

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

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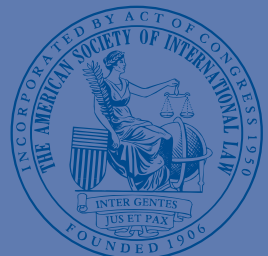
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THE AMERICAN SOCIETY OF INTERNATIONAL LAW



## Chapter 9

### The Recovery of Personal Documentation

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#### INTRODUCTION

The personal documentation of internally displaced persons (IDPs) is often lost during their flight from conflict or disaster. Many IDPs from marginalized groups may have never possessed such documents. IDPs' existing documents may also be invalidated as a result of changes to the legal or administrative regime.

The use of documentation varies widely from country to country as do the consequences of not possessing them. In many contexts, however, IDPs' access to benefits and legal rights are contingent on the production of documents such as identification cards, passports, birth and marriage certificates, educational diplomas, and certification of health and welfare rights or property title. In such cases, inadequate procedures to provide or renew missing or invalid documents for displaced persons can lead to violations of their rights.

Domestic procedures on issuance and recognition of documentation are rarely adapted to situations of forced displacement and frequently result in unforeseen obstacles for IDPs in obtaining or renewing personal documents. Missing documentation also presents an obstacle to return and other durable solutions, for example, in the case of disputes over property and inheritance rights, perpetuating the vulnerability of groups such as female-headed households or minorities whose members may have traditionally been less likely to possess documented rights (or be entitled to them in accordance with local practices).

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This chapter<sup>1</sup> addresses two categories of documents. Those related to the civil status of an individual, establishing family relations, identity, nationality, and property rights and those entitling IDPs to particular benefits in order to ameliorate their condition. Governments confronted with high numbers of IDPs with neither documentation nor evidence to establish their civil status will face serious difficulties in restoring all missing documentation. Consequently, many states opt to establish an IDP status for the purpose of dispensing certain rights and humanitarian assistance. The creation of an “IDP card” based on IDP status can be expedient for addressing emergency needs but is also associated with serious risks, including the possibility of creating a rigid legal category that arbitrarily excludes other *de facto* IDPs in need of assistance, complicates local integration, or serves to limit the rights that IDPs should enjoy on an equal basis with other citizens.

## LEGAL FRAMEWORK

### Relevant Guiding Principles

Principle 20 of the *Guiding Principles on Internal Displacement* (the *Guiding Principles*) provides that:

1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the

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<sup>1</sup> This chapter is based on the experience of the Norwegian Refugee Council’s (NRC) Information, Counseling and Legal Assistance (ICLA) projects. It draws on Conor Foley’s ‘Study on the Recovery of Personal Documentation: the practice of the Norwegian Refugee Council,’ May 2006, which is available on the website of the NRC Internal Displacement Monitoring Centre: <http://www.internal-displacement.org>. Thanks to Paul Nesse (NRC) for reviewing the initial draft document.

course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

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

Although Principle 20 of the *Guiding Principles* relates the "right to documents" specifically to the right to "recognition as a person before the law," it could also be related to a broader set of human rights. The second paragraph of Principle 20 includes a non-exhaustive list of documents required to enjoy other rights such as education, adequate housing, health care, or other social benefits. Documents can also be necessary for the effective realization of liberty and security of the person, freedom of movement, the right to vote, and the right to property and possessions. The last of these issues is of particular importance when people have been arbitrarily evicted from their homes in the course of displacement or are seeking the restitution of their housing, land, and property rights.<sup>2</sup>

The accepted principle that human rights guarantees provided must be practical and effective suggests that where IDPs are denied substantive rights because they lack necessary documents, the authorities in question may, under certain circumstances, be under a positive obligation to remedy the situation.<sup>3</sup> Guiding Principle 4 rules out discrimination of any kind and specifies that certain vulnerable IDP groups should receive protection and assistance that takes into account their special needs. Principle 3 affirms national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction and that IDPs have the right to request and to receive such assistance without being punished for doing so.

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<sup>2</sup> See Chapter 10 of this volume on property rights.

<sup>3</sup> KEIR STARMER, EUROPEAN HUMAN RIGHTS LAW, THE HUMAN RIGHTS ACT 1998 AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS 193-209 (2000).

### Relevant International Law

The right of every human being to be recognized as a person is widely recognized in international law.<sup>4</sup> Both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) specifically state that the right to “recognition everywhere as a person before the law” applies to all people “without distinction of any kind.”<sup>5</sup> Indeed this right is considered to be such a basic prerequisite for the exercise of other individual rights that it is widely held to be non-derogable and is specifically designated as non-derogable in the ICCPR.<sup>6</sup>

International human rights law also provides certain specific safeguards for the right to legal recognition. The ICCPR provides that “every child shall be registered immediately after birth and shall have a name”<sup>7</sup> while the Convention on the Rights of the Child (CRC) states that “where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.”<sup>8</sup> In addition, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

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<sup>4</sup> Universal Declaration of Human Rights [UDHR], art. 6; International Covenant on Civil and Political Rights [ICCPR], art. 16; American Convention on Human Rights [ACHR], art. 3; African Convention on Human and Peoples Rights [AfCHPR], art. 5; Convention on the Elimination of All Forms of Racial Discrimination [CERD], art. 5.

