

# Typology of Movements in the Lake Chad Basin and Voluntariness Verification Tool of Return Movements

Regional Protection Working Group (RPWG), Dakar

## Table of Contents

<b>1. Preface</b> .....	2
<b>2. Background</b> .....	2
<b>3. Definition of the categories of persons</b> .....	2
i. Refugee .....	3
ii. Asylum seekers.....	3
iii. Internally displaced persons (IDPs) .....	3
iv. Refugee returnees.....	3
v. IDP returnees .....	4
vi. Non-refugee returnees .....	4
vii. Stateless persons.....	4
viii. Migrants caught in crisis situations .....	4
<b>4. Typology of movements</b> .....	5
a. Forced displacement .....	7
b. Secondary and multiple displacement .....	7
c. Crisis-induced movement of migrants [back] to their country of origin or nationality .....	8
d. Crisis-induced movement of migrants to a third country .....	9
e. Evacuation and relocation.....	9
e-1. Evacuation and relocation initiated by the government for imperative military reasons .....	10
e-2. Evacuation and relocation initiated by humanitarian organisations .....	11
e-3. Evacuation and relocation jointly initiated by the government and humanitarian organisations .....	11
f. Go-and-see visit.....	12
g. Pendular movements .....	13
h. Return (Refugees and IDPs).....	13
h-1. Spontaneous return .....	14
h-2. Facilitated return by humanitarian organisations .....	14
h-3. Promoted return by UNHCR (Refugees) .....	15
h-4. Return to adverse conditions.....	15
i. Forced return of IDPs .....	16
j. Cross-border forced return/transfer .....	17
j-1. Forced return of refugees .....	17
j-2. Expulsion .....	18
j-3. Extradition.....	19
<b>5. Conclusion</b> .....	20
<b>6. Annex</b> .....	21
<b>7. Key references</b> .....	22

## 1. Preface

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The purpose of the present document is to respond to recommendations from the Regional Protection Working Group (RPWG)<sup>1</sup> in Dakar in April 2016. The RPWG suggested producing a document on typology of the movements and developing a tool to help identify voluntariness of return in the Lake Chad Basin.

## 2. Background

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Since the escalation of Boko Haram attacks in north-eastern Nigeria in 2014, various population movements were observed in Lake Chad Basin in the form of forced displacement<sup>2</sup>, evacuation and relocation, spontaneous and forced or induced return and among others. The crisis has severely affected the most vulnerable people, including refugees, Internally Displaced Persons (IDPs), children<sup>3</sup>, women at risk, elderly persons, and persons with disabilities and serious medical conditions.

Some people, including returnees (refugees and IDPs), may be forced into secondary and multiple displacement due to persecution, human rights violations and the lack of physical and material safety, including lack of humanitarian assistance or access to services. The vast majority of Nigerian returnees are joining IDP sites, where conditions are grim.

A lack of documentation and hence difficulties in proving nationality is a widespread phenomenon, especially in the area most affected by the Lake Chad Basin crisis. The complex patterns of displacement, coupled with low levels of documentation has made it difficult to discern between refugees, IDPs, migrants, returnees and local residents.

All persons on the move are entitled to the protection of their rights and interests. Forced population movements, including forced displacement across or within borders (and return under force of circumstances) as well as forcible transfers and returns, raise critical protection concerns: clear standards for analysing voluntariness will often be required to ensure compliance with relevant international and regional laws and guidelines.

The present document aims to:

- provide definitions of the categories of population and practical application relevant in the Lake Chad Basin;
- explain population movements in the Lake Chad Basin and applicable legal and policy frameworks and;
- provide a tool to assist in determining voluntariness of return.

## 3. Definition of the categories of persons<sup>4</sup>

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<sup>1</sup> The RPWG uses the IASC definition of protection which states that protection is “all activities aimed at ensuring full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. human rights law, international humanitarian law and refugee laws).” (GPC Strategic Framework 2016-2019)

<sup>2</sup> According to the Guiding Principles on Internal Displacement, forced displacement occurs when individuals and communities 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 generalized violence, violations of human rights or natural or human-made disasters.

