

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

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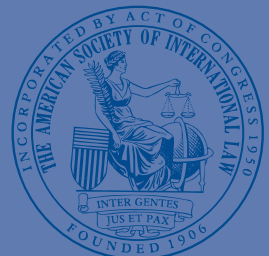
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THE AMERICAN SOCIETY OF INTERNATIONAL LAW



## Chapter 7

### The Right to Education in Situations of Internal Displacement

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#### INTRODUCTION

Education is the right of everyone, including internally displaced persons (IDPs), and in all circumstances. Ensuring this right is critical for children's development and future opportunities. In situations of displacement, this is no less important. Continued school attendance provides a degree of stability, security, structure, and normalcy in the context of upheaval, uncertainty, and trauma that the experience of displacement entails. It can provide IDP children with an important source of psycho-social support and help to reduce their exposure to threats including sexual exploitation, physical attack, and military recruitment. Moreover, classrooms are effective fora for conveying key survival messages about other risks, such as landmines and HIV/AIDS. When curricula are well-designed, education can also be a vehicle for promoting understanding, tolerance, and peace, thereby contributing to reconciliation and rebuilding of the social fabric in war-torn societies. In addition, equal access to education is an important indicator of IDPs' integration into the local community, whether while they are displaced or when they return to their home areas or settle elsewhere. Indeed, the availability of quality education often is a decisive factor in IDPs' decisions about whether and when to return and resettle elsewhere, and is essential for a durable solution to displacement.

In practice, education too often tends to be regarded more as a need than as a right. Moreover, education historically has been considered as a development issue, to be addressed only once humanitarian emergencies have subsided. Yet, these crises can persist for years or even decades, potentially depriving an entire generation of education. Governments have the responsibility to ensure the right to education for all, including for IDPs. To this end, a number of normative, policy, and practical measures are required. This chapter focuses

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on the measures that can be taken in domestic legislation and policy to support realization of the right to education in situations of internal displacement.

## LEGAL FRAMEWORK

The right to education is well established in international human rights law. In addition, international humanitarian law underscores the importance of continued education for children in times of conflict. Drawing upon both of these bodies of law, the *Guiding Principles on Internal Displacement* (hereinafter the *Guiding Principles*)<sup>1</sup> affirm the right to education for IDPs.

### Relevant Guiding Principles

Principle 23(1) affirms the right of every human being to education. Principle 23(2) specifies that “[t]o give effect to this right for internally displaced persons, the authorities concerned shall ensure that persons, in particular displaced children, receive education which shall be free and compulsory at the primary level [and] [e]ducation should respect its recipients’ cultural identity, language and religion.” Paragraphs (3) and (4) of Principle 23 further specify that “[s]pecial efforts should be made to ensure the full and equal participation of women and girls in educational programs [and] [e]ducation 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.”

A number of particular elements of the right to education as set out in Principle 23 are important to highlight. First, sub-paragraph (2) draws attention to that aspect of the right to education that focuses on children, and affirms the broadly recognized right to free and compulsory education at the primary level. However, the preface “in particular” as well as the general reference to the right of internally displaced “persons” to education makes it clear that the right to education is by no means limited to children of primary-

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<sup>1</sup> United Nations, *Guiding Principles on Internal Displacement*, presented by the Representative of the UN Secretary-General on internally displaced persons, Francis M. Deng, to the United Nations Commission on Human Rights, U.N. Doc. E/CN.4/1998/53/Add.2.

school age. References in subsequent sub-paragraphs to “adolescents” and to “women” underscore that the right to education applies not only to young children but also to older children as well as to adults.

Further, the right to education as affirmed in Principle 23 is not confined to formal schooling but also extends, as sub-paragraph (3) indicates, to general “educational programmes” and to “training” as well. Sub-paragraph (4) specifies that the right to education applies equally to IDPs in camps as it does to those in non-camp situations. Overall, the right of IDPs to education is to be considered a priority, with educational and training facilities to be made available to IDPs “as soon as conditions permit.”

In addition to Principle 23, which specifically addresses the right to education, Principle 1(1), which affirms the principles of equality and non-discrimination, and Principle 29(1), which affirms these same principles in the context of return or resettlement, are also relevant.

### **Legal Basis**

Articulation in the *Guiding Principles* of the right of IDPs to education is grounded in a rich body of international law.<sup>2</sup> The right to education is enshrined and firmly guaranteed in international and regional human rights law.<sup>3</sup> Of particular importance is the Convention on the Rights of the Child

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<sup>2</sup> WALTER KÄLIN, *GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT: ANNOTATIONS* 58-60 (2d ed., 2007) [hereinafter *ANNOTATIONS*].

<sup>3</sup> Universal Declaration of Human Rights, G.A. Res. 217(a), U.N. Doc. A/810 (1948); International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. No. 16 at 52, U.N. Doc A/6316 (1966); Protocol I to the Convention for the Protection of Human Rights and Fundamental Freedoms, March 20, 1951; Convention for the Protection of Human Rights and Fundamental Freedoms, Sept. 3, 1953, 213 U.N.T.S. 222, as amended by Protocols Nos. 3, 5, and 8 which entered into force on Sept. 21, 1970, Dec. 20, 1971 and Jan. 1, 1990, respectively. At the regional level, see American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992); Additional

(CRC),<sup>4</sup> which recognizes in Article 28 the “right of the child to education.” The CRC is the most widely ratified international human rights treaty, enjoying near universal ratification.<sup>5</sup>

International humanitarian law affirms the right to children’s education in situations of armed conflict. In situations of international armed conflict, the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention) requires parties to the conflict to “take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, ... and [that] their education [is] facilitated in all circumstances.” It further requires occupying powers to facilitate the functioning of educational facilities in occupied territories.<sup>6</sup> In situations of internal armed conflict, Additional Protocol II to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) requires that children “receive an education, including religious and moral education.”<sup>7</sup>

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Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Protocol of San Salvador, Nov. 16, 1999, O.A.S. Treaty Series No. 69 (1988), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 67 (1992); African [Banjul] Charter on Human and Peoples’ Rights, June 27, 1981, O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

<sup>4</sup> 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).

<sup>5</sup> The United States remains one of the few states not to ratify the Convention on the Rights of the Child (the CRC).

<sup>6</sup> 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, arts. 24(1), 50(1).

<sup>7</sup> Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, art. 4(3)(a), entered into force Dec. 7, 1978.

In addition, international humanitarian law, in particular Protocol I to the Geneva Conventions of 12 August 1949 (Protocol I), specifies that civilian objects, including schools, must not be the subject of armed attack or of reprisals.<sup>8</sup> In this same vein, intentionally directing attacks against civilian objects, which would include schools, constitutes a war crime under the Rome Statute of the International Criminal Court.<sup>9</sup>

Special provisions address children's education in the event of evacuation undertaken in the course of armed conflict. Protocol I provides that "whenever an evacuation occurs...each child's education, including his religious and moral education as his parents' desire, shall be provided while he is away with the greatest possible continuity."<sup>10</sup> Similarly, in situations of non-international conflict, Protocol II requires in cases of evacuation that a child's education be provided with the greatest possible continuity.<sup>11</sup>

Elaborating upon the general principle, a number of specific aspects of the right to education have been elaborated. The UN Committee that monitors implementation of the International Convention on Economic, Social and Cultural Rights (ICESCR) has specified that education should include the following four essential features: availability, accessibility, acceptability, and adaptability.<sup>12</sup> Within this framework, aspects of particular importance in situations of displacement include availability and economic accessibility, physical accessibility, non-discrimination, respect for cultural identity and language, and issues of curriculum content.

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<sup>8</sup> *Id.* at art. 52.

<sup>9</sup> Rome Statute of the International Criminal Court, July 1, 2002, art. 8, U.N. Doc. 2187 U.N.T.S. 90.

<sup>10</sup> Protocol I, art. 78(2).

<sup>11</sup> Protocol II, art. 28(2).

<sup>12</sup> Comm. on Economic, Social and Cultural Rights, General Comment No. 13, at 6, U.N. Doc. E/C.12/1999/10 (1999).

Guiding Principle 23(2) specifies an obligation on the part of the authorities to provide free and compulsory education at the primary level. This obligation finds its legal basis in Article 26(1) of the Universal Declaration of Human Rights (UDHR), Article 13(2)(a) of the ICESCR, Article 28(1)(a) of the CRC, Article XII(4) of the American Declaration of the Rights and Duties of Man, and Article 4(a) of the Convention against Discrimination in Education.<sup>13</sup> Beyond primary education, Article 28(1)(b) of the CRC requires that progressive measures be taken for the introduction of free education in general. Secondary education in its different forms, including general education as well as technical and vocational education, is to be generally available and accessible to all.<sup>14</sup> Higher education also is to be made equally accessible to all, on the basis of capacity, by every appropriate means.<sup>15</sup>

Physical access to education requires that educational services are available, and that these are within safe physical reach.<sup>16</sup> In normal circumstances, this would be achieved by attendance at an educational institution located at a reasonable geographic distance from the student's home, i.e., a local school. However, it might also be achieved by means of "distance learning" programs or mobile education services.

As with other provisions of international human rights, the right to education is governed by the fundamental principle of non-discrimination.<sup>17</sup> States therefore have an obligation to ensure the right to education, without discrimination of any kind. Indeed, a specific convention is devoted to the

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<sup>13</sup> Convention against Discrimination in Education, 429 U.N.T.S. 93, entered into force May 22, 1962.

<sup>14</sup> CRC, art. 28(1)(b); ICESCR, art. 13(2)(b).

<sup>15</sup> CRC, art. 28(1)(c); ICESCR, art. 13(2)(c).

