Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges

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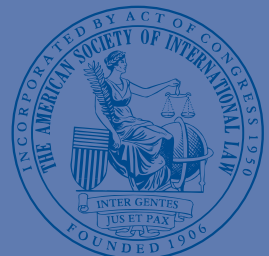
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Planned Evacuations and the Right to Shelter during Displacement

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INTRODUCTION

In response to widespread destruction of the built environment and forced displacement caused by conflict or natural disaster, the provision of durable shelter designed to satisfactory physical standards and which is technologically and culturally appropriate, constitutes a basic need and a fundamental right for forced migrants. [1]

This chapter examines a number of normative and policy aspects of planned evacuation, shelter, and settlements during displacement for internally displaced persons (IDPs) related to the provisions of the *Guiding Principles on Internal Displacement* (the *Guiding Principles*) [2] and how they generally are, or should be, addressed in national law and policy interventions. The chapter focuses on conflict-related and disaster-related modes of temporary shelter during displacement and therefore excludes development-induced displacement.

The data are imprecise in detail but consistent in scale and the location of impact in the global south. According to some commentators, from 1980 through the year 2000, 141 million people lost their homes in 3,559 natural

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[1] Roger Zetter & C. Boano, *Gendering Space for Forcibly Displaced Women and Children: Concepts, Policies and Guidelines*, at 4, Inter-University Committee on International Migration for UNFPA Women and Conflict Review, *Working Paper* 2007 (forthcoming) (manuscript on file with Authors).

[2] U.N. Econ. & Soc. Council [ECOSOC], Comm"n on Hum. Rts., *Guiding Principles on Internal Displacement*, U.N. Doc. E/CN.4 /1998/53/Add.2 (Feb. 11, 1998) (*prepared by* Francis M. Deng).

hazard events, of whom over 97 percent lived in developing countries.[3] These data precede the impact of other recent disasters such as Hurricane Mitch, the tsunami in 2004, Hurricane Katrina, and the Pakistan earthquake in 2005. More recent disaster data suggest that between 1974 and 2003, more than two million people were killed in 6,367 natural disasters globally, and over 182 million made homeless.[4] Current estimates suggest that thirty-three million people are forcibly displaced,[5] either as IDPs or refugees, because of conflict. Of the approximately twenty-six million IDPs, 75-80 percent are women and children.[6] A recently published report in the United Kingdom suggests that currently around 163 million people are forcibly displaced worldwide.[7] Controversially, this same report presents a case for anticipating the rather alarmist figure of one billion people forcibly displaced by 2050, of whom 250 million are predicted to be displaced by climate change.

LEGAL FRAMEWORK

IDPs are often forced to leave their homes and their habitual place of residence, finding themselves in refugee-like situations. However, they remain entitled to the full range of rights enjoyed by other persons in the country and this includes the right to protection and assistance during displacement as well as during return or resettlement and reintegration.

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[3] Roy Gilbert, *Doing More for Those Made Homeless by Natural Disasters*, Disaster Risk Management Series No. 1, at 1 (2001).

[4] Centre for Research on Epidemiology of Disasters [CRED], *2005 Disaster in Numbers*, at 13-14 (2005), *available at* http://www.em-dat.net/documents/2005-disasters-in-numbers.pdf.

[5] World Refugee Survey (2006), *available at* http://www.refugees.org/data/wrs/06/docs/key_statistics.pdf.

[6] Internal Displacement Monitoring Centre, *Internal Displacement: Global Overview of Trends and Developments in 2007,* 2008 INTERNAL DISPLACEMENT MONITORING CTR. 6 [hereinafter IDMC Global Overview].

[7] Christian Aid, *Human Tide: the Real Migration Crisis* (May 2007), *available at* http://www.christianaid.org.uk/Images/human_tide3__tcm15-23335.pdf.

Relevant Guiding Principles

The *Guiding Principles*, rooted in well-established standards of international human rights law, provide overarching principles related to planning evacuation, shelter, and settlements. Principle 1(1) provides that 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" and "shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced."

Different Principles are directly or indirectly related to shelter and settlements in the different phases of displacement. Principle 6(1) expressly affirms the right to be protected if displaced from "home or place of habitual residence" while Principle 6(2)(d) acknowledges the necessity of evacuation in case of disasters. Principle 7(1) provides that authorities shall ensure that alternative solutions to displacement are explored, while 7(2) requires authorities to provide proper accommodation in satisfactory conditions of safety.

Principle 12(1) stresses the right to no arbitrary arrest or detention and conceives confinement in a camp only in exceptional circumstances, while 14(2) affirms the right of freedom of movement in and out of camps or other settlements. Furthermore, Principle 18 affirms a direct right in terms of protection and assistance related to shelter, housing, and living conditions to an adequate standard of living, acknowledging that competent authorities shall provide basic shelter and housing, essential medical services, and sanitation.

Legal Basis

The right of IDPs to planned evacuation, shelter, and settlements during displacement is not directly grounded in international human rights law, humanitarian law, and codes of conduct[8], but is grounded in a rich body of laws specifically referring to an adequate standard of living and right to housing.

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[8] WALTER KÄLIN, GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT: ANNOTATIONS (2d ed., 2007) [hereinafter ANNOTATIONS].

Article 25, paragraph 1, of the 1948 Universal Declaration of Human Rights (the UDHR)[9] provides for the right to a standard of living adequate for the health and well-being of a person and housing and the right to security in the event of circumstances beyond his control. Since the adoption of the UDHR, housing rights and provisions have been reaffirmed and reinforced in several international covenants,[10] conventions, world conferences, fora,[11] protocols,[12]

[9] Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., 67th plen. mtg., at 71, U.N. Doc. A/810 (1948) [hereinafter Universal Declaration].

[10] International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GOAR Supp. No. 16 at 11.1, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, 6 I.L.M. 368 (1967) [hereinafter ICESCR]; Convention on the Elimination of All Forms of Discrimination Against Women, Sept. 3, 1981, G.A. Res. 34/180, arts. 27(1), 14.2(h), U.N. GAOR Supp. No. 46 at 193, U.N. Doc. A/34/46, 1249 U.N.T.S. 13, 19 I.L.M. 33 (1980) [hereinafter CEDAW]; Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. No. 49 at 167, U.N. Doc. A/44/49 (1989), 1577 U.N.T.S. 3, 28 I.L.M. 1456 (1989); International Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. No. 14 at 47, art. 5(e)(iii), U.N. Doc. A/6014 (1966) [hereinafter CERD]; International Covenant on Civil and Political Rights, Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GOAR Supp. No. 16 at 52, at 1, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, 6 I.L.M. 368 (1967) [hereinafter ICCPR]; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, G.A. res, 45/158, Annex, 45 U.N. GOAR Supp. No. 49A, at, 262, art. 43.1(d), U.N. Doc. A/45/49 (1990).

[11] UN-Habitat, *Habitat Agenda and Istanbul Declaration,* Adopted at the Second United Nations Conference on Human Settlements (Habitat II), Istanbul, Turkey, June 3-14, 1996; see also G.A. Res. 51/177, ¶ 61; chap. 7, ¶ 7.9(a); U.N. Doc. A/CONF.165/14 (Dec. 16, 1996); ¶ 13, G.A. Res. 46/163, U.N. Doc. A/RES/46/163 (Dec. 19, 1991).

[12] Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, *reprinted in* U.N. Doc. A/32/144, 16 I.L.M. 1391 (1977).

and regional documents.[13] These pay considerable attention to various measures designed to promote and protect these critical and fundamental rights.

In 1991, the UN Economic and Social Council (ECOSOC) adopted General Comment No. 4,[14] which provides the most authoritative legal interpretation of the right to adequate housing. The right to housing is not interpreted in a restrictive sense of merely having a roof over one's head or being a commodity. Rather, it is the right "to live somewhere in security, peace and dignity" stressing different integral components of the right (paragraph 8) such as: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy." Paragraph 8(d) specifies that "adequate housing must be habitable, in terms of providing the inhabitants with adequate space and protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards…." These principles are consistent with other UN Comments and Recommendations with regard to housing rights and conditions.[15]

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[13] European Social Charter, Oct. 18, 1961, arts. 31, XI, 529 U.N.T.S. 89; Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, E.T.S. No. 5, 213 U.N.T.S. 221; American Declaration of the Rights and Duties of Man., O.A.S. Res. XXX, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9 (2003); 43 AJIL Supp. 133 (1949), art. XI.

[14] U.N. Doc. E/1992/23-E/C.12/1991/4, annex III. Compilation of General Comments and Recommendations, adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1.

[15] The Special Rapporteur, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, E/CN.4/2005/48 (Mar. 3, 2005); U.N. Doc. E/1992/23-E/C.12/1991/4, annex III. Compilation of General Comments and Recommendations, adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1, No. 7(16), 4(4).120.