<sup>3</sup> Children and adolescents constitute around 60 per cent of the conflict-affected population. UNICEF, *Beyond Chibok*, April 2016, available at: [http://www.unicef.org/wcaro/english/Nigeria\\_and\\_Beyond\\_Chibok\\_100416\\_LR\\_embargoed.pdf](http://www.unicef.org/wcaro/english/Nigeria_and_Beyond_Chibok_100416_LR_embargoed.pdf). In Nigeria alone, children account for 57 per cent of the total internally displaced population. UNICEF, *Nigeria Appeal 2016*, available at:

[http://www.unicef.org/appeals/files/HAC\\_2016\\_Nigeria.pdf](http://www.unicef.org/appeals/files/HAC_2016_Nigeria.pdf). In Cameroon, 61 per cent of the population of Minawao camp are children, as of 13 May 2016. UNHCR, *Minawao Camp Profile*, May 2016, available at: <http://data.unhcr.org/SahelSituation/region.php?id=73&country=502#>.

<sup>4</sup> Some of these categories can overlap. For example, a person can be both stateless and a refugee. An asylum seeker can be a refugee. In the Lake Chad Basin, many of the returnees find themselves returning to the situations of internal displacement.

i. Refugee

Refugees are individuals who would meet the criteria under [the refugee definitions in] the 1951 Convention relating to the Status of Refugees (1951 Convention), the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention), UNHCR's Statute [including those who are accorded complementary or temporary forms of protection].

Refugees are specifically defined and protected in international law. Refugees are people outside their country of origin because of feared persecution, conflict, violence, or other circumstances that have seriously disturbed public order, and who, as a result, require 'international protection'. They are so recognized precisely because it is too dangerous for them to return home, and they therefore need sanctuary elsewhere.

Article 1(A)(2) of the 1951 Convention defines a refugee as **any** person who:

*owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*

Article 1 (2) of the OAU Convention defines 'refugee' such that, in addition to the 1951 Convention criteria, it also applies to every person who:

*owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.*

ii. Asylum-seekers

Asylum-seekers are individuals who are seeking asylum, but whose claim has not yet been finally decided. Because asylum-seekers may be refugees, they are protected under international refugee law - for example, against *refoulement* (return to a place where they may be at risk) or penalisation for irregular entry - pending final determination of their status.

iii. Internally Displaced Persons (IDPs)

According to the Guiding Principles on Internal Displacement (Guiding Principles) and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)<sup>5</sup>, internally displaced persons (IDPs) 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 generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.*"

iv. Refugee returnees

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<sup>5</sup> Amongst the Lake Chad Basin countries, Chad, Niger and Nigeria are signatories to the Kampala Convention as of November 2016.

Returnees are former refugees who have returned to their country of origin spontaneously or in an organized fashion but have not yet been fully (re)integrated.<sup>6</sup> The instruments such as the 1951 Convention<sup>7</sup>, General Assembly Resolutions<sup>8</sup>, Executive Committee Conclusions have affirmed UNHCR's role and responsibilities with regard to voluntary repatriation and widened its mandate over decades to include providing assistance for rehabilitation of refugees and dealing with the consequences of their return (monitoring the safety and well-being of returnees; supporting national efforts to build legal and judicial capacity to create conditions for reconciliation; supporting rehabilitation, reconstruction and development assistance; facilitating sustainable reintegration; etc.).

v. IDP returnees

IDP returnees refer to IDPs who have returned to their place of origin or habitual residence. The Kampala Convention<sup>9</sup> and the Guiding Principles on Internal Displacement<sup>10</sup> affirm that national authorities have the primary duty and responsibility to ensure that durable solutions are found for IDPs, including facilitating and supporting sustainable return and reintegration and establishing the conditions under which safe and dignified return becomes possible. In addition, the Kampala Convention<sup>11</sup> and the Guiding Principles<sup>12</sup> affirm that national authorities shall cooperate with and facilitate access to, where appropriate, international organizations and humanitarian agencies and other appropriate actors to assist in supporting sustainable return and reintegration of IDPs.

vi. Non-refugee returnees

In the Lake Chad Basin, the term is used to refer to those whose migration country is affected by the crisis and who have returned to their country of origin or nationality. These people may include second and third generation migrants, and many of them may have difficulties in proving nationality. International human rights law ensures the rights and interest of non-refugee returnees. In cases where non-refugee returnees from countries affected by the crisis find themselves returning to the situations of internally displacement, the Guiding Principles and the Kampala Convention would also apply.

