



# A review of the legal framework in Zimbabwe relating to the protection of IDPs

In the context of the Kampala Convention and other supranational  
normative frameworks



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December 2014

## Contributors

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Cover photo: Displaced people vote on their priorities. NRC Zimbabwe, August, 2014

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## Executive Summary

The Internal Displacement Monitoring Centre (IDMC) of the Norwegian Refugee Council (NRC) estimated that at the end of 2013, there were some 12.5 million internally displaced people (IDPs) in sub-Saharan Africa, more than one third of the global total. Unlike refugees, IDPs have not crossed an internationally recognised border. They therefore do not enjoy the broad protections guaranteed by the 1951 UN Refugee Convention and other international instruments.

There are a number of causes of displacement in Zimbabwe, including disasters, such as floods, droughts and storms, as well as development initiatives. The conditions of IDPs in Zimbabwe vary widely, depending on the cause and duration of their displacement. Their needs range from emergency humanitarian assistance to interventions aimed at securing durable solutions. Poor security of tenure is both a cause of displacement and an obstacle to durable solutions. Where displacements have taken place, providing adequate housing has posed challenges and had implications for safety and health. Further issues may be caused by a lack of access to civil registration and documentation and obstacles to accessing basic services (such as education and health) and livelihoods. As of December 2014, there was no information on the total number of IDPs in Zimbabwe.

Although the existing legal framework does not provide for any formal recognition of internal displacement, the

Government of Zimbabwe has acknowledged the existence of internal displacement. It did so in the Global Political Agreement (the 2008 compact between Zimbabwe's three major political parties which paved the way for a Government of National Unity, subsequently dissolved following elections in 2013)..

Zimbabwe became one of the first countries in Africa to demonstrate commitment to a legally enforceable IDP framework by signing the Convention on Protection and Assistance for Internally Displaced Persons (the "Kampala Convention"), endorsed by the African Union in October 2009. The country ratified the Kampala Convention in July 2013. The convention represents a milestone in IDP law, being the first legally-binding treaty seeking to create an enforceable IDP framework for an entire continent. In addition, the new Zimbabwean constitution which came into effect in May 2013 has significantly expanded human rights protections.

However, Zimbabwe has not yet passed implementing legislation for the Kampala Convention, as required of ratifying states. Thus its provisions do not form part of domestic law. Neither has Zimbabwe officially designated an authority responsible for IDP issues, as required by the convention.

The new constitution and other legal reforms have, however, significantly improved the protection environment



Children from displaced households attend a "satellite school". This is a school that is not formally registered because it does not meet national standards. NRC Zimbabwe, January 2014.

for IDPs. New citizenship provisions remove significant barriers to finding durable solutions for many Zimbabwean IDPs of foreign ancestry. Greater incorporation of international law and ratified treaties would create opportunities for the judiciary to expand the protections afforded to IDPs while the legislature would tackle the formidable task of aligning the laws of Zimbabwe with the Kampala Convention.

IDMC, in collaboration with national and international stakeholders, has produced this report in order to reduce the existing protection gaps. Based on a thorough desk study and extensive research, including information and consultations with local organisations, this report reviews the laws of Zimbabwe most relevant to internal displacement and evaluates them against international, regional and sub-regional standards governing the protection of IDPs. The study aims to provide the Government and other actors working on IDP issues with a map of the gaps in the existing legal framework which prevent IDPs from exercising their rights and proposes recommendations to fill these gaps.

IDMC and the contributors hope that all those engaged with IDP issues in Zimbabwe will find this report a useful tool as the nation embarks on the important task of addressing internal displacement in a comprehensive manner.

## The Way Forward

Key recommendations of this report include:

- translating the provisions of the Kampala Convention into national legislation in order to establish a comprehensive national framework to address internal displacement
- establishing a dedicated and sufficiently funded national institution to coordinate the IDP response in close cooperation with national and international humanitarian and development actors and civil society organisations
- incorporating in national law a definition of IDPs in line with that set out in the Kampala Convention and the Guiding Principles
- enshrining in domestic law a prohibition of discrimination based on displacement as well as discrimination among IDPs or non-displaced individuals and communities based on any ground
- reforming laws that create insecurity of tenure
- affirming IDPs' right to restoration of any housing, land and property assets or, if that is impossible, to compensation in line with international standards
- putting in place all reasonable measures required to seek the free and informed consent of IDPs and displacement-affected communities in relation to any displacement or resettlement decisions, including groups with particular needs
- establishing mechanisms to enable regular and comprehensive collection of disaggregated data on IDPs while ensuring its confidentiality
- allocating adequate resources for all phases of displacement.

## References and Acronyms

<i>"ACHPR"</i>	The African Commission on Human and Peoples' Rights.
<i>"Adequate Housing Report"</i>	The Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context prepared in 2013 by the U.N. Human Rights Council.
<i>"African Charter"</i>	The African Charter of Human and Peoples' Rights.
<i>"African Union Member States"</i>	The member states of the African Union.
<i>"Births and Deaths Registration Act"</i>	The Births and Deaths Registration Act [Chapter 5:02].
<i>"Burial and Cremation Act"</i>	The Burial and Cremation Act [Chapter 5:03].
<i>"CAR Report"</i>	E. Mooney, "Examen du cadre normatif de la République Centrafricaine relatif à la protection des personnes déplacées à l'intérieur de leur propre pays", Brookings Institution – University of Bern, "Project on Internal Displacement", February 2011.
<i>"Census and Statistics Act"</i>	The Census and Statistics Act [Chapter 10:05].
<i>"CESCR"</i>	International Covenant on Economic, Social and Cultural Rights.
<i>"Children's Act"</i>	The Children's Act [Chapter 5:06].
<i>"Citizenship of Zimbabwe Act"</i>	The Citizenship of Zimbabwe Act [Chapter 4:01].
<i>"Civil Protection Act"</i>	The Civil Protection Act [Chapter 10:06].
<i>"Committee on the Protection and Assistance of IDPs"</i>	The Committee on the Protection and Assistance of IDPs under the Model Legislation on the Implementation of the ICGLR Protocol on Protection and Assistance to Internally Displaced Persons.
<i>"Criminal Law (Codification and Reform) Act"</i>	The Criminal Law (Codification and Reform) Act [Chapter 9:23].
<i>"Constitution"</i>	The Constitution of Zimbabwe, as amended by Constitution Amendment No. 20 of 2013.
<i>"Constitution Amendment No. 19"</i>	The Constitution Amendment No. 19 of 2008.
<i>"Constitutional Court"</i>	The constitutional court of Zimbabwe.
<i>"Dar Es Salaam Declaration"</i>	The Dar Es Salaam Declaration on Peace, Security, Democracy and Development.
<i>"DCP"</i>	The Department of Civil Protection.
<i>"Draft African Union Model Law"</i>	African Union, Draft "African Union Model Law for the Implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa".
<i>"DRM"</i>	Disaster Risk Management.
<i>"DRR"</i>	Disaster Risk Reduction.
<i>"ECOSOC"</i>	The U.N. Economic and Social Council.
<i>"Education Act"</i>	The Education Act [Chapter 25:04].
<i>"Electoral Act"</i>	The Electoral Act [Chapter 2:01].
<i>"Electoral Amendment Act"</i>	The Electoral Amendment Act, 2014-6/2014.
<i>"Environmental Management Act"</i>	The Environmental Management Act [Chapter 20:27].
<i>"FAO"</i>	The Food and Agriculture Organisation of the United Nations.



<i>"Global Political Agreement"</i>	The Agreement between the ZANU-PF and the MDC on resolving the challenges facing Zimbabwe, signed by Robert Mugabe, Morgan Tsvangirai and Arthur Mutambara on 15 September 2008.
<i>"Government"</i>	The national government of Zimbabwe.
<i>"GNU"</i>	The Government of National Unity.
<i>"Great Lakes Instruments"</i>	The Dar Es Salaam Declaration, the Great Lakes Pact, the Great Lakes IDP Protocol and the Great Lakes Returning Persons' Property Rights Protocol.
<i>"Great Lakes Pact"</i>	The ICGLR Pact on Security, Stability and Development in the Great Lakes Region.
<i>"Great Lakes IDP Protocol"</i>	The ICGLR Protocol on Protection and Assistance to Internally Displaced Persons.
<i>"Great Lakes IDP Protocol Model Legislation"</i>	The ICGLR Draft Model Legislation on the Implementation of the Protocol on Protection and Assistance to Internally Displaced Persons.
<i>"Great Lakes Returning Persons' Property Rights Protocol"</i>	The ICGLR Protocol on the Property Rights of Returning Persons.
<i>"Great Lakes Returning Persons' Property Rights Protocol Model Legislation"</i>	The ICGLR Draft Model Legislation on Property Rights of Returning Persons.
<i>"Guidance on Profiling IDPs"</i>	The IDMC/UNOCHA Guidance on Profiling Internally Displaced Persons.
<i>"The Hyogo Framework for Action 2005 - 2015"</i>	The Hyogo Framework for Action 2005 – 2015: Building the Resilience of Nations and Communities to Disasters.
<i>"Housing Standards Control Act"</i>	The Housing Standards Control Act [Chapter 29:08].
<i>"IASC"</i>	The Inter-Agency Standing Committee.
<i>"IASC Framework"</i>	The IASC Framework on Durable Solutions for Internally Displaced Persons, April 2010.
<i>"IASC Operational Guidelines"</i>	The IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters, January 2011.
<i>"ICGLR"</i>	The International Conference on the Great Lakes Region.
<i>"ICGLR Member States"</i>	The member states of the ICGLR.
<i>"ICRC"</i>	The International Committee of the Red Cross.
<i>"IDMC"</i>	The Internal Displacement Monitoring Centre.
<i>"IDPs"</i>	Internally Displaced Persons.
<i>"JET"</i>	The JIPS Essential Toolkit.
<i>"JIPS"</i>	The Joint IDP Profiling Service.
<i>"Kampala Convention"</i>	The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa.
<i>"Kampala Declaration"</i>	The Kampala Declaration on Refugees, Returnees and Internally Displaced Persons in Africa.
<i>"Labour Act"</i>	The Labour Act [Chapter 28:01].
<i>"Land Acquisition Act"</i>	The Land Acquisition Act [Chapter 20:10].
<i>"Manual"</i>	Brookings Institution – University of Bern, "Protecting Internally Displaced Persons: A Manual for Law and Policymakers", October 2008.
<i>"MDC"</i>	The two factions of the Movement for Democratic Change Party.
<i>"Medical Services Act"</i>	The Medical Services Act [Chapter 15:13].

<i>"Memorandum of Understanding"</i>	The Memorandum of Understanding between the ZANU-PF and the MDC, signed by Robert Mugabe, Morgan Tsvangirai and Arthur Mutambara on 21 July 2008.
<i>"Mines and Minerals Act"</i>	The Mines and Minerals Act [Chapter 21:05].
<i>"Minimum Essential Elements"</i>	The 67 minimum essential elements of state regulation necessary to ensure adequate protection for IDPs, set out in Annex III of the Manual.
<i>"Missing Persons Act"</i>	Missing Persons Act [Chapter 5:14].
<i>"National Housing Policy"</i>	Government of Zimbabwe, "National Housing Policy", 2012.
<i>"National Registration Act"</i>	The National Registration Act [Chapter 10:17].
<i>"NGOs"</i>	Non-governmental organisations.
<i>"NRC"</i>	The Norwegian Refugee Council.
<i>"Paris Principles"</i>	The Principles relating to the Status of National Institutions, adopted by the United Nations General Assembly in December 1993.
<i>"PARK"</i>	The Profiling and Assessment Resource Kit.
<i>"Parliament"</i>	The parliament of Zimbabwe.
<i>"Pinheiro Principles"</i>	The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons.
<i>"President"</i>	The president of Zimbabwe.
<i>"Pinheiro Principles Handbook"</i>	The Handbook on Housing and Property Restitution for Refugees and Displaced Persons: Implementing the Pinheiro Principles.
<i>"Private Voluntary Organisations Act"</i>	The Private Voluntary Organisations Act [Chapter 17:05].
<i>"Public Health Act"</i>	The Public Health Act [Chapter 15:09].
<i>"PVOs"</i>	Private voluntary organisations.
<i>"Refugees Act"</i>	The Refugees Act [Chapter 4:03].
<i>"Regional Town and Country Planning Act"</i>	The Regional Town and Country Planning Act [Chapter 29:12].
<i>"Rural District Councils Act"</i>	The Rural District Councils Act [Chapter 29:13].
<i>"SADC"</i>	The Southern and African Development Community.
<i>"Social Welfare Assistance Act"</i>	The Social Welfare Assistance Act [Chapter 17:06].
<i>"State"</i>	The Republic of Zimbabwe.
<i>"States Parties"</i>	The African states that have ratified or acceded to the Kampala Convention, as defined in the Kampala Convention.
<i>"Supranational Normative Frameworks"</i>	The sources of supranational norms set out in Part A, Section 3.
<i>"U.N. Guiding Principles"</i>	The United Nations Guiding Principles on Internal Displacement.
<i>"U.N. Guiding Principles Annotations"</i>	Authoritative annotations of the U.N. Guiding Principles, by Walter Kälin, first published in 2000 and then again in 2008 by the Brookings Project on Internal Displacement and the American Society of International Law.
<i>"UNCESCR"</i>	The United Nations Committee on Economic Social and Cultural Rights.
<i>"UNHCR"</i>	The United Nations High Commission for Refugees.
<i>"UNOCHA"</i>	The United Nations Office for the Coordination of Humanitarian Affairs.
<i>"Urban Councils Act"</i>	Urban Councils Act [Chapter 29:15].
<i>"Water Act"</i>	The Water Act [Chapter 20:24].
<i>"ZANU-PF"</i>	The Zimbabwe African National Union (Patriotic Front) Party.
<i>"Zimbabwe"</i>	The Republic of Zimbabwe.
<i>"Zimbabwe Human Rights Commission Act"</i>	The Zimbabwe Human Rights Commission Act [Chapter 10:30].

## 1. Context

Internal displacement in Zimbabwe is not a unique phenomenon. IDMC estimates that around 12.5 million people in the Sub-Saharan region alone – more than one third of the global total figure – were internally displaced at the end of 2013. Internally displaced persons (“IDPs”) have no choice about the decision to abandon their homes; they are forced to leave. Unlike refugees, IDPs have not crossed an internationally recognised border, and therefore do not enjoy the broad protections guaranteed by the 1951 Refugee Convention and other international and regional instruments.

The Government of Zimbabwe acknowledged the existence of the internal displacement phenomenon in the Global Political Agreement (which is no longer binding),<sup>2</sup> and the Memorandum of Understanding.<sup>3</sup> Nevertheless, the existing legal framework does not provide for any formal recognition of internal displacement. In 2009, the Government participated with the United Nations in a rapid assessment to determine the scope of internal displacement, however, the findings of the assessment had not been released as of September 2014 and plans for an updated assessment and a nationwide quantitative survey had not moved forward. As of November 2014, there was no information on the total number of IDPs in Zimbabwe.

In the absence of a comprehensive survey, the only figures available are estimates based on past needs assessments. Estimating the total number of IDPs is made more difficult by the fact that a significant number have been displaced more than once and the fact that many have returned to their places of origin or have settled either locally or elsewhere in the country. UNOCHA reported in its 2009 Consolidated Appeal document for Zimbabwe that violence associated with the 2008 elections displaced 36,000 people,<sup>4</sup> although other anecdotal sources placed the number much higher. Most of those displaced have allegedly been able to return home, and few new displacements were reported in the run-up to, or during, the 2013 elections, which marked the end of the GNU in place since 2009 and installed a new administration.

Nevertheless, Zimbabwe was one of the first countries in Africa to demonstrate commitment to a legally enforceable framework on IDPs by proceeding to the signature of the Kampala Convention at the African Union Summit held in October 2009. In November 2013, the Government completed its ratification of the Kampala Convention.

Implementing the Kampala Convention, however, requires a thorough understanding and evaluation of the internal displacement situation and of the national legal framework. Only with such an understanding and after such an evaluation is it possible to formulate context-specific responses and assist the process of attainment of durable solutions.

Causes of internal displacement in Zimbabwe are manifold, including disasters, such as floods, droughts and storms,<sup>5</sup> as well as development initiatives. Major infrastructure development and improving Zimbabwe's macro-economic stability are significant Government policies. For example, the Government's Medium Term Plan (2011 – 2015)<sup>6</sup> has identified infrastructure development, using both State and private investment, as one of its “key objectives”. Some important areas include improving investor confidence in Zimbabwe's mining sector to improve the mining projects in Zimbabwe<sup>7</sup> and ensuring that Zimbabwe's natural resources are exploited more effectively, albeit with a focus on improving resources sustainability and minimising environmental damage.<sup>8</sup> However, many organisations have questioned Zimbabwe's record in protecting IDP rights when displacement has been caused by development work.

IDPs' conditions in Zimbabwe vary widely, depending on the cause and length of time of their displacement. Their needs range from emergency humanitarian assistance to interventions aimed at securing durable solutions.

Poor security of tenure is both a cause of displacement and an obstacle to durable solutions as it can make inhabitants vulnerable to forced evictions.<sup>9</sup> Property rights in Zimbabwe, particularly housing rights, are threatened by a legislative housing framework that remains largely unchanged from the colonial era, when zoning regulations and building standards were deliberately crafted to maintain segregated housing.<sup>10</sup> As a result, the housing titles of hundreds of thousands of people in Zimbabwe, many of whom are IDPs, still remain unrecognised. Large numbers of residents are thus at risk of repeated displacement.

The lack of access to civil registration and documentation may inhibit IDPs' right to vote and can present a further obstacle to accessing basic services, such as education. Zimbabwe's education system has historically been comparatively strong, but educational outcomes for displaced children have been adversely affected.

IDPs in Zimbabwe often face problems accessing medical treatment as a result of their displacement, because of large distances to health centres, for instance, and the poor provision of community health and sanitation facilities. Although the health service provision in the country has improved considerably since 2009, a number of public hospitals are still understaffed, and essential drugs are in short supply in public hospitals and clinics in both urban and rural areas.

Another consequence of displacement is the loss of access to livelihoods and markets. IDPs are often unable to find new sources of income and employment, which can result in dependency on aid and remittances. The resulting lack of financial resources further inhibits IDPs' access to suitable potable water and sanitation facilities, as in most cases they are unable to afford the usage of state or private-run water systems.<sup>11</sup> Where facilities exist in their area of displacement, these are often insufficient to satisfy all their basic needs, particularly in rural areas.<sup>12</sup>

The international community and civil society look forward to supporting the Government in their efforts to address internal displacement. In this spirit, this report intends to contribute to this important national process by providing a review of the laws of Zimbabwe most relevant to internal displacement in order to give full effect to the Kampala Convention and other international guidelines on internal displacement.

## 2. Scope, Methodology and Structure

The purpose of this report is to identify which of Zimbabwe's existing laws need to be amended or supplemented in order to comply with the country's obligations under the Kampala Convention. This report also considers recommendations based on other relevant international legal instruments (the "Supranational Normative Frameworks"), in particular the U.N. Guiding Principles on Internal Displacement.

The structure of this report mirrors the report on the Central African Republic by Erin Mooney which analysed the protections afforded to IDPs under national legislation in light of certain Supranational Normative Frameworks, namely; the U.N. Guiding Principles, the Kampala Convention, and the Great Lakes Instruments (the "CAR Report").<sup>13</sup> The design of the CAR Report in turn draws from the Brookings-Bern publication, "Protecting Internally Displaced Persons: A Manual for Law and Policymakers" (the "Manual"),<sup>14</sup> which provides guidance to law and policymakers on the full gambit of legal issues which affect IDPs. The Manual identifies the Minimum Essential Elements of state regulation necessary to ensure adequate protection for IDPs in accordance with

the Supranational Normative Frameworks.<sup>15</sup> The CAR Report organises the Minimum Essential Elements into 25 IDP-related themes and reviews the laws of the Central African Republic theme by theme. This report employs a comparative methodology for Zimbabwe, reviewing in separate chapters the ways in which various sources of Zimbabwean law address each of the following 23 IDP-related themes:<sup>16</sup>

1. Definition of IDPs
2. Protection of IDPs against Discrimination
3. Awareness Raising and Training
4. Data collection Relating to IDPs
5. Requirement for a Focal Institution Responsible for the Coordination, Protection and Assistance of IDPs
6. National Human Rights Institutions
7. Participation of IDPs
8. Allocation of Necessary Human, Financial and Other Resources
9. Cooperation with National and International Humanitarian Partners
10. Protection against Arbitrary Displacement
11. Reduction of the Risks of Displacement and Mitigation of Displacement-related Concerns in the Event of a Disaster
12. Ensuring Human Rights in the Event of Development-induced Displacement
13. Freedom of Movement
14. Family Life
15. Recognition, Issuance and Replacement of Documents
16. Property and Possessions
17. Electoral Rights
18. Food
19. Water and Hygiene
20. Basic Shelter and Adequate Housing
21. Health
22. Employment, Economic Activities and Social Protection Programmes
23. Education

Each chapter first sets out the relevant Minimum Essential Elements identified in the Manual and addresses the protections IDPs should expect to enjoy under the Kampala Convention and the other Supranational Normative Frameworks. Each chapter then considers the extent to which the Minimum Essential Elements and these protections are provided for by Zimbabwe's existing legal framework.

Where existing laws fail to meet the standards expected under the Minimum Essential Elements and the Supranational Normative Frameworks, recommendations are set out regarding issues that future legislation should address. These recommendations consider the relevant legal instruments in light of the situational context. The



A displaced woman fetches water from an unprotected source. NRC Zimbabwe, January 2014.

findings of the report are summarised in the table set out in the Appendix.

To provide the necessary context to the thematic chapters set out at Part D and Part E, the introductory part of the report provides: (1) an overview of the relevant Supranational Normative Frameworks; and (2) the current legal framework relating to IDPs in Zimbabwe. Part B addresses certain considerations in relation to the domestication of the Kampala Convention and Part C sets out key recommendations from the thematic chapters.

### 3. Overview of the Supranational Normative Frameworks and Other Sources

#### *a. Instruments Specific to Internal Displacement*

##### *i. The Kampala Convention*

The Kampala Convention<sup>17</sup> represents a milestone in IDP law: the first legally-binding treaty purporting to create an enforceable IDP framework for an entire continent.<sup>18</sup> As of January 2014, the Kampala Convention had been signed by 39 of Africa's 54 states, of which 22 had ratified it.<sup>19</sup> Zimbabwe ratified the Kampala Convention on 22 July 2013.<sup>20</sup>

The Kampala Convention formally "recognis[es] the inherent rights of internally displaced persons [...] as set out in" the U.N. Guiding Principles<sup>21</sup> and uses a similar structure to lay out the rights of IDPs before, during and after displacement. The Kampala Convention's definition of IDPs is almost identical to that of the U.N. Guiding

Principles; and, like the U.N. Guiding Principles, the Kampala Convention contains a prohibition against arbitrary displacement.<sup>22</sup> The definition of arbitrary displacement under the Kampala Convention differs from the Guiding Principles in that it does not specifically discuss development-induced displacement, which is addressed elsewhere in its text. On the other hand, the Kampala Convention contains an expansive list of "harmful practices" which can make a displacement arbitrary, potentially encompassing development-induced and other forms of displacement.<sup>23</sup>

Importantly, the Kampala Convention provides that "States Parties shall [...] [i]ncorporate their obligations under this Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons in conformity with their obligations under international law."<sup>24</sup>

During the Kampala Convention process, the African Union also issued the Kampala Declaration<sup>25</sup> and the "Recommendations of the African Union Experts and Ministers in Charge of Forced Displacement Matters"<sup>26</sup> Although the Kampala Declaration mostly contains broad policy objectives, it also sets forth a few specific requirements, including the need to establish "high-level national mechanisms to address the problem of forced displacement",<sup>27</sup> which would improve the protection environment in Zimbabwe. As a formal declaration of a regional organisation in which Zimbabwe is a member (and currently serving as the vice-chair), the Kampala Declaration carries a certain moral weight, which might influence Zimbabwean policy.



### *ii. The U.N. Guiding Principles*

The U.N. Guiding Principles<sup>28</sup> represented the first serious effort to lay out the obligations of states under international law in relation to IDPs. Although not legally binding on any state, the U.N. Guiding Principles “codify and make explicit guarantees protecting internally displaced persons that are inherent in” international human rights law and international humanitarian law.<sup>29</sup> They have gained substantial standing and authority as governments, courts and other institutions have looked to them as an authoritative international framework setting out the definitive minimum standards governing IDP issues.<sup>30</sup> At the 2005 World Summit on Information Society, for example, the Heads of State and Government recognised the U.N. Guiding Principles as providing an “important international framework for the protection of internally displaced persons.”<sup>31</sup> Most significantly, for the purposes of this report, the Kampala Convention (discussed below) formally “recognis[es] the inherent rights of internally displaced persons [...] as set out in the 1998 United Nations Guiding Principles on Internal Displacement [...]”<sup>32</sup>

The U.N. Guiding Principles aim to address the needs of IDPs during all the phases of internal displacement: protection against displacement, protection during displacement and protection in the durable solutions phase, in which IDPs return, resettle or reintegrate locally.<sup>33</sup> A fundamental premise of the U.N. Guiding Principles is that states bear the primary responsibility for the people within their borders but that, if a state cannot or will not provide sufficient protection to IDPs, then the international community has an obligation and a right to offer assistance, which cannot be arbitrarily interfered with.<sup>34</sup> Whilst the U.N. Guiding Principles permit some forms of displacement (so long as the rights of IDPs are respected throughout such process) they contain a blanket prohibition on “arbitrary displacement”.<sup>35</sup>

### *iii. The Great Lakes Instruments*

Several instruments touching on the protection of IDPs have been signed by the ICGLR Member States. Zimbabwe is not one of the 12 core ICGLR Member States, but it is one of the states immediately bordering that region; furthermore, Zimbabwe participated in certain of the negotiations surrounding the instruments and is expected to be broadly supportive of the framework provided for by the Great Lakes Instruments.<sup>36</sup> For these reasons, Zimbabwe is designated a “co-opted member” of the ICGLR.<sup>37</sup>

The 2004 Dar Es Salaam Declaration<sup>38</sup> was adopted by the ICGLR’s then-11 core ICGLR Member States. (South Sudan joined the ICGLR in 2013<sup>39</sup>) Zimbabwe signed the Dar Es Salaam Declaration as a “Witness”.<sup>40</sup>

In 2006, the ICGLR adopted the Great Lakes Pact<sup>41</sup> which

entered into force in 2008 upon ratification by the requisite number of ICGLR Member States.<sup>42</sup> The Great Lakes Pact includes two protocols relevant to this report: the Great Lakes IDP Protocol<sup>43</sup> and the Great Lakes Returning Persons’ Property Rights Protocol.<sup>44</sup>

### *iv. The Pinheiro Principles*

The Pinheiro Principles<sup>45</sup> provide the first consolidated, universal approach to dealing effectively with outstanding housing and property restitution claims. The Pinheiro Principles focus on restitution as the preferred remedy for violations of IDPs’ and refugees’ rights to housing, land and other property.<sup>46</sup> The term “restitution”, in this context, refers to “undoing the effect of human rights violations and other causes of displacement [...]”<sup>47</sup> Restitution in the context of internal displacement would therefore involve the return to an IDP of the IDP’s original property – whether real property or personal property – as opposed to providing the IDP with compensation for loss of that property.<sup>48</sup> Whilst the Pinheiro Principles do contemplate compensation as a possible remedy,<sup>49</sup> restitution is viewed “as the preferred remedy for displacement and as a key element of restorative justice”, whether or not IDPs are able to return to their former homes.<sup>50</sup> The Pinheiro Principles are grounded firmly within existing international human rights law and international humanitarian law and are designed to provide practical guidance to states, United Nations agencies and the broader international community on how best to address the complex legal and technical issues surrounding housing, land and property restitution.

### ***b. The African Human Rights System***

The African Charter<sup>51</sup> is a comprehensive human rights charter. It was adopted in June 1981 and entered into force in October 1986. Its purpose is to protect the human rights and freedoms of people living on the African continent.<sup>52</sup> As of September 2014, 53 states had ratified the African Charter (all African Union Member States except South Sudan).<sup>53</sup>

The African Commission on Human and People’s Rights (the “ACHPR”), which was created in 1987 under Article 30 of the African Charter, is tasked with the interpretation and monitoring of the implementation of the requirements established by the African Charter itself. The mandate of the ACHPR includes promotion of human rights, standard-setting involving the formulation of “principles and rules aimed at solving problems relating to peoples’ rights and fundamental freedoms”<sup>54</sup>; protective work such as receiving non-state complaints or communications alleging violation of rights and advisory work such as the interpretation of the text of the African Charter. The ACHPR also assesses states’ compliance with the provisions of the African Charter by receiving and considering periodic reports submitted by the states.

It is noteworthy that the ACHPR at its 35<sup>th</sup> Ordinary Session, established the Special Rapporteur on Refugees, Asylum Seekers and Internally Displaced Persons. A protocol to the African Charter was subsequently adopted in 1998 whereby an African Court on Human and Peoples' Rights was to be created. This court functions as a kind appellate or review body of the decisions reached by the ACHPR. According to Article 5(1) of the protocol the court's jurisdiction comprises cases initiated by:

1. the ACHPR;
2. a state party in a case in which it was a complainant before the Commission;
3. a state party in a case in which it was a respondent before the Commission;
4. a state party whose citizen has been a victim of human rights violations; and
5. African inter-governmental organisations.

Whereas the rights of IDPs are not explicitly referred to in the African Charter, several provisions contained therein are of immediate relevance to internal displacement matters. Article 11(1), for example, establishes that "every individual [has a] right to freedom of movement and residence within the borders of a State provided he abides by the law". Equally relevant is Article 2, which recognises that "every individual shall be entitled to the enjoyment of the rights and freedoms guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status. Article 3 acknowledges the principle of equality and of universal entitlement to equal protection of the law.

In several situations the ACHPR issued pronouncements, either in the form of general recommendations or in more specific, country-specific and case-based decisions on the protection of the human rights of IDPs. In particular, the ACHPR recommended the adoption of the national frameworks on migration issues compliant with international standards. The 2nd Ordinary Session held in Brazzaville, Republic of Congo (15 – 28 November 2007) recognised "the importance of the human rights of all migrants, including refugees and IDPs", and recommended "to ensure that national legislation relating to migration issues is consistent with and does not conflict with international human rights standards and conventions."

Several regional treaties provide complementary protection, including the African Charter on the Rights and the Welfare of the Child, the Protocol on the Rights of Women in Africa and the African Union Constitutive Act<sup>55</sup>.

### **c. Additional Sources**

Other sources that have been of significant assistance in

preparing this report include secondary sources practical guidance. Most important amongst these is "Protecting Internally Displaced Persons: A Manual for Law and Policymakers" (the "Manual"),<sup>56</sup> which addresses the technical and legal complexities of protecting persons against displacement and protecting IDPs during and after displacement.<sup>57</sup> Its core chapters are structured around specific categories of humanitarian assistance and recognised human rights.<sup>58</sup> In each chapter, the Manual identifies the relevant Minimum Essential Elements.

Additional guidance can be found in the IPU-UNHCR "Internal Displacement: Responsibility and Action. A Handbook for Parliamentarians"<sup>59</sup> and in the IDMC, Brookings Institution, "National Instruments on Internal Displacement: A Guide to their Development"<sup>60</sup>.

Further international legal instruments are referred to where relevant in the thematic chapters. These include: the International Covenant on Civil and Political Rights,<sup>61</sup> the International Covenant on Economic, Social and Cultural Rights,<sup>62</sup> the U.N. Convention on the Rights of the Child,<sup>63</sup> the U.N. Convention on the Elimination of All Forms of Discrimination Against Women,<sup>64</sup> the Paris Principles relating to the status of national institutions,<sup>65</sup> the U.N. Development-Based Evictions Guidelines,<sup>66</sup> the Hyogo Framework for Action 2005 – 2015,<sup>67</sup> the SADC Disaster Risk Management Strategy 2012 – 2015<sup>68</sup>, the Report of the U.N. Special Rapporteur on Adequate Housing<sup>69</sup>, the **FAO Guidelines on the Responsible Governance of Tenure of Land**<sup>70</sup>, and the SADC Protocol on Education and Training.<sup>71</sup>

Finally, the Draft African Union Model Law<sup>72</sup> will provide a useful starting point for any state wishing to implement the Kampala Convention. While a final text is not yet available, a draft text has been reviewed. It is drafted as a comprehensive IDP law, avoiding the need for multiple amendments of existing legislation. In particular, the Draft African Union Model Law contains a repealing clause<sup>73</sup>, which provides that "all laws, decrees, executive orders, ordinances, or any parts thereof, which are inconsistent with the provisions of this legislation, shall be deemed repealed from the effective date of this legislation."<sup>74</sup>

The first part of the Draft African Union Model Law sets out some general objectives of the legislation<sup>75</sup> and principles to guide its interpretation and implementation.<sup>76</sup> A general obligation on governments and non-state actors to prevent internal displacement<sup>77</sup> is followed by provisions providing protections to IDPs that are specific to three common circumstantial causes of internal displacement: natural disasters (Chapter III), armed conflict (Chapter IV) and development projects (Chapter V). In this context, non-state actors including armed rebel groups are explicitly brought within the ambit of the legislation.

Chapter VI of the Draft African Union Model Law provides specific protections for the rights of IDPs in a number of the areas covered by the thematic chapters in this report, such as education<sup>78</sup> and health.<sup>79</sup>

The Draft African Union Model Law, as with any other model legislation, should be implemented with caution. The development of national legislation on internal displacement needs to take context-specific concerns into account. This should be done through consultation with all relevant parties, including IDPs and other populations affected by displacement.

## 4. Overview of the Legal Framework Relating to IDPs in Zimbabwe

Zimbabwe's legal system emerged in the context of the Roman-Dutch legal traditions of southern Africa, as modified by English common law during the period of British rule. The legal system of Zimbabwe is therefore described as Anglo-Roman-Dutch. As is the case in most common law jurisdictions, the laws of Zimbabwe are not codified, with the exception of the criminal law.<sup>80</sup> The judiciary has a significant role in the development of Zimbabwean law because the doctrine of judicial precedent requires judges to follow earlier decisions of the same or a higher court in a matter that comes before them. Therefore, as in most common law jurisdictions, case law is an important source of Zimbabwean legal authority, and provides guidance for the interpretation of legislation.

### *a. The Constitution*

In May 2013, Zimbabwe's Parliament adopted a new constitution that had been approved by popular referendum three months earlier. The Constitution asserts that it is the supreme law of Zimbabwe and that any law, practice, custom or conduct inconsistent with the Constitution is invalid in relation to any inconsistencies.<sup>81</sup> The Constitution reaffirms a "commitment to upholding and defending fundamental human rights and freedoms"<sup>82</sup> and expands the scope of protections offered to IDPs under the previous constitution of 1979.

The Constitution contains general human rights protections that are of particular relevance to typical circumstances of internal displacement. For example, the Constitution guarantees rights to life and liberty, as well as human dignity, personal security, privacy, freedom of association, freedom of movement and residence, a right to property, education, health care and food and water.<sup>83</sup> Each of these rights may be negatively affected by displacement, and they are specifically mentioned in the Kampala Convention as requiring special attention in displacement situations.<sup>84</sup>

The Constitution also contains a non-discrimination provision, which provides equal protection to all people under the law and prohibits discrimination based on, among other things, nationality, race, colour, tribe, place of birth, ethnic or social origin and language.<sup>85</sup> This provision does not, however, specifically prohibit discrimination based on displacement status, as called for by the Kampala Convention.<sup>86</sup>

The many provisions of the Constitution relevant to the treatment of IDPs are discussed in more detail in the thematic chapters in Part D and Part E of this report.

### *b. Constitutional Provisions Relating to International Law and Ratified Treaties*

Zimbabwe has ratified the Kampala Convention and deposited its instrument of ratification with the African Union. Consequently, Zimbabwe is required (under the Kampala Convention<sup>87</sup> and the Constitution<sup>88</sup>) to incorporate the Kampala Convention into domestic law. Although the Kampala Convention does not form part of the domestic law of Zimbabwe,<sup>89</sup> the Constitution requires all courts and tribunals to apply any "reasonable interpretation" of domestic law that is consistent with a ratified treaty's provisions, in preference to an alternative interpretation that is inconsistent with the treaty.<sup>90</sup> Therefore, whilst IDPs may not be able to rely on specifically enforceable provisions of the Kampala Convention until it has been domesticated, they may be able at the present stage to demand that existing legislation be interpreted consistently with the provisions of the Kampala Convention.

Furthermore, the Constitution provides that "[c]ustomary international law is a part of the law of Zimbabwe, unless it is inconsistent with this Constitution or an Act of Parliament."<sup>91</sup> This may have some positive impact on the situation of IDPs in Zimbabwe as the U.N. Guiding Principles were drawn, in part, from customary international law and so, where not inconsistent with domestic law, elements of the U.N. Guiding Principles that draw on customary international law may still provide actionable rights for IDPs. The U.N. Guiding Principles also reflect customary international humanitarian rules as stated by ICRC in their 2005 Study on Customary International Humanitarian Law.<sup>92</sup>

### *c. Other Legislation*

Other Zimbabwean laws affect the protections afforded to IDPs across the various thematic areas. These laws are discussed in the relevant thematic chapters at Part D and Part E of this report.

# B

## Considerations in relation to the domestication of the Kampala Convention

In order to facilitate the domestication process, the African Union has developed the Draft African Union Model Law for the implementation of the Kampala Convention and has conducted domestication workshops across the continent, including in Nigeria, Sierra Leone, Chad, the Democratic Republic of Congo, Uganda, Zambia and Lesotho.<sup>93</sup> Whilst a number of African Union countries have formally adopted national legislation or policies related to internal displacement – covering specific phases of displacement, focusing on particular aspects or rights or, like Kenya and Uganda, providing a comprehensive framework for the protection of IDPs' rights – none of these domestic processes has yet come to completion following the ratification of the Kampala Convention by the countries concerned. A number of the African Union Member States (including Nigeria and the Democratic Republic of Congo), nevertheless, are now engaged in the process of domestication.<sup>94</sup>

States must decide whether to address the relevant issues through a stand-alone displacement specific law or policy or through the introduction of amendments to existing legislation through piecemeal legislative amendment. The enactment of specific legislation governing the rights of IDPs and their treatment by governments has the advantage of establishing a complete legal framework which addresses internal displacement.<sup>95</sup> An IDP law may, amongst other things, provide a degree of legal certainty and give clear guidance to government institutions as they implement policy and indicate to the African Union and the international community that Zimbabwe is taking seriously its Kampala Convention obligations. Since the Draft African Union Model Law offers a pre-prepared template for the creation of a national IDP law, drafting such a law for Zimbabwe would be relatively straightforward.

Nevertheless, a series of amendments may be required to ensure that the text of the Draft African Union Model Law is adapted to reflect the existing country specific issues relating to Zimbabwe. The most significant barrier to adoption of a stand-alone IDP law is, however, the possible difficulty of reaching a consensus behind a wholesale change to the legal regime applicable to IDPs in Zimbabwe. Provisions relevant to the treatment of IDPs, at this stage, are found in different sections of the legislation and a comprehensive change would entail aligning the existing legislation to the provisions established under the new law.<sup>96</sup>

Implementing the Kampala Convention by piecemeal amendment of legislation and regulations that apply to IDPs may require less consensus and fewer procedural steps than the enactment of a comprehensive IDP law. Furthermore, in some cases, subordinate legislation or executive instruments may be used to amend the legal and regulatory regime, providing a degree of executive discretion and flexibility with regard to tailoring or updating measures relating to IDPs in light of any future changes in circumstances.

The decision to opt for piecemeal legislative amendment may be dictated by the prevailing circumstances and by the need to address specific IDP problems at a particular point in time. Piecemeal legislative amendments in relation to displacement issues have been the object of laws implemented in several different jurisdictions prior to the adoption of the Kampala Convention.<sup>97</sup> Outside Africa, in regions where there is no comprehensive regional treaty in place like the Kampala Convention, laws and policies that address only return and resettlement have also been adopted in Azerbaijan, Bosnia and Herzegovina, Colombia, Nepal and Serbia.<sup>98</sup> A complete list of national frameworks on internal displacement is accessible at the Brookings IDP Laws and Policies Index.<sup>99</sup>

The disadvantages to the piecemeal approach should also be noted: in particular, the possibility of a reduction in the coherence and sufficiency of the measures enacted. The implementation of the Kampala Convention by piecemeal amendment may also take longer than the enactment of a specific IDP law. Until the full set of amendments is completed, the African Union and the international community may express doubts as to the implementing state's intention to follow its Kampala Convention obligations in full.



## Key recommendations

The key recommendations from the IDMC and the NRC to the Government, following the review of the relevant legal instruments discussed in the thematic chapters, are as follows:

1. To translate the provisions of the Kampala Convention into national legislation in a way that establishes a national framework addressing internal displacement in a comprehensive manner.
2. To identify and legally appoint a national institution responsible for the coordination of all efforts aimed at protecting and searching for durable solutions for IDPs, including liaising with national and international humanitarian and development actors and civil society organisations in the delivery of protection and assistance to IDPs. The legal definition of the mandate of the national institution responsible for IDPs should be accompanied by the provision of a specific yearly budget allocation for such institution to discharge its assigned tasks and the requirement to appeal to external funding in the event of unavailability of sufficient resources to address internal displacement concerns.
3. To incorporate into local legislation a definition of IDPs in line with those set out in the Kampala Convention and the U.N. Guiding Principles whilst making clear that the examples of displacement causes in the definition (i) are not exhaustive and that the definition (ii) does not create a specific legal status, but rather is to be used to address the specific vulnerabilities of IDPs through adequate provision under relevant laws and policies.
4. To enshrine in domestic law a prohibition of discrimination based on displacement as well as discrimination among IDPs or non-displaced individuals and communities based on any ground, including race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth or any similar criteria.
5. To introduce provisions into national legislation prohibiting all forms of arbitrary displacement, as defined in the Kampala Convention and the U.N. Guiding Principles, and to formulate criteria compliant with international human rights and humanitarian law standards to determine when a particular act may be considered to amount to arbitrary displacement. Such formulations should, in particular, consider the case of forced evictions, which can only be carried out lawfully under exceptional circumstances and in full accordance with relevant provisions of international human rights and humanitarian law.
6. In relation to the guarantees related to housing, land and property rights: (i) to reaffirm in the relevant legislation that IDPs have the right to have restored to them any housing, land and property assets of which they were deprived or, if that is impossible, to be compensated for any housing, land and property loss in accordance with the Kampala Convention, the U.N. Guiding Principles and the Pinheiro Principles and, to this end, to have effective access to courts or alternative institutional dispute settlement mechanisms; (ii) to reform laws that create insecurity of tenure, especially the Housing Standards Control Act, the Regional Town and Country Planning Act and other laws that permit arbitrary displacement, including by creating a legal obligation to search for alternatives before engaging in demolitions or evictions.
7. To enact specific legislation for: (i) the regular collection of those IDP data – disaggregated by age and sex – that are deemed necessary to inform targeted humanitarian or development programmes; and (ii) the maintenance and protection of relevant IDP data in a confidential and secure manner in order to ensure the privacy of IDPs. The two tasks could be achieved either through separate legislation or, respectively, (i) through amendment of the Census and Statistics Act and (ii) through the inclusion of displacement-related data in the list of categories of information disclosure which are presumed to be unreasonable, in line with Sections 61 and 52 of the Constitution.
8. To adopt, in line with the specific requirements of the Kampala Convention and the U.N. Guiding Principles, a policy that ensures the full participation of IDPs in all initiatives that have an impact on their lives and that the State puts in place all reasonable measures required to seek the free and informed consent of IDPs and displacement-affected communities in relation to any displacement or resettlement decisions. In addition, specific arrangements must be made to guarantee that all groups with particular needs are part of the planning and management of the search for durable solutions. With this in mind, a national con-



sultative forum featuring representatives of both IDPs and local communities could be set up with a view to providing advisory opinions to the national institution in charge of the coordination of IDP protection and assistance activities.

9. To ensure that there are adequate resources to address the three phases of displacement. This could be achieved by: (i) taking into account the resources needed (including budgetary funds, human resources and humanitarian goods) when laws and policies relating to IDPs are drafted; (ii) coordinating the enactment of legislation and policies with Government budgetary cycles; and (iii) ensuring that authorities with responsibility in relation to IDPs have adequate funds.



## General thematic chapters

### 1. Definition of IDPs

#### **a. General Context**

Adopting a definition of IDPs in domestic law is important as it allows both state and non-governmental actors to assess and identify those persons in need of assistance and, accordingly, to apply the relevant laws and policies relating to internal displacement. It should be emphasised that defining IDPs under domestic law does not imply the creation of a specific legal status for displaced persons. IDPs remain citizens or habitual residents of their country and are entitled to protection and assistance on that basis alone. Creating such legal status would mean that internally displaced status could be granted, refused or withdrawn in individual cases. Rather, a non-exhaustive definition of IDPs should be adopted in local law.

#### **b. Minimum Essential Element**

- Adopt a concept of an IDP that is consistent with, and not narrower than, that used in the U.N. Guiding Principles. The definition of IDP must not create a specific legal status that is granted, refused or ceased in individual cases; it should serve as a factual description of the circumstances of a person that is used to determine the applicability of IDP laws and policies.<sup>100</sup>

#### **c. Kampala Convention**

The Kampala Convention adopts the U.N. Guiding Principles' descriptive identification of IDPs, discussed below.

#### **d. U.N. Guiding Principles**

The U.N. Guiding Principles provide the following descriptive identification of IDPs,<sup>101</sup> which has been accorded wide-ranging international acceptance.