The principles are further elaborated in relation to equal rights for all social groups based on the right to non-discrimination.[16] Equal rights for women and men are fundamental to this approach. This is reflected in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),[17] which specifies the importance of impartiality, proportionality, and a right to life with dignity related to housing and sanitation in Article 14(2)(h), while Article 15(4) recalls the right of individuals to choose their residence and domicile.

The Special Rapporteur on adequate housing refers to the Millennium Development Goals[18] as an important opportunity to ensure that women's rights are fully realized, including their right to adequate housing, land, property, and inheritance. Paragraph 30 recalls the importance of specific situations faced by women, particularly in relation to discrimination and additional obstacles in accessing adequate housing, such as domestic violence, female-headed households, forcible separation from children, forced evictions, disabilities, and conflict/post-conflict situations.

The March 2005 report of the Special Rapporteur refers to the impacts of natural disasters on the adequate provision of housing for women.[19] Temporary settlements are often inadequate and contribute to the ill health of women, resulting in an increased vulnerability to impoverishment and sexual and gender-based violence.

The Special Rapporteur stresses in paragraph 83(c) the need to ensure that gender-sensitive housing policies and legislation are developed to eliminate discrimination in housing experienced by groups of women in vulnerable

[16] The Special Rapporteur, *Report by the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination*, ¶ 8, E/CN.4/2006/118 (Feb. 27, 2006).

[17] *See* CEDAW, *supra* note 10.

[18] The Secretary General, *Report of the Secretary General on the Implementation of the United Nations Millennium Declaration,* U.N. Doc. A/58/323 (Sept. 2, 2003).

[19] The Special Rapporteur (Mar. 3, 2005), *supra* note 15.

situations. Paragraph 83(e) ensures that women can access temporary, appropriate shelters and retain access to adequate housing on a longer term basis. In addition, with a specific reference to post-disaster situations, paragraph 84 stresses the need for the adequacy of durable solutions in order for women to participate and benefit equally from reconstruction efforts.

The UN Inter-Agency Standing Committee Gender Manual on Humanitarian Action (the IASC Gender Manual)[20] advocates for the need to integrate gender considerations into shelter planning and programs to ensure people affected by crises benefit equally from safe shelter. The IASC Gender Manual stresses the importance of:

- location of sites which should not expose populations to further inevitable risks;
- site planning which should assure accessibility and protection against sexual assaults;
- individual or communal shelter assignment procedures which should take into consideration proximity to services;
- avoiding overcrowding, especially in the case of spontaneous settlements, in order to reduce the risks of violence against women and the vulnerability of young men to being recruited for gangs or by rebel groups.

In emergency situations, participatory planning must be undertaken to ensure the right to an adequate standard of living for people. Although emergency shelter by definition normally does not meet the criterion of "adequate housing," a number of minimum human requirements are still applicable in the emergency shelter context. Article 12 of the UDHR[21] and Article 17 of the

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[20] Inter-Agency Standing Committee [IASC] *Women, Girls, Boys and Men. Different Needs—Equal Opportunitie*s (Dec. 2006), *available at* http://www.humanitarianinfo.org/iasc/content/documents/subsidi/tf_gender/IASC%20 Gender%20Handbook%20(Feb%202007).pdf.

[21] Universal Declaration of Human Rights, *supra* note 9.

International Covenant on Civil and Political Rights (ICCPR) [22] ensure the right to privacy and Article 3 of the UDHR[23] and Article 9 (1) of the ICCPR[24] provide that everyone has the right to liberty and security of person.

In situations of natural disaster, the UN Inter-Agency Standing Committee (IASC) Guidelines on Human Rights and Natural Disasters (the IASC Guidelines)[25] affirm, in A.1.1., that "all appropriate measures necessary to protect those in danger, in particular vulnerable groups, should be taken to the maximum extent possible (e.g., emergency shelter arrangements)."

Section A.1. (paragraphs 1-8) stresses the importance of evacuation in a manner that fully respects the rights to life, dignity, liberty, and security of those affected, safeguarding homes and common assets left behind. A.1.4. provides that evacuations should be conducted without compromising the right to move to other parts of the country and to settle. This right may not be subject to any restrictions except those which are provided by law.

With regard to the post-emergency phase, the IASC Guidelines provide that the displaced should be granted the opportunity to choose freely whether they want to return to their homes and places of origin, remain in the area to which they have been displaced, or resettle in another part of the country. In particular, the return to their homes and places of origin should only be prohibited if these homes or places of origin are in zones where there are real dangers to the life or physical integrity and health of the affected persons.

The IASC Guidelines state, in A.4.1., that camps are a last resort and should only be established where, and until, the possibility of self-sustainability or

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[22] ICCPR, *supra* note 10.

[23] *Id*.

[24] *Id*.

[25] United Nations, Inter-Agency Standing Committee [IASC], *Operational Guidelines on Human Rights Protection in Situations of Natural Disasters, with Particular Reference to the Persons who are Internally Displaced,* at 18 (2006).

fast rehabilitation assistance does not exist. If camps are provided, the location and lay-out of camps and settlements should be situated in areas with a low natural hazard risk and designed to maximize the security and protection of displaced persons, including women and others whose physical security is most at risk. Moreover, A.4.4. provides that there should not be any restriction of movement unless it is necessary for the security or health of camp residents and population in the vicinity.

The IASC Guidelines, in B.2.1., reiterate that adequate shelter, as well as other emergency services, should be provided "without any discrimination of any kind." In B.2.4., the right to shelter is to be understood as the right to live somewhere in security, peace, and dignity and needs to be translated in planning and implementing shelter programs to allow, as stressed in C.3.1., for the speedy transition from temporary or intermediate shelter to temporary or permanent housing, drawing attention to long term planning and participation to the maximum extent possible (C.3.3).

In line with the abovementioned human rights obligations, Section C.3.2. of the IASC Guidelines emphasizes that "adequacy of these goods and services" means that they are (i) available (in sufficient quantity and quality), (ii) accessible, (iii) acceptable (culturally appropriate and sensitive to gender and age), and (iv) adaptable (flexible enough to adapt to the change of needs in the different phases of emergency relief, reconstruction and, in the case of displaced persons, return). It also indicates that respect for safety standards aimed at reducing damage in cases of future disasters is a criterion for adequacy.

Article 1 of the International Federation of the Red Cross (IFRC) Code of Conduct in Disaster Response Programmes[26] (the IFRC Code of Conduct) and the *Sphere Project Humanitarian Charter and Minimum Standards in Disaster*

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[26] International Federation of Red Cross and Red Crescent Societies (IFRC), *Code of Conduct* (1994).

Response (the *Sphere Handbook*),[27] while not legally binding, are useful guides. The IFRC Code of Conduct and the *Sphere Handbook* articulate the rights to shelter, settlement, and assistance as a right to life with dignity.[28]

Finally, Article 49 of the Convention (IV) Relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention)[29] reiterates the duty of the Occupying Power to undertake total or partial evacuation, ensuring to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, in satisfactory conditions of hygiene, health, safety, and nutrition. Additionally, Article 61 of the Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (the First Additional Protocol),[30] provides for the management of shelters and the provision of emergency accommodations and supplies, defining these as "civil defense activities."

Although not directly related to evacuation and shelter provision and, in any case, comprehensively covered in other chapters of this volume, it is worth mentioning the *Pinheiro Principles*[31] as an important advance in this sector.

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[27] ISOBEL MCCONNAN, THE SPHERE PROJECT: HUMANITARIAN CHARTER AND MINIMUM STANDARDS IN DISASTER RESPONSE (2000) [hereinafter THE SPHERE PROJECT].

[28] Marci Van Dyke & Ronald Waldman, *The Sphere Project. Evaluation Report*, Center for Global Health and Economic Development, Program on Forced Migration and Health, at 7 (2004).

[29] Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T 3516, 75 U.N.T.S. 287 [hereinafter Fourth Geneva Convention].

[30] Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977.

[31] Special Rapporteur, *Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons*, U.N. Doc. E/CN.4/Sub.2/2005/17

Recently translated in a manual,[32] the principles address the field of restitution rights, which provide important guidance in addressing the legal and technical issues surrounding housing, land, and property restitution in a continuum from emergency provision to restitution.

OVERVIEW OF OBSTACLES TO THE IMPLEMENTATION OF THE GUIDING PRINCIPLES

Although the rights of IDPs to shelter and settlements in adequate quantity and quality are clear, in practice they often face obstacles in exercising those rights. These obstacles, in many cases, result in long-term temporary and inadequate solutions, in overcrowded locations which increase vulnerabilities and exacerbate the difficulty of finding durable solutions.

Addressing the procedural, legal, and institutional obstacles to the implementation of the *Guiding Principles* has to be set within the wider context that the vast majority of IDPs are to be found in countries and regions that are affected by a complex mixture of development, governance, human rights, and conflict-related challenges. Such challenges are both a cause and a consequence of internal displacement.[33] Nevertheless, there are three substantive sets of obstacles.