<sup>16</sup> CESCR General Comment 13, 6.

<sup>17</sup> As articulated in article 2 of the UDHR, article 2(2) of the ICESCR, and article 2 of the CRC. A similar provision also is articulated in regional human rights instruments.

issue of prevention of discrimination in education.<sup>18</sup> In addition, numerous international human rights instruments addressing specific forms of discrimination and the rights of specific groups of persons underscore the non-discriminatory nature of the right to education, including instruments relating to girls and women,<sup>19</sup> racial discrimination,<sup>20</sup> persons with disabilities,<sup>21</sup> and refugees.<sup>22</sup>

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<sup>18</sup> Convention against Discrimination in Education, May 22, 1962, 429 U.N.T.S. 93.

<sup>19</sup> Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force Sept. 3, 1981, art. 10. *See also* Convention against Discrimination in Education, art. 2(a); Charter of the Organization of American States, 119 U.N.T.S. 3, Dec. 13, 1951; amended by Protocol of Buenos Aires, 721 U.N.T.S. 324, O.A.S. Treaty Series, No. 1-A, entered into force Feb. 27, 1970; amended by Protocol of Cartagena, O.A.S. Treaty Series, No. 66, 25 I.L.M. 527, Nov. 16, 1988; amended by Protocol of Washington, 1-E Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add. 3 (SEPF), 33 I.L.M. 1005, Sept. 25, 1997; amended by Protocol of Managua, 1-F Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add.4 (SEPF), 33 I.L.M. 1009, Jan. 29, 1996, art. 34(h); Vienna Declaration, World Conference on Human Rights, Vienna, June 14-25, 1993, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993), Section II, ¶ 41; Beijing Declaration and Platform for Action, Fourth World Conference on Women, Sept. 15, 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), sects. 27, 30, 71, 82, 84.

<sup>20</sup> 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)(v), U.N. Doc. A/6014 (1966) [hereinafter CERD].

<sup>21</sup> Declaration on the Rights of Disabled Persons, ¶ 6, U.N. Doc. A/RES/33447 (XXX) (1975); *see also* Vienna Declaration and Programme of Action, at 63, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993); *see also* the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons with Disabilities, AG/RES 1608 (XXIX-O/99), art. III(1)(a); “Persons with disabilities,” General Comment 5, Committee on Economic, Social and Cultural Rights (1994), U.N. Doc. E/1995/22; Declaration on the Rights of Mentally Retarded Persons, G.A. res. 2856 (XXVI), 26 U.N. GAOR Supp. (No. 29) at 93, U.N. Doc. A/8429 (1971), ¶ 2.

<sup>22</sup> Convention relating to the status of Refugees, 189 U.N.T.S. 150; *see also* UNHCR Executive Committee Conclusion No. 47 (XXXVIII(p))—1987, No. 59 (XL(f))—



The World Declaration on Education for All emphasizes that “an active commitment must be made to removing educational disparities” so as to ensure that “underserved groups”—with specific reference made to “those displaced by war”—“should not suffer any discrimination in access to learning opportunities.”<sup>23</sup> The Beijing Platform for Action adopted by the Fourth World Conference on Women in 1995 emphasized that states should take action to “facilitate the availability of educational materials in the appropriate language—in emergency situations also—in order to minimize disruption of schooling among refugee and displaced children.”<sup>24</sup>

It is important to highlight that the principle of non-discrimination does not mean identical treatment. Both the UN Committee on the Rights of the Child and the Human Rights Committee have specified that to address the conditions causing discrimination, “special measures” may be necessary.<sup>25</sup> Specifically as regards education, the Committee on Economic, Social and Cultural Rights has specified that the adoption of temporary special measures intended to bring about *de facto* equality for men and women as well as for disadvantaged groups is not a violation of the right to non-discrimination, so long as such measures do not lead to the maintenance of unequal or separate standards for

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1989, No. 64 (XLI(a)(ix))—1990, No. 74 (XLV(gg))—1994, No. 77 (XLVI(n))—1995, No. 84 (XLVIII(b)(v))—1997, No. 100 (LV(l)(viii))—2004, A Thematic Compilation of Executive Committee Conclusions, June 2005.

<sup>23</sup> World Declaration on Education for All, adopted by the World Conference on Education for All, Jomtein, Thailand, Mar. 1990, art. 3(4), *available at* [http://www.unesco.org/education/efa/ed\\_for\\_all/background/jomtien\\_declaration.shtml](http://www.unesco.org/education/efa/ed_for_all/background/jomtien_declaration.shtml)

<sup>24</sup> Beijing Declaration and Platform for Action, Fourth World Conference on Women, Sept. 15, 1995, A/CONF.177/20 (1995) and A/CONF.177/20/Add.1 (1995), ¶ 147(g).

<sup>25</sup> Comm. on the Rights of the Child, General Comment No. 5 (2003), *General Measures of Implementation of the Convention on the Rights of the Child*, arts. 4, 42, 44, ¶ 6, U.N. Doc. CRC/GC/2003/5 (2003); Human Rights Committee, General Comment No. 18, adopted at its thirty-seventh session (Nov. 10, 1989), ¶ 11.

different groups and provided that they are not continued after the objectives for which they were taken have been achieved.<sup>26</sup>

Internal displacement often disproportionately affects ethnic, linguistic, and religious minority groups. As earlier noted, Guiding Principle 23(2) affirms that education should respect IDPs' "cultural identity, language and religion." The legal basis for this principle can be found in a variety of provisions in international human rights and humanitarian law. Article 29(1)(c) of the CRC recognizes that a child's education shall be directed to various aims including the development of "his or her own cultural identity, language and values." This provision therefore focuses on the individual heritage of the child. At the same time, Article 29(1)(d) of the CRC refers to preparing the child for "friendship among all peoples, ethnic, national and religious groups and persons of indigenous groups." Taking these provisions together, the UN Committee on the Rights of the Child points to the need for a balanced approach to education, "one which succeeds in reconciling diverse values through dialogue and respect for difference."<sup>27</sup>

Obligations to respect cultural identity in education continue to apply in situations of armed conflict. Article 24(1) of the Fourth Geneva Convention requires that "education shall, as far as possible, be entrusted to persons of a similar cultural tradition." Several international humanitarian and human rights instruments allow for parents or guardians to provide such education in accordance with their own convictions.<sup>28</sup> In cases in which children have been

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<sup>26</sup> Comm. on Econ., Soc. and Cultural Rights, General Comment No. 13, *The Right to Education*, ¶ 32, U.N. Doc. E/C.12/1999/10 (1999).

<sup>27</sup> Comm. on the Rights of the Child, *The Aims of Education*, General Comment No. 1, *The Aims of Education*, ¶ 4, U.N. Doc. CRC/GC/2001/1 (2001).

<sup>28</sup> Geneva Convention Protocol II, art. 4(3)(a); UDHR, art. 26(2); ICCPR, art. 18(4); Convention against Discrimination in Education, art. 5(1)(b). *See also* the American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, July 18, 1978, OEA/Ser.L.V/II.82 doc.6 rev.1, art. 12(4) (1992); ECHR, Protocol I, art. 2.

evacuated to a foreign country, Article 78(2) of Protocol I requires that education shall be provided “with the greatest possible continuity.”

Several international and regional instruments, as well as authoritative statements, provide guidance as to the content of education. The Charter of the Organization of American States is most precise in prescribing that “the education of peoples should be directed toward justice, freedom, and peace.”<sup>29</sup> The Vienna World Conference on Human Rights emphasized that education can be a vehicle for promoting understanding, tolerance, and peace, thereby contributing to reconciliation and rebuilding the social fabric in war-torn societies.<sup>30</sup> A similar goal of education has been articulated by the UN Committee on the Rights of the Child.<sup>31</sup> It also has been emphasized in numerous conclusions adopted by the United Nations High Commissioner for Refugees (UNHCR) Executive Committee.<sup>32</sup>

The CRC provides in Article 29(1) a comprehensive list of the goals to which a child’s education should be directed. These include respect for human rights; respect for his or her own cultural identity, language and values, as well as national values; and preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin.<sup>33</sup>

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<sup>29</sup> OAS Charter art. 3(n).

<sup>30</sup> Vienna Declaration and Programme of Action (Vienna Declaration), adopted by the World Conference on Human Rights, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993), Section II, 33.

<sup>31</sup> Committee on the Rights of the Child, General Comment No. 1, *The Aims of Education*, ¶ 13, U.N. Doc. CRC/GC/2001/1, Apr. 17, 2001.

<sup>32</sup> No. 77 (XLVI(n))—1995; No. 80 (XLVII(e)(xi))—1996; No. 85 (XLIX(g))—1998, A Thematic Compilation of Executive Committee Conclusions, June 2005.

<sup>33</sup> See also Recommendation concerning Education for International Understanding, Co-operation and Peace and Education Relating to Human Rights and Fundamental

The right to education applies in times of peace as well as in armed conflict. No specific restriction upon, or derogation from, this right is provided for under international law. In situations of armed conflict, international humanitarian law contains, as elaborated above, a number of provisions safeguarding the right to education. A series of resolutions of the UN Security Council concerned with the “protection of children in armed conflict” have reiterated and reinforced the international norm prescribing continued education in the context of armed conflict.<sup>34</sup> Moreover, although not having formal legal standing, there exists a number of international standards and guidelines based on international law which affirm the right to education in emergencies.<sup>35</sup>

## **OVERVIEW OF OBSTACLES TO THE IMPLEMENTATION OF THE GUIDING PRINCIPLES**

IDPs frequently face a number of particular obstacles in accessing the right to education.<sup>36</sup> These can arise not only in situations of conflict and post-conflict,

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Freedoms, adopted by the General Conference of UNESCO at its eighteenth session, Paris, Nov. 19, 1974.