"For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border."<sup>102</sup>

The examples provided in the descriptive identification are non-exhaustive, and in essence anyone who has been forced or obliged to leave her home and does not cross an internationally-recognised state border is an IDP.<sup>103</sup> Rather than conferring a legal status on a category of

people, the IDP descriptive identification focuses on vulnerabilities for the purpose of ensuring that adequate assistance is given to IDPs and that displacement does not lead to discrimination or other violations of an individual's rights.

The Introduction to the U.N. Guiding Principles describes IDPs with the same language used in the Kampala Convention.<sup>104</sup> The Annotations to the U.N. Guiding Principles provide further guidance on how this descriptive identification is to be approached:

"[...] [The descriptive identification] highlights two elements: (1) the coercive or otherwise involuntary character of movement; and (2) the fact that such movement takes place within national borders. The second requirement is to be understood in a broad sense. It refers to the place where the displaced persons finds refuge and is also met if displaced persons, for example, have to transit through the territory of a neighbouring state in order to gain access to a safe part of their own country; first go abroad and then return (voluntarily or involuntarily) to their own country but cannot go back to their place or origin/habitual residence or home for reasons indicated in paragraph 2; or left voluntarily to another part of their country but cannot return to their homes because of events occurring during their absence that make return impossible or unreasonable [...]"

[Paragraph 2] provides some examples of how displacement may be brought about [...] The words "in particular" indicated that the listed examples are not exhaustive [...]"

[T]he notion of who is an internally displaced person [...] is not a legal definition. Becoming displaced within one's own country of origin or country of habitual residence does not confer special legal status in the same sense as does, say, becoming a refugee. This is because the rights and guarantees to which internally displaced persons are entitled stem from the fact that they are human beings and citizens or habitual residents of a particular state. Those rights and guarantees emanate from the peculiar vulnerability and special needs that flow from the fact of being displaced [...] as human beings who are in a situation of vulnerability [internally displaced persons] are entitled to the enjoyment of all relevant guarantees of human rights and humanitarian law applicable to the

citizens or habitual residents of the country concerned. This does not rule out the possibility of administrative measures such as registration on the domestic level to identify those who are displaced and need special assistance. However, lack of such registration would not deprive internally displaced persons of their entitlements under human rights and humanitarian law [...]

[P]eople may become internally displaced either after suffering the effects of coercive factors or in anticipation of such effects [...]"<sup>105</sup>

#### **e. Zimbabwe-specific Analysis**

Currently, the laws and national policies of Zimbabwe do not appear to contain a definition of IDPs. The Government acknowledged the existence of the phenomenon in the country, however, in the Global Political Agreement (which is no longer binding)<sup>106</sup> and the Memorandum of Understanding.<sup>107</sup> In 2009, the Government participated with the United Nations in a rapid assessment to determine the scope of internal displacement. The findings of the assessment have not been released as of the date of this report, and plans for an updated assessment and a nationwide quantitative survey have not moved forward.

#### **f. Recommendation**

There is currently no definition of IDPs under Zimbabwe law. In order to ensure local law is compatible with the Kampala Convention and the U.N. Guiding Principles, it is recommended that Zimbabwe:

Adopt into local law the definition of IDP that is used in the U.N. Guiding Principles and the Kampala Convention, whilst making it clear that (i) the specific causes of displacement illustrated in the descriptive identification of IDPs are not exhaustive and (ii) the IDP definition does not create a specific legal status but, rather, is used to enable relevant decision-makers to determine the applicability of the laws and policies relating to internal displacement.

## **2. Protection of IDPs against Discrimination**

### **a. General Context**

The principle of non-discrimination is well established in international law, and there are various international and regional instruments addressing the prohibition on discrimination. There are two main issues to be considered in this context: (i) discrimination vis-à-vis non-displaced persons; (ii) discrimination among displaced persons and protection of vulnerable IDPs.

#### *(i) Discrimination vis-à-vis non-displaced persons*

The prohibition of discrimination against IDPs because of their displacement status is increasingly being recognised by state practice at the regional and domestic level.<sup>108</sup> The prohibition of discrimination against IDPs is particularly important given that instances of displacement may be rooted in the intentional discrimination against certain groups. The principle of non-discrimination does not preclude special measures addressing the specific needs of displaced persons. As commentators have noted:

"The principle of equal treatment is fundamental to the approach to displacement taken in the Guiding Principles. That approach is based on the observation that displacement consistently results in specific, severe vulnerabilities and harms for those affected [...] As a result, in order to place IDPs back on an even footing with the non-displaced population, the state should provide specific and targeted measures of assistance and protection of a nature and scope corresponding to the needs and vulnerabilities resulting from displacement. This approach is supported by numerous rules of international human rights law that prescribe positive or special measures in favour of vulnerable groups. Although such measures result in differential treatment, they are not prohibited as being discriminatory; rather they are required by the basic principle that what is different must be treated differently, as long as they respond to genuine vulnerabilities and do not last longer than necessary to address them."<sup>109</sup>

#### *(ii) Discrimination among displaced persons and protection of inherently vulnerable IDPs*

The same principles of non-discrimination that govern the treatment of IDPs in relation to non-displaced persons also apply within the internally displaced population. As commentators have noted:

"Internally displaced populations are typically diverse, and it is important to ensure that some segments do not arbitrarily receive worse treatment than others. Factors that can give rise to differential treatment within displaced populations include the following: Cause of displacement [...] Location of displacement [...] Inherent vulnerability [...]"

Attention to the protection needs of inherently vulnerable groups should be an absolute priority in any internal displacement situation [...] Some of the groups that raise the greatest concern include:

- single parents, particularly women-headed households; [...]
- minors, especially when unaccompanied;
- older persons, especially when unaccompanied or otherwise without family support;
- persons with disabilities, chronic illnesses, or HIV/AIDS;
- traumatised persons;
- pregnant or lactating women;
- members of ethnic or religious minorities;
- indigenous peoples [...]"<sup>110</sup>

#### **b. Minimum Essential Element**

- Recognise the right of any IDP to be protected against discrimination on the ground that he or she is internally displaced as well as against discrimination in relation to other IDPs or non-displaced individuals and communities on any ground such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, or birth or any similar criteria."<sup>111</sup>

#### **c. Kampala Convention and Declaration**

The Kampala Convention specifically prohibits discrimination based on displacement status, in several of its provisions.

##### *(iii) Non-discrimination vis-à-vis non-displaced persons*

Article 3(i)(d) states that States Parties shall "[r]espect and ensure respect and protection of the human rights of internally displaced persons, including [...] non-discrimination [...]"<sup>112</sup>

Article g(i)(a) provides that "States Parties shall protect the rights of internally displaced persons regardless of the cause of displacement by refraining from, and preventing, the following acts, amongst others: [...] Discrimination against such persons in the enjoyment of any rights or freedoms on the grounds that they are internally displaced persons [...]"<sup>113</sup>

Article g(2)(a) goes on to say that States Parties shall "[t]ake necessary measures to ensure that internally displaced persons are received without discrimination of any kind and live in satisfactory conditions of safety, dignity and security [...]"<sup>114</sup>

Paragraph 12 of the Kampala Declaration recognises "the need for protection of civilians in situations of armed conflict, based on International Humanitarian Law", in particular "taking note of the disproportionate share of special vulnerability of displaced persons especially wom-

en, children and other disadvantaged groups including persons with disabilities [...]", thus recognising the often unequal share of burden between IDPs and non-displaced populations."<sup>115</sup>

##### *(iv) Non-discrimination among displaced persons and protection of inherently vulnerable IDPs*

The Kampala Convention also places an obligation on States' Parties to provide protection and assistance to displaced persons without discrimination. For example, Article 5(i) provides that States Parties shall "bear the primary duty and responsibility for providing protection of and humanitarian assistance to internally displaced persons within their territory or jurisdiction without discrimination of any kind."<sup>116</sup>

Finally, the Kampala Convention places a blanket prohibition on "displacement based on policies of racial discrimination, or other similar practices aimed at or resulting in altering the ethnic, religious or racial composition of the population."<sup>117</sup>

#### **d. U.N. Guiding Principles**

##### *(i) Non-discrimination vis-à-vis non-displaced persons*

Principle 1(i) of the U.N. Guiding Principles provides that:

"Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced."<sup>118</sup>

Principle 29(i) states:

"Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services."<sup>119</sup>

The U.N. Guiding Principles Annotations provide further guidance on Principle 1:

"[Principle 1(i)] embodies the principle of equality and non-discrimination and makes explicit what is only implicit in international law: internally displaced persons are entitled to enjoy the same rights and freedoms as other persons in their country. Any discrimination against internally displaced persons is prohibited."<sup>120</sup>

"[T]he prohibition of discrimination is violated if internally displaced persons are disadvantaged on the

sole ground that they are displaced, but it does not outlaw the distinctions that are based on serious and objective reasons. In particular, the principle of non-discrimination does not preclude special measures addressing, for example, the specific needs of displaced women and children [...]"<sup>121</sup>

The U.N. Guiding Principles Annotations highlight that the Principle 29(1) emphasises the general prohibition of discrimination as embodied in Principle 1(1).

*(ii) Non-discrimination among IDPs and protection of inherently vulnerable IDPs*

Principle 4 of the U.N. Guiding Principles states:

"1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth or on any other similar criteria.

2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment that takes into account their special needs."<sup>122</sup>

The U.N. Guiding Principles Annotations make it clear that the "wording of paragraph 1 follows formulations of human rights and humanitarian law provisions that prohibit discrimination [...] [P]aragraph 1 does not guarantee an independent right to freedom from discrimination [as Principle 1 does], but rather an accessory right. Thus its scope is restricted to protecting internally displaced persons against discrimination only with respect to the provisions set forth in the Guiding Principles [...]"<sup>123</sup>

The U.N. Guiding Principles Annotations continue: "Paragraph 2 addresses the situation of particularly vulnerable groups of internally displaced persons [...] and emphasises that they are entitled to the protection and assistance required by their condition and to treatment that takes into account their special needs. Whereas paragraph 2 sets out the general rule, several other Principles address specific aspects of the special attention that should be paid to vulnerable groups (see, for example, Principles 13, 19 and 23). According special treatment to some groups of internally displaced persons does not violate the principle of equality as objectively disparate situations should not be treated equally and specific vulnerabilities should be taken into account [...] Several provisions of humanitarian law expressly set forth that special measures for the protection of children and women shall be taken by parties to a conflict. Similarly, human rights law deals with

the special needs of vulnerable categories of persons in specific instruments [...]"<sup>124</sup>

**e. Zimbabwe-specific Analysis**

Section 56 of the Constitution contains the following non-discrimination provision:

"(1) All persons are equal before the law and have the right to equal protection and benefit of the law.

(2) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

(3) Every person has the right not to be treated in an unfairly discriminatory manner on such grounds as their nationality, race, colour, tribe, place of birth, ethnic or social origin, language, class, religious belief, political affiliation, opinion, custom, culture, sex, gender, marital status, age, pregnancy, disability or economic or social status, or whether they were born in or out of wedlock.

(4) A person is treated in a discriminatory manner for the purpose of subsection (3) if

(a) they are subjected directly or indirectly to a condition, restriction or disability to which other people are not subjected; or

(b) if other people are accorded directly or indirectly a privilege or advantage which they are not accorded.

(5) Discrimination on any of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair, reasonable and justifiable in a democratic society based on openness, justice, human dignity, equality and freedom.

(6) The State must take reasonable legislative and other measures to promote the achievement of equality and to protect or advance people or classes of people who have been disadvantaged by unfair discrimination, and –

(a) such measures must be taken to redress circumstances of genuine need;

(b) no such measure is to be regarded as unfair for the purposes of subsection (3)."<sup>125</sup>

*(iii) Non-discrimination vis-à-vis non-displaced persons*

The general prohibition on discrimination in the Constitution implicitly protects IDPs from discrimination based on the fact of their being displaced. Whilst the constitutional



non-discrimination provisions are to be applauded, to fully protect IDPs, neither the Constitution, nor any other law specifically prohibits discrimination based on displacement condition, as required by the Kampala Convention and the U.N. Guiding Principles.

*(iv) Non-discrimination among displaced persons and protection of inherently vulnerable IDPs*

The general prohibition on discrimination in the Constitution implicitly protects different groups of persons within the displaced population from discrimination. In the context of protecting vulnerable groups, it is notable that the State has a positive duty to promote the achievement of equality and to protect or advance people or classes of people who have been disadvantaged by unfair discrimination.<sup>126</sup> This positive duty could be interpreted to extend, for example, to protect and provide redress to vulnerable groups within displaced populations. It is also made explicit that such protection and redress would not amount to unfair discrimination itself.<sup>127</sup> In other words, this provision could be interpreted to allow the State to take special measures to protect or provide redress to vulnerable groups within displaced populations.

Nonetheless, certain sections of Chapter 4 of the Constitution seem to afford greater guarantees of fundamental rights and freedoms to citizens than non-citizens and could be used as a basis for discrimination against non-citizen IDPs.<sup>128</sup> For example, the rights to education,<sup>129</sup> access to information<sup>130</sup> and health care<sup>131</sup> are each restricted to citizens and permanent residents. Whilst these limitations may make sense from a policy standpoint, they run the risk of creating conditions under which non-citizen IDPs could face unfair discrimination unless interpreted in a manner consistent with the dictates of the Kampala Convention.<sup>132</sup>

**f. Recommendation**

The Kampala Convention requires the prohibition of discrimination based on displacement condition and places an obligation on States Parties to provide protection and assistance to IDPs without discrimination. Currently, Zimbabwe's laws, in particular the Constitution, do not prohibit discrimination based on displacement and in certain aspects also fail adequately to implement the general prohibition on non-discrimination. It is therefore recommended that Zimbabwe:

Enshrine in domestic law the prohibition of discrimination based on displacement as well as of discrimination against IDPs on any ground such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, or birth or any similar criteria.

### 3. Awareness Raising and Training

**a. General Context**

As set out in the U.N. Guiding Principles and the Kampala Convention, national authorities bear the primary duty and responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction.<sup>133</sup> State initiatives to raise awareness and provide training are one important way in which the state can contribute to the mitigation and resolution of displacement.

"Raising National Awareness of the Problem" and "Training on the Rights of IDPs" constitute two distinct benchmarks (2 and 4, respectively) in the Framework for National Responsibility.<sup>134</sup>

*(i) Raising awareness of the problem*

Before implementing laws and policies on displacement, states must "[r]ais[e] awareness of the existence and nature of internal displacement among all relevant stakeholders and of the steps necessary to address it [...]"<sup>135</sup> Public awareness campaigns allow the laws and policies relating to IDPs to be more effectively implemented and to be more easily and widely accepted by the general public. General campaigns aimed at raising public awareness are invaluable for several reasons, including: (i) helping to reduce the stigma that is often associated with displacement and thereby assisting in reducing discrimination against IDPs; and (ii) encouraging understanding of why IDPs may need special assistance in certain circumstances that non-IDPs may not be entitled to.<sup>136</sup> For the same reasons, it is also particularly important to target public awareness campaigns to those communities or areas where large populations of IDPs live.

*(ii) Providing training on the rights of IDPs*

In order to ensure that the implementation of IDP laws and policies are effective, the enactment of IDP laws and policies needs to be accompanied by comprehensive training for those government officials who will be involved in implementation or whose work otherwise involves IDPs.<sup>137</sup> Generally, the training should include: (i) the technical aspects of implementing IDP laws and policies; (ii) a general overview of the issues facing IDPs and their vulnerable situation; and (iii) special protections and assistance available to IDPs or vulnerable groups of IDPs. This will enable government officials to adopt an appropriate response when dealing with IDPs. For example, when an IDP registers for a service with limited personal documentation, the relevant administrative official will recognise that a lowered standard of evidence may be acceptable as it reflects the different situation of IDPs compared with the general population.<sup>138</sup>

It has been observed that the "[p]rovision of training on internal displacement issues to government officials at

all levels is a key element of the exercise of national responsibility and can contribute to all aspects of an official response.”

### **b. Minimum Essential Element**

- Provide for measures to raise awareness of the existence and nature of internal displacement and provide targeted training on the rights of IDPs.<sup>139</sup>

### **c. Kampala Convention**

The Kampala Convention does not specifically address awareness raising and training. However, the general requirements that States Parties assume responsibility for the protection and assistance of IDPs can be interpreted to include awareness raising and training activities.<sup>140</sup>

### **d. Other Relevant Supranational Normative Frameworks**

#### *(i) U.N. Guiding Principles*

Like the Kampala Convention, the U.N. Guiding Principles do not specifically address awareness raising and training. However, the U.N. Guiding Principles’ general requirements that states assume responsibility for the protection and assistance of IDPs can, like those in the Kampala Convention, be interpreted to include awareness raising and training activities.<sup>141</sup> In addition, a government’s official recognition of the validity of the U.N. Guiding Principles and references to them are, in themselves, acknowledgements of the IDP problem and of the special needs of IDPs.<sup>142</sup>

#### *(ii) Pinheiro Principles*

Concerned with housing and property rights, the Pinheiro Principles make references both to training of relevant officials and raising awareness of the rights of IDPs amongst the general public. These two respective principles are as follows:

“12.4 States should establish guidelines that ensure the effectiveness of all relevant housing, land and property restitution procedures, institutions and mechanisms, including guidelines pertaining to [...] staff training and caseloads [...]”<sup>143</sup>

20.5 States should implement public information campaigns aimed at informing secondary occupants and other relevant parties of their rights and of the legal consequences of non-compliance with housing, land and property restitution decisions and judgments [...]”<sup>144</sup>

Other principles, such as ensuring a gender-sensitive property restitution programme and procedure, may also require “training for officials entrusted with working” on such matters.<sup>145</sup>

### **e. Zimbabwe-specific Analysis**

#### *(i) Constitution*

Although not containing any specific reference to IDPs, the various independent commissions established by the Constitution have, as part of their respective mandates, awareness raising for issues that may be relevant to the protection of IDPs. For example, the Zimbabwe Human Rights Commission is tasked with “promot[ing] awareness of and respect for human rights and freedoms at all levels of society.”<sup>146</sup> The Zimbabwe Gender Commission, whilst not having an explicit mandate to raise awareness, is obligated “to do everything necessary to promote gender equality”,<sup>147</sup> which could be interpreted as including raising awareness of the challenges faced by women in general and IDP women specifically. Finally, the Zimbabwe Electoral Commission is required to “conduct and supervise voter education”,<sup>148</sup> which, as discussed in Chapter 17. “Electoral Rights”, should include awareness raising of IDP issues related to voting.

#### *(ii) Civil Protection Act*

Generally, the Civil Protection Act establishes a civil protection organisation, provides for the operation of civil protection in times of disaster and provides for the establishment of a fund to finance civil protection. One of the functions of the Director of Civil Protection is to coordinate the training of personnel for civil protection purposes, which is of relevance here.<sup>149</sup>

Whilst not all cases of displacement will be caused by circumstances falling within the scope of the Civil Protection Act (including disasters, major accidents, disease, disruption of essential services, destruction, pollution or scarcity of essential supplies or the influx of refugees), the Director of Civil Protection could train personnel in relation to IDP-specific concerns pertaining to its mandate.<sup>150</sup>

### **f. Recommendations**

There does not appear to be any legislatively-prescribed requirement for Government officials or entities to run or undertake public awareness-raising campaigns or training programmes relating to IDPs. The Government has the primary duty and responsibility to provide protection and humanitarian assistance to IDPs within Zimbabwe. State initiatives to raise awareness and provide training are important, constituting one of the ways in which Zimbabwe can contribute to the mitigation and resolution of displacement. In light of this, it is recommended that Zimbabwe:

In respect of raising awareness:

- Specify in any outline law relating to IDPs, or in a national policy or strategy document, that one of the functions of national or local institutions specif-

ically tasked with addressing IDP issues is to raise awareness of the existence, nature and specificity of internal displacement.

- Include explicitly in the mandates of the various Independent Commissions awareness raising of issues specific to IDPs.

In respect of providing training on the rights of IDPs:

- Specify in any outline law relating to IDPs, or in a national policy or strategy document, that one of the functions of national or local institutions specifically tasked with addressing IDP issues is to train Government officials at all levels whose work involves IDPs with respect to: (i) implementing IDP rights in accordance with the U.N. Guiding Principles, the Kampala Convention and domestic law; (ii) special protections and assistance that IDPs, or vulnerable groups of IDPs, may require; (iii) the general vulnerable situation of IDPs; and (iv) the search for durable solutions for IDPs and, more specifically, (v) housing-, land- and property-restitution mechanisms, as established in the Pinheiro Principles.

## 4. Data Collection Relating to IDPs

### *a. General Context*

In order to implement legislation and policy that meet IDPs' needs, the state requires "[a]ccurate information on the number, location, and condition of displaced populations is essential to implementing legislation and policies in a manner that meets IDPs' needs for protection."<sup>151</sup> Data collection relating to IDPs is important as it allows legislation, national policies and resources to be targeted to the specific needs and vulnerabilities of IDPs.

The collection of relevant data on IDPs (such as numbers, location, specific needs and vulnerabilities of IDPs) should take place from the time of displacement and should be updated on a regular basis to ensure that the data collected remains accurate.

#### *i. IDP registration*

IDP registration may be one of several methods by which data can be collected and maintained. Registration of IDPs may allow authorities to improve their response by "establishing the number, location, and key demographic characteristics of displaced populations; preventing fraudulent access to secure humanitarian assistance by persons who do not need it; and facilitating the issuance of temporary identity cards to replace personal documentation lost in the course of flight. However, registration procedures should always be tied to specific and concrete goals, meaning that IDPs should be registered not as IDPs *per se* but rather as IDPs entitled to receive specific benefits [...] such as food assistance, medical care, waiver of school fees, or entitlement to stay in a camp. By contrast it may not be necessary to register all IDPs who are not dependent on humanitarian assistance. Here, alternatives to registration, such as the profiling of displacement situations [...] may be considered."<sup>152</sup> In certain limited circumstances, registration, may be useful to improve response by "facilitating the issuing of temporary replacements for personal documentation lost during flight."<sup>153</sup>

However, it is important to emphasise that "registration should not become the basis for creating a new legal category of persons with IDP status. Overly bureaucratic registration procedures or the creation of a legal IDP status are not only unnecessary but also raise significant protection concerns."<sup>154</sup> There is the possibility that registering people as internally displaced makes them potential targets and more vulnerable to discrimination or human rights abuses. This potential disadvantage may be overcome by ensuring a robust domestic regime for the protection of rights of IDPs, along with easily accessible domestic redress for any alleged violations of IDPs' rights.

In this regard, "[n]ational authorities that decide to undertake registration should ensure that:

- Procedures are transparent, non-discriminatory, known and accessible to all IDPs and swift so that access to particular benefits linked to registration is not delayed;
- Criteria for registration are clear, non-discriminatory and do not exclude individuals or groups of IDPs in line with the Guiding Principles;
- Procedures include all IDPs, including those in remote or inaccessible areas and those who are less visible, for example because they are not living in camps;
- The process does not create protection risks for the displaced population;
- Those without documentation are not excluded from registration, but rather are provided with the documents needed to register; [and]
- Any information collected is protected and its confidentiality ensured in order not to expose IDPs to further risks.”<sup>155</sup>

#### *ii. Profiling*

Profiling is described in the Guidance on Profiling IDPs<sup>156</sup>, as the “collaborative process of identifying internally displaced groups or individuals through data collection, including, counting and analysis, in order to take action to advocate on their behalf to protect and assist them and, eventually, to help bring about a solution to their displacement.”<sup>157</sup> Essentially, profiling does not necessarily entail the collection of potentially sensitive data (nor ultimate identification of each concerned individual).

Profiling should include at a minimum: (1) the number of displaced persons, disaggregated by age and sex (even if estimates); and (2) location(s). These two elements are understood as “core data”, which should be supplemented by additional information wherever possible, to include (but not limited to): (3) the cause(s) of displacement; (4) patterns of displacement; (5) protection concerns; (6) humanitarian needs; and (7) potential solutions for the group/individual, if available.<sup>158</sup>

#### *iii. Other methods of IDP data collection*

The government may also obtain information on IDPs through sources such as census information and other official records.

The government may also wish to facilitate international non-state actors’ collection of IDP data. In this regard, methodology documents reflecting previous field experience, for example the UNHCR Tool for Participatory Assessments in Operations<sup>159</sup> or the Guidance on Profiling IDPs,<sup>160</sup> the Joint IDP Profiling Service (“JIPS”) Essential Toolkit (“JET”) and the Profiling and Assessment Resource Kit (“PARK”)<sup>161</sup> could provide useful guidance in ensuring appropriate collection of IDP data.

#### *iv. Privacy, confidentiality and security of data*

It should also be emphasised that IDP data needs to be

maintained in a confidential and secure manner in order to ensure the privacy of IDPs.

#### ***b. Minimum Essential Element***

- Establish systems for the collection and protection of relevant data.<sup>162</sup>

#### ***c. Kampala Convention***

The Kampala Convention contains a number of provisions concerning the collection of data relating to IDPs and registration of IDPs. First, States Parties have an obligation to assess or facilitate the assessment of the needs and vulnerabilities of IDPs and of host communities, in cooperation with international organisations or agencies.<sup>163</sup> Second, “States Parties shall create and maintain an up-dated register of all internally displaced persons within their jurisdiction or effective control. In doing so, States Parties may collaborate with international organisations or humanitarian agencies or civil society organisations.”<sup>164</sup>

#### ***d. Other Relevant Supranational Normative Frameworks***

##### *i. U.N. Guiding Principles*

The U.N. Guiding Principles do not explicitly refer to the need to establish systems for the collection and protection of relevant data on IDPs. Nevertheless, in light of the interpretation provided in the U.N. Guiding Principles Annotations, the need to proceed to the identification of individuals or groups potentially in need as a result of their displacement is self evident. Collecting data, possibly categorised by age and gender, and additional information on displaced population represents a way to operationalise the definition of IDPs offered by the U.N. Guiding Principles.

##### *ii. Great Lakes IDP Protocol*

The Great Lakes IDP Protocol provides that “Member States shall be responsible for assessing the needs of internally displaced persons and shall, to the extent necessary, assist them with registration and, in such cases, Member States shall maintain a *national data base* for the registration of internally displaced persons.”<sup>165</sup>

The Great Lakes IDP Protocol Model Legislation also provides that an impartial statutory body called the Committee on the Protection and Assistance of IDPs should be established, and one of the functions of this committee would be to “[e]nsure the registration of all internally displaced persons in order to maintain a national data base of such persons, provided that such registration shall be for reasons of ascertaining the identification, profile, conditions, and numbers of internally displaced persons for the sole purpose of protection and assistance [...]”<sup>166</sup>

### *iii. JIPS Tools*

JIPS is an inter-agency service that provides technical support to government, humanitarian and development actors seeking to improve their information on IDP populations.<sup>167</sup> Among other forms of such support, JIPS offers tool kits that can be used in profiling efforts. For example, JIPS offers “JET”, which provides guidance through all stages of profiling: in planning stages, in data collection, in report writing and so on.<sup>168</sup> In conjunction with the Assessment Capacities Project, JIPS also offers “PARK”.<sup>169</sup> PARK makes available to practitioners methodologies, tools and other practical resources used in previous profiling efforts.<sup>170</sup>

### **e. Zimbabwe-specific Analysis**

Zimbabwean law has no explicit or direct requirements relating to the collection and protection of relevant data on IDPs. However, certain legislation could be indirectly interpreted as allowing or facilitating the collection and protection of relevant data on IDPs, as outlined below.

#### *i. Census and Statistics Act*

The Census and Statistics Act sets out some relevant functions of the Zimbabwean National Statistics Agency, including to:

- “collect, compile, analyse, interpret, publish and disseminate statistical information alone or in cooperation with other Government Ministries or institutions;”<sup>171</sup>
- “develop and maintain a comprehensive national statistics database;”<sup>172</sup>
- “provide a focal point of contact with international agencies on statistical matters;”<sup>173</sup>
- “perform any other function that may be conferred or imposed upon the Agency by this Act or any other enactment.”<sup>174</sup>

Further, one of the responsibilities of the Zimbabwean National Statistics Agency Board (which is responsible for overseeing the National Statistics Agency) is to “monitor compliance with best practices and international recommendations on production of official statistics.”<sup>175</sup>

The above provisions for the generalised collection of statistics and data, and for compliance and cooperation with international best practice and international recommendations, could provide the legal basis for the collection of data on IDPs.

#### *ii. National Registration Act*

The National Registration Act details the requirements for registration of those resident in Zimbabwe and the issuance of identity documents. The National Registration Act focuses on registration of residents in “designated areas” declared by the Minister of Home Affairs,<sup>176</sup> in which residents must apply for registration by providing identity documents.<sup>177</sup>

The National Registration Act could therefore provide the legal basis for the registration of IDPs.

### **f. Recommendations**

There is currently no law in Zimbabwe relating to the collection and protection of relevant data on IDPs or the registration of IDPs. It is therefore recommended that Zimbabwe:

- Enact specific legislative provisions providing for: (i) the regular collection of relevant IDP data, including the collection of IDP data during national census activities, that is deemed necessary to adequately inform humanitarian response mechanisms and durable solutions programming; and (ii) the maintenance and protection of relevant IDP data in a confidential and secure manner in order to ensure the privacy of IDPs.
- Enact, after sufficient guarantees and safeguards are in place to secure privacy of collected personal data, legislation to provide for the registration of IDPs in accordance with the Kampala Convention and solely for the purpose of facilitating the protection and assistance of IDPs. It must also be made clear that registration does not create a separate legal status for IDPs and that non-registered IDPs should not be precluded from assistance or protection.



## 5. Requirement for a Focal Institution Responsible for the Coordination, Protection and Assistance of IDPs

### a. General Context

A comprehensive humanitarian response to IDPs requires states to designate, within government, a national focal point to facilitate the coordination among various governmental bodies and between domestic and international actors, including civil society groups, national human rights institutions and international humanitarian agencies.<sup>178</sup> States may wish to consider establishing a national focal point by: (a) broadening the mandates of existing governmental bodies to include the coordination of IDP issues; (b) setting up new permanent structures and bodies within the government with a specific mandate to coordinate responses to internal displacement; and (c) establishing committees, working groups or task forces with appropriate institutional arrangements to coordinate the collaboration of various ministries and domestic and international actors.<sup>179</sup> Whichever form the national focal point takes, it must be equipped with a broad mandate, adequate financial and human resources and sufficient political weight to carry out its work.

### b. Minimum Essential Elements

- Designate an institutional focal point for IDP issues at the national level and, where appropriate, the sub-national level.
- Establish a national coordination mechanism for the implementation of the legislation which addresses the phenomenon of internal displacement, and define its power and responsibilities.
- Allocate adequate resources in the national budget to provide authorities with the necessary financial means to discharge the responsibilities which are assigned to them.
- Create a mechanism responsible for coordinating the provision of humanitarian assistance to IDPs.<sup>180</sup>

### c. The Kampala Convention

States Parties to the Convention are obliged to designate an authority or body, “where needed”, responsible for coordinating activities aimed at protecting and assisting IDPs and for cooperating with relevant international organisations or agencies, and civil society organisations, where no such authority or body exist.<sup>181</sup> The obligation to designate a national institutional focal point to coordinate and facilitate the provision of protection and assistance for IDPs is less demanding in the Kampala Convention than according to the Great Lakes IDP Protocol, which requires ICGLR Member States to establish and designate organs of government responsible for disaster emergency preparedness, coordinating protection and assistance to IDPs, as well as establishing focal structures responsible for cooperating with international

agencies and civil society responsible for IDPs.<sup>182</sup> The Kampala Convention notes that States Parties have the primary duty and responsibility for providing protection of and humanitarian assistance to IDPs within their territory or jurisdiction without discrimination of any kind.<sup>183</sup>

### d. Other Relevant Supranational Normative Frameworks

#### i. U.N. Guiding Principles

The U.N. Guiding Principles provide that national authorities “have the primary duty and responsibility to provide protection and humanitarian assistance to IDPs within their jurisdiction.”<sup>184</sup> This Principle includes the identification of a national focal point within the government for IDP issues.<sup>185</sup>

#### ii. Great Lakes IDP Protocol

Under the Great Lakes IDP Protocol, ICGLR Member States accept that they bear the primary responsibility for the protection of the physical and material safety of IDPs during flight, in places of displacement and upon return or resettlement elsewhere within the territory of the state.<sup>186</sup> ICGLR Member States commit to ensuring that national legislation shall specify the organs of government responsible for providing protection and assistance to IDPs, disaster preparedness and the implementation of the legislation incorporating the U.N. Guiding Principles.<sup>187</sup> Moreover, such legislation shall provide for channels of engagement and cooperation between the organs of government, the United Nations, the African Union and civil society.<sup>188</sup>

The Great Lakes IDP Protocol Model Legislation concentrates on the creation of an administrative framework for the implementation of the Great Lakes IDP Protocol and the U.N. Guiding Principles and envisages, in particular:

1. the designation of a Minister in charge of IDPs, with ultimate responsibility for the implementation of the Great Lakes IDP Protocol;<sup>189</sup> and
2. the creation of an impartial statutory body in the form the Committee on the Protection and Assistance of IDPs.<sup>190</sup>

The Committee on the Protection and Assistance of IDPs is entrusted with thirteen principal functions in carrying out the various aspects of coordinating the protection, relief, assistance and promotion of human rights of IDPs nationally, regionally and internationally.<sup>191</sup>

### e. Zimbabwe-specific Analysis

No Zimbabwean legislation has been identified that establishes a focal institution responsible for the coordination and assistance with IDPs in Zimbabwe, nor does the Parliament of Zimbabwe officially recognise a Minister or committee in charge of IDPs. In Zimbabwe, this coordi-



nating role has been unofficially delegated to either the Ministry of Public Service, Labour, and Social Services or to the DCP, depending on the nature of the displacement. The former has been assigned<sup>192</sup> with a mandate to protect refugees and “other vulnerable populations” under the Refugee Act,<sup>193</sup> whereas the Civil Protection Act mandates the latter with disaster response;<sup>194</sup> however, neither has any particular specialised mandate or capacity to deal with IDP issues. Although the Civil Protection Act has a narrow focus and makes no references to IDPs and the Refugee Act does not mention IDPs, both departments have taken steps to respond to the needs of IDPs, whether through responding to emergency needs of IDPs or via dialogue on durable solutions. Typically, an official with the Department of Social Services within the Ministry of Public Service, Labour, and Social Welfare participates in IDP coordination activities such as the UNHCR’s IDP sub-cluster, whereas the DCP leads the coordination of disaster response when people are displaced by flooding or other natural causes.<sup>195</sup>

In order to adopt effective responses to issues faced by IDPs, the protection and assistance efforts should be coordinated through a single national focal point whose authority is founded in legislation. The Constitution grants the President power to appoint Ministers and Deputy Ministers and assign functions to them, including the administration of any act of Parliament or of any ministry or department.<sup>196</sup> However, a more appropriate mechanism for establishing a focal point responsible for IDP coordination would be to enact an IDP law which implements the Kampala Convention, which in turn would appoint a new or an existing Government department or a minister to deal with IDP issues. The IDP legislation should ensure that the focal point has a wide decision-making authority in matters relevant to internal displacement, in particular the authority to develop and publicise guidelines, best practices, policies, strategies and action plans; convene meetings, committees or working groups; and request that Government departments and civil society organisations observe the national framework and support them in their compliance efforts.<sup>197</sup> Furthermore, the IDP law should allocate adequate resources and funding for the focal point to perform its role, and the focal point should be granted appropriate access to political actors and donors to ensure sufficient support and engagement is guaranteed at the highest possible level.<sup>198</sup> The IDP law should define a clear structure by means of established reporting lines, committee memberships or regular consultation, which allow the focal point to coordinate with relevant ministries, local authorities or civil society organisations.<sup>199</sup> Finally, the focal point should be assigned with monitoring and evaluation functions.<sup>200</sup>

In the interim, the Minister of Public Service, Labour, and Social Services could formally designate an official

responsible for IDP issues under the general mandate of providing assistance and support to the vulnerable.

#### **f. Recommendations**

There is currently no identifiable Zimbabwean legislation which formally establishes a focal institution responsible for the coordination of assistance to IDPs in Zimbabwe. Thus, the steps outlined below would help bring Zimbabwe into line with the relevant Minimum Essential Elements and Supranational Normative Frameworks in this area. It is therefore recommended that Zimbabwe:

- Create an impartial statutory body taking the shape of a national committee and designate a Minister or a Government agency or another public institution or committee responsible for facilitating the coordination of activities aimed at protecting and assisting IDPs, and for cooperating with relevant international organisations or agencies and civil society organisations, in accordance with the Kampala Declaration.
- Define and allocate a specific provision within the annual budget to enable the identified institution to adequately respond to IDP issues.
- Define the focal institution’s role, responsibilities and operational methodology.

## 6. National Human Rights Institutions

### a. General Context

A national human rights commission is an autonomous state-sponsored body, which is established either under an act of parliament or under the constitution, with the broad mandate of protecting and promoting human rights. In carrying out its duties, it may perform a range of functions which are directly applicable in the context of protecting IDPs, including investigating individual complaints; monitoring government compliance with treaty obligations; providing advice to government officials and legislators on draft legislation; and engaging in raising awareness and human rights education, especially among national and local authorities, the police and the military.<sup>201</sup> As one study notes, the underlying foundations for any national human rights institution is that “they provide an accessible, no-cost means of redress for the most vulnerable sections of society, who will have particular difficulty gaining access to conventional legal means of resolving their problems.”<sup>202</sup> IDPs are generally considered to be one of the most vulnerable groups in society; thus, national human rights institutions can play an important role in protecting them and IDP protection should intrinsically form an essential part of their mandate.

### b. Minimum Essential Element

- Vest an institution such as a National Human Rights Commission or the Ombudsperson's office with the authority and responsibility to monitor and report on the respect and protection of the rights of IDPs.<sup>203</sup>

### c. Kampala Convention and Declaration

The Kampala Convention does not require African Union Member States to establish a national institution on human rights. It does, however, enumerate various obligations which are commonly within the mandates of national human rights institutions. Under the Kampala Convention, States Parties undertake to prevent arbitrary displacement of populations and conditions that are likely to cause displacement, including political, social, cultural and economic exclusion and marginalisation of populations or persons.<sup>204</sup> States Parties agree to respect their obligations under human rights and humanitarian law, so as to prevent and avoid conditions that might lead to the arbitrary displacement of persons.<sup>205</sup> Furthermore, States Parties commit to providing IDPs with “effective remedies” and establishing frameworks for reparations.<sup>206</sup> Finally, States Parties agree to present reports under the African Charter<sup>207</sup> indicating the legislative and other measures that have been taken to give effect to the Kampala Convention.<sup>208</sup>

Similarly, the Kampala Declaration encourages African Union Member States to sign and ratify treaties, conventions and covenants relating to human rights, refugees,

the protection of civilians during armed conflict, civil, political and socio-economic rights as well as the prevention of large scale arbitrary population displacement, including the Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa and the African Charter on Democracy Elections and Governance.<sup>209</sup>

### d. Other Relevant Supranational Normative Frameworks

#### i. U.N. Guiding Principles

The requirement for a national institution of human rights is not explicitly set out in the U.N. Guiding Principles. The U.N. Guiding Principles do, however, set out that the primary responsibility to provide protection and humanitarian assistance to IDPs lies with national authorities.<sup>210</sup> Although this does not explicitly require the government to establish a national institution of human rights, it does clearly put the onus on the authorities to find a suitable mechanism to ensure the protection of IDPs.

#### ii. Great Lakes IDP Protocol

In line with the Kampala Convention, the Great Lakes IDP Protocol places ICGLR Member States with the responsibility to prevent arbitrary displacement and to eliminate the root causes of displacement.<sup>211</sup> Again, ICGLR Member States agree to adhere to the principles of international humanitarian law and human rights applicable to the protection of IDPs in general.<sup>212</sup>

#### iii. Paris Principles

The Paris Principles were adopted by the United Nations General Assembly in December 1993 to encourage states to form national institutions vested with competence to promote and protect human rights. The Paris Principles are broadly accepted as the test of an institution's legitimacy and credibility, and list the expectations to be met by national human rights institutions, which are as follows: independence (guaranteed by statute or constitution);<sup>213</sup> autonomy from government;<sup>214</sup> pluralism, including in its membership;<sup>215</sup> a broad mandate based on universal human rights standards;<sup>216</sup> adequate powers of investigations;<sup>217</sup> and adequate resources and funding.<sup>218</sup>

Those national human rights institutions that are fully compliant with the Paris Principles are accredited with a special status in the U.N. Human Rights Council which entitles them to make statements or submit documents to the Council.<sup>219</sup> The ACHPR also requires national human rights institutions to conform with the Paris Principles in order to qualify for a special observer status with the ACHPR.<sup>220</sup> This status allows a national human rights institutions to be invited to sessions of the ACHPR, be represented in public sessions of the ACHPR and its subsidiary bodies; participate, without voting rights, in

deliberations on issues which are of interest to them; and to submit proposals which may be put to the vote at the request of any member of the ACHPR.<sup>221</sup>

#### *iv. Framework for National Responsibility*

The Framework for National Responsibility encourages governments to acknowledge internal displacement as a human rights issue, which in turn would bring it within the mandate of national human rights institutions.<sup>222</sup> The Framework for National Responsibility enumerates a number of steps that national human rights institutions could take to facilitate the protection of IDPs. In particular states should:

- “(a) Monitor IDP conditions to ensure that IDPs enjoy the same rights as other citizens in the country and do not face discrimination in seeking to access their rights and that they receive the protection and assistance they require;
- (b) Conduct inquiries into reports of serious violations of IDPs’ human rights and work to ensure an effective response by the authorities;
- (c) Follow-up on early warnings of displacement and ensure that effective measures are taken by the authorities to protect populations against arbitrary displacement and that decisions taken by the authorities to displace populations are implemented in accordance with the guarantees set forth in the Guiding Principles;
- (d) Advise the government on the rights of IDPs, in particular working with national legislative bodies in the development of national laws on internal displacement, based on the Guiding Principles, and helping to frame policies and plans of action, in collaboration with government officials, to effectively address situations of internal displacement;
- (e) Monitor and report on governments’ implementation of national legislation and compliance with international treaty obligations as well as on implementation of national policies and plans of action for IDPs;
- (f) Undertake educational activities and training programs, especially for state institutions, the military and law enforcement agencies on the rights of IDPs, with special attention paid to raising awareness of the particular protection and assistance concerns of women, children and other groups who experience heightened vulnerability;
- (g) Ensure that IDPs are informed about the initiatives being taken on their behalf and are invited to contribute ideas and to participate in the decision-making;

(h) Forge strong relationships with IDP associations as well as local NGOs and representatives of civil society advocating for the protection of IDP rights;

(i) Establish a monitoring presence in areas where IDPs’ physical security is at grave risk;

(j) Monitor the return or resettlement of IDPs to ensure that it is voluntary and occurs in conditions of safety;

(k) Network with national human rights institutions in other countries and relevant regional bodies to share information and experiences on internal displacement with a view to developing best practices.”<sup>223</sup>

#### **e. Zimbabwe-specific Analysis**

The Zimbabwe Human Rights Commission was initially created by Constitution Amendment No. 19,<sup>224</sup> and it was set up as an independent commission under the Constitution. Its enabling legislation, the Zimbabwe Human Rights Commission Act, which outlines the mandate and operational modalities of the commission, was passed into law in 2012.

The Constitution and the Zimbabwe Human Rights Commission Act lay out the functions of the Human Rights Commission in detail. The functions of the commission under the Constitution, which are directly relevant in the context of protecting IDPs, include: (i) promoting awareness of and respect for human rights and freedoms at all levels of society; (ii) promoting the protection, development and attainment of human rights and freedoms; (iii) monitoring, assessing and ensuring the observance of human rights and freedoms; (iv) protecting the public against abuse of power and maladministration by the State and public institutions and officers of those institutions; (v) recommending to Parliament effective measures to promote human rights and freedoms; (vi) conducting research into issues relating to human rights and freedoms and social justice; and (vii) through the appropriate Minister, submit reports to Parliament on particular matters relating to human rights and freedoms which, in the commission’s opinion, should be brought to the attention of Parliament.<sup>225</sup> Although the Constitution does not contain specific provisions which directly address the protection of IDPs, displacement is in itself a human rights restriction which, in certain circumstances, may be carried out arbitrarily. In addition, other fundamental human rights protected by the Constitution may be negatively impacted by displacement.<sup>226</sup> Furthermore, the Zimbabwe Human Rights Commission Act gives the commission the power “to visit and inspect prisons, places of detention, refugee camps and related facilities in order to ascertain the living conditions and to make recommendations regarding those conditions to the Minister

responsible for administering the law relating to those places or facilities.”<sup>227</sup> In conclusion, the Zimbabwe Human Rights Commission’s mandate, although not explicitly extended to cover internal displacement, nonetheless may be regarded as containing extensive protection for IDPs. The Zimbabwe Human Rights Commission itself recommended that “the Parliament of Zimbabwe, based on Section 243 (1) (i) of the Constitution, [enact] an Act of Parliament to specifically entrench provisions that protect the Internally Displaced Persons. Zimbabwean laws should define who an Internally Displaced Person is, and oblige the state to protect such people in line with regional and international standards”.<sup>228</sup>

#### **f. Recommendations**

As discussed above, the Constitution and the Zimbabwe Human Rights Commission Act lay out the legal framework for the establishment and the mandate of the Zimbabwe Commission of Human Rights. However, in order for the Commission to adhere to the Supranational Normative Frameworks governing the establishment and operations of national human rights institutions, it is recommended that Zimbabwe:

- Ensure that the Zimbabwe Human Rights Commission’s mandate is extended to explicitly address the protection of IDPs.
- Amend the Zimbabwe Human Rights Commission Act to ensure adequate protection to IDPs, in conformity with the Paris Principles and the Framework for National Responsibility.

## **7. Participation of IDPs**

### **a. General Context**

The requirement to consult and engage IDPs in all matters affecting them goes back to three key considerations.<sup>229</sup> Firstly, IDPs’ right to participate is founded on internationally guaranteed human rights to freedom of expression and political participation, which includes the right to seek, receive, and impart information and to take part in the conduct of public affairs.<sup>230</sup> Secondly, including IDPs in decision-making enables governments to adopt more effective responses to issues faced by IDPs. Consulting with IDPs provides the government with reliable information on the realities and conditions faced by IDPs. Thirdly, involving IDPs in decision-making encourages them to seek independent solutions for their displacement and associated issues, alongside government action.

### **b. Minimum Essential Element**

- To ensure the consultation and participation of IDPs in all matters affecting them during all phases of displacement and provide sufficient information on such matters to enable them to make voluntary and informed decisions about their future.<sup>231</sup>

### **c. Kampala Convention and Declaration**

The Kampala Convention requires States Parties to consult with IDPs in decisions relating to their protection and assistance, and States Parties shall allow IDPs to participate in the decision-making process.<sup>232</sup> In particular, States Parties commit to taking necessary measures to ensure that IDPs who are citizen in the country can enjoy their civic and political rights, particularly public participation.<sup>233</sup> In situations where displacement is caused by projects carried out by public or private actors, States Parties are obliged to ensure that the stakeholders explore feasible alternatives, with full information and consultation of persons likely to be displaced by projects.<sup>234</sup> Furthermore, the Kampala Convention calls on States Parties to create satisfactory conditions for voluntary return, local integration or relocation and enable IDPs to make a free and informed choice by consulting with them on these and other options, and ensuring their participation in finding sustainable solutions.<sup>235</sup>

The Kampala Convention calls on States Parties to pay special attention to vulnerable groups such as children, the disabled, women, and victims of sexual violence and other abuses.<sup>236</sup> It does not, however, elaborate on the need to ensure that these groups are included in the consultation and decision-making processes.<sup>237</sup>

Overall, the Kampala Convention is innovative in recognising how IDPs, themselves, and the host communities have an important role to play in decisions that affect their lives.

#### **d. Other Relevant Supranational Normative Frameworks**

##### *i. U.N. Guiding Principles*

For cases other than in emergency stages of armed conflicts and disasters, the U.N. Guiding Principles lay down procedural safeguards to ensure the fairness of the process of displacement and the decision-making procedures in the event of displacement.<sup>238</sup> In contrast to the Kampala Convention, the U.N. Guiding Principles explicitly urge states to involve women in the planning and management of their relocation.<sup>239</sup> The Kampala Convention confirms the requirements laid down in the U.N. Guiding Principles, which require states to take adequate measures to guarantee IDPs with “full information on the reasons and procedures for their displacement.”<sup>240</sup> and ensure that their “free and informed consent”<sup>241</sup> is sought. When describing the adequate standard of living which IDPs should be provided, the U.N. Guiding Principles point out that “special efforts should be made to ensure the full participation of women in the planning and distribution” of basic subsistence supplies.<sup>242</sup> Again, this requirement highlights that women are a particularly vulnerable group whose participation adds legitimacy to the processes. The U.N. Guiding Principles do not define what is “adequate” under the circumstances, although guidance can be found in the interpretative pronouncements of the UNCESCR, which incorporates the recognition of a series of rights including food, clothing, housing and improvement of living conditions.<sup>243</sup> In any case, consultation and participation of IDPs may provide a useful tool in identifying when this standard is met, taking into consideration the prevailing social, economic, and cultural conditions and circumstances and the specific needs of IDPs.

Following on from this, the U.N. Guiding Principles place on authorities the primary duty and responsibility not only to establish conditions, but also to provide the means, which allow IDPs to return voluntarily, in safety and with dignity, to their homes or to resettle elsewhere.<sup>244</sup> Special efforts should be made to ensure the full participation of IDPs in the planning and management of their return or resettlement and reintegration.<sup>245</sup> Furthermore, the U.N. Guiding Principles highlight that IDPs who have returned to their homes or resettled should not be discriminated against as a result of their having been displaced and such individuals have the “right to participate fully and equally in public affairs at all levels and have equal access to public services.”<sup>246</sup> This paragraph goes beyond the obligations in the Kampala Convention by stressing the non-discriminatory right to participate as embodied in the U.N. Guiding Principles in situations of return or resettlement.<sup>247</sup>

As further considered in Chapter 17. “Electoral rights”, IDPs should not be discriminated against due to their

displacement, in particular with their rights to freedom of expression, association and equal participation in community affairs, and to voting and participation in governmental and public affairs.<sup>248</sup> These rights are guaranteed by all substantive human rights instruments.<sup>249</sup>

##### *ii. Great Lakes IDP Protocol*

It falls on the ICGLR Member States to ensure the effective participation of IDPs in the preparation and design of national laws which domesticate and implement the U.N. Guiding Principles.<sup>250</sup> In the event of displacement caused by development projects, the ICGLR Member States are committed to ensuring “the effective participation” of IDPs, in particular of women, in the planning and management of their relocation, as well as their return, resettlement and reintegration.<sup>251</sup> In this respect, the Great Lakes IDP Protocol follows the U.N. Guiding Principles by ensuring that women are involved in decision-making processes. In fact, the Great Lakes IDP Protocol goes further by obliging ICGLR Member States to respect and uphold Security Council Resolution 1325, which is applicable to the protection of women and their role during armed conflict, “including their participation in decision-making and administration of programmes, with respect to their safety, welfare, health needs, sanitary care, reproductive rights, food distribution and the process of return.”<sup>252</sup> Moreover, the Great Lakes IDP Protocol Model Legislation specifies that the Committee or the Protection and Assistance of IDPs, which each ICGLR Member State should establish, should include representatives of displaced people, with equal representation of women and men.<sup>253</sup>

##### *iii. Pinheiro Principles*

Under the Pinheiro Principles, there is recognition of the importance of involving IDPs as participants in processes relating to housing, land and property rights, rather than allowing them to be simply the subject of such measures.<sup>254</sup> States and other international and national actors are under the obligation to “ensure that voluntary repatriation and housing, land and property restitution programmes are carried out with adequate consultation and participation with the affected persons, groups and communities.”<sup>255</sup> Marginalised groups such as women, indigenous peoples, racial and ethnic minorities, the elderly, the disabled and children should be adequately represented, and “have the appropriate means and information to participate effectively.”<sup>256</sup> It is highlighted that the specific needs of vulnerable people, such as the elderly, single female heads of households, separated and unaccompanied children and the disabled should be given particular attention in any measures or decisions taken.<sup>257</sup> The Pinheiro Principles echo the U.N. Guiding Principles, which highlight that special efforts should be made to ensure the full participation of IDPs in the planning and management of their return or resettlement and reintegration.<sup>258</sup>



### ***e. Zimbabwe-specific Analysis***

Zimbabwe currently lacks a legal framework that directly empowers IDPs through consultation and participation. However, IDPs' right to participate is safeguarded through the Constitution, which guarantees the fundamental rights of freedom of expression and political participation. Under the Constitution, every person has the right to freedom of assembly and association,<sup>259</sup> and freedom of expression, which includes freedom to seek, receive and communicate ideas and other information.<sup>260</sup> Zimbabwe is thus obliged to take positive measures that enable IDPs who live in camps to move freely<sup>261</sup> and exercise their rights effectively.<sup>262</sup> Every Zimbabwean citizen or permanent resident has the right of access to information held by the State or by any institution or agency of the Government at every level, in so far as the information is required in the interest of public accountability.<sup>263</sup> Furthermore, every person has the right of access to any information held by any person, including the State, insofar as the information is required for the exercise or protection of a right.<sup>264</sup> Finally, the State is obligated to "involve the people in the formulation and implementation of development plans and programmes that affect them",<sup>265</sup> thereby raising the idea of community based planning to a constitutional level. Although this section does not specifically mention IDPs, it does guarantee "the right of people, particularly women, to equal opportunities in development."<sup>266</sup>

There are some provisions within existing legislation which allow for delegation of functions to a more local level, which could provide a starting point for involvement of IDPs or their representatives in decision-making processes. For example, a local planning authority may establish a committee and delegate any of its powers duties or responsibilities on to it.<sup>267</sup> This is particularly relevant when considering the housing issues IDPs encounter.

As Zimbabwe is at an early stage of including IDPs in decision-making processes, there is an opportunity for development of well-rounded consultation from the start, giving equal representation to women and due consideration to the rights of children.<sup>268</sup> The perception of any scheme as being equitable by those involved will encourage participation.

### ***f. Recommendations***

The Kampala Convention requires States Parties to consult IDPs in decisions relating to their protection and assistance and IDPs should be allowed to participate in decision-making processes affecting them. It is therefore recommended that Zimbabwe:

- Formalise the participation of IDPs in the development of laws and policies relating to their protection and assistance, and recognises their right to participate in the decision-making processes.

- Adopt a policy, in accordance with the Kampala Convention, U.N. Guiding Principles and the Great Lakes IDP Protocol, that ensures the participation of IDPs in the planning and management of their relocation, resettlement and reintegration, in particular special effort should be made to involve women and other vulnerable groups in the planning and management of their relocation and in the distribution of basic subsistence supplies.
- Ensure, in compliance with the Pinheiro Principles, the participation of IDPs in housing, land and property restitution programmes.

## 8. Allocation of Necessary Human, Financial and Other Resources

### a. General Context

In order for states to discharge their treaty obligations towards IDPs, domestic laws, policies and programmes must be supported with adequate human and financial resources which address the necessary assistance and protection of IDPs.<sup>269</sup> However, in order to ensure an efficient, effective and non-discriminatory response to internal displacement according to the IDPs' needs and vulnerabilities, adequate and timely mechanisms and procedures need to be put in place beforehand and proper planning is required. Organisations providing humanitarian assistance must be able to do so without obstacles and under protection from attacks or reprisals.

### b. Minimum Essential Elements

- Provide for the allocation of necessary human and financial resources.
- Assign to relevant authorities or organisations at the national and local level clear and specific obligations in the area of humanitarian assistance to IDPs and provide them with the necessary means to do so.
- Provide, in the aftermath of an armed conflict, other situations of violence or natural or man-made disasters, for humanitarian assistance as well measures to re-establish food security, provision of water and sanitation, health services and education at the locations where IDPs find durable solutions.<sup>270</sup>

### c. Kampala Convention and Declaration

Under the Kampala Convention, the obligation falls on the States Parties to provide, to the extent possible, the necessary funds for protection and assistance of IDPs.<sup>271</sup>

The Kampala Declaration places a high burden on the African Union Member States to provide the necessary human and financial resources to assist IDPs, and enumerates the following objectives which are deemed important for the effective fulfilment of this obligation:

- (i) The African Union Member States undertake to expedite targeted support to post-conflict countries, including meeting critical gaps in human resources.<sup>272</sup> In this regard, the ACHPR is urged to establish the African Union Volunteers Programme and database of African experts on post-conflict reconstruction and peace building.<sup>273</sup>
- (ii) The African Union Member States commit themselves to deploying adequate human, financial and material resources to support the return, re-integration and rehabilitation of returnees and the receiving communities.<sup>274</sup>
- (iii) The Kampala Declaration calls upon development partners to dedicate a portion of their development assistance to projects and activities that benefit

IDPs as well as their hosting communities and they must ensure that there is sufficient funding for infrastructural and other improvements in areas where IDPs return and reintegrate.<sup>275</sup>

- (v) The African Union Member States undertake to work closely with national parliaments to ensure the adoption of provisions on adequate resources to address challenges posed by forced displacement.<sup>276</sup>
- (vi) The principles stress the need to forge partnerships, particularly with regards to financing, through the African Development Bank.<sup>277</sup>
- (vii) The Kampala Declaration calls upon the United Nations systems, international organisations, bilateral and multilateral partners, as well as NGOs, to strengthen coordination of their programmes including joint planning, implementation, monitoring, and impact assessment, in partnership with national authorities, particularly in countries affected by conflict and welcome the ongoing reform process by the international humanitarian community to improve effectiveness, predictability and partnership in all aspects of humanitarian operations.<sup>278</sup>

### d. Other Relevant Supranational Normative Frameworks

#### i. U.N. Guiding Principles

The Kampala Convention and the Kampala Declaration reaffirm the importance which the U.N. Guiding Principles places on resource allocation. The U.N. Guiding Principles establish that the national authorities have a duty to provide protection and humanitarian assistance to IDPs,<sup>279</sup> which is considered by the U.N. General Assembly to include the allocation of adequate budgetary resources to deal with all stages of displacement.<sup>280</sup> The U.N. Guiding Principles specifically recognise that the authorities must provide the means which allow IDPs to return to their homes or to resettle in another part of the country.<sup>281</sup> This duty to address the post-displacement phase is also emphasised by the Kampala Convention and the Pinheiro Principles.

The U.N. Guiding Principles further highlight that humanitarian assistance to IDPs shall not be diverted, in particular for political or military reasons.<sup>282</sup> The U.N. Guiding Principles emphasise that "[t]he primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities".<sup>283</sup>

#### ii. Great Lakes IDP Protocol

The Committee on the Protection and Assistance of IDPs has among its responsibilities the mobilisation of the resources necessary to facilitate the protection and assistance of IDPs during all phases of displacement, including

assistance to host communities, as may be needed by such communities.<sup>284</sup>

The Great Lakes IDP Protocol reiterates many of the other Supranational Normative Frameworks as regards humanitarian assistance. In particular, Article 3(5) states that signatory states shall “establish and designate organs of government responsible for disaster emergency preparedness, coordinating protection and assistance to internally displaced persons, as well as the focal structures responsible for cooperating with international agencies and civil society responsible for internally displaced persons.”<sup>285</sup>

### *iii. Pinheiro Principles*

The Pinheiro Principles stress that states should provide appropriate institutions and mechanisms with adequate financial, human and other resources to facilitate housing, land and property restitution processes.<sup>286</sup> Again, where states are unable to shoulder the weight of implementing restitution programmes themselves, the Principles suggest an avenue for the sharing of critical expertise and capacity.<sup>287</sup> However, it is important to note that states have the primary responsibility to finance these programmes, and only if they are unable to find the necessary resources, should they then request assistance from the international community.<sup>288</sup>

### *iv. Framework for National Responsibility*

The Framework for National Responsibility urges governments to devote resources (including food aid, shelter, medical care, education, reintegration assistance, etc.) and assistance to address the needs and protect the rights of IDPs.<sup>289</sup> This could be implemented by earmarking funds in the national budget for programmes that support IDPs.<sup>290</sup>

## **e. Zimbabwe-specific Analysis**

The Kampala Convention and the other Supranational Normative Frameworks considered here identify that the burden is first and foremost with the states to allocate the necessary human and financial resources effectively to ensure the protection of IDPs.

Zimbabwe's legislation does not directly allocate any human and financial resources to address the needs of IDPs, nor does the most recent budget make concessions to IDPs.<sup>291</sup> The Constitution sets out a requirement on the State and all Government institutions and agencies to formulate and implement measures to empower all marginalised persons.<sup>292</sup> This sets an indirect obligation on the State to provide IDPs, within the limits of the resources available to them, access to food, education, shelter and health services, although it does not make any specific references to IDPs.<sup>293</sup> To this effect, the 2014 National Budget makes allocations to the Ministry

of Primary and Secondary Education and the Ministry of Health and Child Care.<sup>294</sup> Moreover, the Constitution stipulates that the Government must compensate persons for land taken by the Government, however, it does not set a clear timeline for the delivery of compensation.<sup>295</sup> The Constitution creates a special exception for “agricultural land”, whereby no compensation is due for compulsory acquisitions by the State except for improvements to the land.<sup>296</sup>

Whereas Zimbabwe has no overarching framework for IDP assistance nor a high-level official tasked with co-ordination IDP issues, certain policies and regulations have made some progress on this front. For example, the DCP, established under the Ministry of Local Government, Public Work, and Urban Development,<sup>297</sup> has as its mandate, “[o]verall coordination of all stakeholders involved in disaster risk management, promote preparedness planning, prompt emergency response, early recovery and rehabilitation of affected elements and advocate for integration of disaster risk reduction into development for sustainability.”<sup>298</sup> The enabling act for the DCP creates a “National Civil Protection Fund” that is to be used for disaster response and preparedness.<sup>299</sup> The DCP and the Civil Protection Fund do not meet the requirements of the International minimum standards for IDP protection because they are limited, at least in practice, to responding to natural disasters and do not typically assist when other displacement events occur.<sup>300</sup> The National Housing Policy makes some headway in plugging this gap, by requiring that the Government facilitates access to alternative housing before demolitions or evictions.<sup>301</sup> However, this policy has not been enacted through any binding legislation to date, and it remains unfunded. In conclusion, whereas Zimbabwe has some structures in place to allocate human and financial resources to protect and assist IDPs, a lack of funding and an absence of a central coordination mechanism leave responses largely depending on the international community.

In addition, Zimbabwean legislation does not provide for the creation of infrastructure for the provision of aid, but rather focuses on mechanisms whereby the Government may come to know of human rights violations.

## **f. Recommendations**

The Kampala Convention and the Supranational Normative Frameworks require Zimbabwe to allocate adequate human and financial resources to address the assistance and protection needs of IDPs. Funds can be apportioned through national budgets as well as through international aid. Zimbabwe should take the following steps in order to conform with the relevant Minimum Essential Elements and Supranational Normative Frameworks in this area. It is therefore recommended that Zimbabwe:

- In compliance with the Kampala Convention, allocate

adequate resources in the national budget to address the phenomenon of internal displacement and provide authorities with the necessary financial means to assist IDPs when responsibility is assigned to them.<sup>302</sup>

- Continue to prioritise the protection and assistance of IDPs in national legislative and policy frameworks, in order to secure international commitments to provide financial support to national efforts.<sup>303</sup>
- Provide appropriate institutions and mechanisms with adequate financial, human and other resources to facilitate housing, land and property restitution processes, in accordance with the Kampala Convention and the Pinheiro Principles.<sup>304</sup>

## 9. Cooperation with National and International Humanitarian Partners

### *a. General Context*

IDPs are often unable to access adequate humanitarian aid. In certain circumstances, state authorities may impede the provision of aid by denying entry of international humanitarian agencies into the country or preventing access to certain displaced communities in need of assistance. In other situations, there may be some domestic legal barriers to the effective provision of international assistance.<sup>305</sup> Another aspect that may render aid ineffective is a lack of coordination between state bodies and national and international humanitarian partners regarding the provision of aid.<sup>306</sup> These are elements which need to be rectified under national frameworks in order to provide protection and assistance to IDP groups. A government which lacks the necessary means to address the needs of IDPs should seek the assistance of the international community to supplement the delivery of aid and assistance to IDPs.<sup>307</sup> The coordinated provision of humanitarian assistance for IDPs can be life-saving and crucial to avoid exacerbating vulnerabilities due to displacement.

### *b. Minimum Essential Elements*

- Provide the necessary legal basis for cooperation with national and international humanitarian partners, including provisions to facilitate the immediate entry of humanitarian personnel and goods, such as the waiver of regular visa and custom requirements.
- Create a mechanism responsible for coordinating the provision of humanitarian assistance to IDPs.
- Facilitate the import and internal transport of humanitarian goods not sufficiently available domestically (for example by waiving or relaxing import restrictions and quotas, customs duties and other taxes) and the speedy entry of foreign humanitarian workers and organisations to the country (for example by streamlining visa requirements and expediting permits).
- Provide for the criminal penalisation of attacks by state as well as non-state actors against humanitarian relief personnel and their material, transport and supplies.<sup>308</sup>

### *c. Kampala Convention and Declaration*

The Kampala Convention states that States Parties shall ensure assistance to IDPs by allowing and facilitating rapid and unimpeded access by humanitarian organisations and personnel<sup>309</sup> and that they “may seek” the cooperation of international organisations or humanitarian agencies, civil society organisations and other relevant actors.<sup>310</sup> States Parties are required to cooperate with each other in protecting and assisting IDPs<sup>311</sup> and they shall respect the mandates of the African Union and the United Nations, as well as the roles of international humanitarian organisations in providing protection and assistance to IDPs, in accordance with international law.<sup>312</sup>

States Parties are also obligated to assess or facilitate the assessment of the needs and vulnerabilities of IDPs, in cooperation with international organisations,<sup>313</sup> and are further required to cooperate in seeking the assistance of international organisations, aid agencies and NGOs (which may offer their services to all IDPs in need of assistance), where the States Parties' resources are inadequate to enable sufficient protection and assistance to IDPs.<sup>314</sup>

States Parties are required to designate an authority or body responsible for coordinating activities aimed at protecting and assisting IDPs and assigning responsibilities to appropriate organs for protection and assistance.<sup>315</sup> In addition to those obligations, States Parties are required to allow rapid, unimpeded access of all relief consignments, equipment and personnel to assist IDPs.<sup>316</sup> Unlike the U.N. Guiding Principles, the Kampala Convention creates an explicit right for States Parties to "prescribe the technical arrangements under which such passage is permitted."<sup>317</sup> States Parties are also under a positive obligation to respect and protect humanitarian personnel and their equipment, as well as being prohibited from attacking or otherwise harming such personnel or equipment.<sup>318</sup>

Under Article 9(3), States Parties are required to discharge their obligations under Article 9(2) (relating to protection and assistance during displacement) with the assistance of international organisations, humanitarian agencies, civil society organisations and other relevant humanitarian partners, where appropriate.<sup>319</sup> The obligations under Article 9(2) include taking measures to ensure that IDPs do not face discrimination and live in safe, dignified and secure conditions,<sup>320</sup> providing IDPs with humanitarian aid to the fullest extent possible without delay,<sup>321</sup> providing special protection for IDPs with special needs<sup>322</sup> and for displaced women's sexual health,<sup>323</sup> and guaranteeing freedom of movement and choice of residence for IDPs.<sup>324</sup> The consideration of "appropriateness" under Article 9(3) would include a situation where States Parties have insufficient resources to comply with their duties under the Kampala Convention, such that they require external assistance.

Article 11(3) further obligates States Parties to cooperate with such organisations to find a durable solution for IDPs, in either providing for sustainable return, local integration or relocation and long-term reconstruction.<sup>325</sup>

The Kampala Convention elaborates on the terms of the collaboration between the African Union and the African Union Member States. The African Union is obligated to "support the efforts of the States Parties to protect and assist internally displaced [...] in particular the Union shall: [...] Coordinate the mobilisation of resources for protec-

tion and assistance to internally displaced persons."<sup>326</sup>

Under the Kampala Declaration, the African Union Member States are encouraged to make generous contributions to the African Union's Special Refugee Contingency Fund tasked with the implementation of programmes to cater for IDPs amongst other conflict-affected groups,<sup>327</sup> and to cooperate with U.N. bodies, international organisations, bilateral and multilateral partners and NGOs to strengthen the coordination of their humanitarian programmes.<sup>328</sup>

#### ***d. Other Relevant Supranational Normative Frameworks***

##### *i. U.N. Guiding Principles*

Principle 24(2) of the U.N. Guiding Principles prohibits States from diverting humanitarian assistance which is to be provided to IDPs, particularly where such assistance is diverted for political or military reasons.<sup>329</sup>

Principle 25 of the U.N. Guiding Principles states that:

- "1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.
2. International humanitarian organisations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a state's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.
3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced."<sup>330</sup>

The presence of national and international organisations does not, however, obviate a national government's duty to provide humanitarian assistance, but state authorities should work to facilitate free passage of humanitarian assistance by waiving requirements for transit, entry, and exit visas for humanitarian personnel acting in their official capacity, minimising customs inspections and documentation requirements, and waiving otherwise applicable duties or restrictions on export, transit, or import of relief goods and equipment.<sup>331</sup>

Principle 3(2) of the U.N. Guiding Principles sets out that "internally displaced persons have the right to request and



to receive protection and humanitarian assistance from the authorities.”<sup>332</sup> If this right is read in conjunction with Principle 25(2), it is arguable that a state authority’s denial of consent to humanitarian organisations to provide assistance amounts to a breach of the IDPs’ human rights.

Principle 26 further requires state authorities to protect humanitarian personnel, their transport and supplies from attacks or other acts of violence.<sup>333</sup> This obligation facilitates cooperation with humanitarian partners by safeguarding humanitarian personnel during their aid missions.

State authorities are required to cooperate with international organisations with regard to facilitating the reunification of missing IDPs with their families. In particular, Principle 16(2) requires cooperation with international organisations with regard to establishing the location of IDPs reported missing, and notification of next of kin on the progress and results of such investigation,<sup>334</sup> whilst Principle 17(3) requires authorities to “encourage and cooperate with humanitarian organisations engaged in the task of family reunification.”<sup>335</sup>

Principle 30 requires authorities to grant and facilitate rapid and unimpeded access for international humanitarian organisations to IDPs to assist them with resettlement and reintegration.<sup>336</sup>

It is noteworthy that the provisions of the Kampala Convention considered above mirror the obligations under Principles 25, 26 and 30, such that the signatories of the Kampala Convention are required to adhere to international humanitarian law. As already identified, this is an intrinsic obligation on the signatories to the Kampala Convention under Article 5(3).

#### **e. Great Lakes IDP Protocol**

The ICGLR Member States agreed to the adoption of the Great Lakes IDP Protocol in November 2006. The ICGLR Member States are committed to ensuring that national laws set up mechanisms of dialogue and cooperation between State bodies, United Nations agencies and the African Union as well as the relevant NGOs and civil society organisations.<sup>337</sup>

As with the U.N. Guiding Principles, direct parallels may be drawn between the Kampala Convention and the Great Lakes IDP Protocol. Similarly to Article 3(i)(j) of the Kampala Convention and Principle 25(3) of the U.N. Guiding Principles, the ICGLR Member States are required to facilitate rapid and unimpeded humanitarian access and assistance to internally displaced persons and to ensure the safety and security of humanitarian personnel in areas of displacement.<sup>338</sup> Article 3(10) of the Great Lakes IDP Protocol echoes Article 9(3) of the Kampala Convention

and Principle 25(2) of the U.N. Guiding Principles, in requiring that where ICGLR Member States are unable to protect and assist IDPs, they shall “accept and respect the obligation of the organs of the international community to provide protection and assistance to internally displaced persons.”<sup>339</sup>

The Great Lakes IDP Protocol Model Legislation further contains several provisions which relate to the question of government cooperation with humanitarian partners. In this regard, the Minister in charge of IDPs is charged, *inter alia*, with:

- requesting international aid for protection and assistance of IDPs “if the capacity of the government to provide such protection and assistance is inadequate or lacking;”
- ensuring rapid, unimpeded, access of humanitarian personnel to all IDPs; and
- ensuring protection of such humanitarian personnel.<sup>340</sup>

The Committee on the Protection and Assistance of IDPs is tasked with, amongst other things:

- coordinating the protection and promotion of the human rights of IDPs as well as coordinating relief and assistance to IDPs among relevant State bodies, U.N. agencies, the African Union, and national and international NGOs;
- serving as the official impartial focal body liaising between the relevant humanitarian actors, coordinating disaster preparation and implementing the Great Lakes IDP Protocol and U.N. Guiding Principles; and
- establishing procedures and channels of engagement and cooperation between the various bodies and organisations in order to enhance the effectiveness of the protections and assistance given to IDPs.<sup>341</sup>

The Great Lakes IDP Protocol Model Legislation intrinsically builds on the concept of state cooperation with humanitarian organisations, in providing for committee members to include representatives from the UNHCR, the various U.N. bodies involved in the Inter-Agency Collaborative Approach to IDPs, the African Union Bureau on Humanitarian Affairs and National Red Cross Societies.<sup>342</sup>

#### **i. Pinheiro Principles**

The Pinheiro Principles stress that the onus is on states to cooperate with each other and with international actors in providing aid and assistance to IDPs in the post-displacement stage. States should request from other states or international organisations the financial and/or technical assistance required to facilitate the effective voluntary return of IDPs, if national resources are insufficient to achieve this.<sup>343</sup> Principle 12.5 requires states, in situations where there has been a breakdown in the rule of law or where the state is unable to implement the framework required to facilitate restitution of land and housing in a

just and timely manner, to request technical assistance and cooperation from relevant international agencies in order to establish provisional systems to ensure effective restitution remedies.<sup>344</sup>

Principle 22.3 also places an obligation on international organisations to work with national authorities by providing expertise and technical assistance with regard to the development of national housing, land and property restitution policies and programmes. International organisations should help to ensure that these policies and programmes are compatible with international human rights, refugee and humanitarian law and related standards, and should also assist in monitoring their implementation.<sup>345</sup> States are thus strongly encouraged to cooperate with international organisations in order to achieve the implementation of the above-mentioned policies and programmes.

#### *ii. Framework for National Responsibility*

The Framework for National Responsibility states that an important way in which governments can demonstrate cooperation with the international community is by inviting the Representative of the U.N. Secretary-General on the Human Rights of Internally Displaced Persons to visit the country, as such visits facilitate dialogue regarding the situation IDPs find themselves in, raise national awareness on the problems facing IDPs, stimulate government action in the shape of policies and programmes on behalf of the IDP community and foster strengthened links between governments and the international community.<sup>346</sup>

Benchmark 12 of the Framework for National Responsibility notes that government cooperation with, and giving safe and unimpeded access to national and international humanitarian organisations seeking to provide assistance to IDPs, is a sign of national responsibility.<sup>347</sup> In situations where there is insufficient political will at the domestic level to address IDP-related problems, engagement of the international community is an important component for establishing national responsibility.<sup>348</sup>

#### ***f. Zimbabwe-specific Analysis***

The obligation on the state to cooperate with both domestic and international humanitarian bodies in relation to protecting and assisting IDPs is not codified in the Zimbabwean Constitution, nor is it explicitly covered in other legislation.

All organisations engaging in humanitarian aid operations or other forms of assistance must be registered under the Private Voluntary Organisations ("PVO") Act.<sup>349</sup> International organisations wishing to engage in humanitarian activities in Zimbabwe must also sign a memorandum of understanding with the relevant ministries in their area of technical operations, and submit this memorandum of understanding to the Registrar of PVOs.<sup>350</sup> These

regulations contain a wide range of procedures whereby the organisations must disclose activities and funding, and any deviation from the regulations can result in the closure of the organisation and at times criminal prosecution of the organisation's officers.<sup>351</sup>

In this regard, cooperation with humanitarian partners in relation to IDP matters would be better achieved through setting up a new central executive office and/or commission which coordinates humanitarian assistance at national or international levels, specifically in relation to assisting IDPs.<sup>352</sup>

This is an important component of Benchmark 12 of the Framework for National Responsibility, which requires that the procedure for working in partnership with regional and international organisations should include such organisations:

- providing technical cooperation on issues such as data collection, registration, the development of national laws and policies on internal displacement, and on issues of property restitution and compensation;
- offering training on the U.N. Guiding Principles;
- assessing the conditions of internal displacement during field trips and making recognitions for enhancing national as well as regional and international responses; and
- monitoring and developing policies and strategies to counter a number of IDP-related issues, including the conditions of IDP camps where serious protection problems are reported and the return and resettlement of IDPs.<sup>353</sup>

It would appear that, with regard to facilitating humanitarian assistance to IDPs through cooperation with national and international humanitarian agencies, the current national framework in Zimbabwe does not go far enough in domesticating the Kampala Convention into national law, or obligating the Government to adhere to the principles of the Minimum Essential Elements or the Supranational Normative Frameworks.

#### ***g. Recommendations***

The recommendations below in relation to cooperation with national and international humanitarian partners, suggest a number of provisions which should be enacted in Zimbabwean national legislation to comply with the Kampala Convention, the Minimum Essential Elements and the relevant Supranational Normative Frameworks. In this regard, it is recommended that Zimbabwe:

- Include in the mandate of the IDP focal institution discussed in Section 5, the obligation to foster links with domestic and non-domestic humanitarian agencies, and coordinate assistance from such organisations, particularly where State resources are insufficient for it to comply with its obligations to protect and assist IDPs

under the Kampala Convention and other applicable legal and policy frameworks.

- In compliance with its obligation under the Kampala Convention, the Minimum Essential Elements and the Supranational Normative Frameworks identified above, should specifically provide for mechanisms to waive or expedite bureaucratic procedures in relation to providing access from international humanitarian organisations into and around the country to locations where IDPs reside.<sup>354</sup>
- Should ensure that national law adheres to the Kampala Convention and the U.N. Guiding Principles by including the obligation to ensure the security of relief personnel and their equipment.<sup>355</sup> Those, who attack humanitarian relief personnel and their material, transport and supplies, should face criminal punishment.
- Put in place technical measures to facilitate the operations of legitimate humanitarian and development agencies which provide humanitarian assistance to, and facilitate the achievement of durable solutions for IDPs.

## 10. Protection against Arbitrary Displacement

### *a. General Context*

Under international human rights law, every person has the right to freedom of movement and to establish one's own residence including the right to be protected against arbitrary interference with their homes, family, privacy, and to legal security of tenure. States must also ensure every person has protection against forced evictions including arbitrary displacement under international law. The Kampala Convention reaffirms this international law right against arbitrary displacement and further clarifies the definition of arbitrary displacement.

### *b. Minimal Essential Elements*

- Recognise the right to be free from arbitrary displacement.
- Penalise arbitrary displacement in domestic law under circumstances in which it amounts to a crime against humanity or war crime in accord with the Rome Statute of the International Criminal Court.
- Take penal and administrative measures to ensure compliance with relevant rules of international humanitarian law, including rules on the conduct of hostilities and the duty to distinguish between civilians and combatants and between civilian objects and military objectives.<sup>356</sup>

### *c. Kampala Convention and Declaration*

The Kampala Convention affirms the right of any person to be protected against arbitrary displacement,<sup>357</sup> and states that members of armed groups shall be prohibited from carrying out arbitrary displacement.<sup>358</sup> The Kampala Convention also affirms that States Parties shall declare as offences punishable by law acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity.<sup>359</sup> The Kampala Convention, whilst not providing a definition of the "arbitrariness" of displacement, lists categories of arbitrary displacements, which is relatively broad and includes (but is not limited to):

1. "Displacement based on policies of racial discrimination or other similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the population;
2. Individual or mass displacement of civilians in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand, in accordance with international humanitarian law;
3. Displacement intentionally used as a method of warfare or due to other violations of international humanitarian law in situations of armed conflict;
4. Displacement caused by generalised violence or violations of human rights;
5. Displacement as a result of harmful practices;

6. Forced evacuations in cases of natural or human made disasters or other causes if the evacuations are not required by the safety and health of those affected;
7. Displacement used as a collective punishment; and
8. Displacement caused by any act, event, factor, or phenomenon of comparable gravity to all of the above and which is not justified under international law, including human rights and international humanitarian law.<sup>360</sup>

The last category of arbitrary displacement leaves room for interpretation as to whether an act may be labelled as “arbitrary displacement”. The overall evaluation of the arbitrariness of a restriction to the full enjoyment of a human right should be based on both substantial considerations (i.e., lawfulness, legitimacy, proportionality) and procedural guarantees (i.e., justice, predictability and reasonableness).

The Kampala Convention requires States Parties to refrain from, prohibit and prevent arbitrary displacement of populations, ensure individual responsibility for acts of arbitrary displacement in accordance with applicable domestic and international criminal law and ensure the accountability of non-state actors concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts. The Kampala Convention further requires States Parties to respect and ensure respect for their obligations under international law, including human rights and humanitarian law, so as to prevent and avoid conditions that might lead to the arbitrary displacement of persons.<sup>361</sup>

In addition, the Kampala Declaration calls upon African Union Member States to sign and ratify treaties, conventions and covenants relating to human rights, refugees, the protection of civilians during armed conflict, civil, political and socio-economic rights as well as the prevention of large scale arbitrary population displacement, including the Organisation of the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa and the African Charter on Democracy Elections and Governance.

Lastly, the Kampala Convention pays special attention to displacement caused by development-based evictions. Article 13 provides that States Parties shall “as much as possible [...] prevent displacement caused by projects carried out by public or private actors; [...] ensure that the stakeholders concerned will explore feasible alternatives, with full information and consultation of persons likely to be displaced by projects; [and] carry out a socio-economic and environmental impact assessment of a proposed development project prior to undertaking such a project.”<sup>362</sup>

#### ***d. Other Relevant Supranational Normative Frameworks***

The international norms described below largely correspond to the Kampala Convention, although several distinctions exist. The Kampala Convention uses an almost identical definition of IDPs as the U.N. Guiding Principles, and similarly contains a prohibition against arbitrary displacement.<sup>363</sup> Article 10(1) of the Kampala Convention requires States, as much as possible, to prevent displacement caused by projects but provides no further detail on the subject of development-based evictions. The U.N. Development-Based Evictions Guidelines, discussed in Chapter 12. “Ensuring Human Rights in the Event of Development-Induced Displacement”, provide “guidance to States on measures and procedures to be adopted in order to ensure that development-based evictions are not undertaken in contravention of existing international human rights standards [...]”<sup>364</sup>

Since the categories of arbitrary displacements listed in Article 4(4) of the Kampala Convention are non-exhaustive and is concluded by a provision leaving open to determination as to whether an act is arbitrary or not, the Kampala Convention correctly recommends multiple assessments to determine its arbitrariness, including “to explore feasible alternatives” and “to carry out a socio-economic and environmental impact assessment.”<sup>365</sup> The Kampala Convention contains an expansive list of “harmful practices” which can make a displacement arbitrary and potentially encompasses development-induced and other forms of displacement.<sup>366</sup> The Great Lakes IDP Protocol requires States to not only prevent arbitrary displacement but also eliminate the root causes of arbitrary displacement. It further obliges ICGLR Member States to declare that any person who, with intent, causes, aids or abets the arbitrary displacement of the people is guilty of a criminal offense punishable by a defined minimum five year sentence. The Pinheiro Principles requires states to take immediate steps to repeal unjust or arbitrary laws and laws that otherwise have a discriminatory effect on the enjoyment of the right to housing, land and property restitution, and should ensure remedies for those wrongfully harmed by the prior application of such laws.

##### ***i. U.N. Guiding Principles***

The U.N. Guiding Principles describe in detail the guarantees available to IDPs that must be provided both in order to prevent arbitrary displacement and to mitigate and end it when it occurs. It provides that every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.<sup>367</sup> The prohibition of arbitrary displacement includes (but is not limited to) displacement under the following circumstances:

1. When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at/or resulting

- in altering the ethnic, religious, or racial composition of the affected population;
- 2. In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
- 3. In cases of large-scale development projects which are not justified by compelling and overriding public interests;
- 4. In cases of disasters, unless the safety and health of those affected requires their evacuation; and
- 5. When it is used as a collective punishment.<sup>368</sup>

Further, Principle 8 sets out standards that need to be respected in all circumstances, even when displacement may be considered justified. The guarantees of respecting the right to life, dignity and security of those affected, all corresponding to non-derogable rights of international human rights law, establish additional elements to be taken into account in the assessment of arbitrariness of an act of displacement.

#### *ii. Great Lakes IDP Protocol*

The Great Lakes IDP Protocol obliges ICGLR Member States to prevent arbitrary displacements and eliminate the root causes of displacement.<sup>369</sup> Moreover, all authorities and public institutions of ICGLR Member States committed to abstain from, prevent and repress the crime of genocide, war and crimes against humanity.<sup>370</sup> In accordance with these obligations, the Great Lakes Model Legislation states that “the arbitrary displacement of the people is prohibited”<sup>371</sup> and declares that any person who, with intent, causes the arbitrary displacement of the people, or aids or abets such displacement is guilty of a criminal offense and shall be imprisoned for a minimum term of five years.<sup>372</sup>

Additionally, ICGLR Member States shall ensure that all feasible alternatives of large-scale developments are explored in order to avoid development induced displacement altogether. Where no alternatives exist, ICGLR Member States undertake to avoid arbitrary displacement and take all measures necessary to minimise displacement and to mitigate the adverse effects of development induced displacement.<sup>373</sup>

#### *iii. Pinheiro Principles*

The Pinheiro Principles prohibit states from engaging in forced eviction, demolition of houses, destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.<sup>374</sup> Further, everyone has the right to be protected against arbitrary or unlawful interference with his or her privacy and his or her home.<sup>375</sup> The Pinheiro Principles require states to ensure that everyone is provided with safeguards of due process against arbitrary or unlawful interference with his or her privacy and his or

her home.<sup>376</sup> States should also ensure that secondary occupants are protected against arbitrary or unlawful forced eviction and that any justifiable and unavoidable evictions are carried out in a manner that is compatible with international human rights laws and standards.<sup>377</sup>

The Pinheiro Principles also prohibit arbitrary and discriminatory laws, stating that states should neither adopt nor apply laws that prejudice the restitution process, in particular through arbitrary, discriminatory, or otherwise unjust abandonment laws or statutes of limitations.<sup>378</sup> In addition, states should take immediate steps to repeal unjust or arbitrary laws and laws that otherwise have a discriminatory effect on the enjoyment of the right to housing, land and property restitution, and should ensure remedies for those wrongfully harmed by the prior application of such laws.<sup>379</sup>

#### **e. Zimbabwe-specific Analysis**

A significant attempt to formalise a response to the problem of displacement including arbitrary displacement in Zimbabwe came following the Zimbabwe elections of 2008. The Memorandum of Understanding established a tentative agreement to “work together to ensure the safety of any displaced persons and their safe return home and that humanitarian and social welfare organisations are enabled to render such assistance as might be required.”<sup>380</sup> However, this arrangement has not led to the enactment of any subsequent legislation which cements the safety of displaced persons, and the Memorandum of Understanding became defunct with the expiration of the GNU in 2013.

Section 74 of the Constitution guarantees that all people shall be free from arbitrary evictions and provides additional protections which appear more in line with international standards such as the UNCESCR General Comments 4 and 7. This section of the Constitution requires that all evictions or demolitions be accompanied by a court order, “made after considering all of the relevant circumstances.”<sup>381</sup> It is unclear if Section 74 provides sufficient protection against arbitrary displacement to bring Zimbabwe into compliance with the Kampala Convention. Recent court decisions support the assertion that an eviction is *prima facie* arbitrary without a court order; however, the courts have not determined if and when an eviction may be arbitrary even with a court order, nor what the “relevant circumstances” and standards should be to issue such an order.

The Kampala Convention's broad protection against arbitrary displacement, including displacement induced by “harmful practices”, may demand more robust protection than Section 74 of the Constitution provides. Harmful practices include “all behaviour, attitudes and/or practices which negatively affect the fundamental rights



of persons, such as but not limited to their right to life, health, dignity, education, mental and physical integrity and education (sic).<sup>382</sup> This expansive provision seems to require that, at a bare minimum, any State-ordered mass eviction must be accompanied by a viable resettlement programme to ensure the displaced do not become homeless and lose access to health care, school, and other basic rights. The National Housing Policy, though not legally binding, reaffirms this aspiration by obligating the Government to “facilitate access to alternative [shelter] before evictions.”<sup>383</sup> It remains to be seen if the Zimbabwean courts will read this broad protection into Section 74 and the interrelated provisions discussed above.

Chapter 16 of the Constitution states that “[t]he State must take appropriate measures, including legislative measures, to give security of tenure to every person lawfully owning or occupying agricultural land.”<sup>384</sup> Whereas increased security of tenure would be a step forward in preventing future arbitrary displacements, legislative and policy measures implemented to achieve this goal should also consider the potential negative impacts should “unlawful” occupants face forced evictions as tenure is secured for “lawful” owners and occupiers.

#### **f. Recommendations**

Zimbabwean law continues to be in a state of flux as case law develops, but generally falls short of complying with international norms and standards of protection of IDPs against arbitrary displacement. In order to limit arbitrary displacement, further legislation needs to be enacted to provide clearer guidance on permitted Government actions. It is therefore recommended that Zimbabwe:

- Enact legislation strictly prohibiting all forms of arbitrary displacement including the instances explicitly foreseen in the relevant international and national documents, such as the Kampala Convention and U.N. Guiding Principles, and establish a system of legal redress for victims of arbitrary displacement.<sup>385</sup>
- Create binding legislation enacting the National Housing Policy’s obligation that the Government facilitate alternative shelter before effecting evictions, respect all procedural guarantees set out in Principle 7 of the U.N. Guiding Principles and explicitly stating that evictions without alternatives violate Section 74 of the Constitution.
- Enact legislation to penalise arbitrary displacement under circumstances in which it amounts to a crime against humanity or a war crime in accordance with the Kampala Convention.<sup>386</sup>

## **11. Reduction of the Risks of Displacement and Mitigation of Displacement-related Concerns in the Event of a Disaster**

### **a. General Context**

Internal displacements can be caused by conflict, generalised violence, human rights violations and disasters induced by natural hazards, which have a devastating impact on human life, peace, stability, security, and development. Situations may of course overlap, in particular where disaster-induced displacement occurs in the context of complex emergencies. It is also increasingly evident that climate change exacerbates natural disasters and related displacement, even if not all disaster-induced displacement is related to climate change.

Zimbabwe has experienced an increase in natural disasters, including disease outbreaks, floods, droughts and storms.<sup>387</sup> Whilst it is clear that natural hazards cannot be prevented from occurring, their effects can, however, be mitigated through early warning systems and effective emergency preparedness, mitigation, disaster response and early recovery systems.<sup>388</sup> The Hyogo Framework for Action 2005 – 2015 (“HFA”) priorities require governments to strengthen Disaster Risk Management (“DRM”) governance, risk and early warning information, disaster education, reduction of underlying risks and emergency. The African Union made its position on the topic known to the 4<sup>th</sup> Session of the Global Platform on Disaster Risk Reduction by acknowledging that disasters are seen as a major cause of internal displacement in Africa and emphasising the need to reflect internal displacement concerns in the successor document to the Hyogo Framework for Action 2005 - 2015.<sup>389</sup>

### **b. Minimum Essential Elements**

- Adopt disaster policies that not only regulate Zimbabwe’s response to natural and human-made disasters but also focus on disaster risk reduction and preparedness.
- Provide for the allocation of necessary human and financial resources to sustain disaster risk reduction and disaster preparedness.<sup>390</sup>

### **c. Kampala Convention**

At the aforementioned 4<sup>th</sup> session of the Global Platform for Disaster Risk Reduction, the African Union delegation took “note of ratification of the Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa that acknowledges the responsibilities of governments to protect people displaced by natural disasters and climate change and take measures to mitigate such displacement.”<sup>391</sup> Meanwhile, the African Union Member States endorsed a regional disaster risk reduction (“DRR”) strategy through the Extended Programme of Action for the implementation of the Africa

Regional Strategy for disaster risk reduction (2006 – 2015).

The Kampala Convention, in fact, requires that States Parties take measures to protect and assist persons displaced in the context of natural or human made disasters, including climate change.<sup>392</sup> These measures include early warning systems in the context of the continental early warning systems, in areas of potential displacement, the establishment and implementation of DRR strategies, emergency and disaster preparedness and management measures and, where necessary, arranging for immediate protection and assistance to IDPs.<sup>393</sup>

The Kampala Convention also prohibits arbitrary displacement in case of forced evacuations resulting from natural or human made disasters if the evacuations are not required by the safety and health of those affected.<sup>394</sup>

States Parties shall be liable to compensate IDPs for damage when that State Party refrains from protecting and assisting IDPs in the event of natural disasters.<sup>395</sup>

#### **d. Other Relevant Supranational Normative Frameworks**

##### *i. U.N. Guiding Principles*

Principle 6 of the U.N. Guiding Principles creates a right for every person to be protected against being arbitrarily displaced from his or her home or place of habitual residence. That right includes cases of disaster, unless the health and safety of those affected requires their evacuation.<sup>396</sup>

##### *ii. Great Lakes IDP Protocol*

The Great Lakes IDP Protocol requires that ICGLR Member States shall establish and designate organs of government responsible for disaster emergency preparedness, coordinating protection and assistance to IDPs, as well as the focal structures responsible for cooperating with international agencies and civil society responsible for IDPs.<sup>397</sup> ICGLR Member States shall ensure that national legislation specifies the organs of government responsible for providing protection and assistance to IDPs, disaster preparedness and the implementation of the legislation incorporating the Guiding Principles.<sup>398</sup>

In addition, they engage with the implementation of an action programme aiming, *inter alia*, at “[p]romoting policies aimed at disaster prevention, protection, assistance, and the search for the durable solutions for refugees and internally displaced persons, as well as their environment.”<sup>399</sup> It further falls on them to “to the extent possible, mitigate the consequences of displacement caused by natural disasters and natural causes.”<sup>400</sup>

Moreover, the ICGLR Member States are committed to establishing “a regional early warning and rapid response mechanism for natural and man-made disasters” and building “capacities for environmental restoration in areas degraded by the settlement of refugee and displaced populations.”<sup>401</sup>

##### *iii. Other*

The Hyogo Framework for Action 2005 - 2015 is a ten-year plan to make the world safer from natural hazards by building the resilience of nations and communities to natural disasters. It was endorsed by the U.N. General Assembly in Resolution 60/1 following the 2005 World Disaster Reduction Conference.<sup>402</sup> The Hyogo Framework for Action 2005 - 2015 priorities require governments to strengthen DRM governance, risk and early warning information, disaster education, reduction of underlying risks and emergency preparedness and response. Zimbabwe has committed itself to the five priorities and related actions of the Hyogo Framework for Action 2005 - 2015 and the SADC DRM Strategy 2012 – 2015, both of which prioritise contingency planning.<sup>403</sup>

National authorities have the primary duty and responsibility to provide assistance to persons affected by natural disasters.<sup>404</sup> International Humanitarian organisations and agencies and non-governmental organisations have the right to offer their services in support of persons affected by natural disasters and in the need of protection and humanitarian assistance when and to the extent that the authorities concerned are unable or unwilling to provide the required humanitarian assistance.<sup>405</sup> All authorities and international actors shall respect and ensure respect for their obligation under international law, so as to prevent and avoid conditions that might lead to displacement of persons.

The IASC Operational Guidelines do not specifically address IDP issues. However, the guidelines do put human rights into the same four categories as the former Special Rapporteur Walter Kälin did with regard to IDP rights, which makes them a useful reference in relation to IDPs in the event of a disaster. The overall concept to bear in mind when reviewing these guidelines is *non-discrimination* in respect of IDPs which is heavily emphasised by the IASC:

##### *iv. Protection of life; security and physical integrity of the person; and family ties.*

In relation to this category, the IASC lists a number of issues particularly relevant to IDPs. Protection activities should be prioritised on the basis of assessed needs and against secondary impacts of natural hazards. Preparedness measures in respect of secondary activities include risk assessment of sites where affected IDPs continue to stay and mapping/updating of risks of those sites. Protection of life, physical integrity and health of

persons exposed to imminent risk is directly applicable to IDPs, as well as the requirement to pay special attention to protection against violence in camps during and after the emergency. Protection against separation of families and unaccompanied children is also applicable to IDPs, as is security in host families and communities to ensure that IDPs eventually resettle in a durable way.<sup>406</sup>

1. Protection of rights related to the provision of food; health; shelter; and education.
2. It is vital for IDPs to have equal access to humanitarian goods, services, health care, food and water as other groups in society. Safe and dignified shelter and sanitation are also key in this respect. With regard to education, the IASC suggests that re-schooling of displaced children following a disaster should be facilitated.<sup>407</sup>
3. Protection of rights related to housing; land and property; livelihoods and secondary and higher education.
4. The IASC guidelines also refer to protection of property left behind as relevant for IDP policies, as well as adequate shelter, including guarantee in case of evictions. IDPs are often exposed to arbitrary evictions, making this kind of protection particularly important. The location of camps and sites and access to livelihoods is also relevant to IDPs in order to provide them with a durable post-disaster resettlement solution.<sup>408</sup>
5. Protection of rights related to documentation; movement; re-establishment of family ties; expression and opinion; and elections.

There should be measures in place to ensure that IDPs are able to return to their pre-disaster homes even if they lack documentation. In relation to this, their electoral rights should also be protected, regardless of their status as IDPs. IDPs should also be granted freedom of movement in their efforts to resettle. Family unity during all phases of the disaster response is another issue that is as relevant for IDPs as for other groups in society.<sup>409</sup>

#### **e. Zimbabwe-specific Analysis**

Natural disasters impact IDPs in two distinct ways. First, disasters can be the initial cause of displacement, which includes persons preventively evacuated in the imminence of a disaster. Second, prior disasters diminishes the resilience of communities, exposing them to the risks of further displacement. No such distinction is made in the relevant legislation of Zimbabwe, although it is possible to divide the legislation into two chronological parts: the first dealing with preventative measures encompassing everyone subjected to a disaster; and the second, more rights-based part dealing with the rights of people who might have become internally displaced due to the disaster.

The main piece of Zimbabwean legislation that deals with the prevention and management of natural disas-

ters is Chapter 10 of the Civil Protection Act. This Act establishes a civil protection organisation and provides for the operation and coordination of civil protection services in times of disaster. This aim is in line with the Great Lakes IDP Protocol, which requires ICGLR Member States to establish and designate organs of Government responsible for disaster emergency preparedness, coordinating protection and assistance to IDPs. Planning for emergencies in Zimbabwe is done at various levels; the sectoral, local authority, district, provincial and national level, which are all required by the Civil Protection Act. The Civil Protection Act does not specify who it protects, but the most probable interpretation is that it protects the Zimbabwean public at large.

Section 3(i) under Part II provides that there shall be a Director of Civil Protection (the "Director"), whose functions are to control and direct personnel, materials and services for the purpose of emergency management, coordinate the planning and execution for civil protection and advising and assisting provincial civil protection.<sup>410</sup>

Part III creates the National Civil Protection Committee, consisting of representatives from various governmental bodies, including the Director of Civil Protection. Their role is to advise the Director in the planning and implementation of civil protection measures.<sup>411</sup>

Under Section 9(i) of Part IV, the Director may, from time to time, appoint such planning committees as he considers necessary for the purpose of preparing action plans in respect of any aspect of civil protection.<sup>412</sup>

The Civil Protection Act provides for a planning committee to be placed in charge of preparing a management plan for civil protection, consisting of such governmental ministers, local authorities, statutory bodies and NGOs that are deemed to be responsible for carrying out functions related to civil protection.<sup>413</sup> In line with the Minimum Essential Elements, these civil protection plans focus on *preventative* disaster risk reduction as well as on responses to disasters.<sup>414</sup> The plans highlight alert mechanisms/procedures, evacuation procedures and stock of available resources.<sup>415</sup>

The Civil Protection Act also provides for dissemination of information and advice to local authorities and to the public generally via area civil protection officers.<sup>416</sup> In line with recommendations by the IASC,<sup>417</sup> the Civil Protection Act also provides for coordination with the armed forces and police in protecting the public, although without specific references to protecting IDPs. However, a recent study suggests that one of Zimbabwe's biggest problems in relation to disaster risk reduction is lack of coordination and communication at the community/village level of society, which is where people are most at risk of becoming displaced.<sup>418</sup>

The Civil Protection Act provides for a National Civil Protection Fund for the development and promotion of civil protection.<sup>419</sup> The fund may, *inter alia*, be applied to research and training, acquisition of land, equipment or materials, or the cost of any scheme deemed by the Minister of Local Government, Rural or Urban Development to be in the interest of civil protection.<sup>420</sup> In relation to the Minimum Essential Elements, the establishment of this fund addresses the need to allocate the necessary human or financial resources for protection of IDPs, given that they are not excluded from its protection.

The Civil Protection Act also permits civil protection officers “to take possession or control of any land or property whatsoever” to deal with a disaster.<sup>421</sup> Although the Civil Protection Act provides for compensation, there is no obligation to restrict any related evacuations to what is “required by the safety and health of those affected”, nor is there any discussion of reparations due to IDPs when the civil protection authorities fail to protect them, as required by the Kampala Convention.<sup>422</sup>

The National DRM policy is currently in draft form but will in the future, if adopted, form the overall policy framework for the promotion, coordination and execution of emergency and disaster management in Zimbabwe.<sup>423</sup>

The Constitution contains some general obligations on the State to provide for people in need, without specific references to IDPs. Section 14, for instance, provides that “[t]he State and all institutions and agencies of the Government at every level must endeavour to facilitate and take measures to empower [...] all marginalised persons.”<sup>424</sup> “Marginalised” people would most likely include IDPs, given their desperate situation and acute needs. Moreover, Section 77 provides that “Every person has the right to – (a) safe, clean and portable water; and (b) sufficient food.”<sup>425</sup> In addition, Section 28 obliges the State and all institutions and agencies of the Government at every level to “take reasonable legislative and other measures, within the limits of the resources available [...] to enable every person to have access to adequate shelter.”<sup>426</sup>

Sections 14, 77 and 28 can all be linked to the requirement contained in Article(2) of the Kampala Convention that States Parties are obliged to provide emergency protection and assistance to people displaced due to catastrophes. Such assistance would include shelter, food and water, as well as general empowerment. Whilst the Constitution gives protection to “every person” and “marginalised persons”, this is in line with the Pinheiro Principles and the U.N. Guiding Principles, whereas the Kampala Convention and the Great Lakes IDP Protocol specifically protect “IDPs”.

Section 28 could be applicable to Principle 6 of the U.N. Guiding Principles and Principle 5.1 of the Pinheiro Principles, which states that everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence and that States should incorporate protections against displacement into domestic legislation.<sup>427</sup> There is, however, no specific legislative protection against displacement in the Constitution.

#### **f. Recommendations**

There is currently no identifiable Zimbabwean legislation which formally address the right of IDPs to be protected in the event of displacement in the context of disasters. Thus, the steps outlined below would help bring Zimbabwe into line with the relevant Minimum Essential Elements and Supranational Normative Frameworks in this area. It is therefore recommended that Zimbabwe:

- Either amend the Civil Protection Act to include IDP protection specifically mandating that evacuations during a disaster are limited to the health and safety requirements of the affected population, or ensure that enabling legislation for the Kampala Convention provides for this.
- Implement legislation that ensures durable solutions for IDPs that have been displaced by disasters, which take into account the resilience of resettled, reintegrated, or returned communities and to minimise the risks of future displacement.
- Devote significant resources to inclusive DRM/DRR activities, and ensures that the Civil Protection Fund is adequately resourced. There should also be full cooperation with international humanitarian and development actors and civil society in disaster preparedness, and efforts to fully implement the Hyogo Framework for Action 2005 – 2015.

## 12. Ensuring Human Rights in the Event of Development-induced Displacement

### a. General Context

States have a fundamental responsibility to mitigate the vulnerability of particular groups to displacement.<sup>428</sup> A vital aspect of this involves protecting the development-related rights of IDPs, especially when large-scale development work takes place which involves (even temporary) displacement.<sup>429</sup> Development projects which lead to permanent displacements can consequently infringe a wide variety of rights (such as freedom of movement rights, right to adequate standard of living, including food, water and hygiene, housing, land and property rights, etc., see Sections 18. “Food”, 19. “Water and hygiene” and 20. “Basic shelter and adequate housing”), highlighting the importance of regulating such projects.<sup>430</sup> Displacement and relocation in the context of development projects, in particular, often risk resulting in forced evictions, i.e., forceful removals carried out in ways that are not compatible with the law or with the standards enshrined in human rights treaties.

### b. Minimum Essential Elements

- Include in national development plans and resettlement policies a clear articulation that forced displacement or relocation induced by development projects must be authorised by law, justified by compelling and overriding public interests, is necessary to protect these interests and is carried out with full respect for the human rights of affected persons. Also include provisions on procedures by which any such displacement or relocation will be effectuated, available remedies, including resettlement and compensation, and the right to administrative or judicial review.<sup>431</sup>

### c. Kampala Convention

Although Article 10 of the Kampala Convention specifically refers to “Displacement induced by Projects”, the Kampala Convention also imposes more general obligations which could also apply to development projects. Under Article 3 of the Kampala Convention, which sets out the general obligations relating to States Parties, States Parties should “refrain from, prohibit and prevent arbitrary displacement of populations.”<sup>432</sup> Article 4(5) states that States Parties should endeavour to protect from displacement communities with a particular spiritual or cultural attachment to land, unless compelling and overriding public interests are engaged.<sup>433</sup>

States Parties' general obligations under the Kampala Convention also extend to regulating the acts of non-state actors like developers. States Parties must ensure the accountability of non-state actors, including multinational companies, for acts of arbitrary displacement or complicity therein.<sup>434</sup> States Parties must also ensure the accountability of non-state actors involved in the

exploration and exploitation of economic and natural resources leading to displacement.<sup>435</sup>

More specifically, under Article 10 of the Kampala Convention, States Parties must prevent, as far as possible, the displacement caused by projects carried out by public or private actors,<sup>436</sup> and ensure that these entities have considered alternative options after consulting with those likely to be affected by the projects.<sup>437</sup> States Parties should also undertake an evaluation of the socio-economic and environmental impact of any proposal for a project development project before its implementation.<sup>438</sup>

### d. Other Relevant Supranational Normative Frameworks

Whilst the Kampala Convention mirrors the principles which are elucidated in the U.N. Guiding Principles and the Pinheiro Principles, these Supranational Normative Frameworks more clearly lay out and qualify the general obligation for states when dealing with development projects. The Great Lakes IDP Protocol also qualifies this general obligation and, like the U.N. Guiding Principles, highlights a state's information and consultation obligations.

#### i. U.N. Guiding Principles

It is interesting to note from the outset that the U.N. Guiding Principles acknowledge that displacement caused by development projects is not prohibited *per se*; indeed, the outcome of such development may often help to realise social and economic human rights. The prohibition against displacement caused by development is not meant to hinder a state's economic development; rather, it is intended to prevent using development to justify forced relocation carried out in violation of basic human rights or forced evictions, which are *prima facie* incompatible with human rights standards.<sup>439</sup>

From this default position, Principle 6(2)(c) prohibits displacement in the context of large scale development *unless* it is “justified by compelling and over-riding public interests.”<sup>440</sup> In effect, the development must satisfy both a *necessity* and *proportionality* test.

The U.N. Guiding Principles Annotations refer to other supranational organisations that have issued operational guidelines, to help states take appropriate steps to ensure these tests are met. Ultimately, referencing both the World Bank Operational Policy 4.12 of 2001 and the Organisation for Economic Cooperation and Development,<sup>441</sup> the U.N. Guiding Principles emphasise that states should consider viable alternative designs to the development proposed.

Principle 7 recommends certain information and consultation obligations on states, albeit this obligation is not



couched specifically in terms of long-term development projects: they generally apply if displacement occurs in “situations other than during the emergency stages of armed conflicts and disasters.”<sup>442</sup> States have an information obligation – to provide those to be displaced with full information on the reasons and procedures for displacement and, where applicable, the information about compensation and relocation.<sup>443</sup> States also have a consultation obligation – to seek the free and informed consent of those who will be displaced,<sup>444</sup> and to endeavour to involve those affected in the planning and management of their relocation.<sup>445</sup> Principle 7 also obliges states to respect the right of IDPs’ to an effective remedy.<sup>446</sup> All the mentioned procedural guarantees should also be considered applicable in situations of ‘arbitrary displacement’. In certain circumstances, failure to ensure participation of the persons affected may in itself be an indication of the arbitrariness of displacement.<sup>447</sup>

### ii. ILO Convention No. 169 (*Indigenous and Tribal Peoples Convention 1989*)

The Indigenous and Tribal Peoples Convention 1989 guarantees the rights of indigenous peoples to the natural resources pertaining to their lands, even if the land or other resources pertaining to the land are in state ownership.<sup>448</sup> Similarly to the U.N. Guiding Principles, states have a consultation obligation towards affected individuals, and states should maintain procedures to consult with these individuals to determine the extent to which the planned activity would prejudice their interests.<sup>449</sup> Article 16(i) imposes a general restriction against removing indigenous peoples from lands which they occupy, unless under Article 16(2) relocation would be “necessary as an exceptional measure” and the affected individuals had given their free and informed consent. The Indigenous and Tribal Peoples Convention 1989 requires states to compensate the relocated individuals in this case.<sup>450</sup>

### iii. The Great Lakes Instruments

The Great Lakes Instruments effectively replicate key U.N. Guiding Principles, but they also help to protect IDP rights more directly in the context of development projects. For example, ICGLR Member States are committed to “making sure that any activity relating to the natural resources scrupulously respects [...] human settlements.”<sup>451</sup> This obligation directly protects settlements from displacement when development aims to exploit natural resources. More specifically, Article 5 of the Great Lakes IDP Protocol indicates that displacement owing to large-scale development projects must be “justified by compelling and overriding public interest and development”<sup>452</sup>. The Great Lakes IDP Protocol imposes obligations on ICGLR Member States to obtain consent,<sup>453</sup> provide full information<sup>454</sup> and ensure participation in the relocation process.<sup>455</sup> These apply *specifically* in the context of development projects.

Moreover, the ICGLR Member States are supposed to provide adequate and liveable places of resettlement and as far as possible to take care, “so that the people displaced by development projects of vast scale are suitably placed and that their displacement is done under satisfactory conditions as regards safety, food, health and hygiene.”<sup>456</sup>

It is important to note that, in accordance with the Great Lakes IDP Protocol, it also falls on the ICGLR Member States to offer special protection to IDPs, in particular to those in the rural communities, stockbreeders and other groups who are connected to the land, on the grounds of dependence or having a particular attachment.<sup>457</sup>

### iv. Basic Principles and Guidelines on Development-Based Evictions and Displacement

The Basic Principles and Guidelines on Development-Based Evictions and Displacement, published by the Office of the High Commissioner for Human Rights, identifies forced evictions as a “distinct phenomenon” in international law. Forced evictions can be equated with “an absence of legally secured tenure.”<sup>458</sup> Paragraph 8 provides an illustration of possible forms of ‘forced evictions’ that may be related to development: “development-based evictions include evictions often planned or conducted under the pretext of serving the “public good”, such as those linked to development and infrastructure projects (including large dams, large-scale industrial or energy projects, or mining and other extractive industries); land-acquisition measures associated with urban renewal, slum upgrades, housing renovation, city beautification, or other land-use programmes (including for agricultural purposes); property, real estate and land disputes; unbridled land speculation; major international business or sporting events; and, ostensibly, environmental purposes. Such activities also include those supported by international development assistance.”<sup>459</sup>

International human rights law affirms that development-based evictions are generally prohibited unless exceptional circumstances call for these measures and the measures can be fully justified.<sup>460</sup> The Basic Principles and Guidelines on Development-Based Evictions and Displacement indicate that forced evictions could only be carried out if they are authorised by law and are carried out in accordance with human rights law.<sup>461</sup> Like the U.N. Guiding Principles and the Great Lakes IDP Protocol, the measures are subject to threshold criteria: they need to be reasonable and proportional, and are undertaken solely for the purpose of promoting general welfare.<sup>462</sup>

Specific measures and procedures ensuring the above include preventive measures, procedures applying prior to any eviction or subsequent resettlement, procedures applying to the eviction itself and principles governing the

provision of remedies after an eviction has taken place. Among others, states should take preventive measures:

- “aimed at conferring legal security of tenure upon those persons, households and communities currently lacking such protection, including all those who do not have formal titles to home and land.”<sup>463</sup>
- “to avoid and/or eliminate underlying causes of forced evictions, such as speculation in land and real estate.”<sup>464</sup>
- requiring that relevant professionals (such as lawyers, law enforcement officers and planners) receiving training in applying international human rights norms.<sup>465</sup>

An “independent national body, such as a national human rights institution” should be entrusted with monitoring and investigation of evictions and State compliance with the U.N. Development-Based Evictions Guidelines and international human rights law.<sup>466</sup>

Before any eviction takes place, planning and development processes “should involve all those likely to be affected”,<sup>467</sup> and States should “fully explore all possible alternatives to evictions.”<sup>468</sup> If an eviction is to take place, authorities “must demonstrate that the eviction is unavoidable and consistent with international human rights commitments protective of the general welfare”,<sup>469</sup> and the State “must make provision for the adoption of all appropriate measures, to the maximum of its available resources [...] to ensure that adequate alternative housing, resettlement or access to productive land, as the case may be, is available and provided.”<sup>470</sup>

If resettlement is contemplated, a comprehensive resettlement policy should be in place, and the “entire resettlement process should be carried out with full participation by and with affected persons, groups and communities [...]”<sup>471</sup> Affected persons, groups and communities must also be provided with 90 days’ notice of resettlement prior to the date of resettlement.<sup>472</sup> Moreover, the “actor proposing and/or carrying out the resettlement shall be required by law to pay for any associated costs, including all resettlement costs [...]”<sup>473</sup>

When an eviction takes place, government officials or their representatives must be present on site, must identify themselves to those being evicted and must present formal authorisation for the eviction action.<sup>474</sup>

All those threatened with eviction or subject to eviction have the right to timely remedy. States should prioritise restitution and return where circumstances allow.<sup>475</sup> Where circumstances do not allow, “competent authorities must provide victims of forced evictions, or assist them in obtaining, appropriate compensation or other forms of just reparation.”<sup>476</sup>

### ***e. Zimbabwe-specific Analysis***

The Constitution explicitly affirms both the human rights of its citizens as well as property rights, rights to agricultural land, environmental rights, and freedom from arbitrary eviction.<sup>477</sup> However, whilst the Constitution imposes some protection against displacement caused by development projects, it does not provide the robust protection mandated by the Kampala Convention, the U.N. Guiding Principles or the Great Lakes instruments.

For instance, under Section 71(3), the State can deprive individuals of property where necessary for town and country planning<sup>478</sup> or to “develop or use that or any other property for a purpose beneficial to the community.”<sup>479</sup> Similarly, the State can deprive individuals of agricultural land for a wide variety of reasons.<sup>480</sup> Although the Constitution requires the State to give reasonable notice of the intention to acquire the property,<sup>481</sup> unlike the Kampala Convention<sup>482</sup> and the U.N. Guiding Principles,<sup>483</sup> there is no requirement that the State consider alternative development plans. More significantly, the Constitution does not contain a necessity or proportionality test for the development plans, and does not explicitly refer to displacement as an effect of divesting property from individuals.

The Environmental Management Act also gives the State power to use land for development. However, it again does not explicitly address displacement which could result. The Minister of Environment and Tourism can also “cause works to be constructed for the protection of the environment” if the works are necessary or desirable in the public interest and the person responsible for the land has failed or refused to construct works.<sup>484</sup> Unlike Article 4(5) of the Kampala Convention, specific reference is not made to those with an attachment to the land. The Environmental Management Act does not specifically refer to displacement nor address Article 10 of the Kampala Convention. Whilst developers must take reasonable measures to prevent or, if that is not possible, to mitigate any undesirable impact on the environment,<sup>485</sup> there is no reference to human settlements who rely on that environment.

As mining is one of the chief drivers of the Zimbabwean economy and often impacts the rights of owners and occupiers of land from which minerals may be extracted, an examination of the Mines and Minerals Act is worthwhile. The Mines and Minerals Act generally protects the rights of lawful occupants of land subject to extraction. For example, Section 31 forbids, in most cases, any prospecting near homes or residences.<sup>486</sup> Although Parts V and VII of the Mines and Minerals Act create exceptions where prospectors can be granted authority to mine near or under homes, Section 80 clearly obligates the authority holder to compensate owners and occupiers who are

“injuriously affected.”<sup>487</sup> The Mines and Minerals Act also creates a provision whereby, when the owner of land is so aggrieved by mining operations that his or her land is rendered valueless, that the authority holder must purchase the land from the owner.<sup>488</sup> All of these provisions likely comply with the obligations of international instruments to protect households from development-induced displacement and to provide effective remedies.

The Mines and Minerals Act may fail, however, where it comes to occupiers of land, whether lawful or unlawful. The Mines and Minerals Act's protections generally are directed towards owners and “occupiers”, with the latter defined as: “the person lawfully and actually using or possessing any land under and by virtue of any grant or agreement.”<sup>489</sup> Although not explicitly stated, the protections against displacement seem to interpret “occupier” as meaning a lawful occupant of communal land, whereas owners correspond to other land. This suggests that many occupants of agricultural land, especially farmworkers, have extremely circumscribed rights against being displaced by mining operations. Whereas a farm-owner may receive compensation or alternative land when mining concessions are granted near his homestead, his workers are offered no such protections and may become displaced by mining operations. Indeed, Section 381 of the Mines and Minerals Act gives the Mining Commissioner authority to evict any “squatters” on mining locations, and creates a criminal offense for anyone who ignores such an order.<sup>490</sup> As a very significant number of Zimbabweans live on land to which they have tenuous or no legal right to occupy, this section creates the potential for development-induced displacement with none of the protections required by the International Instruments discussed in this section.

#### ***f. Recommendations***

There is currently no identifiable Zimbabwean legislation which formally addresses displacement resulting from large-scale development work. Thus, the steps outlined below would help bring Zimbabwe into line with the relevant Minimum Essential Elements and the Supranational Normative Frameworks in this area. It is therefore recommended that Zimbabwe:

- Amend the relevant legislation governing development projects, specifically the Mines and Minerals Act and the Environmental Management Act, to specifically address displacement and protecting the rights of IDPs, as required by the Kampala Convention.
- Amend domestic legislation to include an obligation to search for alternatives to displacement in the implementation of development projects and introducing necessity and proportionality standards in development legislation could help balance the rights of investors and the State's interests with the rights of IDPs. This would also bring legislation in line with the Suprana-

tional Normative Frameworks for IDP protection.

- Develop legal provisions specifying the public interest grounds that may justify relocation, the procedures by which displacement is to be effected in relation to development projects, the scope of compensation and the right to administrative/judicial review.

## 13. Freedom of Movement

### a. General Context

Movement-related rights of IDPs are meant to ensure that once they have been displaced, IDPs can move freely during displacement, both to avoid unsafe situations, as well as to undertake other necessary or desired travel,<sup>491</sup> for example, movement to markets, to livelihoods, or to participate in social and community affairs. In principle, IDPs should be able to choose where to live during displacement and to voluntarily reassess such decisions when the reasons for their displacement or the barriers to their return have ceased to exist.<sup>492</sup> Further, displacement itself constitutes a restriction of the freedom of movement and the right to choose one's own residence.<sup>493</sup>

### b. Minimum Essential Elements

- Recognise that displacement represents an exception to the freedom of movement and to choose one's own residence and that unlawful restrictions to such right may amount to *arbitrary displacement*.
- Recognise IDPs' right to freedom of movement, including specifically the right to seek safety in another area of the country, to leave the country and to seek asylum in another country and to be protected against forced return to or resettlement in any place where their life, safety, liberty and/or health would be in danger.
- Abolish administrative obstacles that may exist, limiting the possibility of IDPs to reach safe areas, or, when the conditions allow it, to return to their homes.
- Recognise that displacement should last no longer than required by the circumstances and the right of all IDPs to make a voluntary and informed choice between return, integration at the location of displacement or resettlement in another part of the country.
- Provide for specific measures (such as deployment of police forces or demobilisation of combatants in the zones of return) to ensure long term safety and security for returning IDPs.<sup>494</sup>

### c. Kampala Convention and Declaration

Article 4(i) of the Kampala Convention reaffirms the duty of States Parties to "prevent and avoid conditions that might lead to arbitrary displacement of persons."<sup>495</sup> Article 4(4) of the Kampala Convention provides that all persons have the right to be protected from arbitrary displacement, and includes a non-exhaustive list of prohibited categories of arbitrary displacement.<sup>496</sup> Article 9(2)(f) of the Kampala Convention provides that States Parties shall "[g]uarantee the freedom of movement and choice of residence of internally displaced persons, except where restrictions on such movement and residence are necessary, justified and proportionate to the requirements of ensuring security for internally displaced persons or maintaining public security, public order or public health."<sup>497</sup> Article 7(5)(d) prohibits members of

armed groups from restricting "the freedom of movement of internally displaced persons within and outside their areas of residence."<sup>498</sup> Article 11(i) of the Kampala Convention obliges States Parties to "seek lasting solutions to the problem of displacement by promoting and creating satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis and in circumstances of safety and dignity."<sup>499</sup> Article 11(2) of the Kampala Convention requires States Parties to "enable internally displaced persons to make a free and informed choice on whether to return, integrate locally or relocate by consulting them on these and other options and ensuring their participation in finding sustainable solutions."<sup>500</sup>

Paragraph 8 of the Kampala Declaration states that signatories "undertake to enable IDPs find durable solutions by promoting and creating conducive conditions for voluntary return, local integration or settlement elsewhere in the circumstances of safety and dignity."<sup>501</sup>

### d. Other Relevant Supranational Normative Frameworks

As described below, the U.N. Guiding Principles and the Pinheiro Principles collectively offer broader protection than the guarantees of the Kampala Convention with regards to the freedom of movement of IDPs. The Great Lakes Returning Persons' Property Rights Protocol essentially seeks the same standard as the Kampala Convention, but like the U.N. Guiding Principles and the Pinheiro Principles, does not contain a provision specifically requiring prohibitions on armed groups restricting the right of IDPs to freedom of movement. Finally, whilst the African Charter includes the broad individual right to freedom of movement and residence, it is not specifically addressed to IDPs.

#### i. U.N. Guiding Principles

Principles 6(3), 12, 14, 15 and 28(i) of the U.N. Guiding Principles are meant to prevent arbitrary displacement and, if displacement does occur, to ensure that IDPs are able to move freely during displacement, both to avoid unsafe situations, as well as to undertake necessary travel.<sup>502</sup>

Principle 6 articulates the obligation to prevent arbitrary displacement and the right to be protected against arbitrary displacement. Principle 6(3), which states that "displacement shall last no longer than required by the circumstances",<sup>503</sup> recognises the right to return or to re-settle, which are discussed further in Principle 28.

Principle 12 provides that every human being has the right to liberty and security of person and no one shall be subject to arbitrary arrest or detention. To give effect to the foregoing right, IDPs shall not be confined in or interned to a camp (thereby restricting their mobility rights), and

even if such confinement or internment is necessary, it should not be for a duration longer than that which is "required by the circumstances."<sup>504</sup> IDPs must also be protected against discriminatory arrest and detention as a result of their displacement.<sup>505</sup>

Principle 14(1) provides that every IDP "has the right to liberty of movement and the freedom to choose his or her residence."<sup>506</sup> It is therefore concerned with movement rights during displacement, and does not address the issue of protection from displacement in the first place. Principle 14(2) provides that IDPs "have the right to move freely in and out of camps or other settlements."<sup>507</sup>

Principle 15 lists the following mobility rights: the right to seek safety in another part of the country;<sup>508</sup> the right to leave their country;<sup>509</sup> the right to seek asylum in another country;<sup>510</sup> the right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.<sup>511</sup>

Principle 28(1) provides, that "[c]ompetent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow [IDPs] to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled [IDPs]."<sup>512</sup> Principle 28(2) provides that "[s]pecial efforts should be made to ensure the full participation of [IDPs] in the planning and management of their return or resettlement and reintegration."<sup>513</sup>

#### *ii. Great Lakes 'IDP Protocol*

Article 4(1)(g) of the Great Lakes 'IDP Protocol provides that ICGLR Member States undertake to: "[e]nsure freedom of movement and choice of residence within designated areas of location, except when restrictions on such movement and residence are necessary, justified, and proportionate to the requirements of maintaining public security, public order and public health."<sup>514</sup>

#### *iii. Pinheiro Principles*

Principle 9 sets forth the right to freedom of movement, which includes the right to choose one's own residence, and restricts the State's right to restrict the freedom of movement to limited areas as follows:

- "9.1 Everyone has the right to freedom of movement and the right to choose his or her residence. No one shall be arbitrarily or unlawfully forced to remain within a certain territory, area or region. Similarly, no one shall be arbitrarily or unlawfully forced to leave a certain territory, area or region.
- 9.2 States shall ensure that freedom of movement and the right to choose one's residence are not subject to any restrictions except those which are provided

by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with international human rights, refugee and humanitarian law and related standards."<sup>515</sup>

Principle 10 contains several provisions which relate to mobility rights of IDPs, which include the voluntary right of return to their former homes, lands or places of habitual residence, in safety and dignity, as well as the right to not be coerced into returning to their former place of residence:

- "10.1 All refugees and displaced persons have the right to return voluntarily to their former homes, lands or places of habitual residence, in safety and dignity. Voluntary return in safety and dignity must be based on a free, informed, individual choice. Refugees and displaced persons should be provided with complete, objective, up-to-date, and accurate information, including physical, material and legal safety issues in countries or places of origin.
- 10.2 States shall allow refugees and displaced persons who wish to return voluntarily to their former homes, lands or places of habitual residence to do so. This right cannot be abridged under conditions of State succession, nor can it be subject to arbitrary or unlawful time limitations.
- 10.3 Refugees and displaced persons shall not be forced, or otherwise coerced, either directly or indirectly, to return to their former homes, lands or places of habitual residence. Refugees and displaced persons should be able to effectively pursue durable solutions to displacement other than return, if they so wish, without prejudicing their right to the restitution of their housing, land and property.
- 10.4 States should, when necessary, request from other States or international organisations the financial and/or technical assistance required to facilitate the effective voluntary return, in safety and dignity, of refugees and displaced persons."<sup>516</sup>

#### *iv. African Charter*

Article 12 of the African Charter contains several provisions relating to the right to the freedom of movement: every individual has the right to freedom of movement and residence within the borders of a state provided he abides by the law; every individual to have the right to leave any country including his own, and to return to his country, which may be subject to certain restrictions (for the protection of national security, law and order, public health or morality); every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions; a non-national legally admitted



in a territory of a State Party to the African Charter, may only be expelled from it by virtue of a decision taken in accordance with the law; mass expulsion (aimed at national, racial, ethnic or religious groups) of non-nationals shall be prohibited.<sup>517</sup>

#### **e. Zimbabwe-specific Analysis**

The Constitution protects the freedom of movement and residence. Section 66(i) of the Constitution provides that “every Zimbabwean citizen” has “(a) the right to enter Zimbabwe; (b) immunity from expulsion from Zimbabwe; and (c) the right to a passport or other travel documents.”<sup>518</sup> Further, Section 66(2) provides that “every Zimbabwean citizen and everyone else who is legally in Zimbabwe” has the right to: “(a) move freely within Zimbabwe; (b) reside in any part of Zimbabwe; and (c) leave Zimbabwe.”<sup>519</sup> Section 49(i)(a) of the Constitution also guarantees to “every person”, the right to personal liberty, which includes the right to not be detained without trial, and being arbitrarily denied the right to liberty or without just cause.<sup>520</sup> Section 50 of the Constitution provides additional due process rights of arrested or detained persons. Whilst the Constitution gives protection to every Zimbabwean “citizen”, the Pinheiro Principles and the U.N. Guiding Principles are slightly more inclusive by protecting “everyone”, and the Kampala Convention and the Great Lakes IDP Protocol specifically protect “IDPs”.

Other sections of the Constitution and various acts, however, place restrictions on the freedom of movement which could be detrimental to IDPs. Section 72(6), for example, states that, “[a]n act of Parliament may make it an offence for any person, without lawful authority, to possess or occupy agricultural land [...]”<sup>521</sup> This section ensures that laws predating the Constitution, which allowed for the criminal punishment of unauthorised occupiers of agricultural land, remain valid under the new Constitution.<sup>522</sup> As many Zimbabwean IDPs either habitually resided on and/or continue to occupy agricultural land with no viable resettlement options, these laws present challenges to voluntary return and local integration, and the enforcement of such laws could result in forced evictions. Similar restrictions apply to persons unlawfully occupying mining locations,<sup>523</sup> thus affecting the movement rights of certain IDPs. Finally, the Civil Protection Act allows civil protection officers to take possession or control of any land or property for the purpose of dealing with disasters.<sup>524</sup> Although this Act (as well as Section 87 and the Second Schedule of the Constitution, which deals with the limitation of rights during public emergencies) probably falls within the permissible limits to freedom of movement set by the relevant international instruments, it could be used to effect involuntary movement of IDPs.

The Refugee Act protects the right to movement of persons who are outside of their country of origin and nation-

ality, so its provisions are not directed towards domestic IDPs, and are therefore not relevant in this report.

#### **f. Recommendations**

There is currently no identifiable Zimbabwean legislation which formally addresses IDPs’ right to freedom of movement in Zimbabwe. Thus, the steps outlined below would help bring Zimbabwe into line with the relevant Minimum Essential Elements and the Supranational Normative Frameworks in this area. It is therefore recommended that Zimbabwe:

- Implement legislation which guarantees the right of freedom of movement specifically to IDPs, including the right of IDPs to circulate freely and seek safety in another part of the country, and the right to choose one’s residence.<sup>525</sup>
- Clarify in legislation the specific application of the prohibitions on arbitrary arrest and detention of IDPs, which would include confinement in camps and that if such confinement or internment is necessary, it should not last longer than required by the circumstances.<sup>526</sup>
- Adopt implementing legislation for the Kampala Convention which contains specific provisions setting out a duty to promote and create conditions for voluntary return, local integration or settlement elsewhere in the circumstances of safety and dignity.<sup>527</sup>
- Implement legislation whereby competent authorities make special efforts to ensure the full participation of IDPs in the planning and management of their return or resettlement and reintegration. This legislation should include specific protections against involuntary movements of IDPs.<sup>528</sup>

## 14. Family Life

### a. General Context

The importance of non-interference with, and protection of family life during internal displacement is essential for the well-being of IDPs. Key issues with respect to family life during displacement include: preserving family unity, pursuing family reunification, determining the fate of any missing family members, treating the dead with appropriate respect, and ensuring adequate living conditions through the provision of housing.<sup>529</sup> In the IDP context, the concept of family can be broader than the narrower concept used in most legal systems, and may, therefore, require broader protection. Thus, family may include not only persons in direct legal or natural relationships, but also “persons belonging to families through shared life, mutual support or emotional ties, in situations where they consider themselves to be part of a family and wish to live together.”<sup>530</sup>

### b. Minimum Essential Elements

- Recognise the right of IDPs to family unity.
- Assign responsibilities to government agencies to search for and reunite members of families who have become separated in the course of displacement; and/or to seek support from the international community for this task.
- If necessary, create national mechanisms charged with for investigating the fate of missing persons providing information and, where possible, handle mortal remains and personal effects of survivors; and/or seek support from the international community for this task.
- Ensure the right to a decent standard of living including through provision of adequate housing “by providing a gathering area and communal space for the human family, the basic unit of society.”<sup>531, 532</sup>

### c. Kampala Convention

The Kampala Convention requires States Parties to, “take necessary measures, including the establishment of specialised mechanisms, to trace and reunify families separated during displacement, and otherwise facilitate the re-establishment of the family ties.”<sup>533</sup> The Kampala Convention further requires that armed groups be prohibited from separating members of the same family,<sup>534</sup> including “recruiting children or requiring or permitting them to take part in hostilities”<sup>535</sup> and “forcibly recruiting persons, kidnapping, abduction or hostage taking, engaging in sexual slavery and trafficking in persons, especially women and children.”<sup>536</sup> Moreover, Article 9(2) (c) of the Kampala Convention requires African Union Member States to, “provide special protection for and assistance to internally displaced persons with special needs, including separated and unaccompanied children, female heads of households, expectant mothers, mothers with young children, the elderly, and persons with disabilities or with communicable diseases.”<sup>537</sup> African Union Member States must also “create and maintain an

up-dated register of all internally displaced persons within their jurisdiction or effective control.”<sup>538</sup>

Article 10(2) of the Kampala Convention imposes an obligation on States Parties to ensure that stakeholders concerned will explore all feasible alternatives, with full consultation of persons likely to be displaced by projects.<sup>539</sup> This provision is relevant in the context of forced evictions due to projects, which can result in the loss of adequate housing, which ultimately interferes with the right to enjoy family life.

### d. Other Relevant Supranational Normative Frameworks

Whilst the Supranational Normative Frameworks described below largely correspond to the Kampala Convention, several key distinctions exist. First, the Kampala Convention requires prohibitions on armed groups from separating family members, including recruiting, kidnapping, abducting, hostage taking, etc., which is not expressly included in the U.N. Guiding Principles or the Great Lakes IDP Protocol. Second, whilst the Kampala Convention and the Great Lakes IDP Protocol require special protections related to family life for various vulnerable populations (such as expectant mothers, the elderly, children, etc.), the U.N. Guiding Principles do not include a similar list of protected vulnerable populations. Finally, whilst the Kampala Convention and the Great Lakes IDP Protocol are silent on the treatment of dead bodies, the U.N. Guiding Principles require express protection of bodies, including the return of bodies of next of kin.

#### i. U.N. Guiding Principles

Principles 16 and 17 of the U.N. Guiding Principles protect the right of IDPs to “non-interference with and protection of family life, obliging states to take measures to preserve family unity, pursue family reunification, determine the fate of the missing, and treat the dead with appropriate respect.”<sup>540</sup>

Principles 16(1) and (2) provides that all IDPs have the right to “know the fate and whereabouts of missing relatives”, and requires authorities to establish the fate of IDPs reported missing, and cooperate with international organisations engaged in the task.<sup>541</sup> Authorities must also inform next of kin on the progress of the investigation and notify them of any results. Principle 16(3) requires authorities to endeavour to collect and identify the remains of the deceased, to prevent their disrespect and mutilation of the remains, and facilitate return of remains to next of kin, or dispose of them respectfully.<sup>542</sup> Principle 16(4) requires that grave sites of IDPs be protected and respected in all circumstances, and that IDPs have the right to access the grave sites of deceased relatives.<sup>543</sup>

Principle 17 provides that every human being has the right to respect of his or her family life, and that to give effect

to this right, family members wishing to remain together should be allowed to do so.<sup>544</sup> Principle 17(3) provides that families separated by displacement should be reunited as quickly as possible, and that appropriate steps be taken to expedite the reunion of families, especially those which include children. Authorities must facilitate inquiries made by family members and encourage and cooperate the work of humanitarian organisations working on family reunification.<sup>545</sup> Principle 17(4) provides that members of IDP families whose personal liberty has been restricted to internment or confinement camps, have the right to remain together.<sup>546</sup>

#### *ii. Great Lakes IDP Protocol*

The Great Lakes IDP Protocol obliges ICGLR Member States to recognise that every human being has the right to respect of his or her family life.<sup>547</sup> ICGLR Member States are committed “to facilitate the reunification of the families and to provide, if necessary, special protection for families with mixed ethnic identity.”<sup>548</sup> ICGLR Member States are further committed to providing “special protection for women, children, the vulnerable and displaced persons with disabilities.”<sup>549</sup>

#### *iii. International Covenant on Economic, Social and Cultural Rights (“CESCR”)*

Pursuant to Article 11(i) of the CESCR, States must “recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”<sup>550</sup> The CESCR makes an important link between the right to enjoyment of family life and adequate housing, especially in the context of forced evictions.<sup>551</sup> General Comment No. 4 clarifies that the right to adequate housing should be recognised to the individual *and his family*: “While the reference to “himself and his family” reflects assumptions regarding gender roles and economic activity patterns commonly accepted in 1966 when the Covenant was adopted, the phrase cannot be read today as implying any limitations upon the applicability of the right to individuals or to female-headed households or other such groups.”<sup>552</sup> Thus, the concept of “family” must be understood in a broad sense. Further, individuals, as well as families, are entitled to adequate housing regardless of age, economic status, group or other affiliation or status and other such factors. General Comment No. 4 also states that the concept of housing should be understood in a wider sense than the mere provision of shelter but should rather encompass “the right to live somewhere in security, peace and dignity”,<sup>553</sup> a notion that underpins the right to family life.

More importantly, through General Comment 4 restating the “right not to be subjected to arbitrary or unlawful interference with one’s privacy, family”,<sup>554</sup> the CESCR classifies forced evictions as acts *prima facie* incom-

patible with human rights and asserts the principle of recognition of a minimum level of tenure security to every individual, regardless of the status of tenure.

#### ***e. Zimbabwe-specific Analysis***

Consistent with the requirements in Article 9(2)(h) of the Kampala Convention, Zimbabwean law includes a specialised mechanism for finding and reuniting families separated during displacement. These include a compulsory birth and death notification and registry, as well as a mechanism for reporting missing persons and assistance in finding them. Notification and registration of the birth or death of any person that occurs in Zimbabwe is compulsory.<sup>555</sup> However, the situation is complicated where a family member dies whilst separated from his or her family, and is not registered. Zimbabwe also has a service for reporting missing persons and locating them. Under the Missing Persons Act, persons may apply to the clerk of the court in the missing person’s area for a “missing person’s order.”<sup>556</sup> At the discretion of the magistrate, the clerk then places a notice in the local newspaper requesting information.<sup>557</sup> The magistrate then has the discretion to conduct an inquiry into the whereabouts of the missing person.<sup>558</sup> Whilst the existence of this system is important, its efficacy in locating missing family members and reuniting them with their families is unknown. In addition, the application must be made in the area where the person went missing, which may be practically impossible for family members who were also displaced from that area. It could therefore be useful to introduce a centralised system of registration of IDPs, for example when they receive aid or medical care, which could assist families in locating missing relatives. Such a registry of IDPs would also fulfil the requirements of Article 13(i) of the Kampala Convention, which requires African Union Member States to create an updated register of all IDPs within their jurisdiction or control.<sup>559</sup>

Zimbabwe’s Constitution and laws have several provisions which appear to implement Article 13(i) of the Kampala Convention and Paragraph 12 of the Kampala Declaration, which require African Union Member States to provide protection and assistance to vulnerable IDPs with special needs, including separated children, women, the elderly, and others. The Constitution contains provisions relating to vulnerable groups that are in need of protection, including children and the elderly. The situation of these vulnerable groups requires particular vigilance during internal displacement. Section 19 of the Constitution imposes an obligation upon the State to “adopt policies and measures to ensure that in matters relating to children, the best interests of the children concerned are paramount.”<sup>560</sup> Similarly, Section 21 states that “the State and all institutions and agencies of [G]overnment at every level must take reasonable measures to secure respect, support and protection for elderly persons.”<sup>561</sup>

Section 19 of the Constitution also states that the State should adopt reasonable policies and measures (within the limits of its resources), to ensure that children “enjoy family or parental care or appropriate care when removed from the family environment.”<sup>562</sup>

Various provisions in the Children's Act provide protections for children, but do not include specific references to situations of internal displacement. Section 2B outlines the role of the Child Welfare Council that the Act establishes, and tasks with the “monitoring the overall situation of children in need of care and ensuring the advancement of their welfare and rights”<sup>563</sup> as well as the “promotion and encouragement of the co-ordination of the activities of organisations which have as their object the promotion and protection of the rights of children.”<sup>564</sup> Thus, despite no express reference to internal displacement, the Council appears to bear responsibility for monitoring the situation and ensuring the welfare and rights of children in displacement, including when they are separated from their families. The Act also makes provision for a Child Welfare Fund, the object of which is “the development and promotion of the welfare and protection of children and young persons”<sup>565</sup>. This fund, administered by the Department of Social Services, contains no specific reference to children affected by displacement.<sup>566</sup>

The issue of treatment of the mortal remains of deceased family members is addressed by the Burial and Cremation Act. It states that “if at any time a registrar is satisfied that the persons responsible for burying a deceased person's body have failed to bury it within a reasonable time after the deceased person's death, he may issue a burial order to a member of the Public Service designated by the Minister”<sup>567</sup>. It appears that this provision can be used in situations where, due to their separation, family members are unavailable to take care of the body of a deceased relative. Access to adequate housing can be instrumental to the full enjoyment of family life, as discussed above. For a discussion of Zimbabwe's laws relating to the right to housing, please refer to Chapter 20. “Basic shelter and adequate housing”.

#### **f. Recommendation**

Whilst the Constitution and Zimbabwean legislation contain several provisions which broadly protect the right to family life, and the rights of certain vulnerable populations (including women, children and the elderly) broadly, additional specificity is necessary in national legislation to ensure the unique challenges of IDPs are adequately addressed. It is therefore recommended that Zimbabwe:

- Enact provisions in relevant legislation guaranteeing the right to family life and family unity of, and providing assistance to, all IDPs separated from family members, including vulnerable populations, such as children, women, the elderly, and those with special needs.<sup>568</sup>

## **15. Recognition, Issuance and Replacement of Documents**

### **a. General Context**

The ability of people to exercise their rights is frequently contingent on their access to identity documents such as a passport, birth certificate or marriage certificate. In many circumstances, however, IDPs have never had such documents, even prior to their displacement. In situations where they had such documents prior to their displacement, IDPs often lose access to them in the course of their displacement and in many cases, no longer have access to the relevant authority which would normally re-issue them. Moreover, even if they have access to the relevant authority, IDPs may struggle to afford the cost of replacement documentation. These difficulties present major obstacles for IDPs both in their inability to attain a durable solution to displacement through local integration or return to their place of origin, and in the restriction of access to essential services such as education and health care.

Accordingly, to help IDPs exercise their rights or gain access to basic services, effective access to identification documentation is crucial.

In the context of Zimbabwe, the question of citizenship is particularly relevant for the estimated 600,000 people of foreign ancestry who used to work on commercial farms in Zimbabwe, as well as their families. In most cases, these former farm workers are second- or third-generation immigrants, whose parents or grandparents had moved to Zimbabwe from Zambia, Malawi or Mozambique. However, few have ever acquired Zimbabwean citizenship documents, or other identity documents, such as birth certificates. This lack of identity documents combined with the fact that in most cases the countries of their supposed foreign citizenship do not recognise them as citizens, has left many at risk of statelessness.<sup>569</sup>

### **b. Minimum Essential Elements**

- Establish institutional mechanisms and facilitated procedures for issuing or reissuing essential documentation to IDPs, including use of official records and alternative forms of evidence available to IDPs.
- Ensure that, when appropriate and necessary, the issuance of IDP cards for purposes of identification and access to specific assistance is carried out in a rapid and accessible process.<sup>570</sup>

### **c. Kampala Convention**

Article 13 of the Kampala Convention covers ‘Registration and Personal Documentation’ and provides as follows:

- “1. States Parties shall create and maintain an up-dated register of all internally displaced persons within their jurisdiction or effective control. In doing so, States Parties may collaborate with international

organisations or humanitarian agencies or civil society organisations.

2. States Parties shall ensure that internally displaced persons shall be issued with relevant documents necessary for the enjoyment and exercise of their rights, such as passports, personal identification documents, civil certificates, birth certificates and marriage certificate.
3. States Parties shall facilitate the issuance of new documents or the replacement of documents lost or destroyed in the course of displacement, without imposing unreasonable conditions, such as requiring return to one's area of habitual residence in order to obtain these or other required documents. The failure to issue internally displaced persons with such documents shall not in any way impair the exercise or enjoyment of their human rights.
4. Women and men as well as separated and unaccompanied children shall have equal rights to obtain such necessary identity documents and shall have the right to have such documentation issued in their own names.<sup>571</sup>

The Draft African Union Model Law details the kind of arrangements required to give full implementation to this provision. In particular, State authorities are recommended to “provide for the waiver of standard and universal requirements such as specific documentation, residency requirements, health insurance coverage that limit or exclude access of Internally displaced persons to health services, and for free access to such services on the basis of needs and particular vulnerabilities”.<sup>572</sup> Also “the relevant Government institution shall elaborate a simplified, (gender, age, and disability sensitive) procedure for issuing the necessary documentations upon applications by internally displaced persons.” Notably, the Draft African Union Model Law advocates for the adoption of proactive arrangements by suggesting that “these procedures shall be publicised to areas where internally displaced persons are located” and clarifies that “loss or lack of personal documentation or lack of registration should not be used: (a) to justify the denial of essential food and relief services; (b) to prevent individuals from travelling to safe areas or from returning to their homes; or (c) to impede their access to employment opportunities.”<sup>573</sup> With a view to protecting IDPs’ right to reacquisition of lost property or compensation thereof, Governments should “restore land deeds and property documents that are destroyed or lost to owners of land and property without undue delay.”<sup>574</sup> Finally, the Draft African Union Model Law, in keeping with the criteria set out by the IASC Framework for Durable Solutions, also refers to guaranteeing IDPs’ “access to documentation” as one of the minimum safeguards upon return and re-integration<sup>575</sup>.

#### **d. U.N. Guiding Principles**

Principle 20 of the U.N. Guiding Principles addresses the recognition, delivery and replacement of documents in the following manner:

- “1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates, and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.
3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.”<sup>576</sup>

The U.N. Guiding Principles Annotations explain the legal foundations of the above principle. The U.N. Guiding Principles Annotations confirm that every IDP has the right to recognition everywhere as a person before the law and such rights are non-derogable.<sup>577</sup> The Annotations also confirm that the states should take affirmative steps to ensure such rights are upheld because “even if most human rights treaty remain silent on the issue of identity documents, the reluctance of authorities to issue documents may raise questions under several other guaranteed rights.”<sup>578</sup> Further, the U.N. Guiding Principles Annotations confirm that the principle of equality and non-discrimination would require that IDPs are able to enjoy their right to obtain necessary documents.

#### **e. Zimbabwe-specific Analysis**

##### *i. Constitution*

The Constitution ensures that all citizens of Zimbabwe have the rights to access personal documentation.<sup>579</sup> According to Section 35(3), all citizens of Zimbabwe are entitled to passports and other travel documents, birth certificates and other identity documents issued by the State.<sup>580</sup> The Constitution also confirms gender equality meaning that women also enjoy the essential rights set out in Chapter 3, including the right to access personal documentation.<sup>581</sup>

There is no general guarantee, under the Constitution, however, of a right to documentation that extends to non-citizens. As a practical matter, this issue has largely been resolved by the Constitution's provisions regarding the qualification criteria for Zimbabwean citizenship,



which make many formerly stateless or third country national IDPs eligible for citizenship. Section 43(2) of the Constitution grants citizenship to anyone born in Zimbabwe before the effective date of the Constitution if they were (i) residing in Zimbabwe on the effective date and (ii) one or both of their parents were a citizen of the SADC.<sup>582</sup> For anyone not born in Zimbabwe, Section 38 of the Constitution grants a right to registration for citizenship if (i) he or she has been married to a Zimbabwean citizen for at least five years<sup>583</sup> or has been lawfully resident in Zimbabwe for at least ten years,<sup>584</sup> whether before or after the effective date, and (ii) he or she satisfies the conditions prescribed by an Act of Parliament.<sup>585</sup> Additionally, a child who is not a Zimbabwean citizen, but is adopted by a Zimbabwean citizen, whether before or after the effective date, is entitled, on application, to be registered as a citizen.<sup>586</sup>

It is noted that the Citizenship of Zimbabwe Act, which prohibits dual citizenship, however, has yet to be amended in line with the Constitution. The Constitutional Court has ordered the Registrar General's office issue identity documents to anyone fulfilling the constitutional citizenship requirements, regardless of the Citizenship of Zimbabwe Act's prohibition on dual citizenship.<sup>587</sup>

#### *ii. National Registration Act*

An important means of protecting the rights of IDPs lacking documentation is for authorities to actively assist IDPs in searching for available pre-displacement data. Registration records are useful sources for this data. In Zimbabwe, the National Registration Act provides for the registration of persons resident in Zimbabwe and for the issue of identity documents. Under the National Registration Act, if a registration officer is satisfied as to the identity of an applicant for registration and the accuracy of any information given in connection with the application for registration, IDPs residing in Zimbabwe are entitled to register and receive identity documents.<sup>588</sup> The National Registration Act also stipulates that the Minister of Home Affairs may assign the administration of the Act may make regulations providing for any matter which by is under the National Registration Act or which in his opinion is necessary.<sup>589</sup> Such regulations may provide for the issue of identity documents, whether original, duplicate or replacement, and the fees payable thereof.<sup>590</sup> Regulations may also provide the procedure for issuing identity documents,<sup>591</sup> the surrender of identity documents issued to persons who have died or are about to leave Zimbabwe<sup>592</sup> and the notification by the holders of identity documents of a change.<sup>593</sup>

#### *iii. Analysis*

Article 13 of Kampala Convention<sup>594</sup> and Principle 20 of the U.N. Guiding Principles<sup>595</sup> require Zimbabwean authorities to ensure that internally displaced persons

shall be issued with relevant documents necessary for the enjoyment and exercise of their rights, such as passports, personal identification documents, civil certificates, birth certificates and marriage certificates. Similarly, as set out in the Minimum Essential Elements, the authorities are required to establish institutional mechanisms for issuing or reissuing essential documentation. The Constitution grants IDPs citizenship rights in Zimbabwe which they previously did not enjoy under the former constitution. Citizenship is an important qualification for access to personal documentation because under the Constitution, every citizen including IDPs has the right to access personal documentation. Similarly, the National Registration Act provides IDPs with means for the issue of identity documents even if IDPs are from outside Zimbabwe. These laws seem to comply with the above requirements.

However, under Kampala Convention and other Supranational Normative Frameworks, as identified above, competent authorities should not only establish procedures for issuing essential documentation to IDPs but also facilitate such procedures without imposing "unreasonable conditions." In regard to this point, despite the constitutional provisions and the Constitutional Court's decision described above, the Citizenship of Zimbabwe Act, which prohibits dual citizenship, has yet to be amended. Therefore, the means to securing this right under the Constitution is not fully established. In addition, the National Registration Act provides IDPs with identity documents only when a registration officer thinks fit. These provisions are only satisfactory to a certain extent as IDPs often may not be able to provide the particulars required. For example, the Registrar General's Department requires a passport for initial registration of non-citizens. However, IDPs are often unable to register even in their first place of origin and, as a result, do not have the required identification documentation. Similarly, in the case of replacement of the identity card where a birth certificate is required,<sup>596</sup> IDPs are often unable to access their birth certificate. Further, the cost of registration could be a burden on IDPs. These conditions and processes could be regarded as "unreasonable conditions" on issuance of personal documentation, and thus fail to comply with the requirements under Kampala Convention and other normative frameworks.

#### **f. Recommendations**

As described, to satisfy the Minimum Essential Elements and comply with Kampala Convention and other Supranational Normative Frameworks, competent authorities should not only establish procedures for issuing or reissuing essential documentation to IDPs but also facilitate such procedures. A facilitated documentation processes should be based on procedures that do not impose 'unreasonable conditions' such as arbitrary costs, delays, or administrative burdens on IDP applicants. In most cases,

such procedures will be used to allow the issuance of specific types of standard documentation needed by IDPs to exercise their rights.<sup>597</sup> It is therefore recommended that Zimbabwe:

- Amend the Citizenship of Zimbabwe Act to comply with the relevant provisions set out in the Constitution.
- Make the requirements for registration in the National Registration Act more flexible so as to avoid imposing 'unreasonable conditions' for IDPs.
- Subsidise or even makes free the fees set for issuing identification documentation to IDPs, which are generally perceived as too high and beyond the reach of many Zimbabweans.
- Should provide that failure to proceed to registration (or, on the part of IDPs, to comply with registration requirement) will not impair access to the protection/assistance required by IDPs.
- Create and maintain an updated register of IDPs within their jurisdiction, in accordance with the Kampala Convention.<sup>598</sup>

## 16. Property and Possessions

### **a. General Context**

Recovery of lost property is crucial to the achievement of durable solutions to internal displacement.<sup>599</sup> Such property is often appropriated or occupied by others during IDPs' absence because of the value of property left behind or because of housing shortages.<sup>600</sup> The problem is further complicated by the fact that those reoccupying property left behind by IDPs are often vulnerable populations who are IDPs themselves, or would be if evicted,<sup>601</sup> and by the fact that IDPs' rights are often neither formal nor recorded.<sup>602</sup> Protecting IDPs' property during displacement from unlawful appropriation, unlawful occupation, looting and other damage, as well as establishing procedures for restitution of such property to IDPs upon their return, must be prioritised in any effort to address internal displacement.

### **b. Minimum Essential Elements**

- Recognise the property rights of IDPs to their abandoned homes, property and land, including the right to protection and restitution of such property.
- Take basic measures to secure homes, lands and property left behind by IDPs against destruction, unlawful use or occupation and appropriation.
- Develop facilitated procedures to restore or compensate IDPs' rights in housing, land and property; where this is not possible, provide support to informal dispute resolution bodies to take into account human rights law in negotiating solutions to local property claims.
- Recognise individual rights to a minimum level of tenure security, regardless of tenure status.<sup>603</sup>

### **c. Kampala Convention and IASC Framework**

#### *i. Rights relating to IDPs' property, in general*

During displacement, the Kampala Convention requires state authorities to "[t]ake necessary measures to protect individual, collective and cultural property left behind by displaced persons [...]"<sup>604</sup> State authorities are also obligated to protect IDPs' property in the place where they currently reside.<sup>605</sup> After IDPs' displacement, state authorities are obligated to "establish appropriate mechanisms providing for simplified procedures[,] where necessary, for resolving disputes relating to the property of internally displaced persons."<sup>606</sup> As it is not always possible to return property of IDPs (for example, where it has been destroyed), the Kampala Convention requires the establishment of "an effective legal framework to provide just and fair compensation and other forms of reparations, where appropriate, to internally displaced persons for damage incurred as a result of displacement, in accordance with international standards."<sup>607</sup> One particular instance in which the Kampala Convention compels states to make reparations is the case in which

the state fails to protect IDPs during a natural disaster and the IDPs suffer damages as a result.<sup>608</sup>

The IASC Framework lists restoration of housing, land and property among the eight criteria used to determine the extent to which the search for durable solutions for IDPs has been successful.<sup>609</sup>

### *ii. Rights relating to IDPs' homes, residences and/or land, in particular*

Without limiting the rights discussed above, the Kampala Convention also recognises special rights relating to IDPs' homes, residences and land. Internal displacement and housing law and policy are inextricably linked. Indeed, the abandonment of a home is one of the three key elements to determining whether someone is an IDP.<sup>610</sup>

The right to protection against arbitrary displacement – to remain in one's home – is consistent with the broader right, recognised by the Kampala Convention to “freedom of movement and choice of residence of internally displaced persons, except where the public interest demands it.”<sup>611</sup> The broader right also includes the right to leave one's home in search of safety,<sup>612</sup> the right of IDPs to move in and out of their areas of residence<sup>613</sup> and the right against “forcible return to or resettlement in any place where [one's] life, safety, liberty and/or health would be at risk”, which could include an IDP's former home.<sup>614</sup>

Under the Kampala Convention, state authorities also have certain positive obligations to help IDPs rebuild their lives in the location of their choice. State authorities must “promot[e] and creat[e] satisfactory conditions for” any of three lasting solutions to displacement: (1) voluntary return to IDPs' former homes (often regarded as the preferred solution<sup>615</sup>), (2) local integration (i.e., in the place where the IDPs currently reside) or (3) relocation to some third part of the country, all “on a sustainable basis and in circumstances of safety and dignity.”<sup>616</sup> This right of IDPs to aid in rebuilding their lives is deduced from the general right to liberty of movement<sup>617</sup> and the related right to choose one's own residence found in Article 12(1) of the International Covenant on Civil and Political Rights.<sup>618</sup> The Kampala Convention follows international norms in paying special attention to “communities with special attachment to, and dependency, on [sic] land due to their particular culture and spiritual values [...]”<sup>619</sup>

## **d. Other Relevant Supranational Normative Frameworks**

### *i. U.N. Guiding Principles*

The Kampala Convention generally tracks the U.N. Guiding Principles in the property protections it offers IDPs. The U.N. Guiding Principles contain the general statement that “[n]o one shall be arbitrarily deprived of property

and possessions.”<sup>620</sup> This general right not to be deprived of property, whether real property or personal property, reflects principles in international instruments like the Universal Declaration of Human Rights<sup>621</sup> and the African Charter.<sup>622</sup> State authorities are prohibited from infringing this right themselves, except in extraordinary circumstances;<sup>623</sup> but the U.N. Guiding Principles make it clear that state authorities are also obligated affirmatively to protect IDPs from arbitrary deprivation of property in various circumstances.

At all times, whether during displacement, after displacement or when protecting against displacement, state authorities are to protect the property of IDPs against the following actions:

- “Pillage;
- Direct or indiscriminate attacks or other acts of violence;
- Being used to shield military operations or objectives;
- Being made the object of reprisal; and
- Being destroyed or appropriated as a form of collective punishment.”<sup>624</sup>

This list, whilst non-exhaustive, reflects the core property rights embodied in international law and identifies acts that are never justified and always constitute arbitrary deprivation of property.<sup>625</sup>

State authorities' obligation under the Kampala Convention and the U.N. Guiding Principles to protect IDPs' property *during* displacement is unpacked in the U.N. Guiding Principles Annotations into three affirmative protections state authorities must offer: (1) preventive actions (for example, deploying troops to protect property), (2) deterrent actions (for example, prosecuting those who destroy or illegally appropriate such property) and (3) preparatory actions (for example, registration of land and ownership rights).<sup>626</sup>

After displacement, whilst the Kampala Convention requires the establishment of “an effective legal framework to provide just and fair compensation and other forms of reparations”, the U.N. Guiding Principles explicitly recognise state authorities' general obligation “to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement.”<sup>627</sup> This is to say IDPs are entitled to the remedy of restitution (subject to certain exceptions).<sup>628</sup> The U.N. Guiding Principles Annotations point to a general trend in human rights instruments recognising the right to restitution or compensation.<sup>629</sup> Among the instruments the U.N. Guiding Principles Annotations point to are the Great Lakes Returning Persons' Property Rights Protocol and the Pinheiro Principles, both discussed below.

## ii. Great Lakes Instruments

The Dar Es Salaam Declaration, the Great Lakes Pact and the Great Lakes Returning Persons' Property Rights Protocol reflect the principles articulated in the U.N. Guiding Principles and the Kampala Convention, often in nearly the same terms. The Great Lakes Returning Persons' Property Rights Protocol moves beyond these principles, however, and further specifies *how* ICGLR Member States are to discharge these obligations to develop legal principles and legal frameworks ensuring recovery of property and efficient resolution of disputes. For this reason, among others, the Great Lakes Returning Persons' Property Rights Protocol is a helpful reference point, even for Zimbabwe, which is not an ICGLR Member State.

Under the Great Lakes Returning Persons' Property Rights Protocol, ICGLR Member States are obligated to:

- “Elaborate legislative procedures under which the local traditional and administrative authorities referred to in Article 69 of the Dar Es Salaam Declaration, can assist to recovery the property of returning refugees and displaced persons;
- Establish simplified formal judicial procedures to enable [i]nternally displaced persons and refugees to lodge formal claims relating to the loss or recovery of their property;
- Establish alternative and informal community[-]based mechanisms and process for resolving property disputes, with simple requirements of proof of ownership based upon reliable and verifiable testimony; [and]
- Establish an affordable property registration scheme under which title to property, including land, held under both customary and statutory land tenure systems is recognised.”<sup>630</sup>

When recovery of property is not possible, ICGLR Member States “shall provide or assist such persons in obtaining appropriate compensation [...]”<sup>631</sup>

ICGLR Member States also commit themselves to addressing specific problems relating to the protection of the property rights of returning spouses, single-parent families, single women, children and orphans.<sup>632</sup> Annexed to the Great Lakes Returning Persons' Property Rights Protocol is an especially helpful resource, the Great Lakes Returning Persons' Property Rights Protocol Model Legislation. Notable features of the model legislation include the formation of Local Property Recovery Panels and a Property Claims Commission for Returnees.<sup>633</sup>

## iii. Pinheiro Principles

Pinheiro Principles 2, 5, 6, 7, 9 and 10 of the Pinheiro Principles reaffirm the rights of IDPs discussed above, under the Kampala Convention, the U.N. Guiding Principles and the Great Lakes Returning Persons' Property

Rights Protocol: against arbitrary displacement, to peaceful enjoyment of their possessions, to freedom of movement and voluntary return and to recovery of property or compensation where recovery is factually impossible. Principles 11 – 21 of the Pinheiro Principles describe the framework of housing and property restitution rights and address, *inter alia*, accessible national restitution procedures,<sup>634</sup> participation of affected persons in the design and implementation of such procedures,<sup>635</sup> records and documentation,<sup>636</sup> the rights of tenants, non-owners and secondary occupants,<sup>637</sup> laws and enforcement of restitution decisions<sup>638</sup> and compensation.<sup>639</sup> Whilst this report cannot summarise every point made in Principles 11 – 21 of the Pinheiro Principles,<sup>640</sup> it can identify a few important provisions contained therein.

The Pinheiro Principles envision “equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims.”<sup>641</sup> The procedures, institutions and mechanisms are to be age and gender sensitive<sup>642</sup> and accessible to all, including via proxy<sup>643</sup> and by collective claim,<sup>644</sup> without regard to gender, age, place of residence.<sup>645</sup> Legal and other assistance should be provided to ensure accessibility.<sup>646</sup> The procedures must set out a clear time period for filing claims that is sufficiently long to provide an adequate opportunity to IDPs to file claims.<sup>647</sup> All affected parties must be represented and included in the decisions regarding claims made.<sup>648</sup>

IDPs with formal ownership rights to property left behind are not the only ones whose property rights should be protected. States should ensure that tenants and social-occupancy rights holders “are able to repossess and use their housing, land and property in a similar manner to those possessing formal ownership rights.”<sup>649</sup> Moreover, secondary occupants (i.e., those who occupy property after IDPs' departure) must be protected against arbitrary forced eviction.<sup>650</sup> Where eviction, for the sake of returning IDPs, is deemed justifiable, unavoidable and therefore non-arbitrary, states should ensure that such evicted persons have access to other adequate housing and should identify and provide alternative housing and/or land for such persons.<sup>651</sup> Where secondary occupants have sold property to third parties acting in good faith, states may consider providing compensation to third parties.<sup>652</sup>

States should establish a national system for the registration of housing, land and property rights.<sup>653</sup> Moreover, restitution decisions should be recorded.<sup>654</sup> States should also ensure that existing records are not destroyed in times of conflict.<sup>655</sup>

Establishing and implementing these procedures will require changes to local law. States are to “develop a

legal framework for protecting the right to housing, land and property restitution which is clear, consistent and, where necessary, consolidated in a single law.<sup>656</sup> This framework must “clearly delineate every person and/or affected group [including any subsidiary claimant like a resident family member] that is legally entitled to the restitution of their housing, land and property [...]”<sup>657</sup> Moreover, states “should take immediate steps to repeal unjust or arbitrary laws and laws that otherwise have a discriminatory effect on the enjoyment of the right to housing, land and property restitution [...]”<sup>658</sup> States must also designate specific agencies for enforcing restitution decisions<sup>659</sup> and ensure “that local and national authorities are legally obligated to respect, implement and enforce” restitution decisions.<sup>660</sup>

Finally, states are to respect IDPs’ right to compensation (monetary or in kind).<sup>661</sup> The state must only use compensation as a remedy, however, when restitution is not factually possible, the injured party voluntarily accepts compensation in place of restitution or when the terms of a peace settlement provide for a combination of restitution and compensation.<sup>662</sup> Factual impossibility should be determined by an impartial tribunal, and IDPs should have the right to rebuild, whenever possible.<sup>663</sup>

The Pinheiro Principles Handbook acknowledges that customary or traditional law can be relevant to working out IDPs’ property rights. This is especially true in Africa, which “may ultimately require different approaches and tools than those which played out in Eastern Europe and assorted other regions and sub-regions given the widespread application of customary law throughout the continent.”<sup>664</sup> In Sudan and South Sudan, for example, where formal land legislation is in place for some areas whilst customary land arrangements are in place for other areas, “[r]econciling such differences and incorporating the (human rights consistent) elements of customary or traditional land arrangements existing in the South with the formal provisions in the North [...] will be a complex endeavour [...]”<sup>665</sup> Indeed, “[i]n many settings customary law arrangements on land are equitable, widely accepted and far more simple to administer and cost effective than formal, title-based systems[...] [and] restitution practitioners will [therefore likely] be assisting in the re-assertion of the housing, land and property rights established under customary law.”<sup>666</sup>

#### *iv. Report of the Special Rapporteur on Adequate Housing*

In order to secure and protect the tenure rights of IDPs, the Adequate Housing Report advocates for states’ recognising a broad range of tenure forms.<sup>667</sup> Such recognition would strengthen IDPs’ claims to property left behind. On the other hand, it is important to understand that the recognition of such tenure forms (for example,

adverse possession) may also strengthen the claims of secondary occupants. The Adequate Housing Report also advocates for registration of tenure rights,<sup>668</sup> which in certain contexts would greatly facilitate the adjudication of claims to property left behind, discussed above.

### **e. Zimbabwe-specific Analysis**

#### *i. Property rights in general and housing rights in particular*

As noted above, internal displacement and property/housing law are inextricably linked. For example, since the abandonment of a home is one of the three key elements to determining whether someone is an IDP, strengthened housing rights can go a long way towards preventing internal displacement.

#### *General property rights*

Zimbabwe’s Constitution provides a right to property that protects private interests and generally prohibits arbitrary development-induced displacement. Section 71 accomplishes this by guaranteeing that property, including housing, may not be compulsorily acquired except when necessary for the public good.<sup>669</sup> This provision requires just compensation and ensures affected parties have access to judicial review, although an important exception exists regarding “agricultural land”, which is discussed below.

Nevertheless, the property protections of the Constitution may fall short of the demands of the Kampala Convention. Section 71 requires only that a compulsory acquisition of property be “for a purpose beneficial to the community” or “in the interests of defence, public safety, public order, public morality, public health or town and country planning.”<sup>670</sup> No specific provisions exist to provide special protection to people who may be displaced by compulsory acquisitions. Whereas the Kampala Convention does not go as far as the U.N. Guiding Principles, which demand that development projects which cause displacement be “justified by compelling and overriding public interests”,<sup>671</sup> the Kampala Convention nonetheless requires stakeholders in development projects that may provoke displacement to “explore all feasible alternatives” and to carry out socio-economic and environmental impact assessments prior to undertaking the project.<sup>672</sup> The Environmental Management Act partially cures this deficiency by requiring an environmental impact assessment for most development projects,<sup>673</sup> but there is neither a constitutional nor any other legal requirement for a socio-economic impact assessment, nor for developers to explore all feasible alternatives before undertaking a development project that will deprive individuals of private property and potentially provoke displacement.



### *Housing rights*

In addition to introducing the added protections for general individual property rights discussed above, Zimbabwe's new Constitution makes some important improvements to individual protections against arbitrary evictions and demolitions. Perhaps the constitutional provision most relevant to internal displacement is Section 74, which guarantees that all people shall be free from arbitrary evictions. Under the new Constitution, all evictions or demolitions must be accompanied by a court order, "made after considering all of the relevant circumstances."<sup>674</sup>

As discussed in Chapter 10. "Protection against Arbitrary Displacement", it is unclear if Section 74 provides sufficient protection against arbitrary displacement to bring Zimbabwe into compliance with the Kampala Convention, as the meaning of "all of the relevant circumstances" is still unsettled.

Beyond the Constitution, several lower-order laws and policies, discussed below, have an impact on housing rights and may play a role in shaping internal displacement in the future.

#### *ii. National housing legislation*

Property rights in Zimbabwe, particularly housing rights, are threatened by a legislative housing framework that remains largely unchanged from the colonial era, when zoning regulations and building standards were deliberately crafted to maintain segregated housing.<sup>675</sup> Laws such as the Regional Town and Country Planning Act and the Housing Standards Control Act provided local authority with broad powers to demolish homes and other structures that do not meet unrealistic colonial housing standards.<sup>676</sup> Laws such as the Urban Councils Act and Rural District Councils Act created overlapping authority between local and central Government, with the Minister of Local Government maintaining the power to veto actions of local authorities, suspend or replace councillors and otherwise meddle in council business.<sup>677</sup> This means that even though certain local and central policy mandates encouraged incremental development and even though demolition orders are legally the purview of local authorities, the Government can demolish urban housing under the auspices of the unrealistic housing standards imposed by the Regional Town and Country Planning Act and the Housing Standards Control Act. These housing laws are likely candidates for the Pinheiro Principles' call to "take immediate steps to repeal unjust or arbitrary laws and laws that otherwise have a discriminatory effect on the enjoyment of the right to housing, land and property restitution [...]"<sup>678</sup>

#### *iii. National housing policy*

The most recent National Housing Policy, also discussed in Chapter 20. "Basic Shelter and Adequate Housing",

encourages the reform of laws to promote incremental development and relax unattainable housing standards, thus mitigating one of the underlying causes of internal displacement in Zimbabwe. The challenge, of course, is that this policy is not binding legislation, and may have little effect on transforming the national structures that are at the root cause of much internal displacement. Some of the local governments have recently taken the recommendations to heart by relaxing housing standards to increase the regular housing supply,<sup>679</sup> but so long as the outdated national laws remain in place the conditions that have led to past displacements remain largely unchanged.

#### *iv. Agricultural land*

##### *Constitutional treatment of agricultural land*

Section 72 of the Constitution carves out agricultural land as a special category of property not subject to the general property protections discussed above. The section prohibits reliance on the non-discrimination clause of the Constitution to challenge an acquisition,<sup>680</sup> which is in tension with the Kampala Convention's prohibition of displacement based on discrimination.<sup>681</sup> Similarly, Section 72's restrictions on access to the courts are in tension with the Kampala Convention's requirement that IDPs have "effective remedies" like compensation available to them.<sup>682</sup>

Chapter 16 of the Constitution lays out the legal framework for agricultural land in detail. Some of the provisions of Chapter 16 may serve to increase stability and diminish the root causes of displacement in rural areas, whilst others are still in tension with the Kampala Convention and related international norms. Chapter 16 affirms that every Zimbabwean, regardless of race or colour, can "acquire, hold, occupy, use, transfer, hypothecate, lease or dispose of" agricultural land.<sup>683</sup> Someone who is displaced by an acquisition of land could likely rely on Chapter 16 to demand a viable resettlement option. Chapter 16 may also improve the protection environment in rural Zimbabwe by requiring the State to take "appropriate measures [...] to give security of tenure to every person *lawfully* owning or occupying agricultural land."<sup>684</sup> Whilst this is a step in the right direction, this provision does not mitigate the risk of displacement for irregular occupants of resettlement land.

##### *Fast Track Land Reform Programme*

To distinguish between lawful and unlawful occupants of resettled land in Zimbabwe, the Government has issued "offer letters", which were to be eventually converted into either A1 Permits (for smallholder farms) or A2 99-Year-Leases (for commercial farms). The Government has recently begun to issue the permits as part of the constitutional mandate to improve security of tenure in rural areas.

## **f. Recommendations**

The legislative framework for both urban and rural land creates significant instability and may provide insufficient protection of private property to satisfy the requirements of the Kampala Convention and other Supranational Normative Frameworks. Whilst the Constitution provides some important individual protections, more work remains to be done. To fully achieve compliance with the Kampala Convention and the U.N. Guiding Principles, Zimbabwe should explicitly recognise a right to adequate housing,<sup>685</sup> should create a legal obligation for the Government to provide viable alternatives before engaging in demolitions or evictions, should provide IDPs with greater access to the courts and should establish a transparent and accessible system for restitution or compensation for lost property. It is therefore recommended that Zimbabwe:

- Reaffirm in a law relating to IDPs their right to have restored to them any housing, land and/or property of which they were deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore, clarifying that right to such restitution is held by IDPs whether or not they return to their former homes.
- Create a legal obligation for the Government to provide viable alternatives before engaging in demolitions or evictions.

## **17. Electoral Rights**

### **a. General Context**

Participation in the political process, whilst not as immediately important as the need for water, food and shelter, is a crucial element in the protection of IDPs. If IDPs are not able to participate in elections and referenda as voters and candidates for election, representation of their views will be diminished and as a result governments will be less attentive to their needs and challenges. Consequently, effective policy relating to the protection of IDPs requires governments to support the participation of IDPs in the political process.

In most political systems, IDPs (insofar as they are citizens of the country in which they are displaced) will retain the formal right to vote and stand for election despite their displacement; however, significant barriers to the exercise of these rights may result. Especially for parliamentary and municipal elections, voter eligibility is usually tied to the place of residence. A key challenge is whether IDPs are allowed to cast their votes in the locality of their displacement or in the constituency of their former residence, and whether it is even safe or otherwise possible to do the latter. Other challenges arise from the failure to provide adequate information, voting facilities or security support to IDPs during the electoral process. Further, voter registration requirements (and in particular the need to supply identity documents that may have been lost) often contribute to the difficulties that many IDPs experience in exercising their electoral rights.

### **b. Minimum Essential Elements**

- Provide mechanisms for IDPs to be registered as voters during displacement, such as through facilitated procedures to maintain existing registration, to transfer registration, and/or to waive requirements that would prevent IDPs from registering at the site of displacement.
- Allow IDPs to cast their vote at the location of displacement, for either the constituency of origin (absentee vote) or the constituency of displacement.<sup>686</sup>

### **c. Kampala Convention and Declaration**

Generally the Kampala Convention acknowledges the signatory states' duty to involve IDPs in decision-making processes, by requesting them to "consult internally displaced persons and allow them to participate in decisions relating to their protection and assistance."<sup>687</sup> More specifically, States Parties to the Kampala Convention are required to take "necessary measures to ensure that internally displaced persons who are citizens in their country of nationality can enjoy their civic and political rights, particularly public participation, the right to vote and to be elected to public office."<sup>688</sup>

Whilst not specific to the treatment of IDPs, in the Kampala Declaration the African Union Member States commit to “develop by 2015, national strategies for the full implementation of the African Charter on Democracy, Elections and Governance including by aligning relevant national legislation and strengthening national institutions charged with democratisation and electoral processes.”<sup>689</sup>

The Kampala Convention also recognises that the full enjoyment of such rights is largely dependent on the issuance of the required documentation. In this respect, “States Parties shall ensure that internally displaced persons shall be issued with relevant documents necessary for the enjoyment and exercise of their rights, such as passports, personal identification documents [...]” and “facilitate the issuance of new documents or replacements of documents lost or destroyed in the course of displacement, without imposing unreasonable conditions [...]”<sup>690</sup>

#### **d. Other Relevant Supranational Normative Frameworks**

##### *i. U.N. Guiding Principles*

The U.N. Guiding Principles enshrine the rights of IDPs to participate in economic and community affairs, and to participate in public and governmental affairs, including the right to vote, and provide that IDPs have the right of access to the means necessary to exercise their rights of participation in public and governmental affairs. The U.N. Guiding Principles also protect the rights to freedom of thought, conscience, religion or belief, opinion and expression of IDPs.<sup>691</sup>

Furthermore, the U. N. Guiding Principles require authorities to facilitate the issuance of identity and other personal documents “necessary for the enjoyment and exercise of legal rights.”<sup>692</sup> Although this Principle is specifically directed towards guaranteeing the right to recognition as a person before the law, it is fundamentally intertwined with electoral rights and other forms of public participation.

##### **e. Zimbabwe-specific Analysis**

The relevant Zimbabwean legislation includes the Electoral Act and the Constitution.

The Constitution does not make specific reference to the voting rights of IDPs, although the inclusion of language supporting universal suffrage may be taken as support for the rights of IDPs to vote. The Constitution provides that “an electoral system based on i) universal adult suffrage and equality of votes; ii) free, fair and regular elections; and iii) adequate representation of the electorate”<sup>693</sup> is a founding principle of Zimbabwe. Further, Section 155 requires the State to take measures to ensure that all

qualified citizens are registered to vote and that every citizen who is eligible to vote in an election or referendum has the opportunity to cast a vote. The same section calls for an electoral system that is “free from violence and other electoral malpractices.”<sup>694</sup> Citizens over the age of 18 have the right to be registered as a voter, subject to limitations for incapacity or electoral fraud.<sup>695</sup> The Constitution also establishes the Zimbabwe Electoral Commission,<sup>696</sup> requiring the Zimbabwe Electoral Commission ZEC to ensure that elections are conducted efficiently, freely, fairly, transparently and in accordance with the law.<sup>697</sup> The Zimbabwe Electoral Commission’s responsibilities include voter registration<sup>698</sup> and voter education.<sup>699</sup>

The most recent amendments to the Electoral Act were required to bring it into line with the new Constitution, specifically by spelling out the conditions under which the general elections were to be held on 31 July 2013. These amendments were enacted by means of a statutory instrument<sup>700</sup> that the President implemented by invoking the extraordinary Presidential Powers (Temporary Measures) Act [Chapter 10:20], thereby bypassing Parliament to ensure that constitutionally valid elections could be held in time to meet an electoral deadline set by the Supreme Court.<sup>701</sup> The Electoral Act was further amended through normal parliamentary procedures in 2014, when the President signed the Electoral Amendment Act passed by Parliament in May of the same year.<sup>702</sup>

The Electoral Act does not provide specific protections for, or indeed make reference to, the electoral rights of IDPs. Voter registration is a continuous process<sup>703</sup> which is terminated in respect of a particular election 12 days after the nomination deadline for candidates in that election,<sup>704</sup> which relaxes the previous requirement for voter registration before the nomination deadline.<sup>705</sup> Eligibility to vote is based on residence in the constituency.<sup>706</sup> Absence from the constituency of residence for a “temporary purpose” does not disqualify a voter from voting in the constituency,<sup>707</sup> although if a voter ceases to reside in the constituency for a continuous period of 12 months his name may be removed from the roll of voters.<sup>708</sup> Voters only have the right to be registered in a constituency other than their constituency of residence if they intend to stand as a candidate for election in that constituency.<sup>709</sup> If a voter registered in one constituency becomes resident in another constituency, he may apply at the constituency registration office for a transfer of registration.<sup>710</sup> Electoral officers have the right to demand from any voter on the electoral roll proof of identity and/or proof of residence in the constituency.<sup>711</sup>

A ballot paper will not be issued to a voter by the presiding officer of a polling station unless the voter produces his registration certificate or proof of identity.<sup>712</sup> Voters have

the right to complain to the Zimbabwe Electoral Commission in cases where their registration is refused<sup>713</sup> and may object to the constituency registrar in the prescribed form (duplicate written objections accompanied by the prescribed fee<sup>714</sup>) where they have been removed from the roll due to absence from the constituency.<sup>715</sup>

Whilst there are several provisions in the Electoral Act and the Constitution that accord with international norms, it is clear that there is a gap between the legal environment for the support of IDPs' participation in the electoral process provided by the Electoral Act and the normative framework discussed above. A particular area of concern is that IDPs risk being removed from the roll of voters if they are absent for 12 months or more from their habitual residence and may have difficulty meeting the requirements for registering as voters in the place of their displacement. There is no specific exception from the 12-month absence rule to allow IDPs to remain on the electoral roll in their constituency of former residence; as noted above, appeals may be made by IDPs to the constituency registrar if they are removed from the roll, but the administrative requirements would make recourse to an appeal difficult for many IDPs.

If they remain on the electoral roll in their constituency of former residence, the lack of any provisions for absentee or proxy voting would severely hinder IDPs from voting in their place of former residence. The administrative requirements may make it difficult for IDPs to register and to vote in the place of their displacement and the powers granted to electoral officers leave open the possibility of abuse to prevent IDPs (or other disadvantaged groups) from voting once at the polling station. As currently drafted the Electoral Act makes both voting at their place of former residence and voting at the place of their displacement difficult for IDPs.

The Electoral Act establishes a range of criminal offences (including disorderly conduct interfering with peaceful voting at the polling station<sup>716</sup>) that provide a framework for protecting IDPs who seek to vote. Beyond the enforcement of the criminal law, the Zimbabwe Electoral Commission, security forces and electoral officers have the important practical role of supporting IDPs' participation in the electoral process.

The Zimbabwe Electoral Commission and electoral officials are given considerable power by the Electoral Act and the Constitution. Whilst not strictly a legislative issue, there may be concerns about the level of expertise present in the Zimbabwe Electoral Commission and more widely in the Government relating to the support of IDPs' participation in the political process. The effective prohibition on foreign involvement in voter education and the electoral process (whilst by no means an uncommon

policy for a sovereign state) is likely to hinder attempts at capacity building at the Zimbabwe Electoral Commission and in the political community more generally to resolve this issue.

#### **f. Recommendations**

As noted above, the Electoral Act and the Constitution provide a reasonable framework for electoral rights. However, there are several areas where the electoral rights of IDPs could be better protected in Zimbabwe. In particular, the steps outlined below would bring Zimbabwe into line with its obligations under the Kampala Convention.

Most of these recommendations suggest a relaxation of the standard voting procedures to take account of the particular challenges facing IDPs. It is noted that relaxation of voting procedures runs the risk of enabling increased electoral fraud. Therefore, such reforms must be carefully targeted so that they apply to IDPs and do not undermine the fair administration of elections in Zimbabwe. It is therefore recommended that Zimbabwe amend the Electoral Act [and/or accompanying administrative instructions] to:

- Provide simplified absentee voting procedures to allow IDPs to vote in their constituency of former residence.
- Provide procedures allowing issuance of documentation required for registration purposes outside IDPs' constituency of former residence.
- Provide a specific exception to the 12-month absence rule to allow IDPs to remain on the electoral roll in their constituency of former residence if they wish.
- Provide simplified procedures for IDPs to register to vote in their constituency of displacement (the Electoral Act would allow for simplified registration procedures to be prescribed for IDPs without a change to the legislation).

The remaining six themes (“Food”; “Water and Hygiene”; “Basic Shelter and Adequate Housing”; “Health”; “Employment, Economic Activities and Social Protection Programmes”; and “Education”) can be grouped together under the umbrella theme of basic needs. Indeed, the Supranational Normative Frameworks tend to address these themes as a group, either when elaborating what kind of humanitarian assistance IDPs require from national authorities and other organisations or when defining what it means for IDPs to have a right to an adequate standard of living. The provisions of the Supranational Normative Frameworks that apply generally to the remaining themes are therefore discussed together, below. Only those provisions of the Supranational Normative Frameworks that are applicable specifically to a particular theme are addressed in the individual themes’ sections.

