displaced because such labels may have a discriminatory effect or jeopardize their safety. As a consequence, displaced persons often lack the legal protection and privileges extended to those who hold identifying documents.

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.

This Principle is derived from the fundamental right to legal personality which is enshrined in the UDHR: "everyone has the right to recognition everywhere as a person before the law", as well as ICCPR article 16

Child Rights

Children have the right to preserve their identity, including nationality and family relations as recognized by law without unlawful interference. The State has a duty to ensure that an undocumented child can speedily re-establish his/her identity.

Issue IV: Property

Internally displaced persons regularly lose much of their property when displaced. Owing to their vulnerability, IDPs need protection for the property left to them or acquired during displacement. This will be considered in module 4. The destruction or theft of crops and livestock, the bombing or burning of shelters and confiscation or forcible occupation of private homes by military or paramilitary forces are among the experiences faced by internally displaced person. This section will consider the right to property during displacement. Issues surrounding compensation for property are found in domestic law and in Guiding Principle 29 (2).

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.

The right to own property is stated in the UDHR, which also prohibits arbitrary deprivation of property, and in the African Charter on Human and Peoples' Rights. However, domestic law often provides better protection of property for internally displaced persons.

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

Everyone, including internally displaced persons, have 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 can not 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)].

Annexes

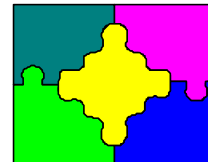
List of Abbreviations

International instruments

CAT	Convention Against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
Common article 3	Common article to all Geneva Conventions - including Geneva Convention relative to the Protection of Civilian Persons in Time of War
CRC	Convention on the Rights of the Child
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Convention on Economic, Social and Cultural Rights
Protocol II	Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)
UDHR	Universal Declaration of Human Rights



Module Four:



Return, Resettlement and Reintegration.

(Produced by the Norwegian Refugee Council in association with the Office of the UN High Commissioner for Human Rights)

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Key Themes/Concepts

- Defining return, resettlement and reintegration
- Themes of the Guiding Principles
 - 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

Introduction

In this section we will examine section IV of the Guiding Principles on return, resettlement and reintegration. To start it is helpful to define terms.

There are two basic solutions - **Return or Resettlement**. **Reintegration or integration** is the process that makes either choice sustainable.

In this module, **return** is used to define the process of going back to one's original place of residence. Obviously return is the ideal durable solution but as noted by some observers is probably the most difficult solution to achieve. Too often after a conflict the clock simply cannot be turned back.

Resettlement (*different from refugee resettlement*) is used to define the process of starting a new life in another part of the country. Resettlement is the option of a fresh start. Depending on the circumstances of displacement and root causes of conflict, a fresh start somewhere else maybe the only reasonable option for some internally displaced.

Reintegration is used to describe the reentry of formerly internally displaced people into the social, economic, cultural and political fabric of their original community. According to UNHCR in order to be successful, reintegration, as it refers to returning refugees, requires access to reasonable resources, opportunities and basic services to establish a self-sustained livelihood in conditions of equal rights with other residents and citizens.¹

To facilitate examination of this section it useful to see the principles according to several themes:

- Voluntary return in conditions of safety and dignity
- Participation and management of return/resettlement by the internally displaced themselves
- Non-Discrimination
- Recovery of property or compensation
- Access by humanitarian organizations

The first two themes impact on the process of return or resettlement while the second two themes impact on the durability of return or resettlement and help define successful reintegration or integration. The last theme defines the operational needs of international organizations in assisting return or resettlement operations and in some cases providing independent verification of the conditions of return.

¹ Drawn from concept of returnee reintegration in the Office of UN High Commissioner for Refugees, Handbook Voluntary Repatriation: International Protection, 1996 Geneva ,section 6.4

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.

Legal Foundations of the Principle²



Concepts of voluntariness, return in safety and dignity drawn from refugee protection regime although not specifically stated in 1951 Convention. Voluntariness follows from principle of non-refoulement, (article 33) obviously in that involuntary return would be “refoulement.”

1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa is the only international refugee instrument to date formally elaborating the principle of voluntary repatriation, although voluntary repatriation is mentioned in the UNHCR statute.

Ie OAU Article V on voluntary repatriation

UNHCR statute - Voluntarily re-availed himself of the protection of the country or voluntarily reestablished himself in the country

Definitions – some ideas from the refugee protection concept³

Voluntary

The decision to return should be a voluntary one. This requirement is more than a matter of principle, a return which is voluntary is more likely to be lasting and sustainable. UNHCR defines a “voluntary decision” as implying two elements: freedom of choice and an informed decision.

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, citizenship status
- Physical security: including protection from armed attacks and mines

² Discussion of the legal foundations of the Guiding Principles are drawn from the Compilation and Analysis of legal norms. Report of the Representative of the Secretary-General to the Commission on Human Rights 1996, E/CN.4/1996/Add.2

³ Most of the discussion in this section is based on the Office of UN High Commissioner for Refugees, Handbook Voluntary Repatriation: International Protection, 1996 Geneva.

- Material security: access to land and property, means of a livelihood and for children an education as well

Dignity

The concept of dignity is less self-evident than safety. The dictionary definition of dignity contains elements of “serious, composed, worthy of honour and respect.” According to UNHCR, in practice dignity means that: returning refugees are not manhandled, that they can return unconditionally and if they are doing so spontaneously they can do so at their own pace, that they are not arbitrarily separated from family members; and that they are treated with respect by the authorities and full acceptance by the national authorities, including the full restoration of their rights. Obviously a similar definition of dignity can be applied to returning internally displaced.

Presenter’s 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 endeavor to facilitate* reintegration or integration which leaves and reflects open nature of reintegration process and wider role of local community

Theme II - Joint participation in planning and management of return

The concepts and elements of ‘voluntariness’ and ‘dignity’ imply the participation of the internally displaced in the planning and management of their return or reintegration.

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.

Legal Foundations of the Principle



While there are no legal foundations the principle it is in conformity with international law. Generally though it is more connected to programming principles of equal participation of internally displaced in decisions that affect their lives, a theme reflected throughout the Guiding Principles.

Implications are that if the internally displaced play a greater role in managing their return or resettlement it will be more successful as well as more sustainable.

Theme III – Non discrimination and Equality of Participation and Access

Essential to the fulfillment of the needs of the internally displaced is the need to be free from discrimination. The concepts of equality before the law, equal protection of the law and non-discrimination form a cornerstone of international human rights law.

Racial, ethnic, religious, gender-specific or political discrimination occurs, in one way or another, in every society however internally displaced persons, often living in strange surroundings, deprived of their security, property and social status, are particularly exposed and vulnerable to discriminatory treatment.

Returning internally displaced persons can, for example, be treated as “enemies” or with a high level of suspicion and hostility.

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.

Legal Background and Foundation



An explicit prohibition of discrimination against internally displaced persons because of their being displaced does not exist in human rights law. However, many international and regional human rights treaties have clauses requiring States parties to respect and ensure the rights and freedoms recognized by those conventions are without discrimination.

Specific grounds upon which discrimination is prohibited in many treaties include race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or "other status". Article 2 of the Universal Declaration for example states:

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...".

“**Other status**” becomes important because displacement may be considered “other status”

International humanitarian law provides, for example, the principle for **humane treatment without adverse distinction** in situations of non-international armed conflict. Article 3 (1) common to the four Geneva Conventions reads:

"Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria."

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.⁴

Areas where non discrimination 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, 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

Internally displaced persons regularly lose much of their property when displaced. The destruction or theft of crops and livestock, the bombing or burning of buildings and confiscation or forcible occupation of private homes by military or paramilitary forces are among the experiences faced by internally displaced persons, especially in situations of armed conflict.