<sup>34</sup> See, e.g., Resolution 1314 (2000), Adopted by the Security Council at its 4185<sup>th</sup> meeting, U.N. Doc. S/RES/1314, Aug. 11, 2000; Resolution 1539 (2004), adopted by the Security Council at its 48<sup>th</sup> meeting, U.N. Doc. S/RES/1539, Apr. 22, 2004, ¶ 9; Resolution 1261 (1999), adopted by the Security Council at its 4037<sup>th</sup> meeting, ¶ 2, U.N. Doc. S/RES/1261, Aug. 30, 1999.

<sup>35</sup> These include: *Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction*, Inter-Agency Network for Education in Emergencies, 2004; Kacem Bensalah, *Guidelines for Education in Situations of Emergency and Crisis: EFA Strategic Planning* (2002); The Office of the UN High Commissioner for Refugees [UNHCR], *Education: Field Guidelines* (2003), available at <http://www.unhcr.org/protect/PROTECTION/40586bd34.pdf>; The Office of the UN High Commissioner for Refugees [UNHCR], *Protecting Persons Affected by Natural Disasters: IASC Operational Guidelines on Human Rights and Natural Disasters*, guideline C.1. (2006).

<sup>36</sup> Erin Mooney & Colleen French, *Barriers and Bridges: Access to Education for Internally Displaced Children* (2005), available at

but also in situations of displacement caused by natural disaster and, to a certain extent, also in situations of development-induced displacement.<sup>37</sup>

### **Lack of Infrastructure**

The conditions causing displacement, whether conflict or natural disasters, often lead to the destruction or significant damage of educational infrastructure, including not only physical buildings, i.e., schools, but also the essential administrative infrastructure and human resource inputs. Teachers may be scarce as they too have been uprooted or even targeted to be killed. Even where teachers are available, state budgets and administrative structures struggling to meet emergency needs may nonetheless result in teachers' salaries going unpaid. Furthermore, schools may be forced to close when the community they service is largely displaced and the public resources needed for their maintenance are no-longer made available.<sup>38</sup> In areas receiving IDPs, overcrowding of existing local schools can be a significant challenge and a source of tension with the host community.

In IDP camps, particular challenges arise. Unless camps are in close proximity to local schools that can accommodate an influx of IDP students, new educational facilities will need to be put in place for the displaced. Whether education programs in fact are established in IDP camps is dependent on the will, resources, capacity, and access of government agencies as well as international and non-governmental organizations. Where schools in IDP camps do exist, typically these are under-resourced, over-crowded, and limited to primary education.<sup>39</sup>

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[http://www.brookings.edu/papers/2005/0111humanrights\\_mooney.aspx](http://www.brookings.edu/papers/2005/0111humanrights_mooney.aspx); Erin Mooney & Colleen French, *Education for IDPs: Poor Marks*, 22 FORCED MIGRATION REV. 58 (2005).

<sup>37</sup> See Chapter 15 in this volume on development-induced displacement.

<sup>38</sup> Susan Saulny, *Students Return to Big Changes in New Orleans*, N.Y. TIMES, Jan. 4, 2006.

<sup>39</sup> *Global Survey on Education in Emergencies*, *infra* note 121, at 10.

Another common obstacle is that existing school facilities may be used during humanitarian emergencies for purposes other than education. It is a common occurrence in crisis situations, whether conflict or disaster, for schools to serve as emergency centers or places of temporary shelter for displaced persons. While often a necessary emergency measure, unless alternative locations and accommodation are found, such arrangements impede access to education not only for IDPs but also for non-displaced students. In some situations, schools are taken over by armed actors to be used as military barracks.

### **Insecurity**

Access to education must mean safe access. In conflict situations, and despite the protections provided by international humanitarian law, it is not uncommon for schools to be the targets of armed attack. Even traveling to school may be dangerous, requiring students to traverse areas strewn with landmines or to cross checkpoints set up by military forces or other armed groups, and where children may be subjected to harassment and at greater risk of enforced military recruitment and abduction. Once at school, additional safety concerns can arise. A lack of separate lavatories is a common problem when education is under-resourced, and can put girls at risk of sexual violence. Sexual exploitation by male teachers or classmates can also be a widespread problem, and a major factor in high attrition and non-enrollment rates of female students.<sup>40</sup>

### **Lack of Documentation**

Enrollment in formal educational institutions typically requires presentation of personal documentation including a birth certificate, documentation proving attendance at a prior educational institution, and records attesting to the level of studies completed. However, loss, destruction, or confiscation of identity and other important personal documentation is a common occurrence in situations of displacement. For IDPs to obtain replacement documentation often is very difficult. In a number of countries, it would require that IDPs

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<sup>40</sup> Women's Commission for Refugee Women and Children, *Help Us Help Ourselves: Education in the Conflict to Post-conflict Transition in Liberia*, at 6 (Mar. 2006).

travel back to their area of origin, even if the area remains unsafe. Obstacles relating to documentation often discriminate in particular against IDPs from minority groups.<sup>41</sup> Also affecting access to the right to education in situations of displacement is the loss by displaced teachers of their teaching certificates, without which they may be barred from teaching.

### **Residency Requirements**

In many countries, school enrollment is dependent on proof of residence in the district. This requirement inevitably presents complications for IDP children, especially where registration is a lengthy and cumbersome process. In countries of the former Soviet Union, the legacy of the *propiska* system which tied the enjoyment of many rights and entitlements to the area of permanent residence and served as a control on freedom of movement, has posed significant impediments to IDPs' enjoyment of a number of rights, including the right to education.<sup>42</sup>

### **Language of Instruction**

Internal displacement often affects minorities, including ethnic and indigenous minorities, who may not speak the local language of instruction in the areas to which they are displaced. Issues concerning the language of instruction may also be an impediment to IDP return. This risk is especially high when IDPs' area of origin comes under the effective control of another linguistic group. That this concern has been brought to the attention of the UN Security Council

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<sup>41</sup> Naga Peoples Movement for Human Rights [NPMHR], *Summary Report on the Conditions of the Internally Displaced Persons from the Imphal Valley to the Naga Hills area of Manipur*, Jan. 5, 2002; United Nations High Commissioner for Refugees/Organization for Security and Cooperation in Europe [UNHCR/OSCE], *Ninth Assessment of the situation of Ethnic Minorities in Kosovo*, May 31, 2002, ¶ 50.

<sup>42</sup> Council of Europe, Parliamentary Assembly, Committee on Migration, Refugees and Demography, *The Propiska System Applied to Migrants, Asylum Seekers and Refugees in Council of Europe Member States: Effects and Remedies*, Doc. 9262 (Oct. 12, 2001), ¶ 91.

by the UN Secretary-General<sup>43</sup> underscores that access to education is not simply a development issue but one that can have significant implications for conflict resolution efforts.

### **Discrimination**

The discrimination that IDPs often suffer on ethnic grounds, or even simply on the basis of being internally displaced, can be so pervasive as to limit IDP children's access to education. For example, there have been cases where IDPs were required to pay school fees twice as high as local students.<sup>44</sup> In some situations of internal displacement, particularly those resulting from ethnic conflict, parallel education systems have been established along linguistic and ethnic lines. The "two schools under one roof" system that exists in Bosnia and Herzegovina as well as in Kosovo, for example, entails providing education to two distinct ethnic and linguistic groups in the same facilities but using distinct curricula and separate administrative procedures. In both countries, however, this arrangement of segregated educational systems has been found to entrench ethnic differences, perpetuate ethnic tensions, undermine national reconciliation efforts, and work against the integration of IDPs and others from minority groups.<sup>45</sup>

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<sup>43</sup> See, e.g., Report of the Secretary-General concerning the situation in Abkhazia, Georgia, ¶ 17, U.N. Doc. S/2000/697, July 17, 2000.

<sup>44</sup> Internal Displacement Monitoring Centre, *Conflict has had Terrible Impact on Already Failing Education System* (2001-2005), available at [http://www.db.idpproject.org/idmc/website/countries.nsf/\(httpEnvelopes\)/460991DF3E39244C802570B8005A7377?OpenDocument](http://www.db.idpproject.org/idmc/website/countries.nsf/(httpEnvelopes)/460991DF3E39244C802570B8005A7377?OpenDocument).

<sup>45</sup> UNHCR/OSCE, *Ninth Assessment of the situation of Ethnic Minorities in Kosovo*, at 50 (May 31, 2002); The Representative of the Secretary General, *Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons: Mission to Bosnia and Herzegovina*, ¶ 47, U.N. Doc. E/CN.4/2006/71/Add.4 (Dec. 29, 2005).



### **School Fees and Other Costs**

International law requires that education, at least at the primary level, be compulsory and free. In practice, however, access to education, including primary education, commonly entails direct and indirect costs. School fees often are levied informally at the primary level, and in many cases they formally exist at the secondary and tertiary levels as well. In addition to tuition fees, there are also often a number of related hidden costs of sending a child to school, including the purchase of uniforms or other appropriate clothing and shoes, textbooks, and supplies. It also is not uncommon for payments to be required to be made directly to teachers, in particular in situations where their official government salaries go unpaid or are inadequate. For IDPs, who typically are in an economically disadvantaged situation, these costs can be particularly prohibitive.