First, there is the absence, or limited capacity, of institutional frameworks such as special national agencies to address issues of emergency management and shelter-related issues for IDPs; the lack of any workable monitoring

(2005), *available at* http://domino.un.org/unispal.NSF/0/577d69b243 fd3c0485257075006698e6?OpenDocument.

[32] Inter-Agency Standing Committee [IASC], *Handbook on Housing and Property Restitution for Refugees and Displaced Persons. Implementing the "Pinheiro Principles* (2007), *available at* http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4693432c2.

[33] The Office of the UN High Commissioner for Refugees [UNHCR], *UNHCR's Role in Support of an Enhanced Inter-Agency Response to the Protection of Internally Displaced Persons*, Policy Framework and Corporate Strategy, Informal Consultative Meeting (Jan. 30, 2007).

mechanisms to oversee displacement operations and minimize harm; and the failure of states to involve affected communities and consult them in planning and policy-making.[34] The competing interests and policies of multilateral development institutions, donor agencies, and national governments further contribute to the weakening of the implementation of adequate shelter and settlement policies for IDPs and in following the standards that they attempt to lay down.

Second, a diverse range of multi-sectoral characteristics of shelter and settlement is unique among the arenas of humanitarian intervention and post-conflict/post-disaster reconstruction. These characteristics serve a rich nexus of needs and interests but are especially problematic in temporary phases of displacement. Shelter is a basic physical resource reflecting the narrowly defined output-driven, "bricks and mortar" model of much current practice.[35] Yet, it also serves a complex set of social, cultural, domestic, and personal needs represented by the variety of ways in which space is identified, ordered, and used.[36] Social meaning also intersects with shelter as a vital economic multiplier.[37] Housing (re-)construction is an on-going process in most

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[34] C.H. Davidson et al*., Truths and Myths about Community Participation in Post-disaster Housing Projects*, 31:1 HABITAT INTERNATIONAL (2007); Jennifer Hyndman, *The Securitization of Fear in Post-Tsunami Sri Lanka,* 97 ANNALS OF THE ASSOC. OF AM. GEOGRAPHERS 361-372 (2007); John Telford & John Cosgrave, *The International Humanitarian System and the 2004 Indian Ocean Earthquake and Tsunamis*, 31 DISASTERS 1.28 (2007).

[35] Jim Kemeny, *Housing and Social Structure: Towards a Sociology of Residence*, (University of Bristol Working paper No. 12, 1992).

[36] Kimberly Dovey, *Home and Homelessness in* HOME ENVIRONMENTS, HUMAN BEHAVIOUR AND ENVIRONMENT ADVANCES IN THEORY AND RESEARCH 39 (Irwin Altman & Joachim Werner eds., 1977*)*; Rachel Kallus, *The Political Role of the Everyday*, 8(3) CITY 341 (2004).

[37] Stephen Sheppard & Richard Hill, *The Economic Impact of Shelter Assistance in Post- Disaster Settings,* CHF International Report 156 (2005), *available at* http://www.chfhq.org/files/2136_file_EIES_final.pdf; UNITED NATIONS HUMAN

societies, especially for forcibly displaced populations, not simply an end-state package delivered by humanitarian agencies.[38] Shelter interventions intersect different program arenas (for example, community strategies and livelihoods) and different spatial and operational scales (from field level projects to national recovery and development strategies). The need for a holistic approach is a *sine qua non* of policy and practice in this sector.[39] These conceptual and operational challenges link to the final set of obstacles.

Third, in terms of implementation, the shelter sector is arguably the least successful despite recent improvements in defining principles and practices. Characteristic in the sector are: uncoordinated agency planning; conflicting mandates; inappropriate design solutions; lack of participation of affected populations; the "lumpy" nature of resources; and inadequate resettlement planning.[40] The division of responsibilities among various agencies, including IFRC as lead agency for IDPs in natural disasters and the Office of the United Nations High Commissioner for Refugees (UNHCR) as lead agency for IDPs in conflict situations, addresses some of these problems but inhibits generic learning.

In this respect, a barrier to implementation has been the reductionist approach of many actors involved in the sector and the failure to regard housing as a complex commodity with many attributes and levels of meaning. Only recently has this complexity been acknowledged in shelter policies and

SETTLEMENT PROGRAMME, THE CHALLENGES OF SLUMS: GLOBAL REPORT ON HUMAN SETTLEMENTS (2003).

[38] Saunders, G., *Dilemmas and Challenges for Shelter Sector: Lessons Learned from the Sphere Revision Process*, 28(2) DISASTERS 164 (2004).

[39] Zetter, R.W., *Land, Housing and the Reconstruction of the Built Environment*, *in* Barakat, S., ed., AFTER THE CONFLICT: RECONSTRUCTION AND DEVELOPMENT IN THE AFTERMATH OF WAR, 155-173. *See* also Zetter & Boano, *supra* note 1.

[40] ALNAP, *ALNAP Annual Review 2002*, *Humanitarian Action: Improving Performance through Improved Learning*, at 90, 95 (2002), *available at* http://www.alnap.org/AR2002/.

programs for forced migrants. As Zetter[41] has emphasized, although shelter is one of the basic needs of forced migrants, it must encompass far more than a physical commodity and the product of basic standards codified in operational guides.

REGULATORY FRAMEWORK

While much will obviously depend on local traditions, legal systems, and circumstances, it can generally be recommended that the legal issues of planned evacuation, shelter, and settlements, examined in this chapter, can best be addressed through integrating enacted laws with well-conceived policies for the three stages prior, during, and post displacement. The institutional organization discussed below should be a reference point for an articulated and coherent national framework which incorporates the main actors and defines, in strategic and if possible operational terms, their roles.

If temporary accommodation fills the gap between the immediate relief phase and the later reconstruction phase, this is an important phase in the disaster recovery process that requires strategic collaboration between governments, NGOs, and aid organizations.[42] Each disaster situation is unique. As such, it will need a unique set of appropriate actions. Finding the "best-fit" solution[43] for temporary accommodation means that emergency relief, rehabilitation, and

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[41] Zetter, R.W., *supra* note 39.

[42] Rita Jalali, *Civil Society and State: Turkey after the Earthquake*, 26(2) DISASTERS 122 (2002); Kathleen Tierney & James Goltz, *Emergency Response: Lessons Learned from the Kobe Earthquake* (Univ. of Delaware, Disaster Research Center Prelim. Paper No. 260, 1997); Economic and Political Weekly Research Foundation, *Marathwada Earthquake: Role of Donor Agencies and NGOs in Relief and Rehabilitation Operations,* Maharasthra Earthquake Rehabilitation Documentation Project, Report No. 5 at 1.

[43] Cassidy Johnson, *What's the Big Deal about Temporary Housing? Planning Consideration for Temporary Accommodation after Disasters: Example of the 1999 Turkish Earthquakes*, TIEMS Disaster Management Conference, Waterloo, Canada, 2002, *available at* http://www.grif.umontreal.ca.

development response mechanisms need to be integrated and planned for in a holistic and coordinated manner.[44]

To determine the "best-fit" temporary accommodation solution for the particular disaster, both pre-disaster preparedness planning and immediate post-disaster assessment are necessary. Preparedness should aim at ensuring that the necessary institutional structures, resources, and information are in place prior to the disaster, or that they can be obtained promptly when needed. However, "even if preparedness is good, it does not follow that managing a disaster will also be good…good planning does not automatically translate into good managing."[45] Since each disaster situation is unique, it follows that the preparedness plan must be adapted and modified after the disaster to ensure the "best-fit" solution for the particular disaster situation.

SUBSTANTIVE AND PROCEDURAL ELEMENTS OF STATE REGULATION

Prior to Displacement

States affected by internal displacement differ in terms of their historical experience, institutional framework, and management capacity related to emergency evacuation and emergency shelter. Some have established effective emergency management frameworks, while others may have limited or no prior experience and must devise the frameworks from scratch, often in the context of an interim constitution and a transitional institutional framework.

First, recourse should be made to national laws and the policy and institutional frameworks which derive from them. This is because many states have laws that are relevant to this sector and which are applicable without discrimination to national populations as a whole, including IDPs. On the legal front, for example, many national constitutions and *ad hoc* legal instruments assure the

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[44] *Id*.

[45] Enrico L. Quarantelli, *Converting Disaster Scholarship into Effective Disaster Planning and Managing: Possibilities and Limitations*, 11 INT'L J. OF MASS EMERGENCIES AND DISASTERS 15-39 (1993).

right to adequate housing and adequate temporary accommodation. These set out pre-displacement norms. National law on disaster risk reduction is also the key instrument addressing the procedural issues of enforcement of existing laws, inter-ministerial collaboration, and ensuring community involvement, particularly in early warning and disaster management.