vii. Stateless persons

According to the Article 1 of the 1954 Convention relating to the Status of Stateless Persons, a stateless person *“means a person who is not considered as a national by any State under the operation of its law.”*<sup>13</sup>

The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness are the key international conventions addressing statelessness. They are complemented by international human rights treaties and provisions relevant to the right to a nationality.

viii. Migrants caught in crisis situations

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<sup>6</sup> UNHCR Emergency Handbook, 2015. Available at: <https://emergency.unhcr.org/entry/79544/unhcrs-mandate-for-refugees-stateless-persons-and-idps#2,1482443746902>

<sup>7</sup> While the 1951 Convention relating to the Status of Refugees does not address the question of voluntary repatriation as such, it does contain several provisions with significant relevance for UNHCR's respective statutory functions such as cessation and non-refoulement.

<sup>8</sup> See, GA Res. 3271 (1974); GA Res. 33/36 (1978); GA Res. 40/118 (1985); GA Res. 44/161 (1989); GA Res. 49/169 (1994); GA Res. 52/103 (1997); GA Res.56/137 (2001).

<sup>9</sup> Art. 11

<sup>10</sup> Section V

<sup>11</sup> Art. 11, Point 3

<sup>12</sup> Section V, Principle 30

<sup>13</sup> Refugees, IDPs, migrants and other persons of concern can also be stateless or at risk of statelessness.

Migrants caught in crisis situations are non-citizens who are present in a country during a conflict or natural disaster regardless of: (a) the means of or reasons for entry; (b) immigration status; or (c) length of or reasons for stay. The term ‘migrant’ does not refer to refugees, asylum-seekers, and stateless persons, for whom specific protection regimes exist under international law.

Migrants caught in crisis may require international protection, because they are not able to safely return to their country of origin. Some may be stateless, and are subject entitled to international protection under the 1954 Convention on the Status of Stateless persons (see above).

#### 4. Typology of movements

The below table provides an overview of types of movements, some of which may overlap, affecting all of the above categories of persons on the move in the Lake Chad Basin, as well as key international and regional legal and policy instruments which inform states and humanitarian actors with regard to listed movements.

The Protection cluster or sector in the Lake Chad Basin countries continues to support the Governments of Nigeria, Cameroon, Chad and Niger in strengthening their legislation or the development of national legal or policy frameworks to bring them in line with the international standards. Examples include continuous advocacy for and support in the domestication of the Kampala Convention; development of the minimum protection principles in case of an evacuation of civilian population<sup>14</sup> and minimum protection considerations with regard to IDP returns in Diffa<sup>15</sup>, supported by the Protection cluster in Niger for the Humanitarian Country Team (HCT) and; development of a durable solutions framework for displaced persons and returnees<sup>16</sup> and a return policy framework on voluntary returns to promote safe, dignified and voluntary return, supported by the Protection Sector Working Group (PSWG) in Nigeria.

Types of movements	Key international and regional legal and policy instruments
<p><b>a. Forced displacement</b></p>	<p>The 1951 United Nations Convention relating to the Status of Refugees and the 1967 Protocol (1951 Convention); the 1969 Organization of African Unity Convention Governing Specific Aspects of Refugee Problems in Africa (OAU Convention); the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention); the United Nations Guiding Principles on Internal Displacement (Guiding Principles); the 1954 Convention on the Status of Stateless Persons (Convention on Statelessness); the 1961 Convention on the Reduction of Statelessness; the 1981 African Charter on Human and Peoples’ Rights (Banjul Charter); the 1990 African Charter on the Rights and Welfare of the Child; the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the 1966 International Covenant on Civil and Political Rights (ICCPR); the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR); the 1979 Convention on the Elimination of All Forms of Discrimination against Women</p>

<sup>14</sup> Niger Protection Cluster, *Conditions minimales de protection relatives au projet de relocalisation des populations dans la région de Diffa*, May 2016. Available at: [http://www.globalprotectioncluster.org/\\_assets/files/field\\_protection\\_clusters/Niger/files/evacuations-humanