

# The legal framework



## Key message

Protection is about ensuring that all women, girls, boys and men are able to enjoy their rights on an equal basis, in safety and dignity, including in times of internal displacement. National laws constitute the primary legal framework for protection activities, and should reflect a State's international legal responsibilities. An understanding of the rights of IDPs and the legal obligations of States and other authorities under international law is therefore essential when working within domestic legal systems.

This does not mean that one must have the specialist knowledge of a lawyer: in fact, protection often requires non-legal skills and practical initiatives. Protection efforts nonetheless must be anchored in national and international law, and be based on rights.

This chapter provides an overview of the legal framework and gives guidance how that framework can be mobilized to support and strengthen protection.

## 1. How international law is relevant to our work

International law sets out the rights of every individual and the responsibility of States and other authorities to ensure the protection of these rights, and is essential to carrying out protection activities at the national and international level. When working within domestic legal systems and alternative dispute resolution mechanisms, international law provides clear and objective criteria for protection, that can help to:

- Assess to what extent human rights are being respected and identify the risks or obstacles that individuals face in exercising their rights;
- Clarify the responsibility of the national authorities and the actions that must be taken to fulfill that responsibility;
- Develop a sound operational response to humanitarian crises, using rights- and community based approaches that strengthen the capacity of individuals to protect themselves;
- Provide a basis for advocacy, awareness-raising, training, capacity-building and other similar activities;
- Guide our own activities, conduct, and interactions with populations of concern.

### What is international law?

International law is the body of law which governs the conduct of and relations between States. International law is derived from two primary sources: international treaties and customary law.

- **International treaties** are agreements between States. A treaty is legally binding on all States that have agreed to be bound by it, for instance by way of ratification or accession. A treaty can also be known as a covenant, convention, charter or protocol.
- **Customary international law** or **custom** results from a general and consistent practice of States followed out of a sense of legal obligation. It is binding on all States, unless a State has persistently objected to the practice.

In addition, international law contains **peremptory norms** (*jus cogens*) which are accepted and recognized by States as norms from which no derogation can ever be permitted. These include, for instance, the prohibition against genocide, slavery and racial discrimination. Resolutions of the UN Security Council are also binding on States when adopted under Chapter VII of the UN Charter. Resolutions and declarations of States, such as those adopted in the UN General Assembly and the UN Human Rights Council, although non binding, can be important normative statements and might even provide an indication of emerging international custom.

## 2. The rights of internally displaced persons

Internally displaced persons are entitled to enjoy, equally and without discrimination, the same rights and freedoms under international and national law as do other persons in their country. International law does not specifically address the plight of internally displaced persons, but this does not mean that they are not protected under the law. In fact, the following three bodies of law provide a comprehensive legal framework for protection in all situations of internal displacement, including during armed conflict:

- **international human rights law;**
- **international humanitarian law;** and
- **international criminal law.**

As citizens or habitual residents<sup>1</sup> of their country, IDPs remain entitled to full and equal protection under the State's **national law**, which should be compatible with the State's obligations under international law.

The challenge for international agencies, NGOs, and States has been to identify the rights and guarantees dispersed in the rich body of international law that respond to the particular needs and protection risks that arise during displacement.

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The **Guiding Principles on Internal Displacement**<sup>2</sup> bring together in one document the main rules of international law, drawn from international human rights law and international humanitarian law, and, by analogy refugee law,<sup>3</sup> that are relevant to protection in situations of internal displacement. The Guiding Principles set out the rights of IDPs and the responsibilities of States and other authorities towards them. To fully understand and most effectively use the Guiding Principles, it is important to situate them within the broader international legal framework.

## 3. International human rights law

Human rights are freedoms and entitlements that *every* individual should enjoy.

International human rights law, which consists of both customary and treaty law, guarantees these rights and obliges States to respect, protect and fulfill the human rights of all persons without discrimination of any kind, such as on the grounds of age, gender, ethnic origin, language, religion, political or other opinion, national or social origin, property, birth or other status, including on the grounds of being or having been internally displaced.

<sup>1</sup> Internally displaced persons are often but are not necessarily citizens of the country in which they are displaced. They can also be habitual residents, which for instance can include stateless persons (on statelessness see chapter 5.1).

<sup>2</sup> Prepared by the Representative of the UN Secretary-General on Internally Displaced Persons, at the request of the UN General Assembly and UN Commission on Human Rights, UN Doc. E/CN.4/1998/53/Add.2. Reproduced in Annex I.

<sup>3</sup> Refugee law, which applies to persons fearing persecution who are displaced *outside* of their country, does not directly apply to IDPs. However, given its focus on issues arising during displacement, some of its principles are instructive by analogy, in particular that of *non-refoulement*, the core principle of international refugee law, which prohibits forcible return of refugees to a place where their lives or freedom would be at risk. In fact, this principle has its basis in human rights law, particularly the rights to freedom of movement, life, liberty, and protection against torture or cruel, inhuman and degrading treatment. On these grounds, IDPs similarly have the right to be protected against forcible return or resettlement to a place where their life, safety, liberty and/or health would be at risk.

### 3.1 Key human rights instruments

The **Universal Declaration on Human Rights (UDHR)** of 1948, the first human rights instrument developed by the United Nations, establishes the main civil, political, economic, social and cultural rights to which all persons are entitled, without discrimination of any kind. Although not a binding instrument in itself, many of its principles constitute customary law and/or have been incorporated into treaties, thus gaining binding force.

Building upon the UDHR and incorporating its principles into legally binding instruments are two Covenants that, together with the UDHR, constitute what is regarded as the “International Bill of Rights.” These are:

- **International Covenant on Civil and Political Rights (ICCPR)** and
- **International Covenant on Economic, Social and Cultural Rights (ICESCR).**

Several additional instruments reinforce the protection of human rights relating to:

- **particular issues**, such as torture or racial discrimination, or
- **specific groups of persons** who may face particular obstacles to the full and equal enjoyment of their rights, including women, children and indigenous persons.

Although none of these instruments specifically addresses internal displacement, they do cover a range of risks that IDPs often face and reinforce protection for particular groups of persons who tend to be disproportionately affected by displacement (see Table 1).

Protection of human rights is also reinforced in a number of **regional human rights instruments** (see Annex 1 at the end of the chapter).

Many human rights are also part of **international customary law**. Norms of customary international law include, for example the rights to life, freedom from torture, freedom from discrimination on grounds of gender, race or ethnic origin, freedom from slavery, and freedom from genocide – all of which also are affirmed in international conventions.

States have the duty to respect customary international human rights law as well as all those human rights treaties that they have committed themselves to implement. They must ensure that their domestic laws, policies and practices are consistent with these obligations.

**DO YOU KNOW** that you can find the text of all international human rights instruments online? Go to the link below to find them:  
<http://www2.ohchr.org/english/law/>

**DO YOU KNOW** which international human rights instruments the State in which you work has committed itself to respect? You can find out at:  
<http://www.ohchr.org/EN/Countries/>

**Table 1: Overview of selected international human rights instruments**

| Name                                                                                                                                                                                                                                                              | Description                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Universal Declaration of Human Rights</b> 1948 (UDHR)                                                                                                                                                                                                          | Worldwide instrument setting out the basic human rights of all persons on the basis of equality and non-discrimination.                                                                                                                                                                                                                                                                                                                                          |
| International Covenant on <b>Civil and Political Rights</b> 1967 (ICCPR)                                                                                                                                                                                          | Sets forth a broad catalogue of civil and political rights, including the rights to life, physical integrity, recognition before the law, political participation, freedom of movement and choice of residence, and protection of the family.                                                                                                                                                                                                                    |
| International Covenant on <b>Economic, Social and Cultural Rights</b> 1967 (ICESCR)                                                                                                                                                                               | Sets out economic, social and cultural guarantees, including the rights to adequate food, shelter, clothing, health care, an adequate standard of living, and guarantees concerning work, social welfare, education and participation in cultural life.                                                                                                                                                                                                          |
| Convention Against <b>Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</b> 1984 (CAT)                                                                                                                                                        | Defines and prohibits torture under all circumstances. Stipulates that States cannot transfer a person to another State if there are grounds for believing that s/he will be tortured (principle of <i>non-refoulement</i> ).                                                                                                                                                                                                                                    |
| International Convention on the Elimination of All Forms of <b>Racial Discrimination</b> 1965 (CERD)                                                                                                                                                              | Prohibits racial discrimination: when a person or group is treated differently because of race, colour, descent, national origin or ethnic origin with the aim or effect of denying their human rights and fundamental freedoms.                                                                                                                                                                                                                                 |
| Convention on the Prevention and Punishment of the Crime of <b>Genocide</b> 1948                                                                                                                                                                                  | Defines genocide as acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, and declares it as a crime, whether committed during peacetime or war.                                                                                                                                                                                                                                                        |
| Convention on the Elimination of All Forms of <b>Discrimination against Women</b> 1979 (CEDAW)                                                                                                                                                                    | Sets a framework for national action for ensuring women enjoy, on an equal footing with men, their rights in all fields, including employment, education and administration of property, and for ensuring the protection of women, especially against threats to their physical safety and against rape and sexual exploitation.                                                                                                                                 |
| Convention on the Rights of the <b>Child</b> 1989 (CRC), together with:<br>• Optional Protocol on the <b>sale of children</b> , child prostitution and child pornography 2000<br>• Optional Protocol on the involvement of <b>children in armed conflict</b> 2000 | A comprehensive code to protect the rights and best interests of children (under 18 years of age). Obliges States to take measures to ensure protection, care, psychological recovery and social reintegration of children affected by armed conflict, including unaccompanied or separated children. The optional protocol on the involvement of children in armed conflict prohibits compulsory recruitment and direct use in hostilities of persons under 18. |
| Convention on the Rights of <b>Persons with Disabilities</b> 2006 (CPD)                                                                                                                                                                                           | Reaffirms human rights and emphasizes their importance for persons living with disabilities. Also provides guidance to States on ways to ensure that those with disabilities, including survivors of landmines and ERW, can exercise their rights on a full and equal basis with others.                                                                                                                                                                         |
| International Convention for the Protection of all Persons against <b>Enforced Disappearances</b> 2006 (CED)                                                                                                                                                      | Defines and prohibits enforced disappearance under any circumstances and obliges States to prevent such acts, to prosecute and punish or extradite those responsible, and provide reparations for victims and their families.                                                                                                                                                                                                                                    |
| Convention concerning the Prohibition and Immediate Action for the Elimination of the <b>Worst Forms of Child Labour</b> (ILO Convention No. 182) 1999                                                                                                            | Obliges States to take all necessary measures to eliminate the worst forms of child labour, such as slavery, trafficking, prostitution or forced labour, including recruitment of children (under 18 years) for use in armed conflict.                                                                                                                                                                                                                           |

|                                                                                                                                             |                                                                                                                                                                                                                                                                 |
|---------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| International Convention on the Protection of all <b>Migrant Workers</b> 1990 (CMW)                                                         | Provides a framework for the protection of the human rights of migrant workers during all stages of the migration process; before departure, during transit and in the country of employment.                                                                   |
| <b>Indigenous and Tribal Peoples</b> (ILO Convention No. 169) 1989                                                                          | Sets a framework for ensuring indigenous and tribal peoples enjoy their rights on an equal footing with other persons. Specifically addresses the issue of relocation of peoples, establishing conditions and guarantees to be fulfilled for this to be lawful. |
| The text of these and other instruments is available online at <a href="http://www2.ohchr.org/english/law/">www2.ohchr.org/english/law/</a> |                                                                                                                                                                                                                                                                 |

### 3.2 The responsibility of the State

States have a responsibility to ensure the full and equal enjoyment of human rights of all individuals on their territory or under their jurisdiction. This duty extends to all agents of the State, including the military and the police, and all public authorities, whether at the national, regional or local level.<sup>4</sup>

This responsibility has three dimensions: to **respect, protect and fulfill human rights**.

- The **duty to respect** requires the State to ensure that all agents of the State act in compliance with human rights law and refrain from any act that might interfere with or impair the exercise of rights. As an example, the State must not restrain freedom of movement: people must be allowed to flee to safer areas within or outside the country and IDPs must be able to move freely in and out of camps and settlements.
- The **duty to protect** obliges the State to take all necessary measures to prevent or put a stop to any violations of rights by third parties, including other individuals or groups. The State must also investigate, prosecute and punish violations of rights and ensure that victims/survivors have access to an adequate and effective remedy under domestic law. As an example, if the State is aware, or reasonably should have been aware, that women are being raped or that children are being recruited into a guerilla group, but does not take action to prevent and put a stop to such acts, it would have failed to fulfill its duty to protect.
- The **duty to fulfill** requires the State to take all possible measures to ensure that individuals under its jurisdiction are able to exercise their human rights. This requires the State to put in place a legal and administrative framework that respects human rights and build national capacity to support the implementation of rights. As an example, ensuring the right to a fair trial requires that an effective judicial system be put in place and ensuring the right to freedom from torture requires that police and prison guards are adequately trained and supervised. In other words, to ensure the realization of rights, a State must often invest its resources.

Many countries experiencing conflict and displacement have significant resource constraints. Human rights law recognizes that States with very limited resources might not have the capacity to ensure full realization of certain economic, social and cultural rights. However, a State cannot use a lack of resources as an excuse to do nothing. A State is obliged to take steps “to the maximum of its available resources, with a view to achieving progressively the full realization” of such rights.<sup>5</sup> It must:

- at a minimum, ensure access to rights essential to survival, that is, food and water, basic shelter, medical services and sanitation; and
- request international assistance when State resources are insufficient.