Next, an integrated approach to substantive issues, prior to displacement, is essential. This reinforces the need for a multilayered institutional capacity for disaster management to be established, with formal recognition of the role of various public, private, and nongovernmental stakeholders. Crucial in this period is an effective functioning partnership among the stakeholders and a culture of collective decision-making in planning, resource-sharing, and developing capacity for implementing disaster management policies and programs in an integrated and transparent way. Moreover, an effective institutional framework is needed to implement prevention, preparedness, response, and recovery phases of disaster management through the development of local action plans. In this context, promoting education, public awareness, and training at the community level by local authorities[46] plays an important role.

The experience in the evacuation of people from villages along the slopes of the Tungurahua volcano in Ecuador in 2000 has shown the problems that can occur where there are deficiencies in pre-displacement planning with uncoordinated mass evacuation implemented with the use of military forces.[47] Contrarily, evacuation experiences in Cuba[48] offer a positive experience of evacuation policies through a detailed and localized pre-displacement capacity. In 1998, during Hurricane George, 818,000 persons were evacuated

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[46] Jeroen Warner & Maria Teresa Orè, *El Niño Platforms: Participatory Disaster Response in Peru,* 30(1) DISASTERS 102-117 (2006).

[47] Graham A. Tobin & Linda M. Whiteford, *Community Resilience and Volcano Hazard: the Eruption of Tungurahua and Evacuation of the Faldas in Ecuador*, 26(1) DISASTERS 36 (2002).

[48] Holly Sims & Kevin Vogelmann, *Popular Mobilization and Disaster Management in Cuba*, 22(3) PUBLIC ADMIN. & DEV. 389-400 (2002).

in seventy-two hours with no lives lost in the hurricane.[49] This experience reinforces the need for a register of public building or structures that could serve as emergency accommodation/evacuation centers. Similarly, mapping exercises should allow planners to designate areas for evacuation.[50]

In order to ensure that integrated structures are in place prior to displacement in Central America,[51] some governments have recently initiated the development of national legislation to deal with disaster situations. With the same objectives, Indonesia has recently proposed a new disaster management bill to its parliament, and the governments of Sri Lanka[52] and India[53] recently adopted new disaster bills.

During Displacement

Five procedural elements or requirements form the backbone of state regulation of shelter during displacement.

The first requirement is establishing standards for shelter and settlement practices. These practices are now reasonably well understood and

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[49] A. Snow, *Highly Organized Evacuation Procedures Saved Lives in Cuba*, ASSOCIATED PRESS, Oct. 2, 1998.

[50] Office of the Coordination of Humanitarian Affairs [OCHA], *Exploring Key Changes and Developments in Postdisaster Settlement, Shelter and Housing*, at 52 (2006).

[51] Ley de la Coordinadora Nacional para la Reducción de Desastres. 109-96 (Guatemala); Ley de Contingencias Nacionales, decreto n. 9-90-E (12/12/1990), GACETA NO.26348 DEL 25/01/1991 (Honduras); Ley 337 in Nicaragua; Ley, n. 7, resolución n. 28 (De 11 de febrero de 2005) (Panama).

[52] Disaster Management Act No. 13 of 2005, Gazette Extraordinary No 1412/31, Sept. 29, 2005 (Sri Lanka).

[53] Disaster Management Bill 2005, Bill No. LV of 2005, Dec. 12, 2005 (India).

elaborated[54] in many manuals.[55] In the past decade there has been commendable progress in the degree to which physical protection needs have been incorporated into assistance projects and technical areas such as the physical layout of shelter, settlements, water, and sanitation facilities. The *UNHCR Handbook for Emergencies* stresses the importance of preserving the original family and community structures as key elements of protection. Standards should be introduced to avoid further vulnerability.

In terms of shelter provision and security, and in accordance with the *Sphere Handbook*,[56] UNHCR endorsed as standard the concept of "adequate dwelling" in camps and settlements. UNHCR advocates that shelters should:

- provide a covered area that affords dignified living space with a degree of privacy;
- have sufficient thermal comfort with ventilation for air circulation;
- provide protection from the elements and natural hazards; and
- ensure that inhabitants, especially women or groups with special needs, are not disadvantaged due to poor accommodation design; physical safety should be a prime concern. [57]

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[54] The Office of the UN High Commissioner for Refugees [UNHCR], *Handbook for Emergencies* (1999), *available at* http://www.unhcr.org/cgi-bin/texis/vtx/publ/opendoc.pdf?tbl=PUBL&id=3bb2fa26b [hereinafter UNHCR Handbook for Emergencies]; *see also* SPHERE PROJECT, *supra* note 27; Norwegian Refugee Council, *Camp Management Toolkit* (2004), *available at* http://103220.c.telecomputing.no/publisher/arch/_img/9069531.pdf [hereinafter Camp Management Toolkit]; *see also* TOM CORSELLIS & ANTONELLA VITALE, TRANSITIONAL SETTLEMENT: DISPLACED POPULATIONS (2005).

[55] UNHCR Handbook for Emergencies, *supra* note 54, at 144.

[56] *See* SPHERE PROJECT, *supra* note 27.

[57] The Office of the UN High Commissioner for Refugees [UNHCR], *Practical Guide to the Systematic use of Standards and Indicators in UNHCR Operations*, at 53 (2006); *see also* Zetter & Boano, *supra* note 1.

In this context, a neighborhood planning concept should be adopted in the design and layout of camps and settlements to promote a sense of community and reinforce community-based protection[58] while also preserving the privacy of the family unit.[59]

The IASC Guidelines[60] stress the importance of providing adequate material for partitions between family dwelling units, especially in communal accommodation, in order to increase security and privacy. Appropriate lighting and security are also basic requirements. Recent reports on tsunami-affected villages in Aceh document threats to women's security in communal temporary shelters[61] with incidents of sexual assault reported, for example, in poorly lit toilets, because the guidelines had not been followed by local authorities and NGOs.[62]

The second requirement is co-ordination, which is essential for all shelter interventions. In Indonesia, after the tsunami, the disaster response for the

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[58] Inter-Agency Standing Committee, *Guidelines for Gender-based Violence Interventions in Humanitarian Settings Focusing on Prevention of and Response to Sexual Violence in Emergencie*s, at 54 (2005) [hereinafter IASC Guidelines]; Andrew Chalinder, *Temporary Human Settlement Planning for Displaced Populations in Emergencies*, GOOD PRACTICE REVIEW (1998).

[59] CORSELLIS & VITALE, *supra* note 54, at 390.

[60] *See* IASC Guidelines, *supra* note 58.

[61] The report indicates that almost 90 percent of women interviewed were dissatisfied with their accommodation because of inadequate facilities, poor access to public services, insufficient sanitation, and lack of designated washing areas for sanitary cloths used during menstruation. Moreover, each family was provided a single room without internal partitions, decreasing privacy.

[62] Oxfam, *A Place to Stay, a Place to Live: Challenges in Providing Shelter in India, Indonesia, and Sri Lanka After the Tsunami*, Oxfam Briefing Note (Dec. 14, 2005), *available at* http://oxfam.intelli-direct.com/e/d.dll?m=234&_url=http://www.oxfam. org.uk/what_we_do/issues/conflict_disasters/downloads/bn_tsunami_shelter.pdf.

habitat sector was initially coordinated by the National Development Planning Agency (BAPPENAS), in cooperation with the Ministry of Public Works (MPW). But after the establishment of the Aceh and Nias Rehabilitation and Reconstruction Agency (BRR) in May 2005, strategy formulation was handed over to BRR.[63]

A third requirement is grafting short-term shelter needs with long-term shelter strategies. In the post-tsunami Indonesian case, the prime issue was whether temporary structures were a necessity in the light of slow progress on reconstruction, or, conversely, a wasteful use of available resources. It has been argued that these resources could have been used for more permanent or incrementally upgradeable solutions. The need to graft short- term temporary needs to longer term strategies is underscored by the fact that disaster-affected populations had to be moved from tents which were rapidly decaying in the scorching tropical sun and rains.[64]

The fourth requirement is deciding on the location of settlements during displacement and understanding the implications for the durable solution phase. General principles have been long established here, but often forgotten. The affected population's priorities and problems, where compulsory evacuation takes place and contingent on feasibility, should be governed by factors such as:

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[63] BRR was established by Government Regulation No. 2/2005, on April 28, 2005. This Government Regulation, established under a state of emergency, was then made Law No. 10/2005. This law emphasized the agency's responsibility to redevelop Aceh and Nias, with its two principle assignments being to manage projects funded by the Indonesian Government's National Annual Budget (APBN) and to coordinate projects funded by donors and foreign NGOs. Based on Presidential Regulation No. 70/2005, BRR can directly appoint housing contractors to supply shelters and homes for the people of Aceh and Nias. BRR, B*uilding a Land of Hope: One Year Report Executing Agency of the Rehabilitation and Reconstruction Agency for Aceh and Nias*, at 13 (Apr. 2006).