The financial impediments that hinder access to education for many students, including the internally displaced, disproportionately affect girls, as families with limited resources generally tend to prioritize paying for boys' education.<sup>46</sup> At the same time, the strong desire for education, combined with the imperative to find money to pay for school fees, is among the factors driving girls and women in crisis settings into prostitution and other exploitative sexual relationships.<sup>47</sup>

### **Economic Responsibilities**

IDP children in many cases miss school because they are needed by their families for domestic or agricultural work or to generate income to help ensure their families' economic survival. Attrition and dropout rates are especially high among girls, who typically are burdened by domestic, child-care, or agricultural responsibilities. Family poverty drives many IDP adolescent girls

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<sup>46</sup> UNICEF, *Gender Achievements and Prospects in Education: The Gap Report, Part One*, at 8 (2005). See also Erin Mooney, *Protecting and Reintegrating Displaced Women and Children Post-Conflict*, in SECURITY, RECONSTRUCTION AND RECONCILIATION 72-74 (Muna Ndulo ed., 2007).

<sup>47</sup> See Mooney, *supra* note 46.

out of school and into prostitution and puts them at risk of trafficking.<sup>48</sup> Even when children manage to combine carrying out economic responsibilities together with continuing their education, limitations on learning opportunities can arise.

### **The Experience of Displacement**

Displacement and its causes, including armed conflict and disaster, tend to have significant repercussions on a child's material well-being as well as their physical and mental health. Such repercussions impact upon an IDP child's ability to learn even when they are in fact able to access educational facilities.<sup>49</sup>

### **REGULATORY FRAMEWORK**

The general principles underpinning a national education system are often derived from the national constitution. Many national constitutions enshrine the right to education and may also specify particular aspects of that right that must be protected, including the right to free and compulsory primary education. However, more specific legislative protections of the right to education provide the most effective basis for ensuring respect for this right. The national regulatory framework typically takes the form of an education bill or education act. Beyond reinforcing any constitutional provisions enshrining the right to education, this framework must elaborate the content of the right, the means of implementing it, and the institutional mechanisms responsible for doing so.

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<sup>48</sup> Jehan Khaleeli & Sarah Martin, *Conflict, Sexual Trafficking and Peacekeeping*, REFUGEES INT'L (2004); The Representative of the Secretary-General on Internally Displaced Persons, *Report of the Representative of the Secretary-General on Internally Displaced Persons, Profiles in Displacement: Colombia*, ¶ 91, U.N. Doc. E/CN.4/2000/83/Add.1 (Jan. 11, 2000).

<sup>49</sup> *Profiles in Displacement: Colombia*, *supra* note 48, at ¶¶ 91-92; Chris Kiwawulo, *IDP Education Poor—Report*, NEW VISION, June 13, 2005; Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Angola*, ¶ 4, U.N. Doc. CRC/C/15/Add.246 (Nov. 3, 2004).

State administrative regulations, decrees, and policies also come into play. These can have the advantage of being more flexible than legislative measures, allowing states to respond more rapidly to emergencies or at least to create a system that is readily adaptable and able to address the particular educational needs of affected populations. The enforceability of policies and other non-legislative measures is enhanced when these are based on constitutional and/or legislative provisions recognizing and regulating the right to education.

Legislative as well as non-legislative measures will be most effective when they are comprehensive. They must clearly set out institutional responsibilities, sources of financing, and clear mechanisms for complaint or legal recourse. Without such provisions, non-legislative measures, in particular, risk not being implemented.

Within federal systems, it is common for states, provinces, or cantons to adopt their own education legislation or policies based on the principles set at the national level. However, where education regulation is decentralized, there is a risk that regional authorities will adapt national principles along ethnic, religious, or linguistic lines that may discriminate against minority populations. To best avoid such a situation, national regulation, applicable at all levels of government, should clearly establish that all basic rights apply throughout the federation, including the rights to non-discrimination and equality of access.

### **SUBSTANTIVE AND PROCEDURAL ELEMENTS OF STATE REGULATION**

States have the primary responsibility to ensure the right to education. This responsibility includes undertaking “all appropriate legislative, administrative and other implementation measures” to enable realization of this right.<sup>50</sup> Standards and procedures need to be elaborated to govern educational enrollment; differentiate between formal and informal education; delineate the distinct levels of education; specify the functions of the Ministry of Education; regulate the accreditation of teachers and examination of students; and provide

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<sup>50</sup> CRC, art. 4.

for the issuance of documentary evidence of results. Legislation and policies also will need to be adopted to remove administrative and procedural barriers prohibiting IDP students from attending school or IDP teachers from providing their services.

### **Prior to Displacement**

The right of IDPs to education should be grounded in provisions of domestic legislation affirming the right of education for all. Guarantees in national education legislation that every person of school age residing on the territory of a state has an equal right to education and express prohibitions of “discrimination between pupils or students”<sup>51</sup> provide an unequivocal basis for IDPs to assert their right to education. Specification in domestic legislation that the right to education is guaranteed regardless of the circumstances, including possible conflict or natural disaster, similarly would be useful.

In addition, domestic laws should provide for affirmative measures to be taken to facilitate access to education for disadvantaged groups. The Constitution of Afghanistan (2004), for example, emphasizes that the right to education is held equally by everyone and provides for the implementation of positive measures to promote education for women, girls, and nomadic groups in recognition of disadvantages that these groups typically experience in accessing education.<sup>52</sup> The Education Act of Sierra Leone (2004) states that education should be designed, among other goals, to “rapidly enhance literacy in Sierra Leone and improve the education opportunities for women and girls.”<sup>53</sup>

While national authorities may not always be able to prevent conflicts or natural disasters, they can take measures to mitigate the implications of such crises for access to education. Contingency plans should be developed that

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<sup>51</sup> See, e.g., Sierra Leone, Education Act 2004, § 4(1); Guatemala, National Education Law, Legislative Decree No. 12-91 (Jan. 12, 1991), arts. 21, 33(3).

<sup>52</sup> Constitution of Afghanistan (2004), arts. 43, 44, available at [http://www.oefre.unibe.ch/law/icl/af\\_idx.html](http://www.oefre.unibe.ch/law/icl/af_idx.html).

<sup>53</sup> Sierra Leone Education Act 2004, *supra* note 51, at § 2(a).

include the safeguarding of educational resources, in terms of both material and personnel, including:

- School registration not being conditional on identity documentation;<sup>54</sup>
- Establishment of a central repository of state examination results and certifications;
- Stockpiling of basic education supplies to be used in event of an emergency;<sup>55</sup> and
- Establishment of a central registry of certified teachers and their qualifications.<sup>56</sup>

Early warning mechanisms should also be put in place and include educational indicators such as unusually high absenteeism or the disproportionate absence of one ethnic or religious group who may fear attack or discrimination.<sup>57</sup>

### **During Displacement**

#### *Substantive Elements*

Given that the right to education for all and without discrimination of any kind should already be enshrined in domestic legislation, in the event of internal displacement, specific mention of IDPs' right to education may appear unnecessary. However, considering the particular obstacles and challenges that IDPs often face in accessing education, including direct discrimination on the basis of their displacement, specific legal reinforcement of their right to education and the prescription of special measures to ensure their access to

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<sup>54</sup> See, e.g., Education Law of Afghanistan, art. 6 (2001).

<sup>55</sup> Pigozzi, *infra* note 57, at 18; Bensalah, *supra* note 35, at 28.

<sup>56</sup> See, e.g., Education Act 2004 of Sri Lanka, § 38.

<sup>57</sup> Mary Joy Pigozzi, *Education in Emergencies and for Reconstruction: A Developmental Approach*, at 6, cited in Marc Sommers, *Children, Education and War: Reaching Education For All (EFA) Objectives in Countries Affected by Conflict* (World Bank Working Paper No. 1, June 2002, at 18).

this right can be important. In particular, it would be appropriate to include such provisions in any domestic legislation or policy specifically addressing the situation of IDPs.

The right to education requires that education be free and compulsory, at least at the primary level. This is a minimum standard. The IDP law in Bosnia and Herzegovina affirms the right of IDPs to education and also to vocational training.<sup>58</sup> Georgia has passed legislation making education at the third stage, years 10 and 11, also free of charge for persons internally displaced.<sup>59</sup>

Domestic legislation relating to the internally displaced should also reaffirm the principle of non-discrimination and provide for the undertaking of special measures to facilitate access to education for IDPs as well as for disadvantaged groups within IDP populations, including women and girls as well as minorities. The National Policy for Internally Displaced Peoples of Uganda (Uganda's IDP Policy), for example, provides for the adoption of "affirmative action" programs to assist and encourage the participation of IDPs in education. Further, the Uganda's IDP Policy echoes the *Guiding Principles on Internal Displacement* by calling for "special efforts" to be taken to ensure full and equal participation in education by IDP women and girls.<sup>60</sup>

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<sup>58</sup> Law on Displaced Persons and Returnees in the Federation of Bosnia and Herzegovina and Refugees from Bosnia and Herzegovina, Official Gazette, no. 15/05 of Mar. 16, 2005, art. 11(7).

<sup>59</sup> Decree of the President of Georgia No. 643 of Sept. 25, 1996 and Ordinance No. 491 of Oct. 31, 1997, cited in *The Guiding Principles on Internal Displacement and the Law of the South Caucasus: Georgia, Armenia and Azerbaijan*, 34 STUDIES in TRANS. LEGAL POLICY 87 (Roberta Cohen et al. eds., 2003).

<sup>60</sup> Uganda National Policy for Internally Displaced Persons, Office of the Prime Minister, Department of Disaster Preparedness and Refugees, Aug. 2004, § 3.1.1.

### *Procedural Elements*

When displacement occurs, a number of procedural measures may be needed to facilitate and safeguard access to education for IDPs.