Because of their vulnerability, internally displaced also 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

⁴ Compilation and Analysis of legal norms, Report of the Representative of the Secretary-General to the Commission on Human Rights 1996, E/CN.4/1996/Add.2

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.

The Inter-American Commission on Human Rights has, for example, recommended payment of just compensation to returning internally displaced persons for loss of their property including homes, crops, livestock and other belongings.⁵

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.

Legal Background and Foundation



In human rights law the Universal Declaration (Article 17) grants everyone the right to own property alone or in association with others. Paragraph 2 of that article prohibits arbitrary deprivation of such property. Interestingly no comparable right is found in either the ICCPR or the ICESCR.

The right to own and enjoy property is also supported and mentioned in other conventions such as International Convention on the Elimination of all Forms of Racial Discrimination, International Convention on the Elimination of all Forms of Discrimination Against Women, the ILO Conventions and regional treaties such as Organization of American States' American Declaration, the European Convention and the African Charter.

In the instruments mentioned, the individual's right to own, possess and/or use private property is not absolute and may be subject to certain interests of society as provided by law and/or under such limitations as "the just requirements of morality, public order and the general welfare in a democratic society." (Universal Declaration, Art. 29)

The existence of an internal armed conflict can constitute a public emergency and can satisfy the requirements for derogation which can temporarily suspend the right to own, use and enjoy property.

Humanitarian law does not directly address property rights but does prohibit, for example, pillage and reprisals. There is a general prohibition against the destruction or seizure of property unless required by military necessity.

⁵ Compilation and Analysis of legal norms, Report of the Representative of the Secretary-General to the Commission on Human Rights 1996, E/CN.4/1996/Add.2

Implementation

The issue of property in the Guiding Principles is multidimensional in that it is focused not only on the protection of property occupied before displacement but also property acquired during displacement.

- The return of personal property is of crucial importance for a dignified return.
- In the process of return, property acquired must also be transported to areas of origin. (*mention RSG comments on Mozambique*)
- Access to land, (*in most cases talking about rural populations*) especially agricultural land is crucial for sustainability both in short term, medium and long term otherwise returning internally displaced become dependent on assistance.
- Property conflict often becomes the source of continuing conflict so local conflict resolution techniques can be important (*Gacaca in Rwanda, Dayton peace Accord specifically mentions property and has a commission to decide on ownership*).

Presenter's Notes

Within the principle highlight:

- *Competent authorities* - not just state authorities therefore includes non-state actors
- *the duty and responsibility* - legal and moral obligation
- *to the extent possible* - realistic qualifier
- *left behind or were dispossessed of* – items that they were forced to leave behind or which were confiscated.
- *shall provide or assist...in obtaining appropriate compensation or another form of just reparation.*

Mention:

- Right to Property or sanctity of property mentioned in principles relating to protection from displacement (Principle six)
- Right to property often most protected by domestic law

Theme V - Access by Humanitarian Organizations

In order to deliver humanitarian assistance, relief workers and their organizations must be able to travel to, and have access to, the internally displaced. They may also need to establish communications with the displaced.

Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations 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.

Legal Background and Foundations



Conventional **human rights law** does not provide explicitly for access by relief workers to the victims of internal displacement who are in need of humanitarian assistance although various General Assembly and Security Council resolutions expressly address this aspect of humanitarian assistance.

For example General Assembly resolution 46/182 reconfirms the pivotal role of access by calling upon all States whose populations are in need of assistance "to facilitate the work of ... [intergovernmental and non-governmental] ... organizations", which work impartially and with strictly humanitarian motives," in implementing humanitarian assistance, in particular the supply of food, medicines, shelter and health care, for which access to victims is essential" (para. 6).

According to **humanitarian law** the International Committee of the Red Cross has a right to offer its services, as do other humanitarian organizations. Consent to such access, which is indispensable to the provision of relief, must be presumed from the acceptance of the organization's offer of humanitarian services.