[64] Florian Steinberg, *Housing Reconstruction and Rehabilitation in Aceh and Nias, Indonesia—RebuildingLives*, 31(1) HABITAT INT'L 155 (2007).

- remaining as close as possible to damaged homes and means of livelihood (as in the case of the Balkans and Sri Lanka);
- staying, where possible, in homes of families or friends;
- improvising temporary shelters close to damaged homes (as in Kosovo, Balkans, Pakistan);
- occupying temporarily requisitioned buildings; and
- permitting emergency shelter, such as tents, next to damaged homes.[65]

Although there is frequently the official desire to clear people away from affected regions, the desire of the displaced is to remain as near as possible to damaged homes or locations from which they have been forcibly displaced. Neglecting the benefits from a more flexible and adaptable procedural response to displacement will often:

- make distribution of supplies and services more difficult;
- reduce possibilities of families salvaging materials;
- create an artificial need for temporary shelter;
- create "refugee-like" situations;
- reduce the capacity of surrounding communities to assist;
- retard reconstruction; and
- retard psychological recovery.[66]

Of course, general principles on location for temporary settlements will be governed by local conditions. Thus, to avoid recreating tsunami vulnerability, exclusion zones for coastal redevelopment[67] were mandated in Sri Lanka and,

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[65] United Nations Disaster Relief Organization [UNDRO], *Shelter After Disaster: Guidelines for Assistance*, at 6 (1982).

[66] *Id*. at 22.

[67] Prior to the tsunami, the area adjacent to the coast was densely populated and was regulated by the Coast Conservation Act No. 57, passed in 1981. Regarding the post-tsunami buffer zone, see *TAFREN: Post-Tsunami Recovery and Reconstruction*

to a lesser extent, in Aceh. These were, however, subject to inconsistent and arbitrary changes, which meant that many new transitional settlements were built after March 2005, but without clear plans for permanent settlement and shelter since the coastal land available for permanent settlement was not clearly designated.[68]

The fifth procedural element or requirement is the active participation of the displaced people in reconstructing their own homes and communities is a *sine qua non* of procedural requirements during displacement. Evidence from Sri Lanka shows that this not only contributes to improved results, but also provides a psychological boost to post-disaster mental health recovery. Providing secure shelters also helped to support livelihoods, for example, by providing a place for storing tools and materials while land security assisted in securing cash grants or bank loans for construction and for restarting livelihoods.[69]

Turning to more substantive elements of state regulation, physical, social, and legal protection[70] is at the heart of responsibility towards IDPs in this phase[71] and should result in a "comprehensive approach that integrates protection with assistance and includes steps to defend the physical safety and rights of [the] displaced."[72] Thus, a national response needs to be inclusive, covering all

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Strategy (2005), *available at* http://www.tafren.gov.lk/portal/resources/pdf/ TAFREN _P-TRRS_May05.pdf.

[68] Jim Kennedy et. al., *Post-tsunami Transitional Settlement and Shelter: Field Experience from Aceh and Sri Lanka*, 37 HUMANITARIAN EX. MAGAZINE 28-31 (Mar. 2007).

[69] *Id.*

[70] UNHCR Handbook for Emergencies, *supra* note 55.

[71] Patricia Weiss Fagen, *Protecting Refugee Women and Children*, 41(1) INT'L MIGRATION 77 (2003).

[72] Roberta Cohen, *Strengthening Protection of IDPs: The UN's Role*, LAWS & ETHICS 108 (Winter/Spring 2006).

situations of internal displacement and groups of IDPs and a range of interpretations of protection, without discrimination.[73] Specifically, a non-discriminatory national response should apply to "all persons fitting the definition of IDPs found in the *Guiding Principles*."[74]

With respect to physical safety, encampment is a widespread temporary expedient, premised on the potential to provide effective protection as well as the efficient delivery of large scale material needs. In Uganda, camps were established for IDPs according to the directives of Uganda's National Policy for IDPs, adopted in 2004.[75] This stressed the duty of the government to protect its citizens against arbitrary displacement and, in case of displacement, to provide for the protection and assistance of IDPs by setting guidelines to be observed by government institutions, local and international humanitarian organizations, and NGOs involved in upholding the rights and entitlements of IDPs through all the phases of displacement.

Second, material needs are, of course, a major substantive element or consideration during displacement. Uganda's National Policy for IDPs states that the government, supported by humanitarian/development agencies, shall provide basic shelter and housing to IDPs. [76] Section 3.9.1. a. and b. further provide that the government will ensure that the "physical and primary social needs of individuals, families and communities for safety, security and privacy are sufficiently met" and that "shelter and housing facilities are within

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[73] ICCPR, *supra* note 10, arts. 2, 26; ICESCR, *supra* note 10, art. 2; Universal Declaration, *supra* note 9, art 2.

[74] The Brookings Institution, *Addressing Internal Displacement: A Framework for National Responsibility,* at 9 (2005).

[75] Office of the Prime Minister, Department of Disaster Preparedness and Refugees, *The National Policy for Internally Displaced Persons* (Aug. 2004), *available at* http://www.brookings.edu/projects/idp/Laws-and-Policies/~/media/Files/Projects/IDP/Laws%20and%20Policies/Uganda/Uganda_IDPpolicy_2004.pdf [hereinafter Uganda's National Policy for IDPs].

[76]*Id* at § 3.9.1.

proximity to local infrastructure and strategically placed for IDPs for easy access to food, water, firewood, medical facilities and other basic necessities."[77]

Third, the needs of particular groups within the IDP population must be considered during displacement. A national framework should address the needs of "women, unaccompanied minors, persons with disabilities, and the elderly."[78] Regardless of the form of shelter provision, within this specific protection right, shelters should comply with UNHCR's "adequate dwelling" standard in the Practical Guide to the Systematic Use of Standards and indicators in UNHCR Operations.

The need for privacy in the dwelling (and beyond), for women, is widely stressed. Lack of privacy was noted as the biggest deprivation experienced by encamped Afghan women.[79]

Shelter density is an important consideration both in this context and in relation to proximity to services such as water and food distribution points and latrines. Afghan women refugees from rural areas, who had relative freedom of movement before displacement, found the overcrowded and confined nature of high density camps dramatically and adversely affected their daily lives and social wellbeing.[80]

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[77] Boltzmann Institute, *Implementing the Guiding Principles on Internal Displacement on the Domestic Level* (June 2005), *available at* http://www.brookings.edu/idp (offering an analysis of domestic legislation, policies, and recommendations on areas for further research).

[78] The Brookings Institution, *supra* note 74, at 9.

[79] Nancy Hatch Dupree, *The Women of Afghanistan* (Swedish Committee for Afghanistan, with Support from the UN Co-ordinator for Afghanistan) *in* Sultan Barakat & Garteh Wardell, *Exploited by Whom? An Alternative Perspective on Humanitarian Assistance to Afghan Women,* 23(5) THIRD WORLD QUARTERLY 909-930 (2004).

[80] Barakat & Wardell, *supra* note 79.

Fourth, temporary housing solutions, and notably collective centers, barracks and, camps are emblematic of the shelter-during-displacement phase. Experience points to many challenges which need to be addressed and confirms that collective centers are especially problematic in transitional situations. In Georgia, almost 44 percent of all registered IDPs are living in one of the more than 1,500 remaining collective accommodation centers. The abject poverty in these centers contrasts with the situation of IDPs living with host families. Around 70 percent of these centers do not meet minimum standards, with inadequate access to clean water, unsafe electric systems, and insufficient insulation.[81] Conditions are not in accordance with the right to an adequate standard of living, and some collective centers are located in relative isolation, forcing children to walk several kilometers to school and complicating access to health care, particularly for the elderly.[82]

Special attention is also required for urban IDPs, such as in Colombia, where informal settlements on the outskirts of cities now house tens of thousands of IDPs and are growing daily as newly displaced families move in and set up their own makeshift homes. As a rule, housing conditions in these informal communities are grossly inadequate. Overcrowding and a lack of basic services are the day-to-day reality. In many such communities, the problems are compounded by a lack of personal security and privacy and inadequate or even no access to employment, schools, and healthcare facilities.

In the Context of Durable Solutions

By its nature, humanitarian assistance, and specifically emergency shelter and settlements, are meant to be a temporary solution for a crisis situation. However, IDPs often find themselves in an ongoing humanitarian crisis,

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[81] Internal Displacement Monitoring Centre/Norwegian Refugee Council, *Profile of Internal Displacement: Georgia* (2005).

[82] Representative of the Secretary-General, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons (Addendum, Mission to Georgia)*, submitted pursuant to Commission on Human Rights resolution, at 12-13, ¶ 14(c), E/CN.4/2006/71/Add.7. 24 (Mar. 24, 2006).

particularly in chronic conflict situations where continued fighting blocks the ability to resume normal paths of development. Moreover, it is plain that return and resettlement can often be impossible in practice without some transitional assistance. On the other hand, overextended periods of humanitarian assistance can lead to dependency and undermine the resilience of recipients.[83]

As expressed in the Brookings Institution's publication, *Addressing Internal Displacement: A Framework for National Responsibility* (the Framework for National Responsibility), [84] such responsibility "extends across all phases of displacement. It includes preventing arbitrary displacement, ensuring the security and well being of persons once they are displaced, and creating the conditions for durable solutions to their plight, namely through voluntary and safe return or resettlement and reintegration." The links between emergency relief and the longer term development needs of forcibly displaced populations poses complex operational challenges for agencies working in the shelter sector, and contradictory technical, and political demands.[85] This is because shelter provision in humanitarian situations does not just serve temporary needs. Structures and communities often remain in place far longer than anticipated and represent durable physical assets which serve longer term recovery and development objectives, especially for returnee populations.[86]

In the shelter policy that UNHCR established in Sri Lanka, it was clear that the agency would not be engaged in permanent shelter. However, it took active steps to liaise with agencies working in this area. Its focus on standards

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[83] International Federation of Red Cross and Red Crescent Societies [IFRC], *World Disaster Report 2004: Focus on Community Resilience,* at 28-29 (2004).

[84] The Brookings Institution, *supra* note 74, at 9.

[85] Margie Buchanan-Smith & Paola Fabbri, *Links between Relief, Rehabilitation and Development in the Tsunami Response: A Review of the Debate* (2005), *available at* http://www.tsunami-evaluation.org/NR/rdonlyres/F3802701-9EF5-4D4C-AF32-D6B12B254313/0/lrrd_review_debate.pdf.

[86] *See* Zetter, *supra* note 39.

and quality and the success with the transitional shelter program, meant that agencies involved in permanent shelter were given adequate time to prepare and implement a well designed program. The success of the transitional shelter program allowed those agencies involved in permanent shelter the time to develop community-based approaches.[87] This experience appears to underscore the vital need for agencies involved in the different phases to be fully coordinated. Even so, there were some major gaps, notably in information-sharing with affected communities. The experience of Somalia's IDP settlements in Bosasso might be considered a good example of both field shelter coordination and upgrading and regularization of uncontrolled sprawl of numerous densely populated informal and formal (re-)settlement areas.[88]

The scope of shelter assistance, in addition to physical provision, must also be addressed in the context of durable solutions. Existing IDP laws in many countries provide strict limits on the amount of finance provided. For example, Russia's Law on Forced Migrants provides for a "one-off cash allowance per...member of the family…in keeping with the procedure established by the government of the Russian Federation, but not less than a minimum salary established by the federal law," one-time assistance with transportation to a place of temporary accommodation, longer-term temporary accommodation, and ongoing free medical assistance and medication (up to the limit of the forced migrant status, which is set at a maximum of five years).[89]

While very specific limits such as these may not always be appropriate, laws and policies that do not provide details about how much aid will be provided can lead to uncertainty and a lack of specific commitment. On balance,

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[87] *Id* at 16.

[88] UN Habitat, *The Story of the Tawakal IDP Settlement and the Lady who Planned It,* 5 SUDP NEWSLETTER 4 (May 2007).

[89] *See* Law of the Russian Federation on Forced Migrants, *available at* http://www.brookings.edu/projects/idp/Laws-and-Policies/~/media/Files/Projects/IDP/ Laws%20and%20Policies/Russia/Russia_Law%20Forced%20Migrants.pdf and http://www.brookings.edu/projects/idp/Laws-and-Policies/~/media/Files/Projects/IDP/ Laws%20and%20Policies/Russia/Russia_AmendedLawNo202%20FZ.pdf.

reasonable limits on the amount and timing of assistance are appropriate so long as (1) they are closely tied with rehabilitation and resettlement assistance initiatives—in particular help with establishing a livelihood—such that IDPs can reasonably be expected to provide for themselves and (2) they retain enough flexibility to account for situations where ongoing crisis make rehabilitation impossible for a specific period of time.[90]

Another dimension is the use of social housing schemes which, although not a common current practice, may offer some potential for IDP housing in the context of durable solutions. Recent experience comes from Azerbaijan[91] and Serbia.[92] In 2002, the Government of Serbia adopted the National Strategy for Resolving the Problems of Refugees and Internally Displaced People.[93] It focused on ensuring the conditions for repatriation of refugees and IDPs and activities for providing conditions for local integration, recommending the development of both social housing and affordable housing.

Procedurally, a gender sensitive approach is fundamental for durable solutions in the shelter sector. Clearly, the role of shelter and settlement as a developmental resource, and its scope in embracing multiple issues and options, offers substantial potential to empower displaced women. Indeed, this is a consistent theme running through this chapter. As we have seen, women prioritize different needs for shelter, settlement, and infrastructure due to different gender roles in the division of labor and perceptions of well being. However, empowerment depends on effective participation and the

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[90] *See* chapter 3, *supra*.

[91] Azer T. Khanlarov, *Social Housing in Azerbaijan*, paper presented at UNICE Social Housing Conference in Vienna, Austria, Nov. 28-30, 2004.

[92] Vladimir Macura & Zlata Vuksanovic, N*ew Approach to Social and Functional Mix in Housing of Belgrade After 2000*, paper presented at UNICE Social Housing Conference, Vienna, Austria, Nov. 28-30, 2004.

[93] For more information, see the Government of Serbia's Poverty Reduction Strategy, *available at* http://www.prsp.sr.gov.yu/dokumenta.jsp.

representation of gendered needs. The positive rhetoric is poorly borne out in practice which, most usually, offers consultation rather than participation.[94]

INSTITUTIONAL ELEMENTS OF STATE REGULATION

Responsibility for assisting IDPs lies first with national authorities. Institutional elements of state regulation that are in place with regard to planned evacuation, shelter, and settlements are generally addressed by recalling the concept of "adequate housing" in different state constitutions. Directly regarding planned evacuation, institutional elements should be provided under specific laws or policies. Fewer countries have specific regulations focused on the situation of IDPs. Institutionally, despite the fact that there is no "best fit" solution, it is advantageous to have a centralized coordination policy and strategic agency as in the examples of the Philippines, Peru, Jamaica, and Cuba.[95]

Prior to Displacement

The first priority for action of the Hyogo Framework[96] not only commits states to make disaster risk reduction a priority, but also to give it "a strong institutional basis for implementation." To do this, it recommends the creation of "multi-sector national platforms," meaning "national mechanisms for coordination and policy guidance on disaster risk reduction that need to be multi-sectoral and inter-disciplinary in nature, with public, private and civil society participation involving all concerned entities within a country [including UN agencies present at the national level, as appropriate]."[97] To

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[94] Zetter & Boano, *supra* note 1, at 16.

[95] Sims & Vogelmann, *supra* note 48, at 390; Osei, P.D. (2007); Warner & Orè, *supra* note 46, at 104.

[96] International Strategy for Disaster Reduction [ISDR], Hyogo Framework for Action 2005-2015: ISDR International Strategy for Disaster Reduction, Extract from the final report of the World Conference on Disaster Reduction, A/CONF.206/6, Kobe, Japan, 18-22 Jan. 2005 [hereinafter ISDR].

[97] *Id*. at 9-11.

date, thirty-five countries have developed such national platforms.[98] In addition, it has been recommended that governments incorporate responsibilities for disaster management into institutional arrangements for disaster relief and recovery to ensure an "holistic response." A number of states such as India,[99] Nicaragua,[100] and Nigeria[101] have proceeded along these lines in recent years. A number of governments have included mechanisms to foster risk reduction strategies and activity in an overall disaster response policy and legislation.[102] In Asia, the Philippines is considering new legislation to widen the scope of its Office of Civil Defense and National Disaster Coordination Council, whereas Vietnam is currently expanding the Disaster Management Unit.[103] All of these legislative frameworks provide for planned evacuation.

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[98] Sálvano Briceño, *Progress on the Implementation of the Hyogo Framework for Action 2005-2015*: *Building the Resilience of Nations and Communities to Disasters* (Powerpoint Presentation to the ISDR ECOSOC Side Event, July 19, 2006), *available at* http://www.unisdr.org/eng/isdr-system/docs/1.

[99] Disaster Management Act of 2005, *available at* http://www.ifrc.org/what/disasters/idrl/publication.asp.

[100] Ley Número 337, Ley Creyadora del Sistema Nacional para la Prevención, Mitigación, y Atención de Desastres, art. 15 (Nicaragua), *available at* http://www.ifrc.org/what/disasters/.idrl/publication.asp.

[101] National Emergency Management Agency (NEMA), *Nigeria: Promoting Disaster Risk Reduction in Post Disaster Recovery and Reconstruction Efforts*, (Powerpoint Presentation to the ISDR ECOSOC Side Event, July 19, 2006), *available at* http://www.unisdr.org/eng/isdr-system/docs/1.