#### Data Collection, Assessment and Analysis

Effective emergency education programs that meet the needs of disaster-affected populations must be based on a clear understanding of the context. Initial assessments must analyze the nature of the emergency and its effect on a population. The capacities of affected people and available local resources should be identified at the same time as assessing their needs and vulnerabilities and any gaps in essential services.<sup>61</sup> Reports should indicate, for example, the number of over-sized classes at the different levels of schooling.<sup>62</sup> To ensure the effectiveness of programs, emergency education assessments must include the participation of not only the emergency-affected community but also the local government and humanitarian actors. Based on the data collected, a framework for an education response should then be developed, including a clear description of the problem and a strategy for action, specific elements of which may need to include the specific procedural measures indicated below.

#### Flexible Implementation of Documentation Requirements

Documentation requirements for school enrollment should be flexible and in no cases should they prohibit a child from receiving an education. Any documentation requirements must be reasonable. In Sri Lanka, for example, the Ministry of Education was pressed to issue a national circular relaxing for IDP children the formal registration requirements that were impeding their enrollment in school.<sup>63</sup> Generally, including in situations of internal

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<sup>61</sup> Minimum Standards for Education in Emergencies, *supra* note 35, at 12, 21-22.

<sup>62</sup> *Id.* at 67.

<sup>63</sup> Manual on Field Practice in Internal Displacement, at 49 (1999).

displacement, safeguards must be in place to ensure that identity documentation and enrollment information is kept confidential.<sup>64</sup>

### Recognition of Teacher Qualifications

National education systems generally require the licensing of teachers as a means of ensuring minimum standards of professionalism. In an emergency, the aim should be to recruit qualified teachers with recognized qualifications and expedite their deployment to affected areas.<sup>65</sup> In the event that teachers' certificates or other documents attesting to their qualifications have been lost or destroyed as a result of the emergency, alternative means of verification, such as testing of applicants, can be introduced. Where the requirements for teacher qualifications vary from one part of the country to the other, a system of mutual recognition would facilitate the deployment of teachers, including displaced teachers.<sup>66</sup> In some situations, particularly in cases of mass displacement, the usual national standards may need to be adapted and relaxed in order to ensure the necessary resources are in place to enable IDPs' education. In order to ensure that displaced populations do not receive an inferior education, however, such flexible requirements must be temporary and carefully monitored.

### Waiver of School Fees at the Primary Level and Support for Continued Education

International law prescribes that primary education should be free in all circumstances (although in practice this obligation is not always respected). Beyond primary education, school fees lawfully legitimately may apply. The

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<sup>64</sup> Minimum Standards for Education in Emergencies, *supra* note 35, at 43.

<sup>65</sup> *Id.* at 60.

<sup>66</sup> *See, e.g.*, Agreement, Meeting of the Conference of the Ministers of Education of Bosnia and Herzegovina, Sarajevo (May 10, 2000), art. 7; United States of America, Title IV (commonly known as the Hurricane Education Recovery Act) of Division B of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Public L. No. 109-148); 119 Stat. 2680, § 104(a)(1)(B).



affect of levying fees, however, may be to limit access to education for those without the means to afford these fees and other associated costs. In some instances it may be possible to implement pro-active schemes, such as the provision of education scholarships, to students who otherwise may have to work or provide for themselves and their families. It is important that such measures for IDPs are implemented in the context of a holistic approach that also facilitates access to education for children from similarly impoverished non-displaced communities.

### Provision of Education Materials

Where the cost of uniforms, books, and other related materials prevents IDP and other students from attending school, subsidies (whole or partial) for these materials can greatly improve access to education. In Azerbaijan, for example, the law on displacement stipulates that displaced persons who are attending secondary school are to be provided with textbooks and other educational materials free of charge.<sup>67</sup> In Georgia and Afghanistan, similar provisions exist.<sup>68</sup>

### Provision of Basic Education in the Language of the Displaced

Displacement may result in the movement of a linguistic group into an area in which their language is not spoken. In such circumstances, one option is to establish classes in which the core competencies are taught in the language of minority groups. However, when taken to the extreme, such as in the “2 schools under 1 roof” system in Bosnia and Herzegovina, such an approach risks reinforcing ethnic divisions, discrimination, and the marginalization of

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<sup>67</sup> *Id.*

<sup>68</sup> Decrees of the president of Georgia, No. 685 of Oct. 24, 1996, No. 614 of Oct. 31, 1998, No. 64 of June 4, 1999, cited in *The Guiding Principles on Internal Displacement and the Law of the South Caucasus: Georgia, Armenia and Azerbaijan*, *supra* note 59; *see also* the Norms on the Resettlement of the Internally Displaced Populations, Afghanistan, art. 8.

the minority groups.<sup>69</sup> To avoid this, it is important that in addition to any classes offered in the minority language, students can also learn the primary language and have the opportunity to take part in the mainstream classes should they choose. This is also essential to safeguarding in practice their right to continue to have access in the long-term to the full range of educational, and consequently employment, opportunities available in the country.

### Effective Student Assessment and Evaluation Methods

Effective student assessment and evaluation methods should be established. These should provide IDP children who have lost their school records and certificates of educational achievement with the opportunity, through for example special written tests, to prove their educational progress and have access to education matching their level of ability.

### Special Measures to Ensure Access to Education by all Regardless of Gender, Work Responsibilities or Other Factors

For students with outside responsibilities such as work or family care, flexible scheduling, including variable school hours and shifts, as well as outreach education programs, should be considered.<sup>70</sup> Girls who are pregnant or have child-care responsibilities must not be prevented from continuing their education; indeed, positive steps should be taken to encourage the involvement of all girls and women in education. For example, child-care facilities should be provided adjacent to schools in order to facilitate young mothers' participation.<sup>71</sup>

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<sup>69</sup> The Special Rapporteur, *Report of the Special Rapporteur on the Right to Education*, ¶¶ 93-97, U.N. Doc. A/HRC/8/10/Add.4 (May 27, 2008); Concluding Observations: Bosnia and Herzegovina, Committee on the Rights of the Child, ¶ 58(a), CRC/C/15/Add.260 (Sept. 21, 2005).

<sup>70</sup> Minimum Standards for Education in Emergencies, *supra* note 35, at 43.

<sup>71</sup> UNHCR Education: Field Guidelines, *infra* note 85, at 1.3.6.

### **In The Context of Durable Solutions**

Guiding Principle 28(1) affirms that competent authorities have the primary duty and responsibility to establish conditions and provide the means for IDPs' voluntary return or resettlement in safety and dignity. Any plan for return or resettlement must ensure access to education. For example, the Law for the Internally Displaced in Peru expressly recognizes this.<sup>72</sup> In Angola, the Norms on Resettlement of Displaced Populations expressly affirm the right to education for IDPs, including those who have returned and resettled.<sup>73</sup>

Revision and adaptation of educational curricula can also be an important step towards facilitating durable solutions to displacement, particularly in cases of displacement induced by conflict or systematic violations of human rights. Curricula should be adapted so as to contribute to rebuilding the social fabric and easing any ethnic, religious, or other tensions that may have brought about the conflict and displacement in the first place. In the short term, when a pre-existing curriculum is used, controversial elements should be omitted and there should be ongoing monitoring to identify and eliminate any messages of hate and revenge. In the long term, in order for reconciliation through education to be effective, it is imperative that all ethnic, religious, and cultural groups and their traditions be reflected in a newly developed curriculum. Just as the curriculum requires careful assessment for ethnic or other bias, so, too, do the textbooks from which that curriculum is taught.<sup>74</sup>

Revised curricula and updated textbooks are two steps towards substantive improvement in the delivery of education to reflect changed school demographics and to promote respect for difference. Another step is to ensure that the composition of the teaching staff reflect those changed demographics

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<sup>72</sup> Law for the Internally Displaced, Law 28223, art. 15(h), May 20, 2004.

<sup>73</sup> See Angola, Norms on the Resettlement of Displaced Populations, Decree 1/01 of 5 Jan. 2001.

<sup>74</sup> See, e.g., Agreement Regarding Textbook Review and Removal of Offensive Materials, Bosnia and Herzegovina, May 18, 1998; Agreement on the Review of Textbooks, Dec. 14, 2001, Sarajevo; National Framework for Relief, Rehabilitation and Reconciliation in Sri Lanka, June 2002, at 12.

following IDP return or resettlement. Moreover, where gender or other imbalances exist, targeted teacher training should seek to increase the number of women teachers or teachers from minority communities.<sup>75</sup>

Displacement and conflict, particularly when they are prolonged, can cause significant disruptions in a child's education. In some instances, children may not receive any formal education over the course of several years. If, and when, these children are able to resume their education, they are likely to be placed not in a class of their peers, but with much younger students in lower grades, which is both demeaning to these children and can result in social tensions and psychosocial problems. To address this issue, age limits should not be enforced for emergency-affected children and youth. Special school programs should be developed that compress a standard primary or secondary education into a shorter period. Such bridging programs and accelerated courses will allow students who are behind on their education to catch up to their peers. In addition, second-chance enrollment for dropouts should be permitted.<sup>76</sup>

In order to respond to the needs of the displaced as they return or resettle, a flexible approach should also be taken to certain educational and administrative requirements. For example, in Bosnia and Herzegovina, the authorities agreed to open schools in return areas even in cases where there

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<sup>75</sup> See, e.g., Agreement, Meeting of the Conference of the Minister of Education of Bosnia and Herzegovina, May 19, 2000, Sarajevo, ¶ 6; National Framework for Relief, Rehabilitation and Reconciliation in Sri Lanka, June 2002, at 12.