Negotiating Access

- Access reflected in several principles
 - important from an assistance point of view to ensure that internally displaced persons have access to assistance (*General Principle 3 – right to receive and request assistance*)
 - Also Principle 25(3) granting free passage and access for humanitarian assistance (*protects the delivery of assistance*)
- In return or resettlement situations access is important to ensure that assistance given is reaching and meeting the target beneficiaries' needs
- From a protection point of view access is necessary to ensure return is according to conditions of safety and dignity.

- Reference to other appropriate actors is to facilitate monitoring of return by not only humanitarian organizations but also for example human rights organizations. (*ie UNHCHR*).
- Although based on access monitoring is in itself an important but large issue to be discussed and negotiated separately with the host government. From an operational point of view, monitoring can be a comprehensive program by a wide variety of organizations to observe whether return is occurring within conditions of safety and dignity or it can be a “passive” program whereby everyday observations are passed on by field workers to government authorities, institutions or organizations that can act upon the information.

Conclusion: Return, resettlement, and reintegration revisited

Like other sections of the Guiding Principles, one should not only look at the principles in isolation – to do would miss the fact that they all form part of the larger mosaic in this case of describing the essential components of durable, sustainable solutions.

Return & Resettlement

To review some of the main points:

According to the Guiding Principles, Government authorities have the primary responsibility to establish conditions of return or resettlement by ensuring among other things an acceptable level of security, an environment and institutions that reflect and protect the rule of law and the possibility of a self-sustained livelihood.

The concepts of “voluntariness” and “participatory approach” are important in shaping the return and resettlement process and are crucial elements of lasting and sustainable return or resettlement. Place of habitual residence, for example may be interpreted broadly as long as it is a voluntary interpretation by the displaced themselves. Implementation of such an interpretation requires equal participation and management by the internally displaced in the process. The same is true in defining acceptable security standards for either return or resettlement.

Reintegration &/or Integration

Reference to non-discrimination and property is reflective of a needs based approach in the Guiding Principles. Non discrimination forms the cornerstone of reintegration or integration by attempting to ensure equal rights with other residents and citizens. Non discrimination is also the foundation for any efforts of reconciliation and conflict resolution.

Reference to property is necessary because it is possibly the single largest resource returning internally displaced will have to ensure a self-sustained livelihood and is also, in situations of population growth and competition over scarce resources, likely to be the largest cause of conflict.

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 toward 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 organizations 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 need to female heads of households;
- design programs to rebuild community infrastructure in areas of return/resettlement;
- design mechanisms to monitor human rights conditions in areas of return/resettlement;
- design programs 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 program design, to prevent stigmatization or resentment.

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

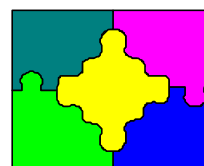
Access by Humanitarian Organizations

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



Module Five:

“Recipients” as Resources:



A Community-based Perspective for Program Response

(Produced by the Norwegian Refugee Council in association with the Office of the UN High Commissioner for Human Rights)

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Key Themes/Concepts

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

Introduction

This module approaches the issue of program response to situations of internal displacement from a community-based perspective. It takes as its starting point that internally displaced persons are not passive “recipients” of assistance and protection, but can and should be key actors in identifying and addressing their own needs. Accordingly, programs responding to situations of internal displacement need to take into account the perspectives and capacities of internally displaced communities and design programs in a way that draws as well as builds upon these capacities. The importance of doing so will be shown to be a cross-cutting theme throughout the Guiding Principles, and all of the phases and aspects of internal displacement that they cover.

To begin, the benefits of integrating a community-based perspective into program response in general will be highlighted. Specifically, doing so can help to ensure that program responses that are appropriate, effective and sustainable and thus less expensive, in the short and long-term.

The meaning of applying a community-based perspective to program response to situations of internal displacement then is examined, with reference to the Guiding Principles, according to five main 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

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 through the local community, through a complex social network including family, clan, village or tribe."

(UNHCR)

However, the experience of displacement is severely disruptive on community and family structures: it disperses communities and often separates families. This weakening or severing of community and family links increases the vulnerability of the internally displaced. Activities that promote the maintenance or restoration of community links, including with the local communities in areas of refuge and return or resettlement, therefore is an important means of enhancing their security. Efforts to reunify families, create support structures for unaccompanied children and enable displaced persons to remain with or rejoin members of their clan, tribe or village should receive high priority.

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 organizations 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 endeavor to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.

Preserving community links:

Regarding the preservation 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

On the preservation of community identity, respect for the linguistic heritage, religion or beliefs and cultural identity of internally displaced populations is important.

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.

The right of internally displaced persons in community affairs also is 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:

....

(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;**

Theme 2: Supporting strategies of self-help

Equally important as enabling internally displaced persons to retain or recreate their previous family and community links is to recognize 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 manifest in efforts by internally displaced populations organize 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, psycho-social 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.

In a number of situations, internally displaced persons have formally organized themselves into groups for the purpose of collectively advocating for the protection of their rights.

To be sure, the relationship between the displaced and the authorities will influence the scope that the internally displaced have for undertaking such efforts. The authorities should be expected to ensure that organizations of the internally displaced can operate in an environment conducive to advocacy efforts.

Theme 4: Involving the displaced in decision-making

Internally displaced persons should, as a matter of course, be involved in the decisions that affect their lives. They know better than anyone else does what their needs are, and may have cultural preferences as to how these should be addressed. Taking into account the views and perspectives of the displaced in the design of programs for responding to their needs can help to ensure the appropriateness and effectiveness of such programs. This is true in all phases of displacement, from prior to displacement to the return or resettlement and reintegration phase.

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:

...

(c) The free and informed consent of those to be displaced shall be sought;

(d) The authorities concerned shall endeavor 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.

In considering the views of the displaced, it is essential to solicit the views of all segments of the population. Too often, the importance of consulting women is overlooked and their capacities ignored, notwithstanding the fact that women and children typically constitute the overwhelming majority of an internally displaced population.

Principle 7(3)

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

....

(d) The authorities concerned shall endeavor 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 longer term, designing programs in a way that draws and build 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, and 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;

In protracted situations of displacement, the loss of skills becomes a serious risk. Where the opportunities for income-generation are different than the activities in which the internally displaced engaged in their areas of origin, the development of new skills may be required.

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. Traditionally, skills training programs have relegated women to activities such as sewing and embroidery, which generate little income. In fact, displaced women often have proven adept in such non-traditional activities as quarry work, reforestation and reconstruction projects. Special efforts, such as gender clauses, may need to be taken to ensure that women have equal access to participate in skills-training and income-generating activities.

Similarly, displaced women often demonstrate considerable resourcefulness and entrepreneurial initiative. To support these efforts, women require equal access to credit opportunities. Typically, the amount of credit required is minimal. Micro-credit programs for women therefore can be particularly important for promoting self-reliance.

Assistance and development programs for internally displaced populations also can and should, to the extent possible, employ the internally displaced in programs undertaken on their behalf. "Food for work" programs 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.

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 programs -- provides a number of important pieces of information that will help to ensure the appropriate and contribute to the effectiveness of 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 of possible ways of minimizing these**

To be sure, there is no blueprint for the program 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 organization 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 IDPs in the protection of their rights**
- Involving IDPs in decision-making**
- Promoting self-reliance**

Working Group Discussions

The presentation has identified and given some examples of activities in different countries in five strategic areas of activity for applying a community-based perspective to program response. The task of the working groups is to explore these themes in reference to the specific situation of internal displacement in which 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 programs? 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?