[102] Hyogo Framework for Action 2005-2015, Building the Resilience of Nations and Communities to Disasters, *available at* http://www.unisdr.org/eng/hfa/hf-implemt-states.htm.

[103] International Strategy for Disaster Reduction [ISDR], *Living with Risk: A Global Review of Disaster Reduction Initiatives* (2004).

During Displacement

Evidence similarly reinforces the need for multi-level co-ordination of government institutional capacity during displacement. National disaster and emergency laws and policies should clearly specify roles and responsibilities of different ministries at the national level, as well as provincial and local administrative structures.

At the national level, both a central executive office and a committee or commission, frequently including one high level policy-making body and one or more technical committees, are usually necessary to coordinate the contributions that inevitably must be made by a number of different ministries.[104] The case of Nicaragua with the National System for the Prevention, Mitigation and Response to Disasters (SINAPRED) might be a relevant example of an institutional framework with parallel committees and executive disaster offices at the national, regional, and municipal levels.[105] With specific reference to the situation of IDPs, Law 387 of 1997 in Colombia established the National Council for Comprehensive Assistance to Populations Displaced by Violence which is an inter-ministerial body responsible for the functioning of the National System for Comprehensive Assistance to Populations Displaced by Violence.[106]

Second, the role of the police and armed forces can become crucial institutional components not only in responding to the social and material

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[104] Disaster Management Training Programme, *The Role and Responsibilities of the United Nations Disaster Management Team,* Aug. 20, 2002, *available at* http://www.undmtp.org/english/roles/role.pdf.

[105] Decreto No. 53-2000, Reglamento de la Ley Número 337, Ley Creyadora del Sistema Nacional para la Prevención, Mitigación, y Atención de Desastres (Nicaragua), *available at* http://www.ifrc.org/what/disasters/idrl/publication.asp.

[106] Law 387 of 1997, Diario Oficial [Official Gazette] No. 43,091 of July 24, 1997, art. 6, *available at* http://www.brookings.edu/projects/idp/Laws-and-Policies/~/media/Files/Projects/IDP/Laws%20and%20Policies/Colombia/Colombia_Law387_1997_Eng.pdf.

needs of temporarily displaced populations (a role which is well developed in recent decades), but also in cases of ongoing or chronic conflict. The issues here are the needs for protection and the logistical support that the police and military can provide. These issues should be addressed as a matter of national law or policy and co-ordination should take place though multilateral and bilateral agreements between the agencies.[107] The IASC's Reference Paper, Civil-Military Relationship in Complex Emergencies,[108] is one of the most comprehensive tools on the subject and spells out a common understanding on when and how, as well as how not, to coordinate with the military in fulfilling humanitarian objectives.[109]

The tsunami disaster response raised the profile and importance of military logistical assistance as part of the overall architecture of response.[110] This experience brought urgency to the need to promote mutual understanding of respective mandates, capabilities, and limitations through joint training and exercises, and developing further joint field-level procedures. The operational complexity of responding to a disaster of such magnitude, and its geographic spread, compelled the use of foreign military resources as well for those countries requesting assistance. Their support was considered vital.[111] Despite the contributions of national and international military forces in disaster

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[107] The Use of Military and Civil Defense Assets in Disaster Relief—"Oslo Guidelines" (Nov. 2006), *available at* http://www.reliefweb.int/rw/lib.nsf/db900SID/AMMF-6VXJVG?OpenDocument.

[108] The paper was endorsed by the IASC in June 2004 and is available at: http://www.reliefweb.int/rw/lib.nsf/db900sid/PANA-7CTJ8U/$file/iasc_jun2004.pdf?openelement.

[109] Manuel Bessler & Kaoruko Seki, *Civil-Military Relations in Armed Conflicts: A Humanitarian Perspective*, 3(3) LIAISON 4-10 (2006).

[110] Tsunami Evaluation Coalition, Coordination of International Humanitarian Assistance in Tsunami-affected Countries, at 46 (July 2006), *available at* http://www.ifrc.org/docs/pubs/updates/tec-coordination-summary.pdf.

[111] UN Agency and NGO presentations, Cobra Gold 2005 Disaster Relief Workshop.

situations, where there is also ongoing conflict such as in Sri Lanka and Indonesia, the military support to humanitarian organizations and interventions in these countries inevitably remains problematic.[112]

In the Context of Durable Solutions

There is sometimes a shift of responsibility among ministries or levels of government when the relief phase is declared over and the shift to a more mid-to-long term recovery program takes place. Any change in institutional focal points and responsibility for relief and recovery should ensure that necessary facilities, coordination, and monitoring remain available through the rehabilitation and recovery phase for all the actors, whether these are domestic or international.

INTERNATIONAL ROLE

Crucial in understanding the international role in planned evacuation, shelter and, settlements is the new cluster approach adopted in the UN in the Humanitarian Reform Review. The Inter-Agency Standing Committee (IASC) has welcomed the cluster approach and in December 2005 adopted IASC Principles which designated global cluster leads in nine areas of humanitarian activity where there was considered to be a need to reinforce response capacities. In December 2006, the IASC Principles endorsed the IASC Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response.[113] Within this framework, the Emergency Shelter Permanent Cluster Working Group (the Emergency Shelter Cluster) was created. The purpose of the Emergency Shelter Cluster [114] is to assist national governments,

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[112] Philippe LeBillon & Arno Waizenegger, *Peace in the Wake of Disaster? Secessionist Conflicts and the 2004 Indian Ocean Tsunami*, 32(3) TRANS. OF THE INST. OF BRITISH GEOGRAPHERS 411-427 (2004).

[113] Inter-Agency Standing Committee [IASC], *Guidance Note on Using Cluster Approach to Strengthen Humanitarian Response* (2006), *available at* http://ocha.unog.ch/humanitarianreform.

[114] Current members: UNHCR (chair for displacements due to conflict), IOM, UNICEF, WFP, UNDP, OCHA, OHCHR, IDD, UN-HABITAT, IFRC is convener of

through the country teams, to improve humanitarian action vis-à-vis emergency shelter provision in emergency settings.

The cluster system has great potential, but there remains the risk that issues that involve multiple players will still constitute a significant gap. Examples are protection of the vulnerable and the particular needs of IDPs when major problems still exist in the shelter sector,[115] such as in the aftermath of the Pakistan earthquake[116] and the tsunami.[117]Also, sharing of knowledge and experience between the clusters may be inhibited unless clear structures for collaboration exist. A number of major international organizations and agencies share responsibility and involvement in various dimensions of shelter and settlement for forcibly displaced populations, including IDPs.

UNHCR

The Office of the United Nations High Commissioner for Refugees (UNHCR) protects and assists refugees, asylum seekers, and stateless persons.[118] Recently, UNHCR's mandate has been expanded to include the protection of

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the Emergency Shelter Cluster in disaster situations, and CRS representing ICVA/SCR/InterAction.

[115] United Nations, Secretary-General's High-level Panel on UN System-wide Coherence in the Areas of Development, Humanitarian Assistance, and the Environment, *Transition from Relief to Development: Key Issues Related to Humanitarian and Recovery/Transition Programmes,* at 3 (May 8, 2006).

[116] Action Aid, *The Evolving UN Cluster Approach in the Aftermath of the Pakistan Earthquake: an NGO Perspective* (2006), *available at* http://www.actionaid.org /docs/un_cluster_approach.pdf.

[117] *See* Tsunami Evaluation Coalition Home Page, http://www.tsunami-evaluation.org.

[118] *See* Statute of the Office of the United Nations High Commissioner for Refugees, *available at* http://www.unhcr.org/cgi-bin/texis/vtx/excom/opendoc.htm?tbl=EX COM&id=3ae69ee64.

IDPs.[119] Moreover, UNHCR's leading role, and its long standing experience in the shelter sector, is fundamentally important for its leadership.

UNDP

The United Nations Development Programme's (UNDP) Bureau of Crisis Prevention and Recovery (BCPR)[120] has initiatives focused on the prevention of conflict, disaster risk reduction, and recovery and reintegration. It has an extensive advisory service in the area of disaster risk reduction, disaster prevention, and recovery. The work of BCPR bridges the humanitarian phase of a post-crisis response and the long-term development phase following recovery. BCPR is also an advocate for crisis sensitivity, working to ensure that all UNDP's long-term development policies and programs address the risks and opportunities related to disaster reduction and conflict prevention. UNDP recently has been involved in the Early Recovery Cluster, which includes some traditional relief and assistance sectors (water and sanitation, nutrition, health, emergency shelter); service provision (emergency telecommunications, logistics); and cross-cutting issues (camp coordination, early recovery and protection).[121]

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[119] The Office of the UN High Commissioner for Refugees [UNHCR], *UNHCR's Expanded Role in Support of the Inter-agency Response to Situations of Internal Displacement: Report of Lessons Learned and Effective Practice Workshop*, PDES/2006/06 (Nov. 2006); The Office of the UN High Commissioner for Refugees [UNHCR], *Policy Framework and Corporate Strategy: UNHCR's Role in Support and Enhanced Inter-agency Response to the Protection of Internally Displaced Persons*, Informal Consultative Meeting, at 30 (Jan. 2007).

[120] *See* International Strategy for Disaster Reduction Home Page, http://www.unisdr.org.

[121] *See* Early Recovery Home Page, http://ocha.unog.ch/humanitarian reform/Default.aspx?tabid=80.

IOM

The International Organization for Migration (IOM) has developed significant expertise in shelter interventions. IOM provides transportation and emergency humanitarian assistance to persons requiring evacuation from emergency situations as well as post-emergency movement assistance, including to internally displaced persons, demobilized soldiers, and persons affected by natural disasters.

UN Habitat

The United Nations Human Settlements Programme (UN-HABITAT) is the UN agency for human settlements. It is mandated by the UN General Assembly to promote socially and environmentally sustainable towns and cities with the goal of providing adequate shelter for all. UN-HABITAT also has some 154 technical programs and projects in sixty-one countries around the world, most of them in the least developed countries. These include major projects in post-war societies such as Afghanistan, Kosovo, Somalia, Iraq, Rwanda, and the Democratic Republic of Congo, and recently in post-tsunami Indonesia.[122] The agency's operational activities help governments create policies and strategies aimed at strengthening a self-reliant management capacity at both national and local levels. The focus on promoting shelter for all, improving urban governance, reducing urban poverty, improving the living environment, and managing disaster mitigation and post-conflict rehabilitation, provides significant knowledge and technical resources which could be better incorporated into the work of the main agencies responsible for shelter and settlement interventions in disaster or conflict situations.

IFRC

The International Federation of Red Cross and Red Crescent Societies (IFRC) is an international membership organization formed by the national Red Cross and Red Crescent Societies around the world. The Federation's International

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[122] *See* UN-Habitat Indonesia Home Page, http://www.unhabitat-indonesia.org.

Disaster Response Laws, Rules and Principles (IDRL) Programme[123] gathers and disseminates information on national and international law on international disaster relief and recovery, as well as outstanding legal issues in this area. In addition to its legal database, publications, and trainings, it has provided support to national societies for their advocacy with governments for the development of appropriate law and policy in these areas. Moreover, the IFRC is convener of the Emergency Shelter Cluster in disaster situations.

Norwegian Refugee Council

The Norwegian Refugee Council (NRC) is a humanitarian NGO that began providing legal advice and representation to beneficiaries in the context of its work supporting repatriation and return in the Balkans during the mid-1990s. NRC's legal counseling programs have expanded considerably with programs set up to assist displaced persons in locations ranging from Afghanistan and Uganda to Georgia and Colombia. Extensive experience in shelter and settlements has given the NRC considerable insights into how to improve qualitatively the shelter sector. Recently NRC has been actively engaged in the coordination of the Camp Management Project which led to a Camp Management Toolkit.[124]

IDMC

The Internal Displacement Monitoring Centre (IDMC) is a body monitoring conflict-induced internal displacement worldwide. IDMC runs an online database[125] providing comprehensive information and analysis on internal

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[123] *See* International Federation of Red Cross and Red Crescent [IFRC], International Disaster Response Laws, Rules and Principles Programme, *available at* http://www.oas.org/dsd/Nat-Dis-Proj/Documents/Enews6Final.pdf.

[124] Camp Management Project, *Camp Management Toolkit*, Norwegian Refugee Council (2004), *available at* http://103220.c.telecomputing.no/publisher/arch /_img/9069531.pdf.

[125] *See* Internal Displacement Monitoring Centre Home Page, http://www.internal-displacement.org.

displacement in some fifty countries. Based on its monitoring and data collection activities, the IDMC runs advocacy and training activities. The database contains a significant number of documents on background, causes of displacement, humanitarian and human rights concerns, and national and international responses.

Shelter Centre

Shelter Centre is an NGO, based in Geneva, which supports humanitarian operations that respond to the transitional settlement and reconstruction needs of populations affected by conflicts and natural disasters, from the emergency phase until durable solutions are reached. [126] Shelter Centre is mainly focused on research, development, dissemination, and operational implementation of humanitarian settlement and shelter policy, best practice, equipment, training, and field programs. Shelter Centre has been actively engaged in the revision of *Shelter After Disaster: Guidelines for Assistance*, prepared by the Office of the United Nations Disaster Relief Co-ordinator (UNDRO, now OCHA) and published in 1982.

ADPC

The Asian Disaster Preparedness Center (ADPC)[127] is a non-profit organization supporting the advancement of safer communities and sustainable development through implementing programs and projects that reduce the impact of disasters upon countries and communities in Asia and the Pacific. ADPC develops and enhances sustainable institutional disaster risk management capacities, frameworks, and mechanisms; supports the development and implementation of government policies; facilitates the dissemination and exchange of disaster risk management expertise, experience, and information; and enhances disaster risk management knowledge and skills.

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[126] *See* Shelter Centre—Supporting the Humanitarian Shelter Community Home Page, http://www.sheltercentre.org.

[127] *See* Asian Disaster Preparedness Center Home Page, http://www.adpc.net.

LA RED

In recent years, the Latin American Network of Social Studies on Disaster Prevention (LA RED)[128] has become an important point of reference in the field of risk management and the prevention of disasters.

ProVention Consortium

The overall goal of ProVention[129] is to reduce the risk and social, economic, and environmental impacts of natural hazards on vulnerable populations in developing countries in order to alleviate poverty and contribute to sustainable development.

Refugee Studies Centre, University of Oxford

The Refugee Studies Centre (RSC) combines world-class academic research and teaching with a commitment to recognizing the human rights, and improving the lives, of refugees and other forced migrants who are among some of the world's most disadvantaged people. Research and dissemination of information on shelter and settlement issues for the forcibly displaced form part of its extensive portfolio. The RSC has a global outreach through international collaboration programs with academics and practitioners and through its dissemination program which includes *Forced Migration Review* and *Forced Migration Online*.

SUMMARY OF RECOMMENDATIONS

1. Review the scope and impact of national legislation and procedures on the right to adequate housing for IDPs, including women and children, and introduce legislative and procedural reform to ensure IDPs' ability to exercise their rights to being protected during evacuation and displacement.

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[128] *See* La Red, Red de estudios sociales en Prevención de desastres en América Latina Home Page, http://www.desenredando.org.

[129]*See* ProVention Home Page, http://www.proventionconsortium.org.

2. Ensure that the right to adequate shelter is recognized as the right to live somewhere in peace and dignity and where physical, legal, and social security are protected.

3. Ensure that the protection of displaced people is at the center of frameworks for intervention, according to binding and non-binding international and national instruments.

4. Prepare for the possibility of displacement, ensuring shelter and settlements plans and contingency evacuation plans are in place in order to assure the application of international rights of protection and adequate housing in a coordinated and comprehensive manner.

5. Establish in countries affected by, or susceptible to, internal displacement, a special office or focal point for evacuation and shelter and settlement assistance with responsibility to co-ordinate and monitor the provision of different shelter and settlement options during displacement.

6. Ensure that strong institutional frameworks are in place at national and local levels to coordinate and implement planned evacuations, the temporary provision of the shelter and settlement needs for displaced populations, and the transition to recovery.

7. Give special attention to enhancing the capacity of the special office/focal point as well as other institutional stakeholders to plan and deliver shelter and settlement options during displacement.

8. Ensure that national governments prepare appropriate standards and guidelines for temporary shelter and settlement provision during evacuation and displacement in order to address habitability, safety, cultural adequacy, tolerable densities, access to adequate infrastructure and services (such as health and education), secure tenure and suitable locations with regard to income and livelihood opportunities in accordance with appropriate economic, cultural, and social conditions.

9. Establish coordination mechanisms prior to, during, and after displacement, involving all competent authorities who commit themselves to providing

adequate housing rights and to upholding all such rights recognized not only under domestic law, but also in accordance with international human rights law, without adverse distinction.

10. Establish coordination mechanisms for evacuation plans and temporary shelter plans which integrate different stakeholders in programming and project implementation, and assign clear mandates and roles, especially in the case of military involvement.

11. Consult with, and enable the participation of, IDPs, including women and affected minority groups, in the formulation, monitoring, review, and appraisal of national, regional, and local shelter and settlements options and evacuation procedures so as to address the obstacles IDPs may face to their participation.

12. Ensure that national governments develop policies for the rapid transfer of displaced populations from transitional and temporary accommodation to temporary or permanent housing.

13. Recognize the long-term impacts of shelter and settlement provision under conditions of temporary evacuation and adopt strategies and policies which address that link and recognize the need for durable solutions.