<sup>76</sup> Inter-Agency Network for Education in Emergencies, *Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction*, at 43-44 (2004). Consider, for example, the case of Somaliland in which the Ministry of Education, in collaboration with Save the Children UK and Denmark, launched a condensed lower primary education program, whereby the usual four years of primary education can be completed in three years, with the aim being that after three years the pupils be channeled into the formal education system: *The Government Education Policy for Kamaiya Children is Faulty*, MS-Nepal Newsletter 2002, Issue 2.

was not the minimum number of students for a school, as prescribed by the law.<sup>77</sup>

## **INSTITUTIONAL ELEMENTS OF STATE REGULATION**

Realization of the right to education depends very much on the existence of an effective institutional infrastructure to administer and provide for educational needs. This infrastructure is likely to be heavily strained or even damaged as a result of the circumstances creating internal displacement. In addition, displacement generally creates additional needs that demand not only the development of new legal or policy norms, but may also necessitate the creation of new institutional capacities or mandates.

### **Prior to Displacement**

#### *Prevention and Contingency Planning*

While conflicts and natural disasters may not always be preventable, steps can be taken to reduce the vulnerability of educational institutions and thereby reduce the disruption that a conflict or disaster may cause to students' education. Disaster prevention or management laws usually designate the Ministry of Education as the primary national authority responsible for reducing the risks to access to education.<sup>78</sup> The Ministry also usefully can be tasked with coordinating the appointment and activities of disaster control groups or reaction teams within schools<sup>79</sup> as well as ensuring the safe

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<sup>77</sup> Implementation Plan for the Interim agreement on accommodation of specific needs and rights of returnee children, Sarajevo, Mar. 5, 2002, art. II(2).

<sup>78</sup> See Reglamento de asignación de funciones del sistema nacional para la prevención, mitigación y atención de desastres a las instituciones del estado, Decreto No. 98-2000, Nicaragua, art. 6(g); Ordinance on Prevention and Control of Floods and Storms and Implementation Provisions, No. 09-L/CTN, March 20, 1993, art. 26(10).

<sup>79</sup> See Presidential Decree No. 1566, Strengthening the Philippines Disaster Control, Capability and Establishing the National Program on Community Disaster Preparedness, sect. 5(e).

stockpiling of supplies, including copies of the curriculum and all textbooks in use.

### *Advanced Training on Education in Emergencies*

Key personnel in schools and relevant government ministries need to be trained in issues relating to emergencies and education as a means of ensuring they are able to prepare for and respond quickly and effectively in the event of an emergency. To this end, the Inter-Agency Network for Education in Emergencies (INEE) has developed training materials and is implementing a global training program on Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction.<sup>80</sup>

### **During Displacement**

#### *Identification of Institutional Responsibility for IDP Settlements/Camps*

Where the focus is on providing educational services in IDP camps and settlements, it is essential that institutional responsibility for the administration and oversight of these facilities be clearly identified. Generally, the Ministry of Education should be responsible for coordinating, for example, the provision of teachers and materials for camps.<sup>81</sup> In other cases, district or provincial authorities may be given the responsibility of organizing the provision of education in camps and settlements. The choice of appropriate institution will depend on the institutional structure and competencies normally in place, particularly whether the regulation of education is centralized in the national authorities or decentralized.

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<sup>80</sup> See Allison Anderson & Dean Brooks, *Implementing Minimum Standards for Education in Emergencies: Lessons from Aceh*, 32 HUMANITARIAN EXCHANGE 23 (2005).

<sup>81</sup> UNHCR Afghanistan, *Strategy for Support to Internally Displaced Persons in the Southern Region in 2005 and 2006*, July 2005, available at [http://www.internal-displacement.org/8025708F004\\_CE90B/httpDocuments/AA74BFD49ED7626FC12570C700513CB7/\\$file/IDPSTRATATKDH05.pdf](http://www.internal-displacement.org/8025708F004_CE90B/httpDocuments/AA74BFD49ED7626FC12570C700513CB7/$file/IDPSTRATATKDH05.pdf). See also Law of the Azerbaijan Republic on social protection of forcibly displaced persons and persons equated to them, May 21, 1999, art. 11.

*Creation of Unit Dedicated to Monitor and Address Educational Needs of the Displaced*

Particularly in situations of large-scale displacement, the creation of a unit within the Ministry of Education dedicated to monitor and address the education needs of the displaced can facilitate consideration and coordination of IDPs' educational needs.<sup>82</sup> The personnel who comprise the unit should be sensitized to the obstacles that IDPs often face in accessing education; they should be aware of IDPs' rights, and be familiar with the Minimum Standards for Education in Emergencies. They should involve all stakeholders including students, parents, and teachers, when making their assessments of the education system and before implementing any decisions that would affect the education of displaced students.

*Creation of Community Education Committees*

The INEE Minimum Standards for Education in Emergencies as well as the UNESCO Guidelines for Education in Situations of Emergency and Crisis recommend the creation of Community Education Committees (CEC).<sup>83</sup> The role of the CEC is to identify and address the educational needs of a community, with representatives drawn from parents and/or parent-teacher associations, local agencies, civil society organizations, community organizations, and youth and women's groups, among others, as well as teachers and learners. As such, a CEC can act as a point of liaison between the IDP community and the Ministry of Education and other relevant institutions. Such committees should be established in IDP camps as well as in areas of IDP return or resettlement. The committee must be inclusive and balanced and should reflect the diversity of the affected population. The CEC should be statutorily recognized and legally registered.

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<sup>82</sup> See, e.g., Interim agreement on accommodation of specific needs and rights of returnee children, Sarajevo, March 5, 2002 and Implementation Plan for the Interim agreement on accommodation of specific needs and rights of returnee children, Sarajevo, March 5, 2002, art. V(5).

<sup>83</sup> Minimum Standards for Education in Emergencies, *supra* note 35, at 15-16; Bensalah, *supra* note 35, at 26.

*Sustaining an Adequate Number of Teachers*

Ensuring the sustainability of the teaching staff is essential for the continuity of education for all students. What is considered an “adequate” number of teachers for any particular country or region must be set by national or local authorities. The maximum class size must be realistic, and every effort must be made to recruit sufficient teachers to avoid major deviations from this standard.<sup>84</sup>

Where financial resources for salaries are strained, a temporary measure may be to develop, in consultation with teachers, alternative remuneration schemes. For example, in IDP return areas, compensation for teachers’ services might initially come in the form of access to plots of land, tools, seed, small livestock, etc.<sup>85</sup> Compensation for teachers’ services should be at a level that ensures professionalism and continuity of service.

A policy of prioritizing the hiring of trained IDP teachers may also add to the sustainability of the workforce, while providing IDP teachers with income. Hiring IDP teachers can help to support the displaced population and ensure teaching staff that are personally aware of, and sensitive to, the challenges faced by the displaced and who, therefore, should be able to provide the practical and psychological support needed by IDP children.

*Affirmative Action in the Training and Appointment of Female Teachers*

It often will be appropriate to proactively recruit female teachers and to adjust the recruitment criteria or process to promote gender parity.<sup>86</sup> The employment of female teachers and/or teaching assistants is important as it provides role

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<sup>84</sup> Minimum Standards for Education in Emergencies, *supra* note 35, at 67.

<sup>85</sup> UN High Commissioner for Refugees, UNHCR Education: Field Guidelines, Feb. 2003, 2.2.7., available at <http://www.unhcr.org/refworld/docid/3f1d38124.html>.

<sup>86</sup> Minimum Standards for Education in Emergencies, *supra* note 35, at 66.



models for girls. The presence of female teachers also enhances protection of girls from sexual harassment by male pupils and teachers.<sup>87</sup>

*Development of Teacher Training Programs to Meet the Needs of the Crisis*

Teacher training programs undertaken in the midst or aftermath of a crisis should address the challenges of value-based education during times of emergency and should incorporate life skills and peace education, as needed.<sup>88</sup> It is essential that teacher training courses are well structured and well documented, and meet the teacher qualification requirements of the education authorities, as well as including any additional components related to the emergency.<sup>89</sup> All education personnel, formal and non-formal, should be trained in recognizing signs of distress in learners and steps to take to address and respond to this behavior in the learning environment.<sup>90</sup> In addition, it is good practice to institute a code of conduct for teachers and educational personnel with the aim of ensuring that schools are safe places, where children are safe from sexual harassment and sexual exploitation and that the teachers behave in a professional manner at all times.<sup>91</sup> Training in the code of conduct should be provided as part of teacher training courses and the code distributed to all educational personnel, whether or not they have been formally trained in its contents.

*Supplementary Teacher Training Programs*

Teacher training facilities may be damaged or strained as a result of a crisis causing displacement, and may need to be substituted or supplemented. Teacher training can be carried out in a variety of flexible ways including in-service and full-time training, mobile trainers, in-school mentoring, school

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<sup>87</sup> UNHCR Education: Field Guidelines, *supra* note 85, at 1.3.5.

<sup>88</sup> Minimum Standards for Education in Emergencies, *supra* note 35, at 60.

<sup>89</sup> *Id.* at 60.

<sup>90</sup> *Id.* at 58.

<sup>91</sup> UNHCR Education: Field Guidelines, *supra* note 85.

cluster arrangements, and teachers' centers.<sup>92</sup> Such programs should aim to reach all displaced teachers, including in camps.<sup>93</sup> When large numbers of teachers are killed, missing, debilitated, or otherwise unable to resume their duties, rapid training programs are required.<sup>94</sup>

### *Ensuring a Safe Learning Environment*

The state has the obligation to ensure the security of all those under its territorial jurisdiction. When educational institutions are at risk or the access routes are unsafe for students, the state should provide effective policing or other measures to ensure protection and that access routes are safe and secure for all students and education personnel.<sup>95</sup> The National Education Law of Guatemala, for example, provides for the protection of "educational communities," stipulating that the Ministry of Education should ensure that educational institutions do not suffer any intervention from political parties or the military.<sup>96</sup>

### *Reconstruction of Schools and Provision of Alternative Shelter*

Education need not take place within formal school structures, and in an emergency setting this may not be an option if schools have been destroyed. As an immediate and interim measure, school shelter support, including tents, should be provided to enable the creation of learning spaces. The goal, however, should be the building or rebuilding of schools, which should have priority coverage in programs to address water and sanitation needs.<sup>97</sup>

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<sup>92</sup> Bensalah, *supra* note 35, at 24.