<sup>4</sup> For a more detailed discussion on State’s obligations under international human rights law see e.g. General Comment No. 31(80) of the Human Rights Committee on the nature of the general legal obligation imposed on States Parties to the Covenant (CCPR/C/21/Rev.1/Add.13).

<sup>5</sup> ICESCR, Article 2(1). For further discussion see e.g. General Comments of the Committee on Social, Economic and Cultural Rights No. 12(1999) on the right to adequate food (E/C.12/1999/5) and No. 14(2000) on the right to the highest attainable standard of health (E/C.12/2000/4).

Although human rights instruments are not formally binding on **non-State actors**, the latter can be expected to uphold the values that underpin these instruments.<sup>6</sup>

### Can human rights be restricted?

Some human rights instruments allow States to restrict or limit the effects of certain rights for specific purposes, such as to protect other rights and freedoms. Such restrictions are subject to strict conditions. They must always be provided for by law and be necessary and proportionate to achieve a legitimate aim, such as to protect national security or public order, safety, health or morals, or the rights and freedoms of others. Restrictions must be consistent with other human rights, including that of non-discrimination, and with the State's other international legal obligations, including international humanitarian law, where applicable.

### Can human rights be suspended?

The duty of the State to respect, protect and fulfill human rights applies **at all times**, including during armed conflict and disasters.

In certain circumstances, such as during a declared **state of emergency**, the State may temporarily derogate from (suspend) certain rights. Such derogations are exceptional measures that are subject to strict requirements. There must be an actual or imminent danger that threatens the physical safety of the population or the political independence or territorial integrity of the State. Any derogation of rights must not go beyond what is necessary to address this danger; must not last longer than required by the circumstances; and must not be inconsistent with the State's other obligations under international law. In addition, such measures may never be discriminatory, that is, applied solely to members of a particular race, religion, ethnic, sex, linguistic or other group.

However, a **number of human rights can never be suspended**, whatever the situation, including in armed conflict. In addition to the principle of non-discrimination, these include:

- the right to life,
- the prohibition of genocide,
- freedom from torture and cruel, inhuman and degrading treatment or punishment,
- freedom from slavery,
- freedom of thought, conscience and religion,
- the right to due process of law, and
- the prohibition of punishment for any act that was not a crime when the act was committed.<sup>7</sup>



#### In our work

As a general rule, human rights law applies equally in times of peace and war. While a State can temporarily suspend the fulfillment of certain rights during war or other public emergency it can only do so to a limited extent and subject to strict conditions. National authorities should be encouraged to continue to respect human rights at all times. Where rights have been lawfully suspended we can continue to monitor and advocate for respect of those rights which cannot be suspended.

<sup>6</sup> While human rights law applies primarily to States, non-state actors, in particular when in charge of territory, are increasingly being seen as having an obligation to respect and protect human rights. In some cases, such actors have expressly agreed to be bound by human rights law, for instance when concluding cease-fire and peace agreements. Depending on the context it may thus be possible and appropriate to undertake human rights advocacy with non-state actors.

<sup>7</sup> See e.g. Article 4(2) of ICCPR. Some regional treaties, such as the American Convention on Human Rights (ACHR), contain a more extensive list of non-derogable rights, including the rights of the child and of the family right to juridical personality, the rights to a name, nationality and to participate in government.

### 3.3 Monitoring respect for international human rights law

There are several mechanisms charged with monitoring and encouraging State compliance with human rights law at the international, regional and national levels. At the international level, the UN treaty-monitoring bodies and the “Special Procedures,” created by the UN Human Rights Council, are of particular importance.<sup>8</sup>

#### 3.3.1 UN treaty-monitoring bodies:

For each of the main human rights treaties, there is a corresponding committee, composed of independent experts, charged with monitoring State compliance with the treaty.<sup>9</sup> In general, the Committees fulfill this role in three ways:

- by examining State reports and issuing concluding observations that outline the main concerns and provide recommendations to the State;
- by issuing general comments that provide guidance on the interpretation of particular rights; and
- by examining individual complaints of alleged violations of human rights, subject to the consent of the State to do so.<sup>10</sup> The treaty-monitoring bodies have been devoting increasing attention to the obstacles that impede the enjoyment of human rights during internal displacement.



#### In our work we can ...

- Consult the treaty-monitoring reports for the country where we work, in particular the recommendations for improving respect for human rights, including those of IDPs;
- Promote, monitor and support follow-up to the recommendations, including by strengthening the State’s capacity, through training, to respect human rights; and
- Provide information about protection concerns when the State report is reviewed (your office might have a focal point for this).

The treaty-monitoring reports are available at [www.universalhumanrightsindex.org](http://www.universalhumanrightsindex.org).

#### 3.3.2 UN Human Rights Council’s Special Procedures:<sup>11</sup>

A whole network of independent human rights experts has been appointed by the UN Human Rights Council to examine, monitor, advise and publicly report on particular human rights themes or country situations.

- **Thematic experts** cover a range of issues relevant to the protection of internally displaced persons, such as: violence against women, minority issues, the rights of indigenous peoples, and the rights to education, to adequate housing, to food, and to physical and mental health. One mandate specifically focuses on promoting the rights of internally displaced persons (see next page).
- **Country-specific experts** address particularly serious situations of human rights violations. Such situations almost inevitably include large numbers of internally displaced persons. Country situations currently covered include: the Democratic Republic of Congo, Myanmar, Somalia, and the Sudan.

<sup>8</sup> For more guidance on how you can make use of these mechanisms to support your efforts to protect the rights of IDPs see the Guide to International Human Rights Mechanisms for Internally Displaced Persons and Their Advocates, Brookings-Bern Project on Internal Displacement, 2006. Available at [www.brookings.edu/projects/idp/2006\\_guidebook.aspx](http://www.brookings.edu/projects/idp/2006_guidebook.aspx)

<sup>9</sup> The UN human rights treaty-monitoring bodies are: the Human Rights Committee (ICCPR), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee against Torture and other forms of Inhuman or Degrading Punishment (CAT), the Committee on the Elimination of Racial Discrimination (CERD), Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on the Rights of the Child (CRC), and the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMR).

<sup>10</sup> Specifically: the HRC, CERD, CAT and CEDAW, though the procedural requirements vary. For guidance, see <http://www.ohchr.org/english/bodies/petitions/index.htm>

<sup>11</sup> For more information on the Special Procedures, see <http://www.ohchr.org/english/bodies/chr/special/index.htm>

**A Global Advocate for IDPs:** The Representative of the Secretary General on the Human Rights of Internally Displaced Persons, who reports to the UN Human Rights Council and the UN General Assembly, engages in dialogue and advocacy with governments and other actors concerning the rights of IDPs, and works to strengthen the international response to internal displacement. Activities include:

- Promoting the rights of IDPs as articulated in the *Guiding Principles on Internal Displacement*;
- Engaging governments and other actors on specific situations of internal displacement and the human rights of IDPs, including by undertaking **country visits**; and
- Sponsoring **national and regional seminars and undertaking research on issues related to internal displacement**.

*The reports and recommendations are available at [www.ohchr.org/english/issues/idp/index.htm](http://www.ohchr.org/english/issues/idp/index.htm)*



#### In our work we can ...

- Consult reports by Special Procedures that address the human rights situation in the country where we work. These provide valuable insight into the range of protection concerns and can assist in developing a protection strategy;
- Provide information to specific country and thematic experts. In response, they might send a written communication to the State concerned, conduct a country mission and raise the issue directly with national officials, make a public statement, and/or report on the issue to the UN Human Rights Council and/or General Assembly;
- Seek technical guidance and advice, as needed, from Special Procedures on issues related to their mandate, such as on national legislation;
- Suggest a country mission by a Special Procedure to examine and discuss the human rights situation with national authorities and other stakeholders, including IDPs, NGOs, and national human rights institutions;
- Disseminate the recommendations (which might be directed not only to States but also to non-State actors and UN agencies) among relevant stakeholders, including the government, civil society, IDP associations, international agencies, and donors;
- Promote, monitor and support follow-up to the recommendations, including by strengthening the State's capacity, through training, to respect human rights.

*The reports of the Special Procedures are available at [www.universalhumanrightsindex.org](http://www.universalhumanrightsindex.org)*

At the **regional level**, in Africa, the Americas and Europe, there are also human rights monitoring mechanisms that provide important protection, especially since rights can be enforced in regional human rights courts (see Annex 1 at the end of the chapter). Regional mechanisms have become increasingly engaged in addressing human rights issues in situations of internal displacement and in protecting the rights of IDPs.

At the **national level**, national courts and human rights institutions have a critical role to play in providing a channel for individuals to claim their rights. These institutions also can work to ensure that domestic legislation, policies and programmes respect and protect human rights, including during situations of internal displacement.

## 4. International humanitarian law

In situations of armed conflict, international humanitarian law comes into effect together with human rights law. Also known as the law of armed conflict or the law of war, IHL aims to limit human suffering in times of armed conflict. This body of law:

- **protects persons who do not, or no longer, take part in hostilities**, namely civilians, prisoners of war, and sick, wounded or shipwrecked combatants; and
- **regulates the method and means of warfare** between parties to a conflict, such as by prohibiting particularly barbarous weapons and tactics, including the use of chemical

and biological weapons, military attacks on civilian targets and “indiscriminate attacks” that strike military objects and civilians without distinction.

IHL applies **in all situations of armed conflict**, both **international conflict** (between States) and **non-international conflict** (between a State and a non-State actor, or between two or more such actors). It is binding on **all parties to an armed conflict**: States, their armed forces and non-State armed groups, whether these are insurgent groups opposing the State or groups such as paramilitary groups supported by the State.

Because some human rights can be temporarily limited or suspended during armed conflict, the protection provided by IHL is particularly important. The more specific rules of IHL also assist in interpreting applicable human rights principles in situations of conflict. For example, evacuations of civilians on grounds of military necessity that are permissible under IHL are a legitimate limitation of the right to freedom of movement under human rights law.

#### 4.1 Key instruments of IHL

The core instruments of international humanitarian law are the four **Geneva Conventions of 1949** and their **two Additional Protocols of 1977**.<sup>12</sup> Many of the key principles contained in these instruments also constitute customary international law, which means that they are automatically binding in *all* situations of armed conflict and on *all* parties to a conflict.

| Type of conflict                        | Description                                                                                | International humanitarian law applicable                                                                                                                                                                                                         |
|-----------------------------------------|--------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>International armed conflict</b>     | Armed conflict between two or more States                                                  | <ul style="list-style-type: none"> <li>• Customary law</li> <li>• The <b>four Geneva Conventions</b>, in particular the Fourth Convention on Protection of Civilians</li> <li>• <b>Additional Protocol I</b> to the Geneva Conventions</li> </ul> |
| <b>Non-international armed conflict</b> | Armed conflict between the State and a non-State actor, or between two or more such actors | <ul style="list-style-type: none"> <li>• Customary law</li> <li>• <b>Article 3</b> common to the Four Geneva Conventions</li> <li>• <b>Additional Protocol II</b> to the Geneva Conventions</li> </ul>                                            |

In addition, several important treaties prohibit or regulate the use of certain weapons, such as the **Mine Ban Treaty** and the **Conventional Weapons Convention** and its Protocols.

#### 4.2 Protection of Civilians: Key principles of IHL

Fundamental to international humanitarian law is the distinction between the **civilian population**, persons who do not take a direct part in hostilities, and **combatants**. The parties to a conflict must at all times distinguish between the civilians and combatants, in order to spare the civilian population and civilian property. The civilian population shall not be the object of attack; attacks shall be directed solely against military objectives.

Internally displaced persons, provided they are not taking a direct part in hostilities, are entitled to the same protection under IHL as any other civilians.

<sup>12</sup> The text of these instruments is available at: [www.icrc.org](http://www.icrc.org). In 2006, the Geneva Conventions achieved universal ratification, meaning that every State in the world is now a party to, and therefore has committed itself to respect, these instruments.

## Key Principles of IHL

Parties to the conflict must distinguish at all times between combatants/fighters and military objects, on the one hand, and civilians and civilian property on the other. Any attacks must be directed only against military objects and all feasible measures must be taken to protect civilians from the indiscriminate effects of hostilities.

### **The following acts are prohibited at all times:**

- targeted or indiscriminate attacks against civilians or civilian objects;
- starvation of civilians as a method of warfare, and attacking, destroying, removing or rendering useless any objects indispensable for the civilian population's survival;
- reprisals or collective punishments against civilians;
- using civilians to shield military objectives from attack or to shield, favour or impede military operations;
- acts of violence intended to spread terror;
- using weapons that are inherently indiscriminate, cause superfluous injury or unnecessary suffering, or cause wide-spread, long-term and severe damage to the environment;

### **Principles of humane treatment:**

- Persons who do not, or have ceased to, take part in hostilities must be treated humanely and protected against violence to life, health and physical or mental well-being, including murder, mutilation, torture and cruel, humiliating or degrading treatment;
- Rape, enforced prostitution and any form of indecent assault as well as sexual slavery, exploitation and abuse are prohibited in all circumstances and at all times;

### **Forced displacement:**

- Unless essential for the security of civilians or imperative military reasons, parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory. Parties to a non-international armed conflict may not order the displacement of the civilian population;
- Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.
- States may not deport or transfer parts of their own civilian population into a territory they occupy;

### **Assistance and basic living conditions:**

- All parties to the conflict must grant and facilitate the unimpeded passage of relief assistance necessary for the survival of civilians;
- All possible measures must be taken so that displaced civilians receive satisfactory conditions of shelter, hygiene, health, safety and nutrition;

### **Individuals and groups with specific rights or needs:**

- The specific protection, health and assistance needs of women must be respected;
- Children are entitled to special respect and protection. Children under 15 must not be recruited into armed forces or armed groups or be allowed to take part in hostilities, whether directly or indirectly;
- Older persons and persons with disabilities or other health problems are entitled to special respect and protection;
- The sick and wounded must be protected and provided with needed medical care and attention with the least possible delay and to the fullest extent practicable;
- The family should be protected. Measures should be taken to ensure that family members are not separated, and if separation occurs, that they are reunited as soon as possible.

### 4.3 International humanitarian law and internal displacement

Because internal displacement so often occurs in situations of armed conflict, IHL is especially important for the protection of internally displaced persons and other affected populations. Indeed, in many instances, respect for IHL would prevent the displacement of civilians.

IHL prohibits any party to an armed conflict from compelling civilians to leave their places of residence. Temporary evacuations may be carried out *only* if the security of civilians or military imperatives absolutely require it; and even then, such evacuations are subject to strict conditions. All possible measures must be taken to ensure that family members are not separated and that the displaced population is received under satisfactory conditions of shelter, hygiene, health, safety and nutrition. Moreover, such evacuations must be temporary; those affected have the right to return in safety to their homes as soon as the reasons for their displacement cease to exist.<sup>13</sup>

In addition to this express prohibition of displacement, the rules of IHL that are intended to spare civilians from the effects of hostilities help prevent forced displacement. It is often the violation of these rules that cause civilians to flee their homes and become displaced.

If displacement does occur, IDPs, like all other civilians, are entitled to protection and assistance, as required. Parties to a conflict have a duty to allow humanitarian access and assistance to civilian populations in need.

*“When civilians flee a conflict zone, this is a good indication that the warring parties are indifferent to their rights under IHL or, worse, are deliberately targeting them.”*

ICRC, 2007

### 4.4 Responsibility to respect and ensure respect for IHL

Each party to a conflict has an obligation to respect and ensure respect for IHL by its armed forces and any other persons or groups acting on its instructions, or under its direction or control. In particular, States must:

- Provide instruction and training on IHL to the armed forces and the public.
- Criminalize violations of the law and put in place adequate legal, administrative and disciplinary structures to prevent, monitor and investigate violations.
- Prosecute and punish or extradite those responsible for serious violations of the law.

**The International Committee of the Red Cross (ICRC)** is an independent and neutral organization mandated by IHL and its Statute to provide assistance and protection to victims of armed conflict and to promote and monitor respect for IHL. For further information see [www.icrc.org](http://www.icrc.org).

In addition, IHL obliges other (neutral) States to work to ensure that the parties to a given conflict respect IHL. This can be accomplished through advocacy, capacity-building, support to humanitarian operations, and prosecution or extradition of those responsible for violations of the law.

All States, regardless of whether or not they are parties to a given conflict, have the duty to prosecute and punish in their own courts, or to extradite, those responsible for serious violations of IHL, such as war crimes and/or grave breaches of the law, regardless of where the crime took place or the nationality of the perpetrator.<sup>14</sup> Members of armed forces and groups can be held individually responsible for violations of IHL, regardless of their rank and whether

<sup>13</sup> See Rules 129-133 of Customary International Humanitarian Law: Volume I (ICRC, 2005). See also Art. 49 of the Fourth Geneva Convention and Art. 17 of Additional Protocol II.

<sup>14</sup> Grave breaches are defined in each of the four Geneva Conventions, Articles 50, 51, 130 and 147 respectively, and Additional Protocol I, Articles 11 and 85. They include willful killing, torture and inhuman treatment, willfully causing great suffering or serious injury to body or health, and unlawful deportation or transfer of populations.

or not they were acting under orders. Military commanders can also be held responsible for either ordering or failing to take measures to prevent such violations from taking place. Individual criminal responsibility has been further developed under international criminal law, which is discussed below.

## 5. International criminal law

National authorities have an obligation to criminalize violations of international human rights and humanitarian law in national legislation and to prosecute and punish those responsible before national courts and tribunals. In some cases, individuals can be brought to justice under international criminal law.

The Statute of the International Criminal Court (ICC)<sup>15</sup> defines a number of crimes that are considered to be of international concern and which can be investigated and prosecuted by the court, provided that the Court has jurisdiction over the act. These include:

- **War crimes**, which include grave breaches of the Geneva Conventions and serious violations of international humanitarian law; cover a range of acts, including wilful killing, torture and inhuman treatment, rape and sexual slavery, starvation of civilians, recruitment of children under 15 into armed forces or groups or using them to participate in hostilities, launching attacks against the civilian population or civilian objects, and ordering the displacement of the civilian population, unless required for the security of civilians or military imperatives.<sup>16</sup>
- **Crimes against humanity**, which are acts committed as part of a widespread or systematic attack directed against a civilian population, whether in times of war or peace, including murder, extermination, enslavement, deportation or forcible transfer of population, arbitrary imprisonment or other severe deprivation of liberty, rape and sexual violence, persecution, enforced disappearance, and other inhuman acts intentionally causing great suffering or serious injury to body or to mental or physical health.<sup>17</sup>
- **Genocide**, which involves acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group, including killings, inflicting serious bodily or mental harm, imposing conditions of life calculated to bring about the group's destruction, preventing births, and/or forcibly transferring children to another group.<sup>18</sup>

International criminal law is complementary to national law in the sense that international courts, such as the ICC, generally only exercise jurisdiction when national courts have proven unwilling or unable to prosecute and punish the crimes in question. To date the ICC has opened investigations into four situations, in Northern Uganda, the Democratic Republic of the Congo, the Central African Republic, and in Darfur.

The international community has also established a number of *ad hoc* criminal tribunals, whose decisions may be drawn upon for interpretations of international criminal law. These tribunals include the International Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda, which were established by the UN Security Council and use foreign judges. The UN has also supported the creation of hybrid tribunals such as the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia, which have both foreign and domestic judges.

<sup>15</sup> Statute of the International Criminal Court, 1998, UN Doc. A/CONF.183/9. For further information, including the text of the Statute, visit [www.icc-cpi.int](http://www.icc-cpi.int).

<sup>16</sup> Article 8 of the Statute of the International Criminal Court.

<sup>17</sup> Article 7 of the Statute of the International Criminal Court.

<sup>18</sup> Article 6 of the Statute of the International Criminal Court. See also the 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

## 6. The Guiding Principles on Internal Displacement

The Guiding Principles on Internal Displacement bring together the rights of IDPs and the responsibilities of national authorities and non-State actors towards them. Although not a binding document, like a treaty, the Guiding Principles are **based on and reflect existing standards of international law**, which *are* binding.<sup>19</sup>

The Guiding Principles on Internal Displacement have been translated into over 40 languages, including: Arabic, Dinka, Georgian, Luo, Nepali, Pashtu, Sinhala, Somali, Spanish, Swahili, Tamil and Turkish. They are available online at [www.brookings.edu/projects/idp/gp\\_page.aspx](http://www.brookings.edu/projects/idp/gp_page.aspx) and have been reproduced in Annex 1 at the end of this Handbook.

The Principles' authority is reinforced by the wide international acceptance that they have received. They are recognized by States as "an important international framework for the protection of internally displaced persons," as well as a "tool" and "standard" to guide governments, international organizations and all other relevant actors in situations of internal displacement.<sup>20</sup>

The Guiding Principles provide a definition of an IDP and a comprehensive statement of what protection should mean during internal displacement. It covers all phases of displacement:

- the pre-displacement phase, providing protection from unlawful displacement;
- protection and assistance during displacement; and
- durable solutions, namely return, local integration at the place of displacement or resettlement in another part of the country and reintegration.

The Guiding Principles address a range of particular needs and protection risks that typically arise in situations of internal displacement, such as family separation, loss of documentation, freedom of movement in and out of camps, and loss of property, and identify the corresponding rights and guarantees to address these concerns. Incorporating civil and political rights as well as economic, social and cultural rights, the Principles cover the broad spectrum of rights, including those not typically at the forefront of humanitarian action. It covers rights relating to:

- **physical security and integrity** (such as the rights to life, protection from torture and rape);
- **basic necessities of life** (such as the rights to food, water, shelter, health and sanitation);
- other **economic, social and cultural protection needs** (such as access to education, property restitution or compensation); and
- other **civil and political protection issues** (such as the rights to personal documentation and to political participation).

<sup>19</sup> The basis in international law for each Principle is summarized in: Walter Kaelin, *Annotations. Guiding Principles*, American Society of International Law (2000), available at: [http://www.asil.org/pdfs/study\\_32.pdf](http://www.asil.org/pdfs/study_32.pdf).

<sup>20</sup> United Nations General Assembly, 2005 World Summit Outcome resolution adopted by Heads of State, UN doc. A/RES/60/1, 15 September 2005, para. 132. See also UN Commission on Human Rights Resolution 2003/1, 23 April 2003; and UN General Assembly Resolution 58/177, 22 December 2003.

## Guiding Principles on Internal Displacement: Overview

| Section                                                                         | Key Points                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|---------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Introduction</b>                                                             | <ul style="list-style-type: none"> <li>• Provides a definition of internally displaced persons</li> <li>• Affirms that the Principles reflect international human rights law and IHL</li> <li>• Explains that the purpose of the Principles is to provide guidance in situations of displacement</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>I. General Principles</b><br>(Principles 1-4)                                | <ul style="list-style-type: none"> <li>• National authorities have the primary responsibility to protect and assist IDPs within their jurisdiction</li> <li>• IDPs are entitled to enjoy in full equality the same rights and freedoms as other persons in their country and shall not be discriminated against</li> <li>• Certain IDPs, especially unaccompanied minors, expectant mothers, mothers with young children, female heads-of-households, persons with disabilities and the elderly, might require specific attention</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>II. Protection from Arbitrary Displacement</b><br>(Principles 5-9)           | <ul style="list-style-type: none"> <li>• Articulates a right not to be arbitrarily (unlawfully) displaced and spells out the situations in which displacement is absolutely prohibited</li> <li>• States have a duty to avoid the displacement of populations unless absolutely necessary and to protect against the displacement of groups with a special dependency on their lands</li> <li>• When displacement is unavoidable, certain guarantees must be established for displacement to be lawful</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>III. Protection and Assistance during Displacement</b><br>(Principles 10-23) | <p>All persons, including IDPs, should enjoy, a broad range of civil, political, economic, social and cultural rights, including the rights:</p> <ul style="list-style-type: none"> <li>• to life and to protection against acts of violence and torture, sexual and gender-based violence, landmines, and recruitment of children into armed forces or groups and their participation in hostilities</li> <li>• to safe access to essential food, potable water, basic shelter, appropriate clothing, medical services and sanitation</li> <li>• to freedom of movement, including in and out of IDP camps</li> <li>• to seek asylum in another country</li> <li>• to personal documentation</li> <li>• to respect for family life and unity</li> <li>• to education and training, equally for women and girls</li> <li>• to employment and participation in economic activities</li> <li>• to vote and participate in government and public affairs</li> </ul> |
| <b>IV. Access to Humanitarian Assistance</b><br>(Principles 24-27)              | <ul style="list-style-type: none"> <li>• When State authorities are unable or unwilling to provide assistance to the displaced, international organizations have the right to offer their services and to enjoy rapid and unimpeded access to the displaced</li> <li>• Humanitarian assistance shall be provided consistent with the principles of humanity and impartiality and without discrimination</li> <li>• Humanitarian actors should take into account and work to address not only the assistance but also the protection concerns of IDPs</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>V. Durable Solutions</b><br>(Principles 28-30)                               | <p>IDPs should have access to a durable solution to displacement, namely rights to:</p> <ul style="list-style-type: none"> <li>• return to their place of origin, integrate locally at displacement site, or resettle elsewhere in the country – voluntarily, safely and in dignity</li> <li>• participate in planning their return or settlement and reintegration</li> <li>• return of lost property or, where not possible, to receive compensation</li> <li>• equal access to public services</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

## 6.1 The Guiding Principles as a Protection Tool

The Guiding Principles are more than a simple compilation and restatement of legal rules. They provide a comprehensive framework for identifying protection concerns and for planning, implementing and monitoring protection activities in situations of internal displacement. They can be used by governments, international agencies, NGOs and IDPs themselves to promote and protect the rights of internally displaced persons.



### IN OUR WORK

The Guiding Principles on Internal Displacement can be used to support our work in a number of ways. The Principles help us to:

- **Monitor and assess** the extent to which IDPs are able to enjoy their rights and identify what protection risks they face;
- **Collect data** using a systematic frame of reference to identify and gather information about protection concerns, causes of displacement, and groups with particular vulnerabilities;
- **Develop strategies** and determine programming priorities for a coordinated national and international response to internal displacement;
- **Raise awareness of and advocate** with national authorities and other actors for respect for the rights of IDPs;
- **Provide training** for displaced individuals and communities, national authorities, including the military and the police, non-State actors where relevant, civil society and human rights, humanitarian, development and peacekeeping staff;
- **Inform IDPs of their rights and empower** them to claim respect for their rights;
- **Build the capacity of States and other authorities** to support them in fulfilling their protection responsibilities. This can include training, technical assistance and advisory services; and
- **Offer advice on national law, policy or action plans relating to IDPs** to ensure that these respect the rights of IDPs (see also section below on the National Legal Framework).

In addition to the *Guiding Principles on Internal Displacement*, there are other principles and guidelines that address specific protection issues that can arise or certain types of internal displacement. These include:

- Principles on **Housing and Property Restitution** for Refugees and Displaced Persons (2005)
- Basic Principles and Guidelines for **Development-based Evictions and Displacement** (1997) and Comprehensive Human Rights Guidelines on **Development-based Displacement** (2006)
- Protecting Persons Affected by **Natural Disasters**: IASC Operational Guidelines on Human Rights and Natural Disasters (2006)
- Paris Principles: Principles and Guidelines on **Children Associated with Armed Forces or Armed Groups** (2007)

## 7. The national legal framework

National laws form the primary legal basis for IDP protection. However, all States have a responsibility to ensure that their national laws and policies respect and reflect their obligations under international law, including those contained in international human rights and humanitarian law. States must therefore take action, by all appropriate means, to give effect to their international legal obligations at the national level.

More specifically, national legislative and policy frameworks should respect the rights and guarantees to which IDPs are entitled under international law, and be consistent with the State's international legal obligations. Protection strategies and activities should also take into

account relevant domestic traditional, customary, or religious dispute resolution mechanisms, which are discussed in more detail in the Access to Justice Action Sheet (*see Part V.10*). 

## 7.1 National legislation on internal displacement

States are generally encouraged to strengthen legal frameworks for the protection of IDPs and to promote the Guiding Principles on Internal Displacement through national legislation.<sup>21</sup> This does not mean that it is necessary or even appropriate in all contexts to adopt IDP-specific legislation. IDPs are citizens or habitual residents of the country in which they live and, as such, are entitled to the same rights and freedoms as other persons in the country.

Internal displacement can however create specific problems and obstacles for IDPs and action may thus be required to ensure that they can exercise their rights on a full and equal basis with others.

Two distinct types of national legislation should be considered in any given situation of internal displacement:

- a. **Generally applicable laws**, which, although they will probably not explicitly address internal displacement, nonetheless relate to issues affecting internally displaced persons. Examples include administrative laws determining how individuals can regain lost personal documents; property laws setting out rules and procedures for claiming compensation; electoral codes determining voter eligibility criteria; and education laws defining admissibility criteria and languages of instruction.
- b. **Laws specifically focused on addressing situations of internal displacement**<sup>22</sup>  
These could take a number of forms. In some instances, governments have adopted laws on a specific phase of displacement, for instance, spelling out minimum standards to be observed during the return or settlement elsewhere and reintegration process. In other cases, governments have adopted comprehensive national laws on internal displacement covering all phases of displacement, from prevention to solutions, and all causes of displacement, including conflict and disasters.

Any specific legislation on internal displacement must have as its aim and effect to ensure that IDPs enjoy their rights *equally* with other citizens or habitual residents of the country. Caution must be exercised to ensure that the consequence of an IDP-specific law is not to isolate IDPs as a separate legal category, which, in extreme cases, might lead to their marginalization from the rest of the community and even the violation of their rights.

Whether IDP-specific legislation would be necessary to ensure the protection of IDPs' rights will depend upon the context. In many cases, modification of existing legislation might well be sufficient to address the particular protection concerns that arise in situations of internal displacement. Indeed, even when there is IDP-specific legislation, amendments to general legislation often will be essential. For instance, to address the particular obstacles that IDPs face in enjoying their rights to property, documentation, education or political participation, simply affirming these rights in an IDP law will usually not be sufficient; rather, it will be necessary to amend the relevant piece of general national legislation (e.g. civil status legislation, education act or electoral code) to remove the legislative impediments that IDPs face or to establish simplified procedures.

<sup>21</sup> United Nations Economic and Social Council (ECOSOC) Resolution 2003/5 (15 July 2003), para. 8; *In Larger Freedom*, Report of the Secretary-General, 21 March 2005, A/59/2005, para. 210. Regional organizations have similarly encouraged States in this regard.

<sup>22</sup> A number of countries have adopted national legislation specifically relating to internal displacement, including Angola, Bosnia and Herzegovina, Colombia, Georgia, Peru, Russia, and Turkey. These are available at the Database on National and Regional Laws and Policies on Internal Displacement at [www.brookings.edu/projects/idp/Laws-and-Policies/idp\\_policies\\_index.aspx](http://www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx)

It is therefore important to review and analyze national legislation in terms of its compatibility with international legal standards and, on this basis, to identify any legislative reform needed to ensure respect for the rights of internally displaced persons. In some countries, local lawyers' groups have conducted studies of national legislation and then worked with the governments to revise national laws so that they conform with the Guiding Principles and the international standards that underpin it.<sup>23</sup> Indeed, national laws and policies will be most effective when developed in consultation with civil society, including IDPs themselves.

To assist such efforts, the Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons is developing a *Manual for Domestic Law and Policy Makers on Implementing the Guiding Principles on Internal Displacement*, providing guidance on key elements to consider in national legislation to ensure protection of the rights of IDPs. The Manual is due for publication in 2008.

International humanitarian and protection agencies can also help States ensure that their national laws and policies conform with international standards by providing technical assistance and advice.



### IN OUR WORK

It is important to understand the national legal framework and its relevance to protecting the rights of IDPs. In particular, we should:

- Be aware of the national laws and policies that relate to internal displacement and to issues of concern to internally displaced persons;
- Understand the extent to which these policies are consistent with the State's obligations under international law and are in accordance with the Guiding Principles on Internal Displacement;
- Offer advice, as appropriate, to the government in strengthening national laws to ensure that IDPs do not face any legislative barriers to realizing their rights;
- Raise awareness among IDPs of those national laws and policies relevant to their protection, empowering them to advocate and claim their rights;
- Advocate for and monitor the implementation of national laws and policies of particular relevance in situations of internal displacement;
- Support the capacity of national authorities to implement national legislation and policies that would protect the rights of IDPs, including through training and awareness-raising, technical assistance and advice, programme support and resource mobilization; and
- Provide legal aid to assist IDPs with accessing legal mechanisms to protect their rights.

## 7.2 Ensuring respect for rights under national law

A number of different mechanisms for enforcing national laws and policies may exist within a State, and could include both formal (state-run) justice mechanisms such as courts, tribunals and quasi-judicial mechanisms, or alternative mechanisms such as religious courts, tribal councils, or grievance committees. For more guidance about how to work within national legal systems to defend human rights and ensure accountability for crimes, violence and abuse, see the Access to Justice action sheet (Part V.10). 

<sup>23</sup> See *The Guiding Principles on Internal Displacement and the Laws of the South Caucasus*, Studies in Transnational Legal Policy, no. 34, Cohen, R., Kaelin, W., and Mooney, E., (eds.), American Society of International Law and the Brookings Institution Project on Internal Displacement, 2003.

## Annex I

### Regional human rights law and mechanisms relevant to IDPs

Reinforcing international human rights law are several **regional human rights instruments** that enhance human rights protection for all persons in the region, including IDPs. In Africa, Latin America and Europe, the regional human rights framework is particularly important because rights can be enforced in regional human rights courts.

#### In Africa:

The **African Charter on Human and Peoples' Rights** affirms the range of civil, political, economic, social and cultural rights, including the right of every individual to freedom of movement and choice of residence, and the right to property.

Supplementing the Charter's provisions for the protection of the rights of women and children are the **African Charter on the Rights and Welfare of the Child** and the **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa**.

Both instruments include specific provisions relating to State obligations to respect human rights in times of armed conflict, and reiterate the responsibility of States to respect and ensure respect for international humanitarian law, including protection of civilians. *The Charter on the Rights of the Child* also affirms that **no child under 18 is to be recruited** or otherwise take direct part in hostilities, and makes express reference to the need to **protect and assist internally displaced children** and to ensure **family reunification** in situations of displacement. The *Protocol on the Rights of Women* also includes commitments to:

- **protect internally displaced women against all forms of violence, rape and sexual exploitation** and ensure perpetrators are brought to justice;
- ensure the increased **participation of displaced persons, particularly women, in the management of camps and settlements**; and
- devote attention to **widows' property rights**, which is key for women heads-of-households whose numbers tend to increase dramatically during displacement.

Monitoring the implementation of States' commitments under the African Charter is the **African Commission on Human and Peoples' Rights**. Individuals, including IDPs, can submit individual complaints of rights violations to the Commission for consideration by the **African Court on Human and Peoples' Rights**.

The Commission also has a **Special Rapporteur on Refugees, Asylum-seekers and Displaced Persons in Africa** who is mandated to: seek, receive, examine and act upon information concerning the rights of refugees, asylum-seekers and IDPs; undertake fact-finding missions to displacement situations; engage in dialogue with States and others relevant actors; develop strategies to better protect the rights of these groups; and raise awareness of the legal standards for their protection.

The **African Union** (formerly the Organization of African Unity) is developing a regional convention on internal displacement.

At the sub-regional level, there are instruments specifically relating to internal displacement, including:

- Great Lakes Protocol on the Protection and Assistance to Internally Displaced Persons and Model Law (2006) and the Protocol on the Property Rights of Returning Persons (2006) are legally binding on any country that ratifies them;
- the non-binding Khartoum Declaration of the Inter-Governmental Authority on Development (IGAD) Ministerial Conference on Internal Displacement (2003) contains important commitments by States in East Africa to protect the rights of IDPs.

### In the Americas

The Organization of American States (OAS), composed of the governments of Latin America, the Caribbean, and North America, has adopted a number of human rights instruments, most notably the **American Convention on Human Rights** (1969).

Monitoring implementation of the American Convention are the **Inter-American Commission on Human Rights** and, for judicial issues, the **Inter-American Court of Human Rights**.

- The **Commission**, composed of independent human rights experts, has been active in monitoring and reporting on situations of internal displacement, and making recommendations to governments for more effective national responses. Spearheading these efforts has been a **Special Rapporteur on Internally Displaced Persons** (1996-2004). IDPs can submit complaints of human rights violations directly to the Commission for referral to the Court.
- The **Court** has increasingly considered cases and issued decisions, which are binding on the State concerned, on issues relating to internal displacement. In particularly important cases, concerning IDPs in Colombia, the Court has concluded that arbitrary displacement violates Article 22 of the American Convention (concerning the right to freedom of movement) and has also insisted that governments must protect persons from displacement.

The OAS has called on all States in the region to address the causes of displacement and, if displacement occurs, to commit to providing IDPs with protection and assistance in accordance with the Guiding Principles on Internal Displacement (OAS resolution 2229 of 2006).

### In Europe

The **Council of Europe** has adopted several human rights instruments, most notably the **European Convention for the Protection of Human Rights and Fundamental Freedoms** (1950) and its 14 Protocols, which contain important provisions relevant to IDPs, including the right to property.

The Council of Europe recommends that States confronted with internal displacement base their national legislation and practice on the **Guiding Principles on Internal Displacement** in addition to all relevant instruments of human rights and international humanitarian law. It has spelled out how the European Convention on Human Rights can be applied to the specific needs faced by IDPs, including safeguarding the civilian nature of camps, facilitating family reunification, and providing protection from forcible return to an area where IDPs' physical safety would be at risk. The Council of Europe has specifically affirmed the rights of IDPs to replacement documentation, compensation for deprivation of property, education, and political participation. See Recommendation 6 *on internally displaced persons* adopted by the Committee Ministers on 5 April 2006.

The **European Court of Human Rights** reviews cases of alleged violations of the Convention and its protocols. IDPs can bring cases directly to the European Court for consideration. In recent years, the Court has issued a number of important binding judgements relating to rights violations suffered by IDPs, particularly regarding the right to property, and awarded victims of such violations financial compensation.

Also relevant are the "human dimension" commitments adopted by the **Organization for Security and Cooperation in Europe (OSCE)**, comprising 56 States across Europe, including all the successor States of the former Soviet Union, Canada and the United States. Although not binding, these commitments reinforce and promote international human rights. The OSCE's Office for Democratic Institution and Human Rights (ODIHR) and its High Commissioner for National Minorities both undertake work relevant to IDP protection.



## References

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- *Customary International Humanitarian Law*, Volume I: Rules. ICRC, 2005. [www.icrc.org](http://www.icrc.org)



## Useful websites

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- Compilation of International Human Rights Law: <http://www2.ohchr.org/english/law/>
- International Humanitarian Law Database: [www.icrc.org/ihl](http://www.icrc.org/ihl)
- UN Treaty Body Database (Ratifications and Reservations): <http://www.ohchr.org/EN/Countries/>
- Universal Human Rights Index of United Nations Documents: [www.universalhumanrightsindex.org](http://www.universalhumanrightsindex.org)
- Database on National and Regional Laws and Policies on Internal Displacement: [www.brookings.edu/projects/idp/Laws-and-Policies/idp\\_policies\\_index.aspx](http://www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx)
- Websites of the UN Human Rights Bodies (Charter Bodies and Treaty-Monitoring Bodies): [www.ohchr.org/english/bodies/index.htm](http://www.ohchr.org/english/bodies/index.htm)