### Kampala Convention and Declaration

The Kampala Convention commits States Parties to “[e]nsur[ing] assistance to internally displaced persons by meeting their basic needs [...]”<sup>717</sup> During displacement, States Parties must “[t]ake measures to ensure that internally displaced persons are received, without discrimination of any kind[,] and live in satisfactory conditions of safety, dignity and security.”<sup>718</sup> States Parties are therefore obligated to provide IDPs, “to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include [...]”:<sup>719</sup>

- food (see Chapter 18. “Food”);
- water and sanitation (see Chapter 19. “Water and Hygiene”);
- shelter (see Chapter 20. “Basic Shelter and Adequate Housing”);
- medical care and other health services (see Chapter 21. “Health”);
- education (see Chapter 23. “Education”);
- other necessary social services (see Chapter 22. “Employment, Economic Activities and Social Protection Programmes”).

States Parties are further obligated to prohibit members of armed groups from “denying internally displaced persons the right to live in satisfactory conditions of dignity, serenity, sanitation, food, water, health and shelter [...]”<sup>720</sup>

States Parties must also concern themselves with the basic needs of IDPs after displacement. The Kampa-

la Convention requires States Parties to “seek lasting solutions to the problem of displacement by promoting and creating satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis and in circumstance of safety and dignity.”<sup>721</sup>

Signatories to the Kampala Declaration call upon the international donor community “to support the efforts of African nations in protecting and assisting refugees and IDPs to meet their basic needs as well as access their fundamental rights.”<sup>722</sup>

### U.N. Guiding Principles

Principle 3 states that IDPs have the right to receive and request humanitarian assistance and protection from their national authorities.<sup>723</sup> The U.N. Guiding Principles Annotations further specify that humanitarian assistance “encompasses material and services that are essential for the survival of internally displaced persons, such as food, water, medical supplies, shelter and clothing.”<sup>724</sup> Principle 25(i) reaffirms that the primary duty and responsibility for providing humanitarian assistance to IDPs lies with national authorities; and humanitarian assistance includes providing safe access to water and sanitation services. International humanitarian organisations and other appropriate actors also have the right to offer their services to IDPs, and authorities may not arbitrarily prohibit such actors from offering such services, especially if they are unable or unwilling to provide the necessary humanitarian assistance.<sup>725</sup>

Without limiting the above, if national authorities undertake any action requiring displacement, such authorities must ensure that accommodation provided to IDPs is of a satisfactory condition in relation to “safety, nutrition, health and hygiene.”<sup>726</sup> This Principle corresponds with Article 49(3) of the Geneva Convention IV and requirements under customary international humanitarian law, as well as human rights guarantees pertaining to social rights where circumstances fall below the threshold for the application of humanitarian law.

Principle 18(i) articulates the fundamental principle underlying the provisions discussed above: namely, that IDPs have a right to “an adequate standard of living.”<sup>727</sup> Principle 18(2) goes on to specify that competent authorities must provide IDPs with and ensure safe access to:

- essential food and potable water;
- basic shelter and housing;



- appropriate clothing; and
- essential medical services and sanitation.<sup>728</sup>

This language tracks provisions in the CESCR (Article 11(1)), the Universal Declaration of Human Rights (Article 25(1)) and the U.N. Convention on the Rights of the Child (Article 27(3)).<sup>729</sup>

## 18. Food

### **a. General Context**

Food is essential for human survival, and is therefore a fundamental precondition for the exercise of virtually all human rights.<sup>730</sup> The right to adequate food is fulfilled when every person has physical and economic access at all times to adequate food or means for its procurement.<sup>731</sup> Food adequacy can be evaluated by factors such as availability of sufficient quantity and quality of food, physical access to food for all, economic access to food, cultural and consumer acceptability of food, quality of food and non-discriminatory access to food.<sup>732</sup>

### **b. Minimum Essential Elements**

- Recognise the right to adequate food for IDPs.
- Designate a governmental authority to be responsible for the procurement, storage and distribution of food to IDPs, and allocate the assignment of sufficient funds for this purpose.
- Seek and accept the support of the international community if needs cannot be sufficiently satisfied at the domestic level.
- Establish procedures to identify and prioritise beneficiaries of food and other nutritional assistance on the basis of need and particular vulnerability.
- Eliminate any obstacles hindering the domestic sourcing of food, such as subsidies or price regulations on domestic materials and commodities that set their prices above global levels.<sup>733</sup>

### **c. Kampala Convention**

Article 9(1)(e) of the Kampala Convention requires that States Parties protect the rights of IDPs regardless of the cause of displacement by refraining from, and preventing, *inter alia*, starvation.<sup>734</sup>

Moreover, the U.N. Guiding Principles affirm the right of IDPs to a sufficient standard of living and specify that, at the minimum, regardless of the circumstances and without discrimination, authorities must provide and ensure IDPs safe access to essential food.<sup>735</sup>

### **d. Other Relevant Supranational Normative Frameworks**

#### *i. Great Lakes IDP Protocol*

Under the Great Lakes IDP Protocol, ICGLR Member States commit to ensure the supply of food “in satisfactory conditions” in areas clear of “armed conflict and danger” with additional regard given to “the special needs of women, children, the vulnerable, and persons with disabilities.”<sup>736</sup>

### **e. Zimbabwe-specific Analysis**

The Constitution grants to every person the right to ac-

cess “sufficient food.”<sup>737</sup> Whilst the Constitution does not provide clear guidance of what “sufficient food” comprises of, it appears to indicate this right is aspirational, and is constrained by the State’s available resources: the State “must take reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of this right.”<sup>738</sup> Section 15 of the Constitution contains several broad provisions relating to food security, requiring the State to “(a) encourage people to grow and store adequate food; (b) secure the establishment of adequate food reserves; and (c) encourage and promote adequate and proper nutrition through mass education and other appropriate means.”<sup>739</sup> No existing laws have been identified which contain specific provisions regarding the right of IDPs to access sufficient food. The Constitution does, however, guarantee all children a right to “nutrition”<sup>740</sup> and obligates the State to adopt “reasonable policies” to ensure that some vulnerable groups such as children and the elderly have access to basic nutrition and food.<sup>741</sup>

Although not binding legislation, Zimbabwe’s latest official development plan, *Zim Asset*, sets out food security as one of the four key strategic clusters that will shape development priorities between 2013 and 2018.<sup>742</sup> The plan lists a wide range of strategies for increasing food security and nutrition including supporting inputs and new financing streams for farmers, improving market linkages, and rebuilding infrastructure.<sup>743</sup> Whilst IDPs are not mentioned specifically, *Zim Asset* repeatedly discusses measures to improve food security and nutrition for “vulnerable” populations.<sup>744</sup>

Several important gaps exist in Zimbabwean legislation when compared to the applicable Supranational Normative Frameworks. Zimbabwe does not criminalise the use of starvation as a method of war. No procedures appear to be in place, which would identify and classify recipients of food assistance on the basis of their needs and state of vulnerability. A single governmental authority responsible for providing, storing and distributing food to IDPs, and ensuring sufficient funds for such purposes, also does not appear to exist. Based on available information, Zimbabwe does not appear to have prioritised removing obstacles to domestic food sourcing, or facilitating the importation of food.

#### ***f. Recommendations***

Whilst the right to food is enshrined in the Constitution, legislative protection of the treatment of specific food rights of IDPs in Zimbabwe is needed. Domestic legislation is similarly lacking in protecting the rights of vulnerable populations to food, food security, and the penalisation of deprivation of food. It is therefore recommended that Zimbabwe:

- Acknowledge in new legislation and regulation relating

to IDPs the right of IDPs to adequate food, considering the special needs of women, children, the vulnerable and people suffering from incapacities.<sup>745</sup>

- Include in the mandate of the IDP focal institution, the procurement, storage and distribution of food to IDPs or coordination thereof, and allocating the assignment of sufficient funds for this purpose.<sup>746</sup>
- Eliminate any obstacle hindering the sourcing of food for domestic consumption.

## 19. Water and Hygiene

### a. General Context

Access to potable water is essential for human survival, and is therefore an essential precondition for the exercise of virtually all human rights.<sup>747</sup> IDPs, especially vulnerable groups within the category such as women, children or ethnic or religious minorities, often face particular challenges to accessing clean water for drinking and sanitation during the course of their displacement and resettlement. The right to water and sanitation “applies throughout the displacement period, and constitutes a precondition for enjoyment of the right to adequate food, the right to adequate housing, the right to health, and the right to participate in economic activities.”<sup>748</sup>

### b. Minimum Essential Elements

- Recognise the right to potable water for IDPs.
- Designate an agency at the local level responsible for the provision and maintenance of water and sanitation services for IDPs, whether they are in camps or not.
- Seek and accept assistance from the international community if needs cannot be sufficiently satisfied at the domestic level.
- Establish procedures to identify and classify the recipients of water and sanitation services on the basis of their need and particular vulnerability.<sup>749</sup>

### c. Kampala Declaration

Paragraph 22 of the Kampala Declaration states that the signatories commit themselves to deal with challenges of, *inter alia*, water and sanitation, in their efforts to find durable solutions to the problem of refugees and IDPs.<sup>750</sup>

### d. Other Relevant Supranational Normative Frameworks

#### i. Great Lakes IDP Protocol

Under the Great Lakes IDP Protocol, ICGLR Member States are committed to ensuring that IDPs can establish themselves “under satisfactory conditions”, *inter alia*, with regards to hygiene and access to water, far from the zones of armed conflicts and danger.<sup>751</sup> In the event of enforced relocation, the ICGLR Member States have the obligation to provide “adequate and habitable sites of relocation” which meet adequate conditions for safety, sanitation and hygiene.<sup>752</sup>

When providing the necessary facilities and arrangements with regard to water supply and sanitation systems, ICGLR Member States are obliged to take into account “the special needs of women, children, the vulnerable, and persons with disabilities.”<sup>753</sup> The ICGLR Member States agree to accept international help when local governments lack the capacity to provide protection and assistance for IDPs, which can be interpreted to include

the provision for their basic needs in food and water.<sup>754</sup>

#### ii. Pinheiro Principles

The Pinheiro Principles do not offer specific principles related to the issue of water and sanitation. However, Principle 8 states that IDPs should have the right to “adequate housing”, which has been interpreted to include adequate facilities, such as access to water and sanitation facilities.<sup>755</sup>

Overall, the Supranational Normative Frameworks provide greater guidance and impose broader obligations than the Kampala Convention with regards to water and sanitation. Whilst the Kampala Convention provides an overarching broad obligation to provide “adequate humanitarian aid”, including water and sanitation, and contains provisions relating to non-discrimination, the other Supranational Normative Frameworks provide more specific guidelines for the needs of women, children and vulnerable populations, as well as the participation of IDPs in decision-making with regards to access to resources.

### e. Zimbabwe-specific Analysis

#### i. Constitution

The Constitution contains broad protection for the right to life and human dignity, which are relevant in the context of basic water and sanitation rights essential for human survival and necessary for human dignity. Specifically, Section 77(a) of the Constitution provides that every person has the right to “safe, clean and potable water”, and the State is required to take “reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of this right.”<sup>756</sup> As such, IDPs have a constitutional right to receive sufficient potable water, regardless of their particular geographical circumstances. The Constitution also mandates that an Act of Parliament allocate revenues to local authorities to provide basic services, including water, to marginalised areas.<sup>757</sup>

Female IDPs, who are frequently responsible for seeking access to water and sanitation for the family, are often in need of special protection against discrimination and unequal treatment. Women’s right to equality is generally enshrined in Section 80(1) of the Constitution, which ensures “equal opportunities in political, economic and social activities.”<sup>758</sup>

#### ii. Water Act

The Water Act, amended most recently in 2002, stipulates that all water is vested in the power of the President and that the use thereof can be obtained by acquiring a permit of usage, in accordance with the rules stated in the Water Act.<sup>759</sup>

The Government or appointed local ministries thus have the obligation to “ensure the availability of water to all citizens for primary purposes” and to “ensure the equitable and efficient allocation of the available water resources.”<sup>760</sup> The relevant ministries also “encourage participation by consumers” in the effective equitable allocation of potable water for primary purposes as well as securing “affordable water to consumers in underprivileged communities.”<sup>761</sup> Whilst IDPs are not specifically mentioned in the legislation, their status as members of an underprivileged community may afford them protection under this provision.

Section 32(1) of the Water Act allows “any person” to abstract water for primary purposes, but this right does not confer on any person “a right, which he does not otherwise possess, to enter or occupy land for the purpose of extracting water.”<sup>762</sup> As IDPs living in temporary or irregular shelter may lack the right to enter or occupy land where the water is located, the application of this right to them is severely limited, and they must rely on local authorities for access to water and sanitation facilities.

Pursuant to Sections 20 *et seq.* of the Water Act, the Minister the Minister of Rural Resources and Water Development must issue regulations defining catchment councils, which then are able to issue usage permits and perform other regulatory functions. By mandating that communities hosting significant numbers of IDPs must have an explicit channel to catchment councils, either through direct representation or an IDP focal institution, the Minister could further the possibility for IDPs to advocate on their own behalf for water rights.

### *iii. The Public Health Act*

Part IV of the Public Health Act provides that local authorities have the obligation, “as may be reasonably possible”, to “provide and maintain a sufficient supply of wholesome water for drinking and domestic purposes.”<sup>763</sup> Local authorities are thus entitled to take control of water sources within a district, or acquire water supplies from elsewhere, with the objective of providing potable water for the people residing in the district. Although not explicitly mentioned in the Public Health Act, IDPs living in areas controlled by local authorities (i.e., not on communal land) are equally entitled to potable water supplied by local authorities.

A local authority is entitled to make a “minimum charge” for the water it supplies to “occupied premises” within its district.<sup>764</sup> IDPs may face hardship if they lack the ability to pay for the requisite amount of water for drinking and sanitation purposes. This problem could become especially acute in situations where supply of water is privatised, and there are insufficient limits on the amount charged. The Public Health Act does provide however,

that when a private business is in charge of distributing water, it must act as though “it were the local authority” (i.e. with the identical obligations).<sup>765</sup>

Section 66 provides that local authorities responsible for water supply have the obligation to maintain existing water supplies “in a condition for the effective distribution” for the supply of pure water for drinking and domestic purposes.<sup>766</sup> Thus, when IDPs return to their original place of residence following a period of displacement, if the water works in that place had been damaged or destroyed, the local authority would be obliged to repair or rebuild water facilities.

### **f. Recommendation**

Zimbabwean law recognises the right of any individual to access sufficient potable water and safe sanitation facilities so as to satisfy basic human needs. Zimbabwean legislation therefore conforms with international standards on this point, however specific protections for IDPs should be included.

- Zimbabwean legislation should include a specific section on IDPs within communities to ensure they have access to the water supplies allocated to that area by public or private authorities. IDPs should be able to access essential water supplies free of charge or at a subsidised rate if they are unable to afford water and sanitation facilities sufficient to meet their basic needs.<sup>767</sup>

## 20. Basic Shelter and Adequate Housing

### a. General Context

With the adoption of the Universal Declaration of Human Rights the right to housing was formally recognised as a basic entitlement of any human being.<sup>768</sup> Other international human rights instruments and related authoritative guidance<sup>769</sup> have specified that the right to housing entails much more than just four walls and a roof over one's head. The need to guarantee everyone's access to shelter thus needs to be coupled with additional guarantees protecting housing as a space where the individual finds his/her own security and develops human relationships in dignity and in a climate of privacy.

Under Article 11(i) of the CESCR, states parties "recognise "right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions".<sup>770</sup> In its General Comment 7, the UNCESCR further elaborated on standards related to adequate housing by defining forced evictions as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection."<sup>771</sup> In the same General Comment 7, the United Nations body stated that forced evictions as *prima facie* incompatible with the requirements of the CESCR.<sup>772</sup>

Displacement entails a major disruption in human living, involving the loss of homes that provide protection from the elements and from intruders.<sup>773</sup> Securing such protection again is an immediate priority for IDPs, but the living conditions encountered by IDPs are often either unsafe because of tensions with host communities, risks of contagious diseases, exposure to natural hazards, etc. or otherwise insecure because the housing is temporary (for example, with family or friends), the IDPs lack formal property rights or other recognised titles legitimising their tenure or use, or the local communities seek to discourage an influx of new residents.<sup>774</sup> Housing issues are also sometimes the cause of displacement. Insecure tenure (discussed in greater detail below) can make inhabitants vulnerable to forced evictions.<sup>775</sup> Securing adequate housing therefore addresses one of IDPs' most important needs whilst also preventing additional displacement.

Adequate housing provides IDPs with:

- legal security of tenure, especially in the form of protection against forced evictions;
- available services and infrastructure (access to water, energy for cooking, heating, and lighting, sanitation and washing facilities, food storage, waste disposal, and so on);
- affordable housing costs such that the attainment of

other basic needs is not threatened;

- habitability in the sense of adequate space, physical safety, and protection from cold, damp, heat, rain, wind, structural hazards, and disease vectors;
- sufficient accessibility that disadvantaged or vulnerable groups are not left without shelter appropriate to their particular needs;
- a physical location allowing affordable access to employment options, health care services, schools, child-care centres, and other social facilities and avoiding risks from pollution sources;
- appropriate construction and materials for the expression of cultural identity; and
- compliance with safety standards aimed at minimising damage from future disasters.<sup>776</sup>

### b. Minimum Essential Elements

- Recognise the right to basic shelter and adequate housing for IDPs;
- Designate a governmental agency responsible for addressing shelter and housing needs of displaced persons;
- Seek and accept support from the international community if needs cannot be sufficiently satisfied at the domestic level;
- Establish procedures to identify and prioritise beneficiaries of basic shelter and adequate housing on the basis of need and particular vulnerability;
- Remove legal obstacles as contained, for example, in building and similar codes, for the construction of transitional shelters or the rebuilding of houses in return or relocation areas; and
- Create specific guarantees to protect IDPs against forced evictions where general guarantees are insufficient. The authorities should also include provisions on the procedures by which evictions may be legitimately carried out.<sup>777</sup>

### c. Kampala Convention and IASC Framework

Once IDPs are sheltered, States Parties are obligated to "[r]espect and maintain the civilian and humanitarian character of the places where internally displaced persons are sheltered and safeguard such locations against infiltration by armed groups or elements [...]"<sup>778</sup>

The IASC Framework lists access to an adequate standard of living and restoration of housing (land and property) among the eight criteria used to determine the extent to which the search for durable solutions for IDPs has been successful.<sup>779</sup>

### d. Other Relevant Supranational Normative Frameworks

#### i. Pinheiro Principles

The Pinheiro Principles address IDPs' right to housing



as part of a broader set of rights to housing, land and/or property lost through the displacement process. For a broader discussion of these rights, see Chapter 16. “Property and Possessions”. The Pinheiro Principles do also address two rights specifically related to adequate housing, however. The Pinheiro Principles recognise that “[e]veryone has the right to be protected against arbitrary or unlawful interference with his or her privacy and his or her home” and provides that states shall ensure that proper safeguards are put in place to protect such right.<sup>780</sup> The Pinheiro Principles also explicitly recognise the right to adequate housing and go on to say that states “should adopt positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing.”<sup>781</sup>

## ii. *The Guiding Principles on Security of Tenure for the Urban Poor*

In 2013, at the request of the UNHRC, the Special Rapporteur on adequate housing, Raquel Rolnik, prepared the Adequate Housing Report, which set forth, for adoption by the UNHRC, the Security of Tenure Guiding Principles<sup>782</sup> and provided commentary on the same.<sup>783</sup> Security of tenure, here, “is understood as a set of relationships with respect to housing and land, established through statutory or customary law or informal or hybrid arrangements, that enables one to live in one’s home in security, peace and dignity.”<sup>784</sup> Security of tenure is “an integral part of the right to adequate housing [...]”<sup>785</sup>

Underlying the Security of Tenure Guiding Principles is “a presumption that individuals and communities occupying land or property to fulfil their right to adequate housing, and who have no other adequate option, have legitimate tenure rights that should be secured and protected.”<sup>786</sup> To secure and protect these tenure rights, the Security of Tenure Guiding Principles advocate that states recognise a broad range of tenure forms. Among these forms are adverse possession, use rights (formal permission to continue using property until and unless certain conditions are met), collective tenure (where ownership, rental or use rights are held under a shared governance structure), housing cooperatives and community land trusts.<sup>787</sup>

Security of tenure in the context of displacement should be ensured in situ (i.e., in the place where the IDPs in question currently reside) rather than through resettlement, unless concerns for public health and safety or the environment dictate otherwise.<sup>788</sup> Even where there are concerns for public health and safety or the environment, “States must explore all feasible alternatives in consultation with affected persons” before resettling and “should use all resources at their disposal, including through international assistance, to explore in situ alternatives”, including through improving housing in situ.<sup>789</sup>

Possible methods of securing tenure in situ on private property include: recognition of adverse possession rights; rental of property by the owner with legal tenancy protections; sale of the property with state support; sale of private property to the state and subsequent grant or rental to occupants, expropriation and subsequent grant or rental to occupants; and land-sharing arrangements.<sup>790</sup> To ensure that sufficient public or private land is allocated to meeting the tenure needs of IDPs, states should: conduct audits of unused public lands and current housing needs; allocate public land to the provision of housing to IDPs; restrict property speculation and tax underutilised private property; implement regulations that restrict predatory lending and reduce the risk that poor households will lose their homes; and prohibit eviction until a household has access to alternative adequate housing.<sup>791</sup>

## e. *Zimbabwe-specific Analysis*

The Constitution, unlike the constitutions of some of Zimbabwe’s neighbours, does not include an explicit right to housing or shelter.<sup>792</sup> Rather, the Constitution requires that State authorities “take reasonable legislative and other measures, within the limits of resources available to them, to enable every person to have access to adequate shelter.”<sup>793</sup> This provision may fall short of the requirements under the Kampala Convention, under which States Parties are to provide IDPs with adequate shelter and other humanitarian assistance “to the fullest extent practicable and with the least possible delay.”<sup>794</sup> The reasonable measures requirement under the Constitution is arguably less stringent than the “fullest extent practicable” standard of the Kampala Convention. Special legislation is therefore probably necessary to ensure that IDPs receive adequate housing during and after displacement. Any such special legislation would need to address, in particular, development-induced displacement since the Kampala Convention appears to require that, at a bare minimum, any such displacement must be accompanied by a viable resettlement programme to ensure IDPs do not become homeless and lose access to health care, school and other basic rights.<sup>795</sup> For more on development-induced displacement, see Chapter 10. “Protection against Arbitrary Displacement” and Chapter 11. “Reduction of the Risks of Displacement in the Event of Catastrophe”.

As noted in Chapter 16. “Property and Possessions”, Zimbabwe’s current legislative housing framework remains largely unchanged from the colonial era, when zoning regulations and building standards were deliberately crafted to maintain segregated housing.<sup>796</sup> This framework threatens property rights in Zimbabwe, particularly housing rights. First, laws such as the Regional Town and Country Planning Act and the Housing Standards Control Act provided local authority with broad powers to demol-

ish homes and other structures that do not meet unrealistic colonial housing standards.<sup>797</sup> Second, laws such as the Urban Councils Act and Rural District Councils Act created overlapping authority between local and central Government, with the Minister of Local Government maintaining the power to veto actions of local authorities.<sup>798</sup>

Although there have been few advances in reforming national housing laws to improve the protection environment for IDPs, the most recent National Housing Policy is a clear step in the right direction. Drafted after “an intensive consultative”, this policy attempts to move housing towards a more realistic, pro-poor framework than previous versions.<sup>799</sup> Most relevant to internal displacement, this policy mandates that the Government find suitable alternative shelter for affected populations before undertaking eviction or demolition campaigns.<sup>800</sup> If implemented, this would go a long way to ensuring that development-induced displacements are undertaken in such a way that they do not constitute “harmful practices” or otherwise amount to “arbitrary displacement” and, therefore, are not in violation of the Kampala Convention.

Regarding improved security of tenure, the Constitution calls on the Government to “take appropriate measures” to establish tenure security for lawful occupants of agricultural land.<sup>801</sup> Although many IDPs and potential victims of displacement may not be considered “lawful” occupants, this provision may pave the way for increased tenure security in general on agricultural land. This mandate parallels with a policy objective, as laid out in Zimbabwe’s latest development plan, *Zim Asset*, to provide housing (among other services) in rural resettlement areas and to issue more secure tenure documents.<sup>802</sup> *Zim Asset* also calls for housing construction generally,<sup>803</sup> although it should be noted that none of these measures are specifically directed towards IDPs.

#### **f. Recommendations**

There is currently no identifiable Zimbabwean legislation which formally guarantees that IDPs receive adequate housing during and after displacement. Thus, the steps outlined below would help bring Zimbabwe into line with the relevant Minimum Essential Elements and Supranational Normative Frameworks in this area. It is therefore recommended that Zimbabwe:

- Pass legislation guaranteeing that IDPs receive adequate housing during and after displacement.
- Ensure, in particular, that development-induced displacement and other evictions are accompanied by a viable resettlement programme ensuring that IDPs do not become homeless.
- Promote security of tenure for IDPs by reforming out-dated laws that contribute to insecurity of tenure.

## **21. Health**

### **a. General Context**

The right to health is composed of two elements: the first being the right to healthcare; and the second being the right to live in healthy conditions.<sup>804</sup> The UNCESCR framework concerning respect for the right to health elaborates on the first element:

- the widespread availability of functioning public health and healthcare facilities, goods and services;
- the physical accessibility of such facilities, goods and services to all sections of the population, including vulnerable and marginalised groups;
- the economic accessibility of such facilities, goods and services to all, such that socially disadvantaged groups are not disproportionately burdened with health-related expenses;
- the accessibility of information on health issues, subject to the right to have personal data treated with confidentiality;
- the acceptability of healthcare facilities, goods and services with respect to medical ethics and confidentiality, as well as cultural, gender and life-cycle considerations of individuals and particular groups;
- the quality of healthcare must be culturally, scientifically and medically appropriate; and
- healthcare facilities, goods and services must be accessible to all without discrimination and particularly to the most vulnerable and marginalised sections of the population.<sup>805</sup>

IDPs often lose access to medical facilities, goods and services as a result of their displacement. This may be through physical inaccessibility due to the remoteness of the area to which they have been forced to relocate or due to discriminatory policies adopted by the state that block their access to treatment.<sup>806</sup> Access also may be constrained due to destruction or damage to health infrastructure as a result of the causes (e.g. conflict, violence, disaster) causing displacement. It may also be that health infrastructure simply does not exist or never did in the localities where IDPs live during displacement.

The second element points to “a public health, preventive perspective focusing on the social determinants of health – including water, sanitation, nutrition and health education.”<sup>807</sup> Displacement can also have an impact on health through the inadequacy of temporary living accommodation in relation to issues, including overcrowding, the risk of attacks or sexual assaults, poor water supply and sanitation issues leading to the spread of water-borne disease.<sup>808</sup>

This section will consider whether IDPs have access to (i) medical facilities as part of their right to healthcare, and (ii) clean water supply, which is an inalienable component

of the second element of the right to health. Other factors relating to this second element of the right to health are reviewed in Sections 18. “Food”, 19. “Water and Hygiene” and 20. “Basic Shelter and Adequate Housing”.

#### **b. Minimum Essential Elements**

- Recognise the right to health for IDPs.
- Designate an agency or organisation responsible for providing essential health services to IDPs in cases where IDPs cannot easily access regular services available to the general population.
- Seek and accept assistance from the international community if needs of IDPs cannot be sufficiently satisfied at the domestic level.
- Establish procedures to identify and prioritise beneficiaries of health services on the basis of need and particular vulnerability.
- Provide for the waiver of standard and universal requirements (for example, specific documentation, residency requirements, health insurance coverage) that limit or exclude access of IDPs to health services, and for free access to these services on the basis of need and particular vulnerability.<sup>809</sup>

#### **c. Kampala Convention and Declaration**

Article 9(2)(c) of the Kampala Convention obligates States Parties to provide particular protection to IDPs with special needs, “including separated unaccompanied children, female heads of households, expectant mothers, mothers with young children, the elderly, and persons with disabilities or communicable diseases.”<sup>810</sup> Moreover, it falls on States Parties to “take special measures to protect and provide for the reproductive and sexual health of internally displaced women as well as appropriate psycho-social support for victims of sexual and other related abuses.”<sup>811</sup>

The signatories to the Kampala Declaration commit to “ensure that all refugee victims of rape, sexual abuse, violence and exploitation in our territories will have free access to legal advice, support and counselling in order to seek and obtain effective redress for the violation of their rights and dignity as well as medical attention, rehabilitation and reintegration.”<sup>812</sup>

#### **d. Other Relevant Supranational Normative Frameworks**

##### *i. U.N. Guiding Principles*

Principle 19 elaborates on the requirement of access to medical care, stating:

- “1. All wounded and sick internally displaced persons, as well as those with disabilities, shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other

than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.

2. Special attention should be paid to the health needs of women including access to female health care providers and services, such as reproductive health care, and appropriate counselling for victims of sexual abuse and other abuses.
3. Special attention should be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.”<sup>813</sup>

Principle 19(1) adopts wording used in customary international humanitarian law in order to set the highest attainable standard of health and facilities for all those in need, without any discriminatory profiling to determine those who receive care. The inclusion of the phrase, “to the fullest extent practicable”, however, highlights that it is sometimes difficult to provide the level of care required. Principle 19(2) requires additional focus on female health issues needs to counter gender bias and the provision of inadequate and inappropriate medical services to women. Principle 19(3) is also aligned with various sources of international humanitarian law relating to the prevention of “epidemic, endemic and other diseases”.<sup>814</sup>

##### *ii. Great Lakes IDP Protocol*

The Great Lakes IDP Protocol sets out that the ICGLR Member States are committed to ensuring that IDPs can live “under satisfactory conditions” through providing safe zones far from armed conflict or danger with specific hygiene and water provision. ICGLR Member States will attempt to achieve this “by having regard to the special needs of women, children, the vulnerable and people with disabilities.”<sup>815</sup>

The Great Lakes IDP Protocol Model Legislation also provides more detail on the protection of IDPs’ health than the Kampala Convention. Generally, the Great Lakes IDP Protocol Model Legislation requires that a Minister in charge of IDPs bears the primary duty and responsibility for protecting and assisting IDPs.<sup>816</sup> In relation to health issues, the Minister is charged with:

- ensuring that areas in which IDPs reside are adequately provided with basic social and health services; and
- ensuring, where necessary, that there is the maintenance of public health along with public order and security in such areas.<sup>817</sup>

#### **e. Zimbabwe-specific Analysis**

##### *i. The right to healthcare*

Section 29 of the Constitution outlines the basic duties of the Government to provide health services. Section 29(1) requires that “the State must take all practical measures to ensure the provision of basic, accessible and adequate

health services throughout Zimbabwe.”<sup>818</sup> The State is also required to take “appropriate, fair and reasonable measures to ensure that no person is refused emergency medical treatment at any health institution.”<sup>819</sup> The State is further obligated to “take all preventative measures within the limits of the resources available to it, including education and public awareness programmes, against the spread of disease”.<sup>820</sup>

Chapter 4 of the Constitution sets out the fundamental human rights of every Zimbabwean citizen. Under Section 76(1), “every citizen and permanent resident of Zimbabwe has the right to have access to basic health-care services, including reproductive health-care services.”<sup>821</sup> Section 76(2) states that those who suffer from a chronic illness have the right to access to basic healthcare for such illness,<sup>822</sup> whilst Section 76(3) prohibits any person from being denied emergency medical treatment in any health-care institution.<sup>823</sup> The State is under the obligation to take “reasonable legislative and other measures, within the limits of the resources available to it, to achieve the progressive realisation of the rights” contained in Section 76.<sup>824</sup>

Certain human rights are elaborated under Part 3 of Chapter 4 of the Constitution, with respect to vulnerable groups “to ensure greater certainty as to the application of those rights and freedoms to particular classes of people.”<sup>825</sup> The Constitution does not set out special provisions regarding the protection of women’s health needs or those of displaced victims of sexual and other abuses, which is contrary to the special protections afforded in the Kampala Convention and the U.N. Guiding Principles to victims of sexual and gender-based violence or those with particular vulnerabilities such as communicable diseases.

Section 57 under Part IV of the Public Health Act provides wide-ranging powers to the Minister of Health and Child Care in relation to the treatment of victims of sexually transmitted diseases, including authorisation to:

- “(a) provide [sexually transmitted disease examinations] free of charge;
- (b) make provision for the free treatment and, where necessary, the accommodation and maintenance of persons infected with sexually transmitted disease [...];
- (c) supply, free of charge, such remedies as may be specified from time to time in the Gazette for use in the treatment of persons infected with sexually transmitted disease who are treated as free patients at any public institution;
- [...]
- (e) establish and maintain special accommodation for the maintenance and treatment of persons infected with sexually transmitted disease who are liable

to detention [...]”<sup>826</sup>

There is no breakdown of the number of displaced persons who have received HIV-related medical attention. In this regard, a number of issues may affect the IDP community, such as a limited amount of knowledge regarding avoiding the spread of disease and a lack of access to health education or treatment centres, which would not be considered problematic for the general population.

As set out in the Kampala Convention and the U.N. Guiding Principles, a cornerstone of protecting IDPs’ right to health is providing for special protection for IDPs with special needs, including those infected with communicable diseases. It is noted, however, that the focus of Part III of the Public Health Act is not on providing access to medical attention to those affected but on the removal of such individuals so as not to affect the general population. Part III further places the onus on the infected individual to attend treatment rather than the State to provide treatment. This is a problem for IDPs whose displacement may mean that they have been forced to move to remote locations where access to healthcare services is difficult. The State’s obligation to provide treatment to infected individuals may be implicit under the Public Health Act given the containment of infected individuals in hospitals, but this commitment arises in situations where the individuals’ criminal conduct results in imprisonment.

#### *ii. The right to clean water supply*

As discussed above, the right to clean water is a fundamental component of the second element of the right to health as it relates to the right to live in healthy conditions. The provision of water may be considered in the context of: 1. Adequacy and equity of the service provided; 2. Acceptability and safety of the service provided; 3. Minimum social burden on the users; 4. Physical safety of the users; 5. Reliability of services; 6. Minimum environmental damage; 7. Efficient use of facilities; and 8. Participation of stakeholders and co-ordination.<sup>827</sup> Section 77 of the Constitution states that “every person has the right to – (a) safe, clean and potable water; and (b) sufficient food” and that the State must take reasonable steps to achieve the realisation of this right.<sup>828</sup>

Part VI of the Public Health Act elaborates that there is a duty on every local authority to furnish “a sufficient supply of wholesome water for drinking and domestic purposes.”<sup>829</sup> Each local authority shall maintain all water works vested in its jurisdiction “in a condition for the effective distribution of a supply of pure water for drinking and domestic purposes.”<sup>830</sup> There is no distinction made under either the Constitution or the Public Health Act in relation to the standard of the provision of water in emergency situations, where “[the] provision of water and sanitation is among the top priorities and needs to

be planned and initiated from the very beginning of the crisis”,<sup>831</sup> in contrast to such supply in stable conditions.

Under Section 84 of the Public Health Act, local authorities are obligated to prevent or remedy any danger to health which could arise “from “the erection of or occupation of unhealthy dwellings or premises or the erection of dwellings or premises on unhealthy sites [...]”<sup>832</sup> Under Sections 83 and 85(c), they are further required to maintain cleanliness and prevent nuisances,<sup>833</sup> including any nuisance relating to “any well or other source of water supply or any cistern or other receptacle for water, whether public or private, the water from which is used or is likely to be used by man for drinking or domestic purposes [...] which is polluted or otherwise liable to render any such water injurious or dangerous to health.”<sup>834</sup>

Further to these provisions, the Water Act provides a comprehensive legislative background for the development and utilisation of water resources in Zimbabwe, the control of use when water is in short supply and the protection of the environment and prevention and control of water pollution.<sup>835</sup>

The Housing Standards Control Act reiterates that “in every dwelling there shall be an adequate supply of potable water”<sup>836</sup> and stipulates that there must be at least “one water point for every unit of twelve occupants, which is accessible with reasonable convenience to all the occupants of the dwelling.”<sup>837</sup> Where the condition of any of the water supply, personal washing facilities, drainage and latrines, freedom from damp, facilities for the storage, preparation and cooking of food and the disposal of waste water and any contravention under the Public Health Act, “is so far defective that the building is not reasonably suitable for occupation in such condition”, the building shall be deemed of unsatisfactory standard,<sup>838</sup> and may be subject to a repair,<sup>839</sup> demolition<sup>840</sup> or closure order.<sup>841</sup>

The relevant authority is permitted to apply to the housing court clerk to issue a summons provided that the date stated in the summons is not less than 21 nor more than 30 days from the date on which the summons is issued.<sup>842</sup> The owner of, or any right holder in, any building subject to the summons has the right to deliver a written statement to the relevant parties opposing the making of the order up to not less than four days prior to the date stated in the summons.<sup>843</sup>

### *iii. Responsibility for public health*

Certain national laws set out that the Minister of Health and Child Care has overall responsibility for public health in Zimbabwe. Section 3 of the Medical Services Act provides that “the Minister shall as far as is reasonably possible (a) provide and maintain comprehensive and

constantly developing medical services; and (b) encourage local authorities and other persons to provide such services.”<sup>844</sup> The Public Health Act also stipulates that the Minister of Health and Child Care is responsible for preventing and guarding against the introduction of extra-territorial diseases and promoting the public health and prevention of infectious and contagious diseases within Zimbabwe.<sup>845</sup> Further provisions in the Public Health Act set out local and regional bodies that are responsible for healthcare in their districts. Section 4 of the Public Health Act sets out the requirement that an Advisory Board of Public Health is established, tasked with advising the Minister of Health and Child Care on all matters of public health in Zimbabwe.<sup>846</sup> There are also provisions regarding the establishment of District Health Management Committees, the appointment of medical officers and health inspectors, and the establishment of local health committees.<sup>847</sup>

In this regard, in relation to the Minimum Essential Element that an agency or organisation should have primary responsibility for providing essential health services to IDPs where IDPs do not have easy access to regular medical services (as echoed in the Great Lakes IDP Protocol Model Legislation, where responsibility falls to the Minister responsible for IDPs), it is noted that though healthcare in Zimbabwe is the overall responsibility of the Minister of Health and Child Care, there does not appear to be any individual under national law specifically responsible for IDPs in general or the protection of IDPs’ right to health, specifically.

### **f. Recommendations**

The Kampala Convention requires that States Parties incorporate the obligations under the Convention to protect and assist IDPs into national law by amending current legislation or enacting new legislation.<sup>848</sup> The current national framework in Zimbabwe does accede to this requirement to some degree, given the protections provided under the Constitution. Given, however, that gaps have been identified in relation to the protection of IDPs’ right to health, further legislative changes should be implemented. The absence of legislation that specifically deals with these issues or incorporates the principles under the Supranational Normative Frameworks may enable policies that discriminate against IDPs and deny access to their right to health, purely as a result of their displacement.

The steps outlined below would help bring Zimbabwe into line with the relevant Minimum Essential Element, the Kampala Convention and other relevant Supranational Normative Frameworks in this area. It is therefore recommended that Zimbabwe:

- Enact domestic law that protects IDPs’ right to health, in compliance with the Kampala Convention. In par-



ticular, such legislation should comply with the Minimum Essential Element by incorporating mechanics to identify and prioritise groups with particular vulnerabilities and needs, and the U.N. Guiding Principles in providing for the protection of the rights of vulnerable groups within the IDP community, including the sexual health of displaced women and psycho-social support for individuals subject to the increased threat of gender-based violence and sexual assault as a result of their displacement. Such law should obligate the State to provide IDPs with access to treatment rather than placing the onus on IDPs to source their own treatment.

- Include in the mandate of the IDP focal institution, the responsibility for ensuring that health services available to the general population are provided to IDPs in cases where IDPs cannot easily access such services, and that the particular health vulnerabilities that accompany displacement are addressed by national health legislation and policy.<sup>849</sup>

## 22. Employment, Economic Activities and Social Protection Programmes

### a. General Context

Employment, participation in economic activities and access to social protection programmes are important prerequisites for IDPs to achieve a durable solution to their displacement and to develop self-sufficiency. However, displacement often results in IDPs losing their former employment as well as the assets and social networks that support economic activities. Even in cases where livelihoods can be saved, access to markets often gets cut off. In many cases IDPs also lack the documentation required to establish entitlement to social protection programmes or to prove their professional qualifications. In addition to these challenges, IDPs may face discrimination that hinders their attempts to re-enter the job market or access social protection programmes.

As a result of these difficulties, without appropriate support IDPs are at significant risk of long-term impoverishment and reliance on humanitarian assistance. In such circumstances, IDPs are exposed to the dangers of exploitation in the informal economy, which may particularly harm vulnerable IDPs, especially children and women.

### b. Minimum Essential Elements

- Recognise IDPs' rights to work and to access social protection programmes.
- Take specific measures to protect IDPs against discrimination in the labour market and to give IDPs access to social protection programmes.
- Direct government agencies responsible for employment and social security specifically to evaluate and take action in response to the particular problems faced by IDPs (for example, through provisional work programmes, access to microcredit and other assistance, skills transfers and vocational training, and access to labour market and social protection programmes).
- Provide for measures (such as microcredit systems, vocational training, and distribution of farming implements, seeds or animals) that help former IDPs to regain their livelihoods or engage in new economic activities in their place of settlement.<sup>850</sup>

### c. Kampala Convention and Declaration

Under the Kampala Convention, States Parties are prohibited from "[d]iscriminati[ng] against such persons in the enjoyment of any rights or freedoms on grounds that they are internally displaced persons."<sup>851</sup> Similarly, States Parties are required to "[p]romote self-reliance and sustainable livelihoods amongst [IDPs]".<sup>852</sup>

Further, under the Kampala Declaration the African Union Member States committed to "creating an enabling environment for refugees and internally displaced persons

particularly women and vulnerable groups as well as the youth to become self-reliant through socio-economic integration which will enable them to prepare to contribute to the local economy upon return.”<sup>853</sup> Finally, the IASC Framework, in fact, refers to adequate standards of living and access to livelihoods, among the 8 criteria to determine progress towards achieving durable solutions.

#### **d. Other Relevant Supranational Normative Frameworks**

##### *i. U.N. Guiding Principles*

The U.N. Guiding Principles provide that “[w]hen necessary, internally displaced persons shall have access to [...] social services” both during their displacement and following their resettlement.<sup>854</sup> In addition, the U.N. Guiding Principles require that “[i]nternally displaced persons [...] shall not be discriminated against as a result of their displacement in the enjoyment of the [...] right to seek freely opportunities for employment and to participate in economic activities.”<sup>855</sup>

##### *ii. Great Lakes Instruments*

The Great Lakes IDP Protocol does not contain any direct reference to employment, economic activities or social protection. However, the U.N. Guiding Principles are incorporated in the Annex to the Great Lakes IDP Protocol.

Further, under the Great Lakes Pact, the ICGLR Member States must implement action programmes focused on “[p]romoting policies aimed at disaster prevention, protection, assistance, and the search for durable solutions for refugees and internally displaced persons, as well as their environment”<sup>856</sup> and “[p]romoting relevant policies to guarantee access to basic social services by the populations affected by conflicts and effects of natural disasters.”<sup>857</sup>

##### *iii. CESC*

Under the CESC, States are under a general obligation to guarantee basic living standards, a task that entails adequate prioritisation in the overall allocation of resources available. On this point the UNCESCR has expressed the opinion that “a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State Party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education, is *prima facie*, failing to discharge its obligations under the Covenant.”<sup>858</sup>

#### **e. Zimbabwe-specific Analysis**

Economic self-sufficiency and social protection are intimately connected, and various legal instruments in

Zimbabwe attempt to deal with both. For example, the Constitution requires “[t]he State and all institutions and agencies of the Government at every level [to] endeavour to facilitate and take measures to empower, through appropriate, transparent, fair and just affirmative action, all marginalised persons, groups, and communities in Zimbabwe.”<sup>859</sup> The Constitution also requires that appropriate and adequate measures be taken to open the labour market to all Zimbabweans, especially to women and youths.<sup>860</sup> In addition, the Constitution mandates the State to provide social security and social care to those in need.<sup>861</sup> Finally, the Constitution obliges the State to adopt reasonable measures to provide everyone with the opportunity to work in a freely chosen activity, and to remove arbitrary restrictions on economic activity.

In relation to workers’ rights during employment, the Labour Act is the most significant legislation in Zimbabwe. The Labour Act prevents employers from discriminating on the basis of race, tribe, place of origin, political opinion, colour, creed or sex when recruiting or managing employees.<sup>862</sup> IDPs are not specifically protected against discrimination under this legislation; whilst in some cases discrimination against IDPs will relate to one or more of the characteristics listed in the Labour Act, in many cases IDPs are likely to suffer discrimination in access to employment because of their status as IDPs. Therefore, the Minimum Essential Elements described above require the enactment in law of specific protections from employment discrimination for IDPs.<sup>863</sup>

In relation to social protection, Zimbabwe has legislation aimed at providing support and social services to a number of marginalised groups. Particularly relevant here is the Children’s Act, under which Zimbabwe established a Child Welfare Fund<sup>864</sup> that has its purpose the “development and promotion of the welfare and protection of children and young persons.”<sup>865</sup> Besides potentially supporting the provision of social services and protections for children, the Child Welfare Fund may also help reduce time and resource burdens on families, and may consequently give them – and especially female family members – a greater chance of participating in the labour market.<sup>866</sup>

The Social Welfare Assistance Act allows “any destitute or indigent person” to apply for welfare assistance<sup>867</sup> and provides for a wide range of social welfare to be provided to eligible applicants, including financial assistance, counselling, training, and the supply of food and clothing.<sup>868</sup> The categories of eligibility for assistance are broad<sup>869</sup> although they do not specifically refer to IDPs.

Whilst the current legal framework indicates a willingness to support certain marginalised or disempowered groups and to provide for their participation in the economy, the

challenge for Zimbabwe is to make sure that the same level of support is also afforded to IDPs. The recommendations below set out some suggestions for improving the framework of support for IDPs.

#### ***f. Recommendations***

As noted above, the legislation provides a reasonable, albeit incomplete, framework for the protection of IDPs' rights to participation in economic activity and to social protection in Zimbabwe. The steps outlined below would help improve this framework and bring Zimbabwe into line with its obligations under the Kampala Convention. It is therefore recommended that Zimbabwe:

- Include in the mandate of the IDP focal institution the promotion of IDPs' access to employment ensuring the right of IDPs to be protected from discrimination in all areas of employment and economic activity as well as their protection from exploitation.
- Take steps to remove practical barriers that prevent IDPs from accessing employment or social protection programmes (such as requirements for documents to prove status or residence requirements).

## **23. Education**

### ***a. General Context***

Displacement causes severe disruption to the education of children. Organising adequate educational provision for IDP children in their place of displacement often proves extremely challenging. Even where school places are available for displaced children in their place of displacement, their educational experience might be complicated by overcrowding and tensions with the host community, by the trauma of displacement and by the demands of their life outside school, in a context where IDP children are often at risk of exploitation in the illegal labour market or other forms of abuse. In addition to this, IDP families might find it difficult to fulfil registration requirements and to afford school fees and other costs of education, although this problem is by no means confined to IDPs.

Ensuring adequate educational provision is, however, of critical importance for the immediate welfare and for the future life chances of IDP children, and consequently for the reintegration of IDP communities.

### ***b. Essential Minimum Elements***

- To acknowledge the right of all citizens, including IDPs, to receive education provided either without charge or on terms at least as favourable as those applicable to other disadvantaged members of the host community.
- To eliminate unreasonable and discriminatory administrative obstacles that limit access of IDPs to school through a failure sufficiently to take into account IDPs' specific problems (examples of such obstacles being administrative requirements relating to documentation and formal school transfers, or requirements to provide school books and uniform).
- To establish a clear obligation on the part of the competent authority to provide an education to IDPs located in areas inaccessible to existing schools.<sup>870</sup>

### ***c. Kampala Declaration***

The Kampala Declaration commits signatory nations to ensure access to education for IDPs and other vulnerable groups.<sup>871</sup>

### ***d. Other Relevant Supranational Normative Frameworks***

#### ***i. U.N. Guiding Principles***

Principle 23 provides that "[e]very human being has the right to education" and goes on to mandate the state to ensure that displaced children receive free and compulsory primary education, ensuring the full and equal participation of women and girls, and respecting the culture, language, and religion of IDPs.<sup>872</sup> Further, the U.N. Guiding Principles provide that "[e]ducation and training facilities shall be made available to internally displaced

persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.”<sup>873</sup>

#### *ii. Great Lakes IDP Protocol*

The Great Lakes IDP Protocol Model Legislation, attached to the Great Lakes IDP Protocol, specifies that the Ministry of Education should be represented on a Committee for the Protection and Assistance of IDPs.<sup>874</sup>

#### *iii. Other*

Zimbabwe is also subject to the SADC Protocol on Education and Training, adopted in 1997. The SADC Protocol on Education and Training instructs member states to “strive to provide universal basic education providing for at least nine years of schooling.”<sup>875</sup> Article 5(4) of the SADC Protocol on Education and Training also instructs states to give “special support” to “socially disadvantaged groups.”<sup>876</sup>

The African Charter on the Rights and Welfare of the Child, to which Zimbabwe is party, requires signatories to provide free and compulsory education to all children<sup>877</sup> and also guarantees access to education regardless of “race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.”<sup>878</sup>

Similarly, the Convention on the Rights of the Child, which Zimbabwe ratified in 1990, provides for free and compulsory primary education for all children.<sup>879</sup>

#### **e. Zimbabwe-specific Analysis**

Section 75 of the Constitution provides a basic right to education in Zimbabwe. Every citizen<sup>880</sup> has a right to “a basic State-funded education, including adult basic education” and “further education, which the [S]tate, through reasonable legislative and other measures, must make progressively available and accessible.”<sup>881</sup> The State also has an affirmative duty to “achieve the progressive realisation” of the right to education.<sup>882</sup> Furthermore, the State is required by the Constitution to take all practical measures to promote free and compulsory education and steps must be taken to ensure equality between girls and boys in access to educational opportunities.<sup>883</sup> The State is also responsible for providing access to higher and tertiary education, but it is not required to be free and compulsory.<sup>884</sup>

Other provisions give the State varying responsibilities with regard to education. Every child (defined as boys and girls under 18 years of age) has a right to education.<sup>885</sup> In Section 19, the State is required to “adopt reasonable policies and measures, within the limits of the resources available to it, to ensure that children have access to appropriate education and training”<sup>886</sup> and to enact legislation or take other appropriate measures to “ensure that

children are not required or permitted to perform work or provide services that place at risk the children’s [...] education.”<sup>887</sup> In Section 20, discussing youth (defined as citizens between 15 and 35 years of age), the State is similarly responsible for ensuring “access to appropriate education and training.”<sup>888</sup>

The other significant piece of Zimbabwean legislation relating to education is the Education Act. The Education Act provides that “every child in Zimbabwe shall have the right to school education”<sup>889</sup> – note that there is no restriction of the right to education to Zimbabwean citizens and permanent residents as in the Constitution. With exceptions for single-sex or religious schools, it is further stated that “no child in Zimbabwe shall be refused admission to any school [or be] discriminated against by the imposition of onerous terms and conditions in regard to his admission to any school [...] on the grounds of his race, tribe, place of origin, national or ethnic origin, political opinions, colour, creed or gender [...]”<sup>890</sup> A term is “onerous” if it requires a child or parent to either “do anything” or “possess some quality, attribute, asset, or property” that is not required by the school of students from a different background.<sup>891</sup> Note that there is no specific protection from discrimination for internally displaced children, nor recognition that the enforcement of uniform standards and other requirements may result in their unintended discrimination considering their specific needs and challenges, in particular with regards to the generally low purchase power of IDP families compared to the non-displaced population.

Parents of primary school age children in Zimbabwe are obliged to ensure that such children attend school<sup>892</sup>; each local authority is specifically mandated to “endeavour to establish and maintain such primary schools as may be necessary for all children in the area under its jurisdiction.”<sup>893</sup>

Children have a general right of enrolment at the State school nearest to their place of ordinary residence (this term is not defined), subject to the nearest school being fully enrolled.<sup>894</sup> Where the nearest school is fully enrolled a certificate to this effect is provided which may be used in an application for enrolment to the next nearest school<sup>895</sup> although no right of enrolment at the nearest school with free places is provided.

The legal environment provided by the Constitution and the Education Act accords reasonably closely with the normative framework, particularly with respect to the universal right to free education, the general prohibition of discrimination based on background, and the obligation of local authorities to provide school places to all children under their jurisdiction.

## f. Recommendations

As noted above, the Education Act and the Constitution provide a strong framework for the protection of educational rights in Zimbabwe. However, the steps outlined below would help bring Zimbabwe into line with its Kampala Convention obligations in this area. It is therefore recommended that Zimbabwe:

- Include in the mandate for the IDP focal institution, promoting the protection from discrimination for internally displaced children, within the structures of the Constitution and the Education Act.
- Take measures to avoid indirect discrimination against internally displaced children through requirements to provide school materials or documentation for enrolment at school and the inclusion of IDP children in the Basic Education Assistance Module.
- Take measures to build capacity amongst the educational profession and public authorities with regard to the provision of education for internally displaced children, including awareness of internally displaced children's specific educational needs and challenges.<sup>896</sup>

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## Appendix: Zimbabwean Legislation reviewed under each Thematic Chapter and Relevant Recommendations

No.	Thematic Section	Relevant Zimbabwean Legal and Policy Sources	Recommendations
1	Definition of IDPs		<ul style="list-style-type: none"> <li>Adopt into local law the definition of IDP that is used in the U.N. Guiding Principles and the Kampala Convention, whilst making it clear that (i) the specific causes of displacement illustrated in the descriptive identification of IDPs are not exhaustive and (ii) the IDP definition does not create a specific legal status but, rather, is used to enable relevant decision-makers to determine the applicability of the laws and policies relating to internal displacement.</li> </ul>
2	Protection of IDPs against Discrimination	Constitution.	<ul style="list-style-type: none"> <li>Enshrine in domestic law the prohibition of discrimination based on displacement as well as of discrimination against IDPs on any ground such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, or birth or any similar criteria.</li> </ul>
3	Awareness Raising and Training	Civil Protection Act. Constitution.	<p>In respect of raising awareness:</p> <ul style="list-style-type: none"> <li>Specify in any outline law relating to IDPs, or in a national policy or strategy document, that one of the functions of national or local institutions specifically tasked with addressing IDP issues is to raise awareness of the existence, nature and specificity of internal displacement.</li> <li>Include explicitly in the mandates of the various Independent Commissions awareness raising of issues specific to IDPs.</li> </ul> <p>In respect of providing training on the rights of IDPs:</p> <ul style="list-style-type: none"> <li>Specify in any outline law relating to IDPs, or in a national policy or strategy document, that one of the functions of national or local institutions specifically tasked with addressing IDP issues is to train Government officials at all levels whose work involves IDPs with respect to: (i) implementing IDP rights in accordance with the U.N. Guiding Principles, the Kampala Convention and domestic law; (ii) special protections and assistance that IDPs, or vulnerable groups of IDPs, may require; (iii) the general vulnerable situation of IDPs; and (iv) the search for durable solutions for IDPs and, more specifically, (v) housing-, land- and property-restitution mechanisms, as established in the Pinheiro Principles.</li> </ul>

No.	Thematic Section	Relevant Zimbabwean Legal and Policy Sources	Recommendations
4	Data Collection Relating to IDPs	Census and Statistics Act. National Registration Act.	<ul style="list-style-type: none"> <li>▪ Enact specific legislative provisions providing for: (i) the regular collection of relevant IDP data, including the collection of IDP data during national census activities, that is deemed necessary to adequately inform humanitarian response mechanisms and durable solutions programming; and (ii) the maintenance and protection of relevant IDP data in a confidential and secure manner in order to ensure the privacy of IDPs.</li> <li>▪ Enact, after sufficient guarantees and safeguards are in place to secure privacy of collected personal data, legislation to provide for the registration of IDPs in accordance with the Kampala Convention and solely for the purpose of facilitating the protection and assistance of IDPs. It must also be made clear that registration does not create a separate legal status for IDPs and that non-registered IDPs should not be precluded from assistance or protection.</li> </ul>
5	Requirement for a Focal Institution Responsible for the Coordination, Protection and Assistance of IDPs	Civil Protection Act. Constitution. Refugees Act. SI 2014-12.	<ul style="list-style-type: none"> <li>▪ Create an impartial statutory body taking the shape of a national committee and designate a Minister or a Government agency or another public institution or committee responsible for facilitating the coordination of activities aimed at protecting and assisting IDPs, and for cooperating with relevant international organisations or agencies and civil society organisations, in accordance with the Kampala Declaration.</li> <li>▪ Define and allocate a specific provision within the annual budget to enable the identified institution to adequately respond to IDP issues.</li> <li>▪ Define the focal institution's role, responsibilities and operational methodology.</li> </ul>
6	National Human Rights Institutions	Constitution. Constitution Amendment No, 19. Zimbabwe Human Rights Commission Act.	<ul style="list-style-type: none"> <li>▪ Ensure that the Zimbabwe Human Rights Commission's mandate is extended to explicitly address the protection of IDPs.</li> <li>▪ Amend the Zimbabwe Human Rights Commission Act to ensure adequate protection to IDPs, in conformity with the Paris Principles and the Framework for National Responsibility.</li> </ul>
7	Participation of IDPs	Constitution. Regional Town and Country Planning Act.	<ul style="list-style-type: none"> <li>▪ Formalise the participation of IDPs in the development of laws and policies relating to their protection and assistance, and recognises their right to participate in the decision-making processes.</li> <li>▪ Adopt a policy, in accordance with the Kampala Convention, U.N. Guiding Principles and the Great Lakes IDP Protocol, that ensures the participation of IDPs in the planning and management of their relocation, resettlement and reintegration, in particular special effort should be made to involve women and other vulnerable groups in the planning and management of their relocation and in the distribution of basic subsistence supplies.</li> <li>▪ Ensure, in compliance with the Pinheiro Principles, the participation of IDPs in housing, land and property restitution programmes.</li> </ul>

No.	Thematic Section	Relevant Zimbabwean Legal and Policy Sources	Recommendations
8	Allocation of Necessary Human, Financial and Other Resources	Civil Protection Act. Constitution. Government of Zimbabwe, "National Housing Policy". Minister of Finance & Economic Development, "The 2014 Zimbabwe National Budget Statement".	<ul style="list-style-type: none"> <li>▪ In compliance with the Kampala Convention, allocate adequate resources in the national budget to address the phenomenon of internal displacement and provide authorities with the necessary financial means to assist IDPs when responsibility is assigned to them.</li> <li>▪ Continue to prioritise the protection and assistance of IDPs in national legislative and policy frameworks, in order to secure international commitments to provide financial support to national efforts.</li> <li>▪ Provide appropriate institutions and mechanisms with adequate financial, human and other resources to facilitate housing, land and property restitution processes, in accordance with the Kampala Convention and the Pinheiro Principles.</li> </ul>
9	Cooperation with National and International Humanitarian Partners	Private Voluntary Organisations Act.	<ul style="list-style-type: none"> <li>▪ Include in the mandate of the IDP focal institution discussed in Section 5, the obligation to foster links with domestic and non-domestic humanitarian agencies, and coordinate assistance from such organisations, particularly where State resources are insufficient for it to comply with its obligations to protect and assist IDPs under the Kampala Convention and other applicable legal and policy frameworks.</li> <li>▪ In compliance with its obligation under the Kampala Convention, the Minimum Essential Elements and the Supranational Normative Frameworks identified above, should specifically provide for mechanisms to waive or expedite bureaucratic procedures in relation to providing access from international humanitarian organisations into and around the country to locations where IDPs reside.</li> <li>▪ Should ensure that national law adheres to the Kampala Convention and the U.N. Guiding Principles by including the obligation to ensure the security of relief personnel and their equipment. Those, who attack humanitarian relief personnel and their material, transport and supplies, should face criminal punishment.</li> <li>▪ Put in place technical measures to facilitate the operations of legitimate humanitarian and development agencies which provide humanitarian assistance to, and facilitate the achievement of durable solutions for IDPs.</li> </ul>

No.	Thematic Section	Relevant Zimbabwean Legal and Policy Sources	Recommendations
10	Protection against Arbitrary Displacement	Constitution. Government of Zimbabwe, "National Housing Policy".	<ul style="list-style-type: none"> <li>▪ Enact legislation strictly prohibiting all forms of arbitrary displacement including the instances explicitly foreseen in the relevant international and national documents, such as the Kampala Convention and U.N. Guiding Principles, and establish a system of legal redress for victims of arbitrary displacement.</li> <li>▪ Create binding legislation enacting the National Housing Policy's obligation that the Government facilitate alternative shelter before effecting evictions, respect all procedural guarantees set out in Principle 7 of the U.N. Guiding Principles and explicitly stating that evictions without alternatives violate Section 74 of the Constitution.</li> <li>▪ Enact legislation to penalise arbitrary displacement under circumstances in which it amounts to a crime against humanity or a war crime in accordance with the Kampala Convention.</li> </ul>
11	Reduction of the Risks of Displacement and Mitigation of Displacement-related Concerns in the Event of a Disaster	Civil Protection Act. Constitution.	<ul style="list-style-type: none"> <li>▪ Either amend the Civil Protection Act to include IDP protection specifically mandating that evacuations during a disaster are limited to the health and safety requirements of the affected population, or ensure that enabling legislation for the Kampala Convention provides for this.</li> <li>▪ Implement legislation that ensures durable solutions for IDPs that have been displaced by disasters, which take into account the resilience of resettled, reintegrated, or returned communities and to minimise the risks of future displacement.</li> <li>▪ Devote significant resources to inclusive DRM/DRR activities, and ensures that the Civil Protection Fund is adequately resourced. There should also be full cooperation with international humanitarian and development actors and civil society in disaster preparedness, and efforts to fully implement the Hyogo Framework for Action 2005 – 2015.</li> </ul>
12	Ensuring Human Rights in the Event of Development-induced Displacement	Constitution. Environmental Management Act. Mines and Minerals Act.	<ul style="list-style-type: none"> <li>▪ Amend the relevant legislation governing development projects, specifically the Mines and Minerals Act and the Environmental Management Act, to specifically address displacement and protecting the rights of IDPs, as required by the Kampala Convention.</li> <li>▪ Amend domestic legislation to include an obligation to search for alternatives to displacement in the implementation of development projects and introducing necessity and proportionality standards in development legislation could help balance the rights of investors and the State's interests with the rights of IDPs. This would also bring legislation in line with the Supranational Normative Frameworks for IDP protection.</li> <li>▪ Develop legal provisions specifying the public interest grounds that may justify relocation, the procedures by which displacement is to be effected in relation to development projects, the scope of compensation and the right to administrative/judicial review.</li> </ul>



No.	Thematic Section	Relevant Zimbabwean Legal and Policy Sources	Recommendations
13	Freedom of Movement	Civil Protection Act. Constitution. Land Acquisition Act. Mines and Minerals Act.	<ul style="list-style-type: none"> <li>Implement legislation which guarantees the right of freedom of movement specifically to IDPs, including the right of IDPs to circulate freely and seek safety in another part of the country, and the right to choose one's residence.</li> <li>Clarify in legislation the specific application of the prohibitions on arbitrary arrest and detention of IDPs, which would include confinement in camps and that if such confinement or internment is necessary, it should not last longer than required by the circumstances.</li> <li>Adopt implementing legislation for the Kampala Convention which contains specific provisions setting out a duty to promote and create conditions for voluntary return, local integration or settlement elsewhere in the circumstances of safety and dignity.</li> <li>Implement legislation whereby competent authorities make special efforts to ensure the full participation of IDPs in the planning and management of their return or resettlement and reintegration. This legislation should include specific protections against involuntary movements of IDPs.</li> </ul>
14	Family Life	Births and Deaths Registration Act. Burial and Cremation Act. Children's Act. Constitution. Missing Persons Act.	<ul style="list-style-type: none"> <li>Enact provisions in relevant legislation guaranteeing the right to family life and family unity of, and providing assistance to, all IDPs separated from family members, including vulnerable populations, such as children, women, the elderly, and those with special needs.</li> </ul>
15	Recognition, Issuance and Replacement of Documents	Citizenship of Zimbabwe Act. Constitution. National Registration Act.	<ul style="list-style-type: none"> <li>Amend the Citizenship of Zimbabwe Act to comply with the relevant provisions set out in the Constitution.</li> <li>Make the requirements for registration in the National Registration Act more flexible so as to avoid imposing 'unreasonable conditions' for IDPs.</li> <li>Subsidise or even makes free the fees set for issuing identification documentation to IDPs, which are generally perceived as too high and beyond the reach of many Zimbabweans.</li> <li>Should provide that failure to proceed to registration (or, on the part of IDPs, to comply with registration requirement) will not impair access to the protection/assistance required by IDPs.</li> <li>Create and maintain an updated register of IDPs within their jurisdiction, in accordance with the Kampala Convention.</li> </ul>

No.	Thematic Section	Relevant Zimbabwean Legal and Policy Sources	Recommendations
16	Property and Possessions	Constitution. Environmental Management Act. Housing Standards Control Act. Regional Town and Country Planning Act. Rural Districts Council Act. Urban Councils Act. Urban Councils Amendment Bill.	<ul style="list-style-type: none"> <li>▪ Reaffirm in a law relating to IDPs their right to have restored to them any housing, land and/or property of which they were deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore, clarifying that right to such restitution is held by IDPs whether or not they return to their former homes.</li> <li>▪ Create a legal obligation for the Government to provide viable alternatives before engaging in demolitions or evictions.</li> </ul>
17	Electoral Rights	Constitution. Electoral Act. Electoral Amendment Act. SI 2013-85.	<ul style="list-style-type: none"> <li>▪ Provide simplified absentee voting procedures to allow IDPs to vote in their constituency of former residence.</li> <li>▪ Provide procedures allowing issuance of documentation required for registration purposes outside IDPs' constituency of former residence.</li> <li>▪ Provide a specific exception to the 12-month absence rule to allow IDPs to remain on the electoral roll in their constituency of former residence if they wish.</li> <li>▪ Provide simplified procedures for IDPs to register to vote in their constituency of displacement (the Electoral Act would allow for simplified registration procedures to be prescribed for IDPs without a change to the legislation).</li> </ul>
18	Food	Constitution. Government of Zimbabwe, "Zimbabwe Agenda for Sustainable Socio-Economic Transformation."	<ul style="list-style-type: none"> <li>▪ Acknowledge in new legislation and regulation relating to IDPs the right of IDPs to adequate food, considering the special needs of women, children, the vulnerable and people suffering from incapacities.</li> <li>▪ Include in the mandate of the IDP focal institution, the procurement, storage and distribution of food to IDPs or coordination thereof, and allocating the assignment of sufficient funds for this purpose.</li> <li>▪ Eliminate any obstacle hindering the sourcing of food for domestic consumption.</li> </ul>
19	Water and Hygiene	Constitution. Public Health Act. Water Act.	<ul style="list-style-type: none"> <li>▪ Zimbabwean legislation should include a specific section on IDPs within communities to ensure they have access to the water supplies allocated to that area by public or private authorities. IDPs should be able to access essential water supplies free of charge or at a subsidised rate if they are unable to afford water and sanitation facilities sufficient to meet their basic needs.</li> </ul>

No.	Thematic Section	Relevant Zimbabwean Legal and Policy Sources	Recommendations
20	Basic Shelter and Adequate housing	Constitution. Government of Zimbabwe, "National Housing Policy". Government of Zimbabwe, "Zimbabwe Agenda for Sustainable Socio-Economic Transformation". Housing Standards and Control Act. Regional Town and Country Planning Act. Rural Districts Councils Act. Urban Councils Act. Urban Councils Amendment Bill.	<ul style="list-style-type: none"> <li>■ Pass legislation guaranteeing that IDPs receive adequate housing during and after displacement.</li> <li>■ Ensure, in particular, that development-induced displacement and other evictions are accompanied by a viable resettlement programme ensuring that IDPs do not become homeless.</li> <li>■ Promote security of tenure for IDPs by reforming out-dated laws that contribute to insecurity of tenure.</li> </ul>
21	Health	Constitution. Housing Standards Control Act. Public Health Act. Water Act. Medical Services Act.	<ul style="list-style-type: none"> <li>■ Enact domestic law that protects IDPs' right to health, in compliance with the Kampala Convention. In particular, such legislation should comply with the Minimum Essential Element by incorporating mechanics to identify and prioritise groups with particular vulnerabilities and needs, and the U.N. Guiding Principles in providing for the protection of the rights of vulnerable groups within the IDP community, including the sexual health of displaced women and psycho-social support for individuals subject to the increased threat of gender-based violence and sexual assault as a result of their displacement. Such law should obligate the State to provide IDPs with access to treatment rather than placing the onus on IDPs to source their own treatment.</li> <li>■ Include in the mandate of the IDP focal institution, the responsibility for ensuring that health services available to the general population are provided to IDPs in cases where IDPs cannot easily access such services, and that the particular health vulnerabilities that accompany displacement are addressed by national health legislation and policy.</li> </ul>

No.	Thematic Section	Relevant Zimbabwean Legal and Policy Sources	Recommendations
22	Employment, Economic Activities and Social Protection Programmes	Children's Act. Constitution. Labour Act. Social Welfare Assistance Act.	<ul style="list-style-type: none"> <li>▪ Include in the mandate of the IDP focal institution the promotion of IDPs' access to employment ensuring the right of IDPs to be protected from discrimination in all areas of employment and economic activity as well as their protection from exploitation.</li> <li>▪ Take steps to remove practical barriers that prevent IDPs from accessing employment or social protection programmes (such as requirements for documents to prove status or residence requirements).</li> </ul>
23	Education	Constitution. Education Act.	<ul style="list-style-type: none"> <li>▪ Enact domestic law that protects IDPs' right to health, in compliance with the Kampala Convention. In particular, such legislation should comply with the Minimum Essential Element by incorporating mechanics to identify and prioritise groups with particular vulnerabilities and needs, and the U.N. Guiding Principles in providing for the protection of the rights of vulnerable groups within the IDP community, including the sexual health of displaced women and psycho-social support for individuals subject to the increased threat of gender-based violence and sexual assault as a result of their displacement. Such law should obligate the State to provide IDPs with access to treatment rather than placing the onus on IDPs to source their own treatment.</li> <li>▪ Include in the mandate of the IDP focal institution, the responsibility for ensuring that health services available to the general population are provided to IDPs in cases where IDPs cannot easily access such services, and that the particular health vulnerabilities that accompany displacement are addressed by national health legislation and policy.</li> </ul>

## Notes

1. Mooney, "CAR Report". This "legal audit" of legislation in the Central African Republic was commissioned by the Representative of the United Nations Secretary-General on the Human Rights of IDPs and UNHCR in 2010, to provide technical assistance to the Government of the Central African Republic in line with its obligations under the Great Lakes Pact and other Great Lakes Instruments.
2. Global Political Agreement. The Global Political Agreement gave way to the formation of the GNU in Zimbabwe. Article 16.4(c) states that "all displaced persons be entitled to humanitarian and food assistance to enable them to return and settle in their original homes and that social welfare organisations shall be allowed to render such assistance as may be required." Under Article 18.5(h) the parties agree "to work together to ensure the safety of any displaced persons, their safe return home and their full enjoyment of the protection of the law."
3. Memorandum of Understanding, Article 10(i)(d) entitled "Interim measures" states: "The Parties agree that [...] they will work together to ensure the safety of any displaced persons and their safe return home and that humanitarian and social welfare organisations are enabled to render such assistance as might be required."
4. UNOCHA, "2009 Consolidated Appeal", p. 36.
5. Zimbabwe National Contingency Plan, December 2012 – November 2013, p. 6.
6. Zimbabwe Medium Term Plan 2011 – 2015, p. 16.
7. Zimbabwe Medium Term Plan 2011 – 2015, pp. 137 – 139.
8. Zimbabwe Medium Term Plan 2011 – 2015, pp. 161 – 163.
9. U.N. Human Rights Council, "Adequate Housing Report", III(A)(6).
10. Rakodi, and Mutizwa-Mangiza, "Housing Policy, Production and Consumption in Harare", p. 10.
11. See, e.g., Sithole, "Polluted Water Brings Disease to Rural Zimbabwe"; Mahove, "Zimbabwe: Displaced Farm Workers Face Crisis"; Martin and Lari, "Zimbabwe, Humanitarian Access Denied".
12. ZIMSTAT, "Multiple Indicator Cluster Survey 2014, Key Findings".
13. Erin Mooney, "Examen du cadre normatif de la République Centrafricaine relatif à la protection des personnes déplacées à l'intérieur de leur propre pays", Brookings Institution, University of Bern, "Project on Internal Displacement", February 2011.
14. Brookings Institution – University of Bern, "Protecting Internally Displaced Persons: A Manual for Law and Policymakers", October 2008.
15. Manual, Annex III.
16. For the purposes of this report, the following two themes were not addressed as standalone chapters: (i) "Provide for Measures that Cover All Three Phases of Displacement"; and (ii) "Humanitarian Aid in General".
17. African Union "African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa", 23 October 2009 (Kampala Convention).
18. IDMC, "Annual Report 2014".
19. African Union, "List of Countries which have Signed, Ratified/Acceded to the Kampala Convention".
20. African Union, "List of Countries which have Signed, Ratified/Acceded to the Kampala Convention".
21. Kampala Convention, Preamble.
22. Kampala Convention, Articles 1 and 3.
23. Kampala Convention, Articles 1 and 4.
24. Kampala Convention, Article 3(2)(a).
25. African Union, "Kampala Declaration on Refugees, Returnees and Internally Displaced Persons in Africa", 23 October 2009 (Kampala Declaration).
26. African Union, "Recommendations of the African Union Experts and Ministers in Charge of Forced Displacement Matters", 2009.
27. Kampala Declaration, Paragraph 1.
28. The United Nations Guiding Principles on Internal Displacement, Preface to the Revised Edition, September 2004.
29. Kälén, "Guiding Principles on Internal Displacement: Annotations", American Society of International Law and Brookings Institution, 2008, p. viii; Kälén, "How Hard is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework", p. 6.
30. Kälén, "Guiding Principles on Internal Displacement: Annotations", p. vii; Cohen, "Strengthening Protection of IDPs: The U.N.'s Role", p. 103.
31. U.N. General Assembly, "Resolution adopted by the General Assembly 60/1. World Summit Outcome", Paragraph 132.
32. Kampala Convention, Preamble.
33. Kälén, "Guiding Principles on Internal Displacement: Annotations", p. 2.
34. U.N. Guiding Principles, Principles 3 and 25.
35. U.N. Guiding Principles, Principle 6.
36. ICGLR, "Concept Note".
37. ICGLR, "Concept Note". Zimbabwe participated in



the negotiations that led to the Pact, described below. While not formally bound by the Great Lakes Instruments, co-opted membership gives an indication of support for the general framework of the Pact. See Kigozi, "Comparison of the Kampala Convention and the IDP Protocol of the Great Lakes Pact".

38. ICGLR, "Dar Es Salaam Declaration on Peace, Security, Democracy, and Development", 19 – 20 November 2004 (ICGLR, "Dar Es Salaam Declaration").
39. ICGLR, "The Republic of South Sudan raised its flag at ICGLR headquarters".
40. ICGLR, "Dar Es Salaam Declaration".
41. ICGLR, "Pact on Security, Stability and Development in the Great Lakes Region", 14 – 15 December 2006.
42. ICGLR, "Concept Note".
43. ICGLR, "Protocol on the Protection and Assistance to Internally Displaced Persons", 30 November 2006.
44. ICGLR, "Protocol on the Property Rights of Returning Persons", 30 November 2006/
45. Centre on Housing Rights and Evictions, "The Pinheiro Principles: United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons" (Pinheiro Principles).
46. Pinheiro Principles Handbook.
47. Pinheiro Principles Handbook, p. 10.
48. Pinheiro Principles Handbook, pp. 24 – 25.
49. Pinheiro Principle 2.1 "All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore as determined by an independent, impartial tribunal".
50. Pinheiro Principles, 2.2.
51. Organisation of African Unity, "African Charter on Human and Peoples' Rights", CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), 27 June 1981 (African Charter on Human and Peoples' Rights).
52. ThinkAfricaPress, "5: Understanding the African Charter on Human and Peoples' Rights".
53. ACHPR, "Ratification Table: African Charter on Human and Peoples' Rights".
54. Mandate of the Special Rapporteur on Refugees, Asylum Seekers, Migrants and Internally Displaced Persons.
55. African Union Constitutive Act.
56. Brookings Institution – University of Bern, "Protecting Internally Displaced Persons: A Manual for Law and Policymakers", October 2008 (Manual).
57. Manual, Introduction (1).
58. Manual, Structure of the Chapters (7).
59. UNHCR, "Internal Displacement: Responsibility and Action", Handbook for Parliamentarians No 20, 18 November 2013.
60. IDMC, Brookings Institution, "National Instruments on Internal Displacement: A Guide to their Development", 2013.
61. U.N. General Assembly, "International Covenant on Civil and Political Rights", 16 December 1966.
62. U.N. General Assembly, "International Covenant on Economic, Social and Cultural Rights", 16 December 1966.
63. U.N. General Assembly, "Convention on the Rights of the Child", 20 November 1989.
64. U.N. General Assembly, "Convention on the Elimination of All Forms of Discrimination Against Women", 18 December 1979.
65. UNICEF, "The Paris Principles. Principles and Guidelines on Children Associated With Armed Forces or Armed Groups", February 2007.
66. U.N. Development-Based Evictions Guidelines.
67. United Nations, "The Hyogo Framework for Action 2005 – 2015: Building the Resilience of Nations and Communities to Disasters".
68. SADC Disaster Risk Management Strategy 2012 – 2015.
69. U.N. Human Rights Council, "Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context, Raquel Rolnik", 30 December 2013 (U.N. Human Rights Council, "Adequate Housing Report").
70. FAO, "Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security", 2012.
71. SADC, "Protocol on Education and Training", 1997.
72. African Union, Draft "African Union Model Law for the Implementation of the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa" (Draft African Union Model Law).
73. Draft African Union Model Law, Article 61.
74. It is suggested that this clause should be refined, if enacted in Zimbabwe, to provide that only the offending provisions, and not the instrument as a whole, should be deemed repealed.
75. Draft African Union Model Law, Article 3.
76. Draft African Union Model Law, Article 4.
77. Draft African Union Model Law, Article 5.
78. Draft African Union Model Law, Article 26.
79. Draft African Union Model Law, Article 27.
80. Criminal Law (Codification and Reform) Act. For a comprehensive review of the Zimbabwean legal system, see Saki & Chiware, "The Law in Zimbabwe".
81. Constitution, Section 2.
82. Constitution, Preamble.
83. Constitution, Sections 48, 49, 51, 52, 57, 58, 66, 71, 75, 76 and 77.
84. Kampala Convention, Articles 7 and 9.
85. Constitution, Section 56.
86. Kampala Convention, Article 9.
87. Kampala Convention, Article 2(a).

88. Constitution, Section 34.
89. Constitution, Section 327(2)(b): “[a]n international treaty which has been concluded or executed by the President or under the President’s authority [...] does not form part of the law of Zimbabwe unless it has been incorporated into the law through an Act of Parliament”.
90. Constitution, Section 326 (2).
91. Constitution, Section 326 (1).
92. ICRC, “Customary International Humanitarian Law Volume I: Rules”.
93. African Union, IDMC, “The Kampala Convention One Year On”, p. 16.
94. African Union, IDMC, “The Kampala Convention One Year On”, pp. 6 – 7.
95. The Brookings-IDMC Guide mentions the following advantages to an IDP Law: the particular circumstances of a country are addressed in a comprehensive and consistent manner, the risk of unaddressed protection gaps is reduced, more flexibility is provided in terms of scope and format, and it is easier to monitor implementation.
96. The disadvantages inherent to this approach are that “the cross-cutting nature of such an instrument means many ministries and government bodies need to be involved, which may cause delay or difficulties in fostering national ownership of the new instrument; there may be more barriers to the creation of such an instrument (IDMC, Brookings Institution, “National Instruments on Internal Displacement”, p. 33).
97. See, e.g. Norms on the Resettlement of the Internally Displaced Populations..
98. Wyndham, “A developing trend: laws and policies on internal displacement”.
99. Brookings Institution, “IDP Laws and Policies Index”.
100. Manual, Annex III.
101. Kälin, “Guiding Principles on Internal Displacement: Annotations”, p. 3.
102. U.N. Guiding Principles, Introduction, Paragraph 2.
103. Kälin, “Guiding Principles on Internal Displacement: Annotations”, p. 2.
104. U.N. Guiding Principles, Introduction, Paragraph 2.
105. Kälin, “Guiding Principles on Internal Displacement: Annotations”.
106. Global Political Agreement. The Global Political Agreement led to the formation of the GNU in Zimbabwe. Article 16.4(c) states that “all displaced persons be entitled to humanitarian and food assistance to enable them to return and settle in their original homes and that social welfare organisations shall be allowed to render such assistance as may be required”. Under Article 18.5(h) the parties agree “to work together to ensure the safety of any displaced persons, their safe return home and their full enjoyment of the protection of the law.”
107. Memorandum of Understanding, Article 10(i)(d) entitled “Interim measures”, states: “The Parties agree that [...] they will work together to ensure the safety of any displaced persons and their safe return home and that humanitarian and social welfare organisations are enabled to render such assistance as might be required.”
108. Kälin, “Guiding Principles on Internal Displacement: Annotations”, p. 12.
109. Manual, pp. 16 – 17.
110. Manual, pp. 17 – 18.
111. Manual, Annex III.
112. Kampala Convention, Article 3(i)(d).
113. Kampala Convention, Article 9(i)(a).
114. Kampala Convention, Article 9(2)(a).
115. Kampala Declaration, Paragraph 12.
116. Kampala Convention, Article 5(i).
117. Kampala Convention, Article 4(4)(a).
118. U.N. Guiding Principle, Principle 1(i).
119. U.N. Guiding Principle, Principle 29(i).
120. Kälin, “Guiding Principles on Internal Displacement: Annotations”, pp. 11 – 12. See, e.g., U.N. General Assembly, “Universal Declaration of Human Rights”, Article 7; U.N. General Assembly, “International Covenant on Civil and Political Rights”, Article 26; American Convention on Human Rights, Article 24; ThinkAfricaPress, “5: Understanding the African Charter on Human and Peoples’ Rights”; First Geneva Convention, Article 3; Second Geneva Convention, Article 3; Third Geneva Convention, Article 3; and Fourth Geneva Convention, Article 3.
121. Kälin, “Guiding Principles on Internal Displacement: Annotations”, p. 13.
122. U.N. Guiding Principles, Principle 4.
123. Kälin, “Guiding Principles on Internal Displacement: Annotations”, pp. 21 – 22.
124. Kälin, “Guiding Principles on Internal Displacement: Annotations”, pp. 22 – 23.
125. Constitution, Section 56.
126. Constitution, Section 53(6).
127. Constitution, Sections 53(6)(b) and 53(5).
128. It should be noted that the Constitution has considerably more expansive citizenship provisions than previous versions, and there are therefore far fewer non-citizen IDPs than before the enactment of the Constitution (Constitution, Sections 35 – 43). Nonetheless, some non-citizens continue to be affected by internal displacement and therefore the issues discussed in this chapter should be addressed.
129. Constitution, Section 75.
130. Constitution, Section 62.
131. Constitution, Section 29.
132. The Constitution requires the courts to interpret laws in a manner that is consistent with international treaties to which Zimbabwe is party (Constitution, Section 327), however, this requirement has not been

- sufficiently tested in court.
133. U.N. Guiding Principles, Principle 5; Kampala Convention, Article 5(1).
  134. Brookings Institution, "A Framework for National Responsibility", pp. 13 and 15.
  135. Manual, p. 24.
  136. See Chapter 2. "Protection of IDPs against Discrimination".
  137. Manual, pp. 26 – 27 ("Provision of training on internal displacement issues to government officials at all levels is a key element of the exercise of national responsibility and can contribute to all aspects of an official response.").
  138. See *generally* Brookings Institution, "A Framework for National Responsibility".
  139. Manual, Annex III.
  140. See, e.g., Kampala Convention, Article 3(1) (requiring States Parties to respect and ensure respect for the rights and inherent dignity of IDPs). Training and awareness raising should be seen as an inherent element of this obligation.
  141. See, e.g., U.N. Guiding Principles, Principle 3 (delegating the primary duty and responsibility to provide protection and humanitarian assistance to IDPs). Training and awareness raising should be seen as an inherent element of this obligation.
  142. Brookings Institution, "A Framework for National Responsibility", p. 13.
  143. Pinheiro Principles, Principle 12.4.
  144. Pinheiro Principles, Principle 20.5.
  145. See the discussion relating to Principle 4.3 ("States shall ensure that housing, land and property restitution programmes, policies and practices do not disadvantage women and girls, and should adopt positive measures to ensure gender equality in this regard.") in the Pinheiro Principles Handbook, p. 37.
  146. Constitution, Section 243(1)(a).
  147. Constitution, Section 246(i).
  148. Constitution, Section 239(h).
  149. Civil Protection Act, Section 3(2)(d).
  150. Civil Protection Act, Section 3(2)(d).
  151. Manual, p. 25.
  152. Manual, p. 14.
  153. IDMC, Brookings Institution, "National Instruments on Internal Displacement. A Guide to their Development" 2013, p. 29.
  154. Manual, p. 14.
  155. IDMC, Brookings Institution, "National Instruments on Internal Displacement", p. 30.
  156. IDMC, UNOCHA, "Guidance on Profiling IDPs".
  157. IDMC, UNOCHA, "Guidance on Profiling IDPs", p. 5.
  158. IDMC, UNOCHA, "Guidance on Profiling IDPs", p. 5.
  159. UNHCR, Tool for Participatory Assessment in Operations.
  160. IDMC, UNOCHA, "Guidance on Profiling IDPs".
  161. PARK, "About Park".
  162. Manual, Annex III.
  163. Kampala Convention, Article 5(5).
  164. Kampala Convention, Article 13(1).
  165. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 3(4) (emphasis added).
  166. ICGLR, "Draft Model Legislation on the Protocol on the Protection and Assistance to IDPs", Article 6(8).
  167. JIPS, "Discover our collaborative vision".
  168. JIPS, "What is JET".
  169. PARK, "About Park".
  170. PARK, "About Park".
  171. Census and Statistics Act, Section 4(1)(e).
  172. Census and Statistics, Section 4(1)(g).
  173. Census and Statistics Act, Section 4(1)(h).
  174. Census and Statistics Act, Section 4(1)(i).
  175. Census and Statistic Act, Section 8(1)(c).
  176. National Registration Act, Section 4.
  177. National Registration Act, Section 6(2).
  178. Manual, p. 30.
  179. Manual, p. 30.
  180. Manual, Annex III.
  181. Kampala Convention, Article 3(2)(b).
  182. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 3(5).
  183. Kampala Convention, Article 5(1).
  184. U.N. Guiding Principles, Principles 3(1) and 25(1).
  185. U.N. General Assembly, "Protection of and Assistance to Internally Displaced Persons: Resolution", paragraph 11.
  186. ICGLR, "Protocol on the Protection and Assistance to IDPs", Articles 3(3)
  187. ICGLR, "Protocol on the Protection and Assistance to IDPs", Articles 3(5) and 6(4)(c).
  188. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 6(4)(d).
  189. ICGLR, "Draft Model Legislation on the Protocol on the Protection and Assistance to IDPs", Sections 4(1) – (11).
  190. ICGLR, "Draft Model Legislation on the Protocol on the Protection and Assistance to IDPs", Section 5.
  191. ICGLR, "Draft Model Legislation on the Protocol on the Protection and Assistance to IDPs", Sections 6(1) – (13). Most these functions are noted in the relevant section of this study, for example, in the section relating to the data collection.
  192. SI 2014-12.
  193. Refugees Act.
  194. Civil Protection Act.
  195. The Ministry of Public Service, Labour, and Social Welfare has participated in IDP sub-cluster meetings on the basis of its mandate to implement the Refugee Act and the Ministry's relationship with UNHCR due to this responsibility: See Ministry of Public Service, Labour and Social Welfare Mission Statement.
  196. Constitution, Section 104.

197. UNHCR, "Internal Displacement: Responsibility and Action", p. 53.
198. UNHCR, "Internal Displacement: Responsibility and Action", pp. 53 – 54.
199. UNHCR, "Internal Displacement: Responsibility and Action", p. 54.
200. UNHCR, "Internal Displacement: Responsibility and Action", p. 54.
201. Brookings Institution, "Report of the International Colloquy on the Guiding Principles on Internal Displacement", p. 26.
202. ICHRP, "Performance & Legitimacy: National Human Rights Institutions", p. 87.
203. Manual, Annex III.
204. Kampala Convention, Articles 3(i)(a) and 3(i)(b).
205. Kampala Convention, Article 4(i).
206. Kampala Convention, Articles 12(i) and 12(2).
207. African Charter on Human and Peoples' Rights.
208. Kampala Convention, Article 14(4).
209. Kampala Declaration, Paragraph 3.
210. U.N. Guiding Principles, Principle 3(i).
211. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 3(i).
212. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 4(i)(a).
213. Pursuant to section A.2 of the Paris Principles: "A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence."
214. The Paris Principles require national institutions to have sufficient funding to have their own premises and staff "in order to be independent of the Government"; the mandate of members should be established by "an official act which shall establish the specific duration of the mandate" since a stable mandate is a precondition for independence; membership should be renewable, subject to the need for pluralism; and many of the principles set out under "methods of operation" serve to reinforce independence. U.N. Human Rights Council, "National Human Rights Institutions: History, Principles, Roles and Responsibilities", p. 39.
215. Ensuring the pluralistic composition of the National Institution is a prime requirement of the Paris Principles as a guarantee of institutional independence. Section B.1 states: "The composition of the national institution and the appointment of its members [...] shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights." The same provision highlights that pluralism is intended to promote effective cooperation with an indicative list of stakeholders representing: (a) Non-governmental organisations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organisations, for example, associations of lawyers, doctors, journalists and eminent scientists; (b) Trends in philosophical or religious thought; (c) Universities and qualified experts; (d) Parliament; (e) Government departments. ICC, "Report and Recommendations of the Sub-Committee on Accreditation (SCA)", p. 26.
216. According to Sections A.1 and A.2 of the Paris Principles, a National Institution should possess, "as broad a mandate as possible," which is to be, "set forth in a constitutional or legislative text," and should include both, "the promot[ion] and protect[ion] of human rights." Section A.3 of the Paris Principles enumerates specific responsibilities the National Institution must, at a minimum, be vested with. These requirements identify two main issues which must necessarily be addressed in the establishment and operation of a National Institution: (i) The mandate of the Institution must be established in national law. This is necessary to guarantee the independence and autonomy with which a National Institution undertakes its activities in the fulfilment of its public mandate; and (ii) The National Institution's mandate to both promote and protect human rights must be defined as broadly as possible so as to give the public the protection of a wide range of international human rights standards: civil; political; economic; cultural; and social. This gives effect to the principle that all rights are universal, indivisible, and interdependent. ICC, "Report and Recommendations of the Sub-Committee on Accreditation (SCA)", pp. 13 – 14.
217. All national institutions should have the general authority to protect human rights and the specific authority to take up "any situation of violation of human rights," as well as to consider "any questions falling within [their] competence." Some institutions may, in addition, consider "complaints and petitions concerning individual situations." This authority is referred to as "quasi-jurisdictional competence." U.N. Human Rights Council, "National Human Rights Institutions: History, Principles, Roles and Responsibilities", p. 39.
218. Section B.2 of the Paris Principles addresses the requirement for National Institutions to be adequately funded as a guarantee of their independence. The purpose of such funding and a definition of what it entails is stated as follows: "The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence." ICC, "Report and Recommendations

- of the Sub-Committee on Accreditation (SCA)", p. 35.
219. ICC, "Chart of the Status of National Institutions".
  220. ACHPR, "31: Resolution on the Granting of Observer Status to National Human Rights Institutions in Africa".
  221. ACHPR, "31: Resolution on the Granting of Observer Status to National Human Rights Institutions in Africa".
  222. Brookings Institution, "A Framework for National Responsibility", p. 19.
  223. Brookings Institution, "A Framework for National Responsibility", pp. 19 – 20.
  224. Constitution of Zimbabwe, Amendment No. 19, Section 11.
  225. Constitution, Sections 243(i)(a), (b), (c), (e), (i), (j) and 244(2).
  226. Constitution, Chapter 4, Part 2.
  227. Zimbabwe Human Rights Commission Act, Section 4(b).
  228. Zimbabwe Human Rights Commission, "Report on the Mission Visit to Chingwizi", p. 23.
  229. Manual, pp. 31 – 32.
  230. See, e.g., U.N. General Assembly, "Universal Declaration of Human Rights", Article 19; U.N. General Assembly, "International Covenant on Civil and Political Rights", Article 25.
  231. Manual, Annex III.
  232. Kampala Convention, Article 9(2)(k).
  233. Kampala Convention, Article 9(2)(l).
  234. Kampala Convention, Article 10(2). It should also be noted that a failure to engage effectively with affected persons and groups through consultation and negotiation may result in a 'forced eviction'.
  235. Kampala Convention, Article 11(i) and (2).
  236. Kampala Convention, Article 9(2)(c) and (d).
  237. Kampala Convention, Articles 9, 10 and 11.
  238. Annotated U.N. Guiding Principles, p. 40.
  239. U.N. Guiding Principles, Principle 7(3)(d).
  240. U.N. Guiding Principles, Principle 7(3)(b).
  241. U.N. Guiding Principles, Principle 7(3)(c).
  242. U.N. Guiding Principles, Principle 18(3).
  243. U.N. General Assembly, "International Covenant on Civil and Political Rights", Article 11.1. See *also* UNCESCR General Comment No. 12, Paragraph 7; UNCESCR General Comment No. 4, Article 11, Paragraph 8.
  244. U.N. Guiding Principles, Principle 28(1).
  245. U.N. Guiding Principles, Principle 28(2).
  246. U.N. Guiding Principles, Principle 29(1).
  247. U.N. Guiding Principles, p. 132.
  248. U.N. Guiding Principles, Principles 22(i)(a), (c), and (d).
  249. U.N. General Assembly, "Universal Declaration of Human Rights", Articles 18, 19, 20 and 21; U.N. General Assembly, "International Covenant on Civil and Political Rights", Articles 18, 19 and 21; American Convention on Human Rights, Articles 12, 13, 16 and 23.
  250. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 6(5).
  251. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 5(6).
  252. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 4(i)(b).
  253. ICGLR, "Draft Model Legislation on the Protocol on the Protection and Assistance to IDPs", Article 5(6).
  254. Pinheiro Principles Handbook, p. 72.
  255. Pinheiro Principles, Principle 14.1.
  256. Pinheiro Principles, Principle 14.2.
  257. Pinheiro Principles, Principle 14.2.
  258. U.N. Guiding Principles, Principle 28(2).
  259. Constitution, Section 58.
  260. Constitution, Section 61.
  261. U.N. Guiding Principles, Principle 14(2).
  262. Brookings Institution, "Moving Beyond Rhetoric: Consultation and Participation with Populations Displaced by Conflict or Natural Disasters", p. 16.
  263. Constitution, Section 62(1).
  264. Constitution, Section 62(2).
  265. Constitution, Section 13(2).
  266. Constitution, Section 13(3).
  267. Regional Town and Country Planning Act, Part III, Article 12.
  268. U.N. General Assembly, "Convention on the Rights of the Child", p. 3, Article 12.
  269. Brookings Institution, "A Framework for National Responsibility", p. 24.
  270. Manual, Annex III.
  271. Kampala Convention, Article 3(2)(d).
  272. Kampala Declaration, Paragraph 16.
  273. Kampala Declaration, Paragraph 16.
  274. Kampala Declaration, Paragraph 18.
  275. Kampala Declaration, Paragraph 20.
  276. Kampala Declaration, Paragraph 25.
  277. Kampala Declaration, Paragraph 26.
  278. Kampala Declaration, Paragraph 27.
  279. U.N. Guiding Principles, Principle 3.
  280. U.N. General Assembly, "Protection of and Assistance to Internally Displaced Persons: Resolution", Paragraph 11.
  281. U.N. Guiding Principles, Principle 28.
  282. U.N. Guiding Principles, Principle 24(2).
  283. U.N. Guiding Principles, Principle 25(1).
  284. ICGLR, "Draft Model legislation on the Protocol on the Protection and Assistance to IDPs", Article 6(7).
  285. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 3(5).
  286. Pinheiro Principles, Principle 12.
  287. Pinheiro Principles Handbook, p. 56.
  288. Pinheiro Principles Handbook, p. 56.
  289. Brookings Institution, "A Framework for National Responsibility", p. 24.
  290. Brookings Institution, "A Framework for National



- Responsibility", p. 24.
291. Minister of Finance & Economic Development, "The 2014 Zimbabwe National Budget Statement".
  292. Constitution, Chapter 2.
  293. Constitution, Sections 15, 27, 28 and 29.
  294. Minister of Finance & Economic Development, "The 2014 Zimbabwe National Budget Statement".
  295. Constitution, Section 71.
  296. Constitution, Section 72(3).
  297. Civil Protection Act, Section 2.
  298. Civil Protection Directorate, "About Us".
  299. Civil Protection Act, Part IX.
  300. Note that this shortcoming is the result of implementation decisions, not legal restrictions. The DCP is empowered to respond to a wide range of disaster which could include displacement induced by Governmental policies (Civil Protection Act, Section 2.)
  301. Government of Zimbabwe, "National Housing Policy", Section 65.
  302. Manual, Chapter 2.
  303. Brookings Institution, "A Framework for National Responsibility", p. 24.
  304. Pinheiro Principles, Principle 12.
  305. In 1977, both ECOSOC (Resolution 2012 (LXIII), 1977) and the XXIIIrd International Conference of the Red Cross (Resolution VI) adopted a detailed list of recommendations for facilitating disaster assistance called the "Measures to Expedite International Relief".
  306. Manual, pp. 66 – 67.
  307. Brookings Institution, "A Framework for National Responsibility", p. 24.
  308. Manual, Annex III.
  309. Kampala Convention, Article 3(i)(j).
  310. Kampala Convention, Article 4(3).
  311. Kampala Convention, Article 5(2).
  312. Kampala Convention, Article 5(3).
  313. Kampala Convention, Article 5(5).
  314. Kampala Convention, Article 5(6). Article 8(1) of the Kampala Convention sets out the "Responsibility to Protect" doctrine, stating that "the African Union shall have the right to intervene in a Member State pursuant to a decision of the Assembly in accordance with Article 4(h) of the Constitutive Act in respect of grave circumstances, namely: war crimes, genocide, and crimes against humanity."
  315. Kampala Convention, Article 3(2)(b).
  316. Kampala Convention, Article 5(7).
  317. Kampala Convention, Article 5(7).
  318. Kampala Convention, Article 5(10).
  319. Kampala Convention, Article 9(3).
  320. Kampala Convention, Article 9(2)(a).
  321. Kampala Convention, Article 9(2)(b).
  322. Kampala Convention, Article 9(2)(c).
  323. Kampala Convention, Article 9(2)(d).
  324. Kampala Convention, Article 9(2)(f).
  325. Kampala Convention, Article 11(3).
  326. Kampala Convention, Article 8(3)(b).
  327. Kampala Declaration, Paragraph 23.
  328. Kampala Declaration, Paragraph 27.
  329. U.N. Guiding Principles, Principle 24(2).
  330. U.N. Guiding Principles, Principle 25.
  331. Manual, p. 65.
  332. U.N. Guiding Principles, Principle 3(2).
  333. U.N. Guiding Principles, Principle 26.
  334. U.N. Guiding Principles, Principle 16(2).
  335. U.N. Guiding Principles, Principle 17(3).
  336. U.N. Guiding Principles, Principle 30.
  337. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 6(4)(d).
  338. ICGLR, "Protocol on the Protection and Assistance to IDPs", Articles 3(6) and (7).
  339. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 3(10).
  340. ICGLR, "Draft Model Legislation on the Protocol on the Protection and Assistance to IDPs", Sections 4(2), (6) and (7).
  341. ICGLR, "Draft Model Legislation on the Protocol on the Protection and Assistance to IDPs", Sections 6(3), (4), and (5).
  342. ICGLR, "Draft Model Legislation on the Protocol on the Protection and Assistance to IDPs", Section 5(4).
  343. Pinheiro Principles, Principle 10.4.
  344. Pinheiro Principles, Principle 12.5.
  345. Pinheiro Principles, Principle 22.3.
  346. Brookings Institution, "A Framework for National Responsibility", p. 25.
  347. Brookings Institution, "A Framework for National Responsibility", p. 24.
  348. Brookings Institution, "A Framework for National Responsibility", p. 26.
  349. Private Voluntary Organisations Act, Sections 2 and 6.
  350. Private Voluntary Organisations Act, Section 3.
  351. Private Voluntary Organisations Act, Section 6(3).
  352. Manual, p. 69.
  353. Brookings Institution, "A Framework for National Responsibility", pp. 25 – 26.
  354. Fisher, 'The Right to Humanitarian Assistance' in Kälin, Williams and Solomon (eds.), "Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges", pp. 126 – 127.
  355. Fisher, 'The Right to Humanitarian Assistance' in Kälin, Williams and Solomon (eds.), "Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges", pp. 126 – 127.
  356. Manual, Annex III.
  357. Kampala Convention, Article 4(4).
  358. Kampala Convention, Article 7(5)(a).
  359. Kampala Convention, Article 4(6).
  360. Kampala Convention, Article 4(4).

361. Kampala Convention, Article 4(1).
362. Kampala Convention, Articles 10(1) - (3).
363. Kampala Convention, Articles 1 and 3.
364. U.N. Development-Based Evictions Guidelines, I(10).
365. Kampala Convention, Articles 10(2) and 10(3).
366. U.N. Development-Based Evictions Guidelines, Articles 1 and 4.
367. U.N. Guiding Principles, Principle 6(1).
368. U.N. Guiding Principles, Principle 6(2).
369. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 3(1).
370. ICGLR, "Security Pact", Articles 8(a) and (c).
371. ICGLR, "Draft Model Legislation on the Protocol on the Protection and Assistance to IDPs", Section 3(4).
372. ICGLR, "Draft Model Legislation on the Protocol on the Protection and Assistance to IDPs", Sections 3(6) and (7).
373. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 5(2).
374. Pinheiro Principles, Principle 5.3.
375. Pinheiro Principles, Principle 6.1.
376. Pinheiro Principles, Principle 6.2.
377. Pinheiro Principles, Principle 17.1.
378. Pinheiro Principles, Principle 19.1.
379. Pinheiro Principles, Principle 19.2.
380. Memorandum of Understanding, Article 10.1(d).
381. Constitution, Section 74.
382. Constitution, Section 1(j).
383. Government of Zimbabwe, "National Housing Policy", Section 6.
384. Constitution, Section 292.
385. Manual, p. 45.
386. Kampala Convention, Article 4(6).
387. Zimbabwe National Contingency Plan, December 2012 – November 2013, p. 6.
388. Zimbabwe National Contingency Plan, December 2012 – November 2013, p. 6.
389. African Union, "Africa Position to the 4th Global Platform for Disaster Risk Reduction".
390. Manual, Annex III.
391. African Union, "Africa Position to the 4th Global Platform for Disaster Risk Reduction", p. 1.
392. Kampala Convention, Article 5(4).
393. Kampala Convention, Article 4(2).
394. Kampala Convention, Article 4(4)(f)
395. Kampala Convention, Article 12(3).
396. U.N. Guiding Principles, Principle 6.
397. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 3(5).
398. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 6(4)(c).
399. ICGLR, "Security Pact", Article 20(1)(a).
400. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 3(2).
401. ICGLR, "Dar Es Salaam Declaration", Paragraph 65.
402. U.N. General Assembly, "Resolution adopted by the General Assembly 60/1. World Summit Outcome", Paragraph 56(g).
403. Zimbabwe National Contingency Plan, December 2012 – November 2013, p. 5.
404. Brookings Institution, "IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters", General Principle II.1.
405. Brookings Institution, "IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters", General Principle II.2.
406. Brookings Institution, "IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters", p. 61.
407. Brookings Institution, "IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters", p. 61.
408. Brookings Institution, "IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters", pp. 61 – 62.
409. Brookings Institution, "IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters", p. 62.
410. Civil Protection Act, Section 3(1).
411. Civil Protection Act, Part III.
412. Civil Protection Act, Section 9(1).
413. Civil Protection Act, Section 9(2).
414. Civil Protection Act, Section 11(1).
415. UNISDR, "Disaster Risk Reduction Efforts in Zimbabwe", p. 4.
416. Civil Protection Act, Section 18(2)(c).
417. IASC, UNOCHA, "Civil-Military Guidelines & Reference for Complex Emergencies", Part 2.
418. Bongo, et al. "A rights-based analysis of disaster risk reduction framework in Zimbabwe and its implications for policy and practice".
419. Civil Protection Act, Section 31.
420. Civil Protection Act, Section 32.
421. Civil Protection Act, Section 23.
422. Kampala Convention, Articles 4(f) and 12.
423. Bongo, et al., "A rights-based analysis of disaster risk reduction framework in Zimbabwe and its implications for policy and practice".
424. Constitution, Section 14(1).
425. Constitution, Section 77.
426. Constitution, Section 28.
427. Pinheiro Principles, Principle 5.1.
428. Manual, p. 43.
429. Manual, p. 43.
430. Manual, p. 58.
431. Manual, Annex III.
432. Kampala Convention, Article 3(1)(a).
433. Kampala Convention, Article 4(5).
434. Kampala Convention, Article 3(1)(h).
435. Kampala Convention, Article 3(1)(i)
436. Kampala Convention, Article 10(1).
437. Kampala Convention, Article 10(2).

438. Kampala Convention, Article 10(3).
439. U.N. Guiding Principles, Principle 6(2)(c).
440. U.N. Guiding Principles, Principle 6(2)(c).
441. U.N. Guiding Principles, Principle 6(2)(c).
442. U.N. Guiding Principles, Principle 7(3).
443. U.N. Guiding Principles, Principle 7(3)(b).
444. U.N. Guiding Principles, Principle 7(3)(c).
445. U.N. Guiding Principles, Principle 7(3)(d).
446. U.N. Guiding Principles, Principle 7(3)(f).
447. "They apply whether or not displacement is permissible, meaning that the non-arbitrary character of displacement in a given case does not justify any departure from the requirements of Principle 7".
448. Indigenous and Tribal Peoples Convention, Article 15(2).
449. Indigenous and Tribal Peoples Convention, Article 15(2).
450. Indigenous and Tribal Peoples Convention, Article 16(5).
451. ICGLR, "Security Pact", Article 9(a).
452. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 5(i).
453. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 5(3).
454. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 5(4).
455. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 5(6).
456. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 5.
457. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 4(i)(c).
458. U.N. Development-Based Evictions Guidelines, Paragraph 5.
459. U.N. Development-Based Evictions Guidelines, Paragraph 8.
460. U.N. Development-Based Evictions Guidelines, Paragraph 21.
461. U.N. Development-Based Evictions Guidelines, Paragraph 21.
462. U.N. Development-Based Evictions Guidelines, Paragraph 21.
463. U.N. Development-Based Evictions Guidelines, Paragraph 25.
464. U.N. Development-Based Evictions Guidelines, Paragraph 30.
465. U.N. Development-Based Evictions Guidelines, Paragraph 34.
466. U.N. Development-Based Evictions Guidelines, Paragraph 70. *See also* Chapter 5. "Requirement for a Focal Institution Responsible for the Coordination, Protection and Assistance of IDPs".
467. U.N. Development-Based Evictions Guidelines, Paragraph 37.
468. U.N. Development-Based Evictions Guidelines, Paragraph 38.
469. U.N. Development-Based Evictions Guidelines, Paragraph 40.
470. U.N. Development-Based Evictions Guidelines, Paragraph 43.
471. U.N. Development-Based Evictions Guidelines, Paragraph 56.
472. U.N. Development-Based Evictions Guidelines, Paragraph 56(i).
473. U.N. Development-Based Evictions Guidelines, Paragraph 55(c).
474. U.N. Development-Based Evictions Guidelines, Paragraph 45.
475. U.N. Development-Based Evictions Guidelines, Paragraph 64.
476. U.N. Development-Based Evictions Guidelines, Paragraph 67.
477. Constitution, Sections 71 – 74.
478. Constitution, Section 71(3)(b)(i).
479. Constitution, Section 71(3)(b)(ii).
480. Constitution, Section 72(2)(b).
481. Constitution, Section 71(3)(c)(i).
482. Kampala Convention, Article 10(2).
483. U.N. Guiding Principles, Principle 6(2)(c).
484. Environmental Management Act, Sections 111(i)(a) – (b).
485. Environmental Management Act, Section 107(i).
486. Mines and Minerals Act, Section 31.
487. Mines and Minerals Act, Section 80.
488. Mines and Minerals Act, Section 82.
489. Mines and Minerals Act, Section 5.
490. Mines and Minerals Act, Section 381.
491. Manual, p. 81.
492. Manual, p. 81.
493. U.N. General Assembly, "International Covenant on Civil and Political Rights", Article 12.
494. Manual, Annex III.
495. Kampala Convention, Article 4(i).
496. Kampala Convention, Article 4(4).
497. Kampala Convention, Article 9(2)(f).
498. Kampala Convention, Article 7(5)(d).
499. Kampala Convention, Article 11(i).
500. Kampala Convention, Article 11(2).
501. Kampala Declaration, Paragraph 8.
502. Manual, p. 81.
503. U.N. Guiding Principles, Principle 6(3).
504. U.N. Guiding Principles, Principle 12.
505. U.N. Guiding Principles, Principle 12.
506. U.N. Guiding Principles, Principle 14(i).
507. U.N. Guiding Principles, Principle 14(2).
508. U.N. Guiding Principles, Principle 15(a).
509. U.N. Guiding Principles, Principle 15(b).
510. U.N. Guiding Principles, Principle 15(c).
511. U.N. Guiding Principles, Principle 15(d).
512. U.N. Guiding Principles, Principle 28.
513. U.N. Guiding Principles, Principle 28.
514. ICGLR, "Protocol on the Protection and Assistance

- to IDPs", Article 4(i)(g).
515. Pinheiro Principles, Principle 9.
  516. Pinheiro Principles, Principle 10.
  517. African Charter on Human and Peoples' Rights, Article 12.
  518. Constitution, Section 66(1).
  519. Constitution, Section 66(2).
  520. Constitution, Section 49(1).
  521. Constitution, Section 72(6).
  522. Land Acquisition Act, Section 9.
  523. Mines and Minerals Act, Section 381.
  524. Civil Protection Act, Section 23.
  525. See Mooney, "CAR Report"; Kampala Convention Article 9; U.N. Guiding Principles, Principles 14 and 15.
  526. U.N. Guiding Principles, Principle 12.
  527. Kampala Declaration, Paragraph 8.
  528. U.N. Guiding Principles, Principle 28.
  529. Manual, p. 93.
  530. Manual, p. 94.
  531. Of particular relevance, in this context, is the issue of forced evictions: as recalled by U.N. CESCR the "practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to *non-interference with privacy, family and home*" (General Observation 7).
  532. Manual, Annex III.
  533. Kampala Convention, Article 9 (2)(h).
  534. Kampala Convention, Article 7(5)(c).
  535. Kampala Convention, Article 7(5)(e).
  536. Kampala Convention, Article 7(5)(f).
  537. Kampala Convention, Article 9(2)(c).
  538. Kampala Convention, Article 13(1).
  539. Kampala Convention, Article 10(2).
  540. Manual, p. 93.
  541. U.N. Guiding Principles, Principles 16(1) and (2).
  542. U.N. Guiding Principles, Principle 16(3).
  543. U.N. Guiding Principles, Principle 16(4).
  544. U.N. Guiding Principles, Principle 17(2).
  545. U.N. Guiding Principles, Principle 17(3).
  546. U.N. Guiding Principles, Principle 17(4).
  547. ICGLR, "Protocol on the Protection and Assistance to IDPs;" U.N. Guiding Principles, Principle 17.
  548. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 4(i)(h).
  549. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 4(i)(d).
  550. CESCR, Article 11(1).
  551. UNCESCR General Comment No.7.
  552. UNCESCR General Comment No. 4.
  553. UNCESCR General Comment No. 4.
  554. UNCESCR General Comment No. 4.
  555. Births and Deaths Registration Act, Section 10.
  556. Missing Persons Act, Section 3.
  557. Missing Persons Act, Section 3.
  558. Missing Persons Act, Section 4.
  559. Kampala Convention, Article 13(1).
  560. Constitution, Section 19(1).
  561. Constitution, Section 21(1).
  562. Constitution, Section 19(2)(a).
  563. Children's Act, Section 2B(b).
  564. Children's Act, Section 2B(c).
  565. Children's Act, Section 75l.
  566. See, e.g., UNICEF Zimbabwe, "Institutional Capacity Assessment: Department of Social Services", p. iv.
  567. Burial and Cremation Act, Section 9(1).
  568. Kampala Convention, Article 9(1)(c).
  569. Katinka Ridderbos, "Stateless former farm workers in Zimbabwe".
  570. Manual, Annex III.
  571. Kampala Convention, Article 13.
  572. Draft African Union Model Law, Article 27(7).
  573. Draft African Union Model Law, Articles 30(4),(5) and (7).
  574. Draft African Union Model Law, Article 45(2)(b).
  575. Draft African Union Model Law, Article 49(1)(e).
  576. U.N. Guiding Principles, Principle 20.
  577. Kälin, "Guiding Principles on Internal Displacement: Annotations", pp. 92 – 93.
  578. Kälin, "Guiding Principles on Internal Displacement: Annotations", p. 93.
  579. Constitution, Section 35(2).
  580. Constitution, Section 35(3).
  581. Constitution, Section 3(g)(1), Section 17(2).
  582. Constitution, Section 43(3).
  583. Constitution, Section 38(1).
  584. Constitution, Section 38(2).
  585. Constitution, Section 38(1)(2). These conditions are prescribed by the Citizenship of Zimbabwe Act, Part III.
  586. Constitution, Section 38(3).
  587. The Herald, "Concourt upholds dual citizenship".
  588. Zimbabwe National Registration Act, Section 7.
  589. National Registration Act, Section 11(1).
  590. National Registration Act, Section 11(2)(a).
  591. National Registration Act, Section 11(2)(b).
  592. National Registration Act, Section 11(2)(c).
  593. National Registration Act, Section 11(2)(f).
  594. Kampala Convention, Article 13.
  595. U.N. Guiding Principles, Principle 20.
  596. Zimbabwe Registrar General's Department website.
  597. Manual, p. 162.
  598. Kampala Convention, Article 13.
  599. Manual, p. 171.
  600. Manual, p. 171.
  601. Pinheiro Principles, Principles 17:1 – 17:4.
  602. Manual, p. 172.
  603. Manual, Annex III.
  604. Kampala Convention, Article 9(2)(i). See also U.N. Guiding Principles, Principle 21(3) (stating that state authorities are obligated to protect property left behind by such IDPs "against destruction and arbitrary

- and illegal appropriation, occupation or use.”).
605. Kampala Convention, Article 9(2)(i) (“States Parties shall [...] [t]ake necessary measures to protect individual, collective and cultural property [...] in areas where internally displaced persons are located [...]”). See *a/so* ICGLR, “Protocol on the Property Rights of Returning Persons”, Article 3(3) (“Member States shall ensure that the property of internally displaced persons and refugees shall be protected in all possible circumstances against arbitrary and illegal appropriation, occupation or use [...]”); see *a/so* Chapter 20. “Basic Shelter and Adequate Housing”.
  606. Kampala Convention, Article 11(4).
  607. Kampala Convention, Article 12(2). See *a/so* U.N. Guiding Principle, Principle 29(2) (stating that state authorities “shall provide or assist [IDPs] in obtaining appropriate compensation or another form of just reparation.”); Great Lakes Returning Persons’ Property Rights Protocol, Articles 4(2) and 8.
  608. Kampala Convention, Article 12(3) (“A State Party shall be liable to make reparation to internally displaced persons for damage where such a State Party refrains from protecting and assisting internally displaced persons in the event of natural disasters.”).
  609. Brookings Institution, “IASC Framework on Durable Solutions for Internally Displaced Persons”, p. 27.
  610. Kampala Convention, Article 1.
  611. Kampala Convention, Article 9(2)(f). See *a/so* U.N. Guiding Principles, Principle 14(i) (“Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.”); Chapter 13. “Freedom of Movement”.
  612. Kampala Convention, Article 9(2)(e) (“States Parties shall [...] [r]espect and ensure the right to seek safety in another party of the State [...]”); “U.N. Guiding Principles, Principle 15(a) – (c) (“Internally displaced persons have: (a) The right to seek safety in another part of the country; (b) The right to leave their country; [and] (c) The right to seek asylum in another country [...]”).
  613. Kampala Convention, Article 7(5)(d) (“Members of armed groups shall be prohibited from: [...] [r]estricting the freedom of movement of internally displaced persons within and outside their areas of residence [...]”); U.N. Guiding Principles, Principle 14(2) (“[I]nternally displaced persons have the right to move freely in and out of camps or other settlements.”).
  614. Kampala Convention, Article 9(2)(e). See *a/so* U.N. Guiding Principles, Principle 15(d) (which contains nearly identical language).
  615. Kälén “Guiding Principles on Internal Displacement: Annotations”, p. 126.
  616. Kampala Convention, Article 11(i). See *a/so* U.N. Guiding Principles, Principle 28(i) (“Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country.”).
  617. See Chapter 13. “Freedom of Movement”.
  618. Kälén “Guiding Principles on Internal Displacement: Annotations”, pp. 126 and 129 (See discussion of principle’s roots in international humanitarian and other international law on pp. 126 – 130.); U.N. General Assembly, “International Covenant on Civil and Political Rights”, Article 12(1) (“Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.”).
  619. Kampala Convention, Article 4(5). See *a/so* U.N. Guiding Principles, Principle 9 (“States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands” (citing the ILO Convention, the 2007 U.N. Declaration on the Rights of Indigenous Peoples and the World Bank’s Operational Directive, the OECD’s 1992 Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects, and the U.N. Development-Based Evictions Guidelines)).
  620. U.N. Guiding Principles, Principle 21(i). See *a/so* ICGLR, “Protocol on the Property Rights of Returning Persons”, Article 3(i)(a) (“The Member States accept that the following [...] shall form the basis of the legal protection of the property of internally displaced persons and refugees, and those resettled or relocated elsewhere due to development induced displacement: [...] The right of everyone, including internally displaced persons and refugees, to own property in accordance with [international law] [...]”).
  621. U.N. General Assembly, “Universal Declaration of Human Rights”, Article 17 (“(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property”).
  622. African Charter on Human and Peoples’ Rights (“The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws”).
  623. Kälén “Guiding Principles on Internal Displacement: Annotations”, p. 96. See *a/so* ICGLR, “Protocol on the Property Rights of Returning Persons”, Article 4(5) and (6) (describing “compelling and overwhelming circumstances” that might justify such action and an ICGLR Member State’s continuing obligations even in such a case).
  624. U.N. Guiding Principles, Principle 21(2). See *a/so* ICGLR, “Protocol on the Property Rights of Return-

- ing Persons", Article 3(2) (setting forth the same list).
625. Kälin "Guiding Principles on Internal Displacement: Annotations", p. 96.
  626. Kälin "Guiding Principles on Internal Displacement: Annotations", p. 99 (citing United Nations Secretary-General, "U.N. Security Council Report on the protection of civilians in armed conflict.").
  627. U.N. Guiding Principles, Principle 29(2). Note that nearly identical language is found in the Great Lakes Returning Persons' Property Rights Protocol, Article 4(1).
  628. Kälin "Guiding Principles on Internal Displacement: Annotations", p. 132.
  629. Kälin "Guiding Principles on Internal Displacement: Annotations", pp. 132 – 40.
  630. ICGLR, "Protocol on the Property Rights of Returning Persons", Article 4(3).
  631. ICGLR, "Protocol on the Property Rights of Returning Persons", Article 4(2).
  632. ICGLR, "Protocol on the Property Rights of Returning Persons", Articles 5 and 6.
  633. ICGLR, "Draft Model Legislation on Protocol on the Property Rights of Returning Persons", Sections 5 and 7.
  634. Pinheiro Principles, Principles 12 – 13.
  635. Pinheiro Principles, Principle 14.
  636. Pinheiro Principles, Principle 15.
  637. Pinheiro Principles, Principles 16 – 17.
  638. Pinheiro Principles, Principles 18 – 20.
  639. Pinheiro Principles, Principle 21.
  640. For a thorough review of the requirements of the Pinheiro Principles, and the justifications for such requirements, see Pinheiro Principles Handbook, p. 24.
  641. Pinheiro Principles, Principle 12.1.
  642. Pinheiro Principles, Principle 12.2.
  643. Pinheiro Principles, Principle 13.5.
  644. Pinheiro Principles, Principle 13.6.
  645. Pinheiro Principles, Principles 13.1 – 13.4.
  646. Pinheiro Principles, Principles 13.10 and 13.11.
  647. Pinheiro Principles, Principle 13.9.
  648. Pinheiro Principles, Principle 14.
  649. Pinheiro Principles, Principle 16.1.
  650. Pinheiro Principles, Principle 17.1.
  651. Pinheiro Principles, Principle 17.3.
  652. Pinheiro Principles, Principle 17.4.
  653. Pinheiro Principles, Principle 15.1.
  654. Pinheiro Principles, Principle 15.2.
  655. Pinheiro Principles, Principle 15.4.
  656. Pinheiro Principles, Principle 18.1.
  657. Pinheiro Principles, Principle 18.2.
  658. Pinheiro Principles, Principle 19.2.
  659. Pinheiro Principles, Principle 20.1.
  660. Pinheiro Principles, Principle 20.2.
  661. Pinheiro Principles, Principle 21.1.
  662. Pinheiro Principles, Principle 21.1.
  663. Pinheiro Principles, Principle 21.2.
  664. Pinheiro Principles Handbook, pp. 13 – 14.
  665. Pinheiro Principles, Principle 28.
  666. Pinheiro Principles.
  667. See Chapter 20. "Basic Shelter and Adequate Housing"; U.N. Human Rights Council, "Adequate Housing Report", II(1), III(B).
  668. U.N. Human Rights Council, "Adequate Housing Report", III(C)(31).
  669. Constitution, Section 71.
  670. Constitution, Section 71.
  671. U.N. Guiding Principles, Principle 6.
  672. Kampala Convention, Article 10.
  673. Environmental Management Act, Part XI.
  674. Constitution, Section 74.
  675. Rakodi and Mutizwa-Mangiza, "Housing Policy, Production and Consumption in Harare", p. 10.
  676. Regional Town and Country Planning Act, Section 35; Housing Standards Control Act, Section 16.
  677. Rural District Councils Act, especially Section 53; Urban Councils Act; for a detailed explanation of the extent of this overlapping authority, see Urban Councils Amendment Bill.
  678. Pinheiro Principles, Principle 19.2.
  679. The Herald, "Harare relaxes building by-laws".
  680. Constitution, Section 72(3).
  681. Kampala Convention, Article 4(4)(a).
  682. Kampala Convention, Article 12.
  683. Constitution, Section 289.
  684. Constitution, Section 292 (emphasis added).
  685. See Chapter 20. "Basic Shelter and Adequate Housing".
  686. Manual, Annex III.
  687. Kampala Convention, Article 9(2)(k).
  688. Kampala Convention, Article 9(2)(l).
  689. Kampala Declaration, Paragraph 5.
  690. Kampala Convention, Articles 13(2) and (3).
  691. U.N. Guiding Principles, Principle 22.
  692. Kälin, "Guiding Principles on Internal Displacement Annotations", p. 93.
  693. Constitution, Section 3.
  694. Constitution, Section 155.
  695. Constitution, Fourth Schedule.
  696. Constitution, Section 238.
  697. Constitution, Section 239(a).
  698. Constitution, Section 239(b).
  699. Constitution, Section 239(g).
  700. SI 2013-85.
  701. Veritas, "Bill Watch 20-2013".
  702. Electoral Amendment Act.
  703. Electoral Act, Section 17A.
  704. Electoral Act, Section 26A.
  705. Veritas, "Bill Watch 11-2014", p. 3.
  706. Electoral Act, Section 23(1).
  707. Electoral Act, Section 23(2).
  708. Electoral Act, Section 23(3).
  709. Electoral Act, Section 23(1).



710. Electoral Act, Section 25(1).
711. Electoral Act, Section 23(4).
712. Electoral Act, Section 56(3).
713. Electoral Act, Sections 24(7) and 190.
714. Electoral Act, Section 28(2).
715. Electoral Act, Section 28(1).
716. Electoral Act, Section 89.
717. Kampala Convention, Article 3(i)(j). Such assistance includes “allowing and facilitating rapid and unimpeded access by humanitarian organisations and personnel [...]”.
718. Kampala Convention, Article 9(2)(a).
719. Kampala Convention, Article 9(2)(b).
720. Kampala Convention, Article 7(5)(c).
721. Kampala Convention, Article 11(1).
722. Kampala Declaration, Paragraph 10.
723. U.N. Guiding Principles, Principle 3.
724. U.N. Guiding Principles, Principles 24(1) and (2); Kälin, “Guiding Principles on Internal Displacement Annotations”, p. 113.
725. U.N. Guiding Principles, Principle 25.
726. U.N. Guiding Principles, Principle 7(2).
727. U.N. Guiding Principles, Principles 18(1).
728. U.N. Guiding Principles, Principles 18(2)(a) and (d).
729. Kälin, “Guiding Principles on Displacement: Annotations”, pp. 83 and 85.
730. Manual, p. 105.
731. Manual, p. 105; UNCESCR General Comment 12.
732. UNCESCR General Comment 12.
733. Manual, Annex III.
734. Kampala Convention, Article 9(i)(e).
735. U.N. Guiding Principles, Principles 18(1) and 18(2)(a).
736. ICGLR, “Protocol on the Protection and Assistance to IDPs”, Article 4 (i)(f).
737. Constitution, Section 77.
738. Constitution, Section 77.
739. Constitution, Section 15.
740. Constitution Section 81(f).
741. Constitution, Sections 19 and 21.
742. Government of Zimbabwe, “Zimbabwe Agenda for Sustainable Socio-Economic Transformation”.
743. Government of Zimbabwe, “Zimbabwe Agenda for Sustainable Socio-Economic Transformation”, “Food Security and Nutrition Cluster Matrix”, p. 52 et. seq.
744. Government of Zimbabwe, “Zimbabwe Agenda for Sustainable Socio-Economic Transformation”, at pp. 37, 52, 54, 58, 60 and 74.
745. Mooney, “CAR Report”.
746. Mooney, “CAR Report”.
747. Manual, p. 117.
748. Manual, p. 117.
749. Manual, Annex III.
750. Kampala Declaration, Paragraph 22.
751. ICGLR, “Protocol on the Protection and Assistance to IDPs”, Article 4(i)(f).
752. ICGLR, “Protocol on the Protection and Assistance to IDPs”, Article 5(5).
753. ICGLR, “Protocol on the Protection and Assistance to IDPs”, Article 4(i)(f).
754. ICGLR, “Protocol on the Protection and Assistance to IDPs”, Article 3(10).
755. Pinheiro Principles, Principle 8; Pinheiro Principles Handbook, pp. 48 – 49.
756. Constitution, Section 77(a).
757. Constitution, Sections 301(1) and 301(2)(d).
758. Constitution, Section 80(1).
759. Water Act, Sections 3 and 4.
760. Water Act, Sections 6(1)(b) and (c).
761. Water Act, Sections 6 (2)(c) and (d).
762. Water Act, Section 32(1).
763. Public Health Act, Section 64(1).
764. Public Health Act, Section 64(2).
765. Public Health Act, Section 64(3).
766. Public Health Act, Section 66.
767. Manual, p. 125.
768. See U.N. General Assembly “Universal Declaration of Human Rights”, Article 25.
769. See, e.g., UNCESCR General Comment No. 4 and UNCESCR General Comment No. 7.
770. CESCR Article 11(1).
771. UNCESCR General Comment No. 7, paragraph 3.
772. UNCESCR General Comment No. 7, paragraph 1.
773. Manual, p. 131.
774. Manual, p. 131.
775. U.N. Human Rights Council, “Adequate Housing Report”, III(A)(6).
776. U.N. Human Rights Council, “Adequate Housing Report”.
777. Manual, Annex III.
778. Kampala Convention, Article 9(2)(g). See also Article 7(5)(i).
779. Brookings Institution, “IASC Framework on Durable Solutions for Internally Displaced Persons”, p. 27.
780. Pinheiro Principles, Principles 6.1 – 6.2.
781. Pinheiro Principles, Principle 8.2.
782. U.N. Human Rights Council, “Security of Tenure Guidelines”.
783. U.N. Human Rights Council, “Adequate Housing Report”, III.
784. U.N. Human Rights Council, “Security of Tenure Guidelines”.
785. U.N. Human Rights Council, “Security of Tenure Guidelines”. The guiding principles in the Adequate Housing Report also relate to tenure as it affects the claims of IDPs to property left behind. This is addressed in Chapter 16. “Property and Possessions”.
786. U.N. Human Rights Council, “Security of Tenure Guidelines”.
787. U.N. Human Rights Council, “Security of Tenure Guidelines”, Principle 1; U.N. Human Rights Council, “Adequate Housing Report”, III(B). Securing tenure in these ways is critical to securing adequate housing

- for IDPs in the place to which they have been displaced. IDPs would also benefit from secure tenure rights of the kind just discussed in property left behind, including a home. See Chapter 16. "Property and Possessions".
788. U.N. Human Rights Council, "Security of Tenure Guidelines", Principle 3; "Adequate Housing Report", II(5).
  789. U.N. Human Rights Council, "Adequate Housing Report", III(D)(37) – (38).
  790. U.N. Human Rights Council, "Adequate Housing Report", III(C)(27).
  791. U.N. Human Rights Council, "Adequate Housing Report", III(E).
  792. See, e.g., Constitution of South Africa, Section 26.
  793. Constitution, Section 28. The Constitution does, however, guarantee children a right to shelter. (Constitution, Section 81). Zimbabwe is also party to the International Covenant on Economic, Social and Cultural Rights, which guarantees a right to housing, although this treaty, like the Kampala Convention, has not been domesticated. ECOSOC, "Concluding Observations of the Committee on Economic, Social, and Cultural Rights".
  794. Kampala Convention, Article 9.
  795. The Kampala Convention prohibits displacement induced by "harmful practices", which include "all behaviour, attitudes and/or practices which negatively affect the fundamental rights of persons, such as but not limited to their right to life, health, dignity [...], mental and physical integrity and education." Kampala Convention, Article 1(j).
  796. Rakodi and Mutizwa-Mangiza, "Housing Policy, Production and Consumption in Harare", p. 10.
  797. Regional Town and Country Planning Act, Section 35; Housing Standards Control Act, Section 16.
  798. See Rural District Councils Act, especially Section 53; see also Urban Councils Act. For a detailed explanation of the extent of this overlapping authority, see Urban Councils Amendment Bill. Note that this bill was suspended indefinitely in 2012 (The Zimbabwean, "Urban Councils Amendment Bill suspended").
  799. Government of Zimbabwe, "National Housing Policy".
  800. Government of Zimbabwe, "National Housing Policy", Paragraph 65.
  801. Constitution, Section 292.
  802. Government of Zimbabwe, "Zimbabwe Agenda for Sustainable Socio-Economic Transformation", p. 34, 54.
  803. Government of Zimbabwe, "Zimbabwe Agenda for Sustainable Socio-Economic Transformation", p. 76.
  804. Robinson, "The Right to Health and Basic Services" in Kälin, Williams and Solomon (eds.), "Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges", p. 207.
  805. Manual, p. 146.
  806. Manual, p. 148.
  807. Robinson, "The Right to Health and Basic Services" in Kälin, Williams and Solomon (eds.), "Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges", p. 207.
  808. Manual, p. 148.
  809. Manuel, Annex III.
  810. Kampala Convention, Article 9(2)(c).
  811. Kampala Convention, Article 9(2)(d).
  812. Kampala Declaration, Paragraph 13.
  813. U.N. Guiding Principles, Principle 19.
  814. Kälin, "Guiding Principles on Internal Displacement: Annotations", pp. 89 – 91.
  815. ICGLR, "Protocol on the Protection and Assistance to IDPs", Article 4(i)(f).
  816. ICGLR, "Draft Model Legislation on the Protocol on the Protection and Assistance to IDPs", Section 4(i).
  817. ICGLR, "Draft Model Legislation on the Protocol on the Protection and Assistance to IDPs", Sections 4 (10) and (11).
  818. Constitution, Section 29(1).
  819. Constitution, Section 29(2).
  820. Constitution, Section 29(3).
  821. Constitution, Section 76(1).
  822. Constitution, Section 76(2).
  823. Constitution, Section 76(3).
  824. Constitution, Section 76(4).
  825. Constitution, Section 79(1).
  826. Public Health Act, Section 57.
  827. UNHCR, "A Guidance for UNHCR Field Operations on Water and Sanitation Services", pp. 5 – 6.
  828. Constitution, Section 77.
  829. Public Health Act, Section 64(i).
  830. Public Health Act., Section 66.
  831. UNHCR, "A Guidance for UNHCR Field Operations on Water and Sanitation Services", p. 7.
  832. Public Health Act, Section 84.
  833. Public Health Act, Section 83.
  834. Public Health Act, Section 85(c).
  835. Water Act, Preamble.
  836. Housing Standards Control Act, First Schedule, Paragraph 3(a).
  837. Housing Standards Control Act, First Schedule, Paragraph 3(b).
  838. Housing Standards Control Act, Section 23(a).
  839. Housing Standards Control Act, Section 16(a).
  840. Housing Standards Control Act, Section 16(b)(i).
  841. Housing Standards Control Act, Section 16(b)(ii).
  842. Housing Standards Control Act, Section 17(2).
  843. Housing Standards Control Act, Section 20.
  844. Medical Services Act, Section 3.
  845. Public Health Act, Section 3(2).
  846. Public Health Act, Sections 4(i) and 4(5).
  847. Public Health Act, Sections 4A, 7, 10 and 15.

848. Kampala Convention, Article 3(2)(a).
849. Manual, p. 148.
850. Manuel, Annex III.
851. Kampala Convention, Article 9(1)(a).
852. Kampala Convention, Article 3(1)(k).
853. Kampala Declaration, Paragraph 11.
854. U.N. Guiding Principles, Principles 19(1) and 29(1).
855. U.N. Guiding Principles, Principle 22(1)(b).
856. ICGLR, "Security Pact", Article 20(1)(a).
857. ICGLR, "Security Pact", Article 20(1)(b).
858. UNCESCR General Comment No. 3.
859. Constitution, Section 14(1).
860. Constitution, Section 14(2).
861. Constitution, Section 30.
862. Labour Act, Section 5.
863. It is worth noting at this point that IDPs often find better opportunities for initial economic reintegration in the informal sector; the effect of employment regulation on IDPs' ability to participate in the informal economy should be carefully balanced against the imperative to protect IDPs from exploitation.
864. Children's Act, Section 75H.
865. Children's Act, Section 75I.
866. Manual, p. 202. (explaining how "subsidised child-care may be a precondition for women's participation in income-generating activities").
867. Social Welfare Assistance Act, Section 3.
868. Social Welfare Assistance Act, Section 5.
869. Social Welfare Assistance Act, Section 6.
870. Manuel, Annex III.
871. Kampala Declaration, Paragraph 14.
872. U. N. Guiding Principles, Principle 23.
873. U.N. Guiding Principles, Principle 23(4).
874. ICGLR, "Draft Model Legislation on the Protocol on the Protection and Assistance to IDPs", Section 5(l).
875. SADC, "Protocol on Education and Training".
876. SADC, "Protocol on Education and Training", Article 5(4).
877. SADC, "Protocol on Education and Training", Article 11.
878. SADC, "Protocol on Education and Training", Article 3.
879. SADC, "Protocol on Education and Training", Article 28.
880. Note that non-citizens are not generally entitled to the same educational rights
881. Constitution, Section 75.
882. Constitution, Section 75.
883. Constitution, Section 27.
884. Constitution, Sections 27 and 75.
885. Constitution, Section 81(1)(f).
886. Constitution, Section 19(2)(d).
887. Constitution, Section 19(3)(b)(ii).
888. Constitution, Section 20(1)(a).
889. Education Act, Section 4(1).
890. Education Act, Sections 4(2)(a) and 4(2)(b).
891. Education Act, Section 3.
892. Education Act, Section 5.
893. Education Act, Section 8.
894. Education Act, Section 10.
895. Education Act, Section 11.
896. These recommendations are based on a synthesis of Manual, Chapter 15.

# About IDMC

The Internal Displacement Monitoring Centre (IDMC) is the leading source of information and analysis on internal displacement. For the millions of people worldwide displaced within their own country, IDMC plays a unique role as a global monitor and evidence-based advocate to influence policy and action by governments, UN agencies, donors, international organisations and NGOs.

IDMC was established in 1998 at the request of the Interagency Standing Committee on humanitarian assistance. Since then, IDMC's unique global function has been recognised and reiterated in annual UN General Assembly resolutions.

IDMC is part of the Norwegian Refugee Council (NRC), an independent, non-governmental humanitarian organisation.

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