<sup>93</sup> See, e.g., UN Office for the Coordination of Humanitarian Affairs, *Consolidated Inter-Agency Appeal 2004—Chechnya and Neighboring Republics*, Nov. 2003.

<sup>94</sup> See, e.g., Anderson & Brooks, *supra* note 80, at 22.

<sup>95</sup> Minimum Standards for Education in Emergencies, *supra* note 35, at 45.

<sup>96</sup> National Education Law, Legislative Decree No. 12-91 (Jan. 12, 1991), art. 100.

<sup>97</sup> UNHCR Education: Field Guidelines, *supra* note 85, at 2.3.5.

*Support to Host Schools*

Generally, the preference is for IDPs to be integrated into local community schools. Where IDPs are dispersed within the local community, this is essential. Moreover, local schools will likely have the basic necessary infrastructure, including school buildings and teachers, which simply will not exist in IDP camps and settlements. To be sure, these schools will need additional support. A significant influx of students to one area can cause overcrowding in local schools and can be a practical and financial burden on the host school. The risk in such a situation is that schools will become reluctant to accept internally displaced children. States, therefore, should take the necessary budgetary measures to compensate or otherwise channel additional resources to schools that accept large influxes of displaced children.<sup>98</sup>

*Provision of Funding to Support Education in Emergencies*

Rapid educational response in emergencies requires quick access to funding, for example, emergency reserves. Funding during protracted emergencies should be sufficient to support education for children and youth that will permit them to continue their progress through a normal school program.<sup>99</sup> In addition, flexibility in funding, possibly by means of a special fund, would enable reconstruction and re-supply to be undertaken as, and when, emergency-affected areas become accessible.<sup>100</sup>

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<sup>98</sup> See, e.g., United States of America, Title IV (commonly known as the Hurricane Education Recovery Act) of Division B of the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Public Laws 109-148); 119 Stat. 2680, Section 107(e)(1).

<sup>99</sup> Minimum Standards for Education in Emergencies, *supra* note 35, at 44.

<sup>100</sup> Bensalah, *supra* note 35, at 25.

*Facilitating Access for International Assistance when National Capacity is Insufficient*

In particular in crisis situations, the United Nations and international non-governmental organizations often provide critical support to national education efforts. Guiding Principle 25(2) states that “international humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced.” What needs to be emphasized is not just the right of such organizations to offer support, but the obligation on the part of state authorities to not arbitrarily withhold their consent to such assistance, particularly when they are unable or unwilling to provide the required humanitarian access.<sup>101</sup> As noted earlier, under the key international as well as regional instruments guaranteeing the right to education, states parties commit to “undertake all appropriate legislative, administrative and other measures” for the implementation of this right “to the maximum extent of their available resources and, where needed, within the framework of international cooperation.”<sup>102</sup>

**In the Context of Durable Solutions***Creation of Representative Curriculum and Textbook Review Body*

In the event that a curriculum review is undertaken, a suitable body needs to be established that can effectively represent the views of the diverse constituent groups in society. A similar approach should be taken in relation to textbook review. In Bosnia and Herzegovina, a Curriculum Harmonization Board was created. Members of the Board included one representative of the Ministry of Education, one representative from a pedagogical institute of each ethnic or minority community, and representatives of the international community.<sup>103</sup> Separate expert groups were formed to conduct a review of

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<sup>101</sup> *Guiding Principles on Internal Displacement*, principle 25(2).

<sup>102</sup> CRC, art. 4. *See also* ICESCR, art. 2; ACHR, art. 1.

<sup>103</sup> Agreement, Meeting of the Conference of the Minister of Education of Bosnia and Herzegovina, May 10, 2000, Sarajevo, ¶ 2, available at <http://www.unhcr.ba/protection/refugees&dp/10maya%7E1.pdf>.

textbooks to ensure they did not include any material offensive to the goals and multi-ethnic makeup of the state.<sup>104</sup>

### *Revision of Laws Concerning Composition of School Boards*

In a further effort to ensure that institutional infrastructure reflects changed student demographics, laws governing the composition of school boards should be revised and amended as necessary to ensure that the composition of the boards reflects the composition of the school population.<sup>105</sup> In situations of IDP return or resettlement, it may be appropriate in the initial phase to ensure that the boards include representatives of the IDP community.

## **INTERNATIONAL ROLE**

The international community can contribute to the promotion and protection of the right of IDPs to education in a number of ways. International and regional human rights mechanisms play an especially important role in monitoring state compliance with human rights standards. They can assist with identifying gaps in legislation and implementation; recommend legal, procedural, and institutional reform; and provide technical assistance in the development of laws and policies to ensure respect for the right of IDPs to education.

Several monitoring mechanisms exist within the UN and regional human rights systems. Some depend on a country's ratification of a particular human rights treaty. Of particular relevance are the UN Committee on the Rights of the Child and the UN Committee on Economic, Social and Cultural Rights, which are responsible for monitoring the implementation of their respective treaties by state parties. In a number of cases, the Committee on the Rights of the Child has drawn attention to the right of IDP children to education and the

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<sup>104</sup> Agreement Regarding Textbook Review and Removal of Offensive Material, Bosnia and Herzegovina, May 18, 1998; Agreement on the Review of Textbooks, Dec. 14, 2001, Sarajevo.

<sup>105</sup> Implementation Plan for the Interim agreement on accommodation of specific needs and rights of returnee children, Sarajevo, Mar. 5, 2002, article VI(9)(b).

application of the *Guiding Principles*.<sup>106</sup> The Committee on Economic, Social and Cultural rights has also on occasion referred to the challenges faced by IDPs in accessing education.<sup>107</sup>

A number of thematic special mechanisms of the UN Human Rights Council also are relevant. The mandate of the UN Special Rapporteur on the right to education is of particular importance. Educational issues for IDPs also can be addressed by the Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons. Also relevant is the mandate of the Special Representative of the Secretary-General for Children and Armed Conflict. This mechanism has devoted significant attention both to issues of education in conflict as well as to the situation of IDPs, often linking the two issues.<sup>108</sup>

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<sup>106</sup> See, e.g., Committee on the Rights of the Child, Concluding observations of the Committee on the Rights of the Child: Uganda, ¶ 63, U.N. Doc. CRC/C/UGA/CO/2 (Nov. 23, 2005); Committee on the Rights of the Child, Concluding observations of the Committee on the Rights of the Child: Croatia, ¶ 60, U.N. Doc. CRC/C/15/Add. 243 (Oct. 1, 2004); Committee on the Rights of the Child, Concluding observations of the Committee on the Rights of the Child: Turkey, ¶ 60, U.N. Doc. CRC/C/15/Add.152 (July 9, 2001).

<sup>107</sup> See, e.g., Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on Economic, Social and Cultural Rights: Serbia and Montenegro, ¶¶ 37, 64, U.N. Doc. E/C.12/1/Add.108 (June 23, 2005); Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on Economic, Social and Cultural Rights: Georgia, ¶¶ 12, 31, U.N. Doc. E/C.12/1/Add.83 (Dec. 19, 2002).

<sup>108</sup> The Special Representative of the Secretary-General, *Report of the Special Representative of the Secretary-General for Children and Armed Conflict to the General Assembly*, U.N. Doc. A/55/442 (Oct. 3, 2000); The Special Representative of the Secretary-General, *Report of the Special Representative of the Secretary-General for Children and Armed Conflict to the General Assembly*, U.N. Doc. A/57/402 (Sept. 24, 2002); The Special Representative of the Secretary-General, *Report of the Special Representative of the Secretary-General for Children and Armed Conflict to the General Assembly*, U.N. Doc. A/58/328 (Aug. 29, 2003).

At the operational and programmatic level, international organizations and donor governments can provide valuable practical, technical, material, and financial support to educational programming. In addition to assistance in the development of educational infrastructure, this support might include, for example, technical assistance in the drafting of education legislation and the development of curricula.

As regards emergency education, three international agencies have particular expertise and competence: the United Nations Children's Fund (UNICEF), the United Nations High Commissioner for Refugees (UNHCR) and, though less directly operational in nature, the United Nations Educational Scientific and Cultural Organization (UNESCO).

UNICEF has lead responsibility in the international response to education in humanitarian emergencies. Activities undertaken in this regard include: setting-up temporary learning spaces and re-opening schools; supporting the educational re-integration of teachers and children (with a focus on girls); providing learning materials; and organizing recreational activities.<sup>109</sup> Following the immediate emergency phase, UNICEF's role includes promoting the resumption of quality educational activities in the areas of literacy, numeracy, and life skills such as HIV/AIDS prevention and hygiene, as well as establishing community services around schools such as water and sanitation. Another form of support offered by UNICEF is the distribution of pre-packaged kits containing school supplies and teaching materials aimed at swiftly providing short-term literacy and numeracy education during the early emergency phase. Sometimes referred to as "school-in-a-box" kits, the appropriateness of these generic kits has sometimes been questioned on the basis that they do not take into account the particular social context and scholastic traditions of the society and students.<sup>110</sup> Any decision about the use of these kits should be taken only after appropriate consultation with national authorities and the communities affected.

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<sup>109</sup> Core Commitments for Children in Emergencies, UNICEF, Mar. 2005, at 13-14.