<sup>5</sup> UDHR, art. 2; ICCPR, art. 16.

<sup>6</sup> ICCPR, art. 4(2); ACHR, art. 27(2).

<sup>7</sup> ICCPR, art. 24(2).

<sup>8</sup> CRC, art. 8(2). *See also* Declaration on Social and Legal Principles relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption Nationally and Internationally (1986).

requires states parties to officially register marriages in order to ensure that the equal rights of both parties are fully respected.<sup>9</sup>

International refugee law and humanitarian law also set out specific obligations related to documentation. The 1951 Convention Relating to the Status of Refugees (the Refugee Convention) explicitly requires that the authorities “shall deliver or cause to be delivered under their supervision to refugees such documents or certifications as would normally be delivered to aliens by or through their national authorities,”<sup>10</sup> and also to issue identity papers to refugees not possessing a valid travel document.<sup>11</sup> These documents should be accepted as proof of identity “in the absence of proof to the contrary.”<sup>12</sup> The Refugee Convention also states that rights “previously acquired by a refugee and dependent on personal status,” such as those related to marriage, shall be respected by contracting states.<sup>13</sup>

The Convention (IV) Relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention) requires occupying powers to “take all necessary steps to facilitate the identification of children and the registration of their parentage.”<sup>14</sup> When civilians are interned by occupying powers, the Fourth Geneva Convention specifies that “family or identity documents in the possession of internees may not be taken away without a receipt being given, that internees shall never be left without identity papers, and that, if they do not possess any identity documents, the detaining authorities must issue them

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<sup>9</sup> CEDAW, art. 19(2); *See also* Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1964.

<sup>10</sup> 1951 Convention Relating to the Status of Refugees [Refugee Convention], art. 25(2).

<sup>11</sup> *Id.* art. 27.

<sup>12</sup> *Id.* art. 25.

<sup>13</sup> *Id.* art 12(2).

<sup>14</sup> Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, Aug. 12, 1949 [the Fourth Geneva Convention], art. 50(2).

special documents which will serve as their identity papers for the duration of their internment.”<sup>15</sup> The Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I) also states that when children are evacuated to a foreign country, “the authorities of the receiving country shall establish for each child a card with photographs, which they shall send to the Central Tracing Agency of the International Committee of the Red Cross.”<sup>16</sup>

The right to non-discrimination dictates that women and men shall have equal rights to obtain necessary documents and have them issued in their own names. In refugee settings, for example, the Executive Committee of the Office of the United Nations High Commissioner for Refugees (UNHCR) has urged states to “issue individual identification and/or registration documents to all refugee women”<sup>17</sup> and also called upon states and the UNHCR to “ensure the equal access of women and men to refugee status determination procedures and to all forms of personal documentation relevant to refugees’ freedom of movement, welfare and civil status.”<sup>18</sup>

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

A general obstacle to the implementation of Principle 20 is the frequent imbalance between state requirements, as prescribed by state law, directives and procedures for documentation to be held by those under its jurisdiction, and the state’s capacity and willingness to issue these documents. The lack of awareness or will of officials implementing these rules at the central or local

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<sup>15</sup> *Id.* art. 97(6).

<sup>16</sup> Protocol Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977, art. 78(3).

<sup>17</sup> UNHCR Ex. Com. Conc. 64 (XLI) Refugee Women and International Protection, viii (1990).

<sup>18</sup> UNHCR Ex. Com. Conc. 73 (XLIV) Refugee Protection and Sexual Violence, ¶ (c) (1993).

level, or even in some cases corruption, also contributes to the non-respect of regulations.

Conflicts or natural disasters often disrupt the regular functioning of institutions and put tremendous pressure on the system to deliver documentation to a large number of people through procedures that are not adapted to situations of mass displacement. This raises issues of resources, capacity, and procedures. Documents are usually issued on the basis of other documents or evidence proving the identity or status of a person. In the absence of exceptional procedures taking into account the fact that most displaced persons are unable to provide such evidence, there is a significant risk that displaced persons remain without documentation. In addition, civil and land registries are often incomplete (especially in informal societies) or have been destroyed or taken away during the conflict, which increases the difficulty for the authorities to establish the identity and status of a person and therefore issue new documentation. In Afghanistan, Sudan, Burundi, northern Uganda, and the Democratic Republic of Congo, for example, official registers of births, deaths, and marriages are frequently incomplete and significant sections of the population have never been issued official documents. This is particularly the case in rural areas, where indigenous people or certain ethnic minorities are less likely to be registered. Women are also disproportionately excluded from official records. Once displaced, the initial absence of documents increases their vulnerability and poses additional obstacles to proving their identity or qualifications and claiming their rights.

In such circumstances, governments may prefer to issue temporary documents or grant rights through IDP registration—and may even create for them a separate status. In this case, too, it can prove logistically difficult to differentiate displaced persons from other vulnerable categories in need of assistance. Also, in certain cases, displaced persons do not wish to be identified as such because they believe it would put them at risk. Linking assistance to registration and/or status might oblige IDPs to choose between their physical security and humanitarian assistance. Registration can be perceived as a threat if there is a suspicion that the data provided may be passed on to other agencies such as the armed forces, police, or military groups who may suspect them of affiliation with opposition groups.



Regulations that should facilitate recognition of individuals before the law and individual enjoyment of rights can instead become an unreasonable demand by the state and—correspondingly—an unreasonable burden of proof on the side of the individual. The imposition of deadlines for people to apply for certain types of documents, for example, can create problems for people who do not file a request on time for lack of information, or for practical or security reasons. Complex procedures, fees, and corruption are additional obstacles to IDPs' access to documentation.

Existing documents may have become invalid following regime change or division of the country. The will of the new authorities or breakaway regions to assert their power over their territory and population often result in the creation of new rules and requirements, including new documentation. At the same time, documents from the previous regime or breakaway region may be declared invalid, thereby depriving displaced persons of related rights. In such circumstances, IDPs can find themselves separated from their administrative records.

Kosovo is a good example of the difficulties created by the existence of competing systems and institutions within a country, and demonstrates how the issue of documentation can affect many aspects of life, from identity to ownership, education, work qualifications, and pension issues. Between the withdrawal of Serbian forces from Kosovo further to NATO air strikes in 1999 and Kosovo's declaration of independence in 2007, the United Nations Interim Administrative Mission in Kosovo (UNMIK), along with the Provisional Institutions of Self-Government (PISG), administered the province. The Serbian authorities do not recognize documents issued by UNMIK on the grounds that the province is still legally part of Serbia. Similarly, Kosovo Courts do not recognize birth, death, and other registry book certificates issued by the parallel registry offices in Southern and Central Serbia. Ownership certificates issued by those offices on the basis of land registry books relocated from Kosovo are also not recognized. For their part, registry offices in Southern and Central Serbia do not recognize certificates from the registry books that were kept in Kosovo after 1999. Administrative bodies in Serbia proper do not recognize the registration of births, deaths, and marriages in

Kosovo after 1999.<sup>19</sup> Requests linked to property restitution or inheritance procedures are therefore made much more complex because they require multiple searches to obtain ownership and identity documents.<sup>20</sup>

The lack of mutual recognition of documents in Kosovo can prevent IDPs from accessing other rights, in particular pension rights since working booklets proving the number of years of service are either lost or impossible to obtain. In the absence of adequate documentation, IDPs requesting pension benefits cannot enjoy the full amount to which they are entitled. Access to education can also be complicated where documents are not recognized.

Access to documents can also be affected by the need to travel long distance in order to reach the institutions in charge of delivering the documents. This raises issues of costs that not all IDPs can afford, as well as security concerns when the documents can only be retrieved in the place of origin or by crossing insecure areas.

When documents are required, IDPs often lack information and knowledge on which institutions to approach or procedures to follow in order to obtain them. This is particularly the case where civil recognition and ownership rely on customary systems of relations to land, neighbors, and local power structures and have not involved documents. Individuals and groups that culturally or traditionally did not need or use documents in their place of origin or habitual residence have limited experience in relating to formal and bureaucratic systems or institutions. The dispersal of these groups and traditional leaders may render the determination of identity and ownership particularly difficult. Natural disasters add another layer of complexity since physical reference points or boundaries such as poles, trees, or walls may have disappeared.

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<sup>19</sup> See reports and activities of Praxis, a Belgrade-based NGO offering legal assistance to the displaced of Serbia and Kosovo, at: <http://www.praxis.org.rs>.

<sup>20</sup> See reports and activities of Civil Rights Project, an Information Counselling and Legal Assistance program, run by the Norwegian Refugee Council.

## REGULATORY FRAMEWORK

The regulatory framework related to documentation is highly contextual and will depend on the characteristics of the society where it applies. Some countries are highly regulated with large state bureaucracies, in which possession of personal documentation is not just a legal requirement, but also an absolute necessity to participate in social, political, and economic life. In others, while the state may theoretically require all citizens to possess personal documentation, the implementation is flexible and, in practice, this is not such a day-to-day necessity. The need and urgency of finding ways to issue new identification will largely be determined by the negative consequences that different societies impose on those who do not possess it. In some of the places where the Norwegian Refugee Council (NRC) has programs, such as parts of Sudan and Uganda, the Democratic Republic of Congo and Afghanistan, the state is so weak that most official functions, such as the issuing of personal documentation, have largely collapsed and so displaced people may be at no greater disadvantage than the settled population. Nevertheless, practical measures need to be taken to ensure that IDPs are not discriminated against with regard to certain rights which the settled population may find it easier to assert simply because they have lived in the same place for longer.

Local specificities will also determine whether the more appropriate way to address documentation issues is through general legislation, IDP-specific legislation, or at the policy level. While IDP-specific legislation can be proposed as a way to address the particular difficulties affecting the delivery of documents during displacement, it might be more time-efficient to use existing laws and propose adapted procedures through administrative instructions that can be prepared more quickly. An important variable is the centralized or decentralized nature of the state. In decentralized countries, the adoption of a framework legislation or policy might be necessary to ensure a consistent approach countrywide while at the same time accommodating regional specificities. A country with a centralized system can address the same issue directly either through amendment to the existing legislation or administrative instructions, which will apply throughout the country. Where relevant, customary law mechanisms should also be taken into account and

integrated in or recognized by the statutory law system to facilitate issuance of documents and access to rights.

In some countries, impressive laws have been drafted relating to internal displacement. However, there is often a large gap between law and practice. Too often monitoring bodies make recommendations, which states are content to adopt at the policy level. Unfortunately, these often either make little practical difference or actually add to the administrative chaos that often accompanies major displacement crises. Creating new laws, commissions, and other institutions is not necessarily the best solution. States would often be better advised to strengthen and reform the mechanisms that already exist. This is particularly the case with regard to the issuing of new documents, where the solutions often depend on an act of political will.

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

The substantive and procedural elements discussed below and related recommendations shall be adapted and interpreted according to the specific context of the country.

### **Prior to Displacement**

#### *Contingency Plan*

In situations where displacement is imminent or frequent, it is important to establish a contingency plan to facilitate issuance of documents and registration of affected populations. Since regulations established in normal circumstances are not usually adapted to situations of internal displacement, the conditions required to trigger departure from established rules should be specified—these might include the declaration of a state of emergency, or a certain threshold of displaced persons. Regulations can also limit the scope of the special regime to regions affected by the conflict. A contingency plan should endeavor to secure existing records. Updated copies of records registries shall be kept in a safe place to facilitate renewal of documentation and continuous updating of records. Such a contingency plan should also indicate the institutions responsible for its implementation.

## **During Displacement**

### *Establishment of Documentation Needs and Requirements*

IDPs have the right to have their documents issued or replaced like any other citizens. Laws and regulations should determine the type of documents needed and the procedures for obtaining such documents. Procedures should be transparent and made known to the public in order to limit abuses. The list of documents and the procedures should take into account the scope of displacement and the number of people in need of new documents, as well as the capacity of institutions to respond to those needs. This means in practice that states should limit to the minimum the various types of documents required to avoid vicious circles whereby one or more documents is required to obtain another document, leaving a significant proportion of IDPs without any documentation at all. In Colombia, for example, to obtain a basic identity card two preliminary documents are required.<sup>21</sup> As a consequence, in 2002, it was estimated that only one-third of IDPs had identification documents and only 13 percent were registered with the civil registry office.<sup>22</sup>

Legislation should consider alternative and simple identity determination procedures, including a broad range of records and documents such as electricity or telephone bills, rental and bank receipts. A balance should be found between the need for legal certainty, the risk of abuse, and the right of IDPs to obtain the documentation required to benefit from humanitarian assistance and other rights. Clear guidelines should be set regarding elements that can substitute for written proof and be accepted by the institutions in charge of processing claims for documentation. Customary law and traditional methods for identification such as the use of witnesses should be considered and articulated with the formal legal system in place where civil records have been lost or destroyed, or when the formal system was incomplete. Safeguards such as punitive measures in case of false testimonies or forged documents can

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<sup>21</sup> Internal Displacement Monitoring Centre [IDMC], *Lack of Identity Documents Deprives the Displaced from Emergency Assistance*, Country profile for Colombia (2002), available at <http://www.internal-displacement.org>.

<sup>22</sup> *Id.*

be included to limit the risk of abuses resulting from the adoption of a lower evidentiary threshold.

The acceptance of flexible and customary procedures is also essential to protect the rights of certain groups such as indigenous people, Roma, or women who are disproportionately excluded from official records. In the case of women, for example, documents can be essential to claim inheritance rights. Marriages contracted under customary law that represent the majority of cases in many countries with less formalized legal systems are often not recognized by statutory law. When questions of land inheritance arise, women are left without legal standing. In these cases, recognition of customary marriages could protect women although customary law regulating inheritance rights is often patriarchal and tends to dispossess widows, to the advantage of male relatives.

The following examples show how informal mechanisms can be used to establish identity, age, or ownership. In Nigeria, the confirmation of a village chief or a relative is an informal and accepted way of identification. In Eritrea, three witnesses are needed for a confirmation of identity. To ensure accuracy of testimonies, witnesses can be held responsible for their declaration. In other countries, the location where relatives are buried is considered as a proof of ownership. In Sudan, a doctor establishes age certificates, which are required to allow people to work. Birth registries from IDP or refugee camps can also be a basis to establish birth certificates, which is often the first step to obtaining other personal documents. In Honduras, birth registries from clinics located in camps hosting refugees from El Salvador have been used as a basis for UNHCR to issue birth certificates that were later stamped and recognized as official by El Salvador at the time of repatriation. Many other possibilities for using informal mechanisms exist and states should choose the solution that best meets their needs in accordance with their specific context.

### *Temporary Documents*

Some countries have also chosen to issue temporary documents to IDPs to allow them to have full access to rights entitled by the possession of documents despite the fact that they are not in a position to produce the required elements of proof. Such a solution can be envisaged in the short term to respond to an emergency situation but should not delay the delivery of permanent documents. Any regulation allowing for temporary documents should include provisions detailing modalities to transform temporary documents into permanent ones.

### *IDP Cards as a Temporary Substitute for Permanent Documents*

Internal displacement is not a legal category but a situational fact. The *Guiding Principles* are careful not to use such terms as “definition of an IDP,” “IDP status,” or “IDP determination” to avoid putting IDPs into a legal category that the Principles make clear cannot be attributed. One of the reasons for this is that IDPs should not need to be registered to enjoy their legal rights as citizens. However, in many instances, states have created a special IDP status to identify who is an IDP for planning purposes, to determine the number and location of persons in need of assistance, and to identify beneficiaries. The delivery of an IDP card identifies potential beneficiaries and can be used as a temporary substitute for lost documents, which will allow access to rights such as health care or entitlement to collective accommodation or food assistance. In such cases, IDP cards have been nominative to avoid abuses or selling of IDP cards. While it can be expedient to create an IDP status to address the difficulty of issuing new documents based on reliable evidence, creating an IDP status is a time-consuming process in terms of staff and procedures since it involves a determination process, a regular update of data, an opportunity to appeal negative decisions and defining of criteria for the end of the status. Additionally, states should be cautious not to create a legal category that could prejudice other vulnerable groups in need of assistance such as the domiciled population or refugees. The best option remains to provide IDPs with the same documents as any other citizen.

In cases where countries have decided to create an IDP status as a means to addressing their needs, the determination process should be based on the

definition given by the *Guiding Principles* and be simple and inclusive with minimum requirements with regards to proof of residency and identity, to allow for a quicker identification and delivery of assistance. There should be a general presumption in favor of claimants. Regulations should consider *prima facie* recognition of IDPs based on well-known facts of a general nature that led to the displacement. Wide temporal and/or geographical criteria encompassing periods and regions where displacement has taken place can also be added to identify IDPs, although they should be modified when new circumstances arise.

In certain countries such as the Balkans or Georgia where IDP status offers significant benefits such as access to health care, education, accommodation and pensions, states are understandably keen to avoid abuses and impose stricter criteria that can be detrimental to IDPs. In Azerbaijan, and in Georgia until 2003, for example, IDPs buying property would lose their status. This requirement delayed the local integration of IDPs who were reluctant to buy property for fear of losing the benefits linked to the status.<sup>23</sup>

#### *Link between Profiling, Registration and Documentation*

Profiling of an IDP population is an approach used to gather demographic information and numbers on IDPs through methods and techniques that do not necessarily entail individual registration. The approach presents the major advantage of providing a good picture of the IDP population while respecting the confidentiality and anonymity of individuals, as names are not registered. The *Guidance on Profiling Internally Displaced Persons*, edited by the NRC's Internal Displacement Monitoring Centre and the United Nations Office for the Coordination of Humanitarian Affairs' (OCHA) Displacement and Protection Support Section, provides a detailed framework for collection and analysis of IDP-related information, including guidance in data collection methodologies and IDP profiling.<sup>24</sup>

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<sup>23</sup> ICLA Azerbaijan, Apr. 2006.

<sup>24</sup> *Guidance on Profiling Internally Displaced Persons* (Anne Davies and Norwegian Refugee Council (NRC) Internal Displacement Monitoring Centre and the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) eds., Apr.



When the purpose of an IDP status or card is to facilitate access to certain services and be used as a substitute for identity documents, however, there is definitely a need for individual names to appear on the card and registration is therefore necessary. In such cases, emphasis should be placed on the confidentiality of the collected data. Registration can also be considered as a protection tool to quantify and assess the needs of IDPs as well as facilitate access to basic rights.<sup>25</sup> In the absence of personal documentation and complete civil registries, registration can be a means to facilitate issuance of temporary or permanent identity documents or IDP cards.

### *Confidentiality*

Collection of personal information for the purpose of issuing personal documentation or IDP cards should be in line with data protection norms to protect the security of IDPs. Systems should be implemented to safeguard information, be it paper (secure location) or electronic (secure location associated with encryption programs). Regulations should provide clear guidelines on the use of data collected by the administration. These guidelines should cover:

- the purpose for which the information has been collected;
- the type of staff authorized to collect, enter, access and use the information;
- the procedures regulating sharing of personal data and persons with whom data can be shared;
- guarantees that the information will be stored in a secure location; and

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2008), available at [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/7620BC6F3CED0587C125739B00383CE0/\\$file/IDP\\_Profiling\\_Guidance\\_2008.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/7620BC6F3CED0587C125739B00383CE0/$file/IDP_Profiling_Guidance_2008.pdf).

<sup>25</sup> Executive Committee Conclusion No. 91, *Registration of Refugees and Asylum Seekers* (2001).

- destruction of data once the purpose of its collection has been served.<sup>26</sup>

Such measures are essential to ensure that IDPs come forward to apply for documentation or IDP status. In Colombia, for example, many IDPs are reluctant to identify themselves as IDPs because they fear that public officials will not respect the confidentiality of the information received and will share it with paramilitary groups from whom they could face reprisals.<sup>27</sup> Consequently, many Colombian IDPs do not register and are deprived of assistance.

#### *Public Information and Measures to Ensure Access to Documentation*

Regulations should detail measures to inform IDPs about their rights and duties and bodies responsible for implementation. Public and media campaigns should be associated with visits to IDP camps or locations and provision of legal assistance. In Colombia, UNHCR, the Colombian Registrar, and a number of NGOs have carried out such an initiative jointly. Mobile documentation units have been established to visit areas inhabited by IDPs and help them complete applications for personal identity documents.<sup>28</sup> In Sri Lanka, NRC's legal clinics were often attended by local, district, and national officials, including police officers and the Government Secretary (GS) in the area. This presence was very significant at a practical level, for example for the issuing of National Identity Cards, as the GS is responsible for issuing the forms and people who have lost their original documents must also fill in a police report. Digital cameras were also used to obtain photographs necessary

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<sup>26</sup> See also Inter-Agency Standing Committee [IASC], *Procedural Standards for RSD under UNHCR's Mandate*, UNHCR, Sept. 1, 2005, and the *Draft Guidelines on Profiling Internally Displaced Persons (IDPs)*, at 51-53 (May 2006).

<sup>27</sup> Amnesty Int'l, *Colombia: the Paramilitaries in Medellin: Demobilization or Legalization?*, AI Index: AMR 3/019/2005, Sept. 1 2005.

<sup>28</sup> *Colombia: UNHCR expands IDP programme*, Press Briefing, Geneva, Dec. 3, 2004.

for the issuance of personal documents.<sup>29</sup> Specific outreach measures should be added for groups that are less likely to have had documentation such as women or indigenous people.

### *Determination of Administrative Requirements to Obtain Documentation*

#### Documentation Fees

Regulations should consider exemption of documentation fees for IDPs who are disproportionately affected by the loss of documents and who often find themselves with very limited financial means. In Burundi, for example, the cost of an identity card represents an average day's salary and marriage documents and birth certificates can cost up to three times as much,<sup>30</sup> representing an unreasonable burden that prevents IDPs from access to documentation. Required basic identity documents should be free of charge while other civil documents should be free or require only minimal fees. Monitoring mechanisms should be established to prevent abuse of position by which officials responsible for delivering documentation collect unlawful fees or bribes from IDPs.

#### Place of Application

IDPs should not have to go to their place of origin to apply for documentation and/or collect information required to obtain new documentation. In many cases, this would put their security at risk or entail traveling costs that IDPs cannot necessarily afford. In Azerbaijan, for instance, the main obstacle for IDPs to obtain their IDP card is the existence of a centralized system for distribution that means that IDPs located in various parts of the country must travel to Baku to apply for and receive their documents.<sup>31</sup> To meet "place of application" requirements necessitates that offices collecting claims from IDPs are evenly distributed throughout the country or that outreach efforts are

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<sup>29</sup> ICLA Sri Lanka, Mar. 2006.

<sup>30</sup> ICLA Burundi, Mar. 2006.

<sup>31</sup> ICLA Azerbaijan, Apr. 2006.

undertaken through mobile teams or other means to ensure easy access for IDPs. A possible alternative is to allow submission by mail. Further to repeated advocacy efforts, Praxis, a Serbian NGO providing legal aid convinced authorities to instruct their offices to accept requests received by mail. This solution not only saved time and money to IDPs but also allowed them to avoid having to use the cumbersome power-of-attorney procedure necessary for IDP representative to submit their requests.

### Residency Requirement

While a residency requirement is often necessary to locate IDPs in need and facilitate identification, there should be flexibility in the type of proof establishing residency. Many countries require proof of residency to issue personal documentation or IDP cards, such as a certificate proving accommodation in a camp or collective center, or a rental receipt or contract. People living in informal settlements are, in effect, penalized by such regulations. This is the case in Serbia, where many Roma IDPs living in informal settlements cannot provide residency documents that are a prerequisite for obtaining IDP status and other documents.

In the case of a country seceding, the residency requirement should not be used in a manner that results in IDPs becoming stateless or deprived of the citizenship of the new country where they are currently displaced. In Croatia, some IDPs have been denied citizenship on the ground that they were displaced from one part of Croatia to another during the war and therefore do not satisfy the requirement of five years permanent residency.<sup>32</sup>

### Deadlines

In relation to the issuance of personal identity documents, deadlines should have no relevance, as personal documents should be issued at any time depending on needs and circumstances. With regard to application for IDP status, deadlines are of limited use since new displacements can always occur. Deadlines are also not consistent with the *Guiding Principles*, which make no reference to any time limits in this context. In Colombia, the Office of the

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<sup>32</sup> NRC's Civil Rights Project in Vukovar, May 2006.

High Commissioner for Human Rights (OHCHR) has criticized the “restrictive interpretation of the rules, as exemplified by the introduction of deadlines.”<sup>33</sup>

### **In the Context of Durable Solutions**

#### *Sharing Information on Property Registers, Cadastre and Civil Registration*

In the case of secession or where one part of the country is not in the control of the official government, efforts should be made to exchange information on cadastre and civil registration to facilitate issuance of permanent documents as a step towards normalization and durable solutions such as local integration, resettlement, or return of IDPs.

#### *Recognition of Documents*

States should facilitate dialogue and coordination with recognized or *de facto* regimes controlling other parts of the country, whether or not the conflict in that region is resolved yet, for the benefit of the displaced population. To the extent reasonable, identity documents should be acknowledged despite unresolved political disagreements on territorial control and legitimacy. Mutual recognition of documents would facilitate IDPs’ access to documentation irrespective of whether they are displaced in a state-controlled area or not. In the case of former refugees returning to their countries and going through a phase of internal displacement, efforts should also be made to acknowledge and recognize documents of neighboring countries and international agencies, such as UNHCR, to facilitate their reintegration.

#### *Issuance of Permanent Documents*

When IDP status or temporary documents have initially been issued to allow IDPs to benefit from certain rights despite missing personal documentation, all efforts should be made to plan for and issue permanent documents as soon as

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<sup>33</sup> See U.N. Doc. E/CN.4/2002/17, ¶ 235 (Feb. 28, 2002), available at [http://www.unhchr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238\\_025668700518ca4/34c2bdd5aa7c0d8bc1256b9d005ab9bd/\\$FILE/G0211115.pdf](http://www.unhchr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238_025668700518ca4/34c2bdd5aa7c0d8bc1256b9d005ab9bd/$FILE/G0211115.pdf).

possible to facilitate their return to normal life and enjoyment of their citizens' rights.

## **INSTITUTIONAL ELEMENTS OF STATE REGULATION**

### **During Displacement**

#### *Bodies Responsible for Issuing Documentation*

Depending on the scope of displacement and need for documentation, countries should consider reinforcing their offices usually responsible for delivery of personal documentation in terms of staffing and material needs. This can represent a significant logistical challenge since conflict-induced displacement also tends to have a disruptive impact on institutions. Such bodies should also be responsible for disseminating information on procedures and requirements as well as providing support in completing forms, including through the establishment of mobile offices.

#### *Staff Training and Capacity-building*

Staff in charge of collecting claims and issuing documentation should receive regular training and guidance on all valid and new applicable procedures. Training should be provided in all offices to ensure consistency of implementation throughout the country.

#### *Centralized Review and Quality Control of Decisions Issued*

A centralized control at the ministerial level should be established to ensure consistency of decisions throughout the country.

#### *Material used to Collect and Process Information adapted to Needs and Local Skills*

Using old collecting methods can sometimes prove more useful and efficient than hi-tech solutions that, in the absence of adequate training and maintenance of the equipment, become counter-productive.

## INTERNATIONAL ROLE

The support of the international community can take multiple forms, corresponding to the different mandates and roles of international actors ranging from inter-governmental organizations to NGOs and various donors. Since international standards applying to documentation are rather general and the way the issue is addressed is so contextual, international support will often have to be tailored to each country. This is however different for issues related to IDP status and registration where methods and procedures used in other countries can apply more generally. Since the issuance of documentation is principally the responsibility of authorities, cooperation with authorities is crucial to avoid duplication and/or the creation of parallel registries. The main criteria for intervention by the international community should be to ensure that its support to documentation does not result in discrimination against IDPs or the rest of the population. On the one hand, legislation and procedures should not discriminate against IDPs, and on the other hand, the focus on IDPs should not disadvantage the rest of the population in terms of access to documentation. International actors (inter-governmental and NGOs) dealing with documentation issues should also coordinate their approaches and activities to ensure that a coherent and consistent message is delivered to national interlocutors at various levels, be it local or national.

International actors can help by supporting authorities or by directly assisting IDPs through the provision of legal assistance. Support to the authorities can take the form of monitoring and capacity-building associated with technical and logistical support. Through its protection and assistance activities, the international community can be made aware of shortcomings and concerns related to documentation. This passive or active monitoring can result in technical and legal advice. Specific recommendations can also be formulated in relation to law, procedures, and institutional arrangements, including lessons learned from other countries when those are applicable and concrete. The international community can also initiate or support national campaigns informing people on required procedures and location of offices where documents can be obtained.

Capacity-building projects should be designed in close cooperation with the authorities to ensure that they correspond to existing needs and that solutions

proposed are adapted to the local context and capacity. In most post-conflict situations, an administration disrupted and weakened by the conflict will have to face an increased demand for delivery of documents or registration of displaced persons. The international community role will then be to advocate for and assist with more equipment and staff for institutions dealing with delivery of documentation. This support should, however, not be a substitute for the responsibility of authorities. The introduction of new registering or filing techniques such as computer data entry can be necessary to improve the professionalism of cadastre and civil registry agencies and strengthen their capacity. Training of staff using those techniques is essential to build in-country capacity to run and maintain the system in the short and long-term. When procedures or legislation have been changed, the international community can also support the authorities in organizing legal training for state officials in charge of implementing the new measures.

Provision of legal aid to displaced persons is another way to disseminate certain advocacy messages and basic standards while at the same time providing concrete and direct assistance to those who need it. Legal assistance allows IDPs to reclaim and exercise their rights by requesting authorities to abide by the rules. In that sense, it plays a crucial role in reinforcing the rule of law in a post-conflict environment and puts the emphasis on the responsibility of the state towards its citizens. International organizations such as UNHCR or the NRC have extensively used legal aid to support IDPs' access to documentation. Legal aid consists of legal advice and assistance in filling forms, gathering required documentation, or preparing court cases. Both UNHCR and NRC have integrated mobile teams in their legal assistance programs to facilitate access to isolated or vulnerable IDPs.

### **United Nations High Commissioner for Refugees**

UNHCR has long experience in cooperating with states to facilitate or carry out registration and documentation of displaced persons (refugees, asylum seekers, and IDPs). UNHCR assumes an operational role for registration and documentation for the displaced and other persons of concern, only if



government capacity is lacking.<sup>34</sup> UNHCR executes its activities in support of, and complementary to, the authorities, with a strong emphasis on developing their capacities.

### **Norwegian Refugee Council**

NRC is a humanitarian NGO assisting refugees and displaced persons. One of the NRC's core activities is to provide information and legal advice to those two categories to facilitate durable solutions and access to rights. In addition to information on the situation in home areas, the Information Counseling and Legal Assistance (ICLA) Programme has focused on repossession of housing, land, and property. NRC's lawyers and advisors also contribute to helping refugees and IDPs obtain citizenship, identity papers, and other personal documents to facilitate freedom of movement and return as well as access to education, health care services, the labor market, or pension entitlements.

### **SUMMARY OF RECOMMENDATIONS**

1. In situations where internal displacement is imminent or frequent, it is important to establish a contingency plan to facilitate issuance of documents and registration of affected populations through measures adapted to the situation created by displacement.
2. During displacement situations, laws and regulations should limit to the minimum the type and number of documents required for the issuing or replacement of missing documents to ensure that IDPs can exert their right to have their documents replaced without discrimination due to their situation.
3. Temporary documents allowing IDPs to have full access to rights can be used as a short-term solution to address situations where large numbers of people need documentation without being in a position to produce the required elements of proof. Regulations allowing for temporary documents should

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<sup>34</sup> The 2001 Executive Committee Conclusion No. 91 on registration reaffirms the State responsibility and sets out certain standards to be met for the registration and documentation of refugees and asylum seekers by both States and UNHCR.

include provisions detailing modalities to transform temporary documents into permanent ones.

4. When IDP status is used for planning purposes to determine the number and location of persons in need of assistance and identify beneficiaries, IDP cards can also be used as a temporary substitute for missing documents allowing for access to a wide range of rights.

5. Access to permanent documents should be encouraged and facilitated at the same time as temporary measures are put in place. To the extent possible, permanent documents used by the general public should be issued from the start.

6. Collection of personal information should be in line with data protection norms to protect the security of IDPs.

7. States should plan for public information campaigns and develop legal assistance programs including through mobile teams to ensure that IDPs are informed about their rights and possibility to obtain personal documentation.

8. Mobile offices should be developed to facilitate access of IDPs to institutions delivering personal documentation.

9. Administrative requirements to apply for documentation should be kept to a minimum. States should consider exemption from documentation fees for IDPs, a sufficient number of offices collecting claims evenly distributed throughout the country to facilitate access, and the possibility to request documentation by mail.

10. The requirement to produce proof of residency should be used in a manner which will not prejudice IDPs living in informal settlements and who cannot produce official documents establishing their place of residence.

11. In the case of secession or where one part of the country is controlled by authorities other than the official government, efforts should be made to share information on cadastre and civil registration to facilitate issuance of permanent documents. In such cases, mutual acceptance of documents should

be considered despite political disagreements, without necessarily implying any political recognition.

12. States should accept alternative and simple identity determination procedures, including those with a low evidentiary threshold in recognition of the difficulties faced by displaced persons to produce other proof.

13. When a state has established IDP status, determination of such status should remain in line with the definition of the *Guiding Principles on Internal Displacement* and avoid restrictive criteria that would leave genuine IDPs outside the scope of the status. Since being a displaced person is a fact and not a legal category, the existence of an IDP status should not restrict in any way the right of displaced persons to receive assistance and protection from the state independently of their legal status.

14. Bodies responsible for issuing documentation should be clearly identified and their capacity reinforced in terms of number of staff and training.

15. A centralized review and quality control of decisions issued should be put in place.

16. The material and techniques used to collect and process information should be adapted to needs and local skills.

17. Agencies in charge of issuing documentation should be provided with the resources necessary to the completion of their tasks.