<sup>110</sup> Marc Sommers, *Educating Children During Emergencies: A View from the Field*, Women's Commission for Refugee Women and Children (1999).

UNHCR's role in ensuring educational opportunities among displaced populations is principally focused on refugees, in line with its statutory global responsibility for providing assistance and protection to refugees. However, within its *UNHCR Education: Field Guidelines*, a clear role is identified for UNHCR with regard to the provision of education for the internally displaced as well. This role, which necessitates close coordination with UNICEF, includes assisting local schools to accommodate substantial influxes of IDP students; promoting curriculum design aimed at countering the trauma and stress suffered by IDP children; and support for the construction of low-cost semi-permanent schools and the provision of teacher incentives.<sup>111</sup> Moreover, in light of UNHCR's recently specified lead responsibilities for the protection of conflict-induced IDPs as well as for camp coordination and management in IDP situations, it will be important for UNHCR to devote close attention to issues of IDP education.

UNESCO's role in supporting educational programming in situations of internal displacement and humanitarian crises generally is more limited and less direct when compared with the role of UNICEF and UNHCR. Among UNESCO's more direct contributions in conflict-affected countries are those made through its Program for Education for Emergencies and Reconstruction (PEER) unit, which devises educational programming and interventions in the Horn of Africa, but which as of yet have not been systematically replicated in other regions of the world.<sup>112</sup> UNESCO nonetheless has become increasingly involved in research on education responses in emergency and conflict situations. In 2006, UNESCO's International Institute for Educational Planning developed the *Guidebook for Planning Education in Emergencies and Reconstruction* (the *Guidebook*).<sup>113</sup> The *Guidebook*, which aims to support educational authorities in providing equal access to quality education for children affected by conflict or disaster, makes extensive references to the

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<sup>111</sup> UNHCR Education: Field Guidelines, *supra* note 85, at 3.1.4, 4.1.2.

<sup>112</sup> Marc Sommers, *Children, Education and War: Reaching Education For All (EFA) Objectives in Countries Affected by Conflict*, Working Paper No. 1, World Bank, at 13 (2002).

<sup>113</sup> Guidebook for Planning Education in Emergencies and Reconstruction, UNESCO/IIEP (2006).



challenges faced by IDPs and provides suggestions for how best to address those challenges.

Another UN agency that provides critical support underpinning the work of UNICEF, UNHCR, and others is the World Food Program (WFP). In many situations, WFP provides food for students and teachers, usually in the form of school meals, as part of its general emergency response. WFP's school feeding programs and food-for-work schemes for teachers in emergency settings provide critical support facilitating access to education. In the immediate aftermath of the tsunami of December 2004, for example, WFP provided food to those affected by the devastation, with particular attention paid to the internally displaced who were living in schools, mosques, hospitals, with host families, and in remote communities.<sup>114</sup> Following the immediate response phase, WFP implemented school feeding programs in all tsunami-affected countries.<sup>115</sup>

In addition to the work of UN agencies, numerous international NGOs are actively engaged in supporting educational programs for refugee and internally displaced children. Chief among these are the International Rescue Committee (IRC) and the International Save the Children Alliance. In 1997, the IRC founded its Program for Children Affected by Armed Conflict, among the main activities of which is ensuring education in emergency environments.<sup>116</sup> Save the Children also has an extensive history of working on issues of education in conflict and other emergency environments. Education-related activities carried out by the organization range from feeding programs to the development of informal and flexible educational programs to meet the needs of children who would otherwise not be able to attend school for reasons, for example, of work or family obligations.<sup>117</sup> Globally, Save the

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<sup>114</sup> World Food Programme: Annual Report 2004, WFP, at 26.

<sup>115</sup> World Food Programme: Annual Report 2005, WFP, at 20-22.

<sup>116</sup> IRC Child & Youth Education Fact Sheet, July 2005, at 2.

<sup>117</sup> Hope and Opportunity: International Save the Children Alliance Annual Report (2005).

Children has issued recommendations to governments and donors for how to address the challenges faced by children in conflict-affected countries.<sup>118</sup>

At the UN World Summit in 2005, heads of state and governments pledged that “children in armed conflicts [will] receive timely and effective humanitarian assistance, including education, for their rehabilitation and reintegration into society.”<sup>119</sup> Donors, however, traditionally have been reluctant to fund education in humanitarian disasters, considering this to be an issue of development rather than emergency relief. There is some indication this approach is beginning to change.<sup>120</sup> Overall, however, it remains the case that support for education in emergencies, including for IDPs, continues to be severely under funded.<sup>121</sup>

In addition to financial support, donors also have been urged to take an active interest in ensuring both the quality and coverage of emergency education response, including the enrollment and retention of learners from vulnerable groups.<sup>122</sup> The United Kingdom’s Department for International Development (DFID) has issued a study on the impact of conflicts on education with a view to enhancing the effectiveness of its education interventions.<sup>123</sup> The Swedish International Development Agency (SIDA) has produced guidelines for

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<sup>118</sup> Save the Children, *Rewrite the Future: Education for Children in Conflict-affected Countries*, at 35 (2006).

<sup>119</sup> G.A. res. 60/L.1, ¶ 132, U.N. Doc. A/60/L.1, (Sept. 15, 2005), art. 118.

<sup>120</sup> Susan Nicolai & Carl Triplehorn, *The Role of Education in Protecting Children in Conflict*, HUMANITARIAN PRACTICE NETWORK PAPER 16-17 (2003).

<sup>121</sup> Women’s Commission for Refugee Women and Children, *Global Survey on Education in Emergencies*, at 24 (2004). See also Save the Children, *Last in Line, Last in School: How Donors are Failing Children in Conflict-affected Fragile States* (2007).

<sup>122</sup> Minimum Standards for Education in Emergencies, Chronic Crises and Early Reconstruction, Inter-Agency Network for Education in Emergencies 24 (2004).

<sup>123</sup> DFID, Education, Conflict and International Development, Feb. 2003.

humanitarian assistance in the education sector.<sup>124</sup> Both publications refer to the situation of internally displaced children, with the DFID study making particularly detailed observations about the challenges faced by internally displaced children and the priorities of humanitarian actors in addressing these challenges.

The World Bank, for its part, has suggested a framework by which states can be guided in reconstructing the education system in conflict-affected countries. First, states must adopt sound policies and possess committed leadership. Secondly, the state must have an adequate operational capacity at all levels to translate sound policies and strong leadership into effective action. Thirdly, financial resources must be made available to support effective programs. Finally, attention must be paid to results and accountability for learning and outcomes.<sup>125</sup>

## **SUMMARY OF RECOMMENDATIONS**

To protect the right to education in situations of internal displacement and ensure equal access and enjoyment of the right to education among IDPs, domestic legislators and policy-makers in countries affected by, and at risk of, displacement would do well to take a number of specific steps. These include:

1. Review all relevant domestic legislation, policies, and administrative guidelines, including but not limited to general education legislation and policy as well as IDP-specific legislation and policy, to assess their impact on the right to education for IDPs;
2. Identify any legislative and administrative barriers needing to be addressed to enable IDPs to access education on par with other persons in the country;
3. Develop and adopt the necessary legislative, procedural, and administrative reforms to ensure that IDPs enjoy equal and unhindered access to free primary

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<sup>124</sup> SIDA, *Guidelines for Humanitarian Assistance in the Education Sector*, 2002.

<sup>125</sup> World Bank, *Reshaping the Future: Education and Postconflict Reconstruction*, at 30 (2005).

education and are able to access education and attain the same educational standards on par with the population;

4. Prepare for the possibility of displacement by developing contingency planning for education in emergencies as well as procedural safeguards and institutional capacity to enable continued access to education in the context of emergencies, including displacement;

5. Prioritize education at the earliest stages of an emergency concurrently with the provision of humanitarian assistance, including by providing, with international support if required, educational services including in IDP camps and settlements;

6. Relocate IDPs from temporary emergency shelters in schools and other educational facilities into adequate and appropriate alternative accommodation as soon as possible;

7. Issue replacement identity documentation to IDPs as soon as possible and without unreasonable conditions, such as having to return to the place of origin;

8. Relax registration requirements for school enrollment to take into account the particular challenges faced by IDPs, including loss of identity documentation and school records or transfer papers that under normal circumstances may be required for school registration;

9. Recognize IDP teachers' certification and, in the event of teacher shortages, adapt certification processes and training programs and provide incentives to expedite direct teaching resources to areas affected by internal displacement as temporary measures, while ensuring quality education;

10. Sensitize teachers through training and other means to the particular needs of IDPs, including their psycho-social needs and potential risks for discrimination;

11. Ensure, both during displacement as well as upon return or resettlement, that IDPs have access to education without discrimination of any kind and in a language that they understand;
12. Provide opportunities for accelerated learning for IDPs and others whose education was disrupted by conflict or disaster as well as alternative schooling (e.g., evening classes) or skills-training programs for IDP children and adolescents whose household or economic obligations impede regular school attendance;
13. Adopt special measures for IDPs, such as exemption from school fees, creation of scholarship schemes, provision of learning materials and other resources (e.g., uniforms), and support (e.g., meals, transportation) free of charge where necessary to overcome the particular obstacles that IDPs face in accessing education;
14. Monitor and report on IDPs' access to education in reporting to the UN treaty bodies, in particular to the Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights, taking into account recommendations made by these bodies and other international and regional human rights mechanisms when revising domestic legislation and policy;
15. Call upon expertise and technical support from the international community, in particular from UNICEF, NGOs specialized in education in emergencies, the UN Special Rapporteur on the Right to Education, and regional organizations' experts on the right to education as well as from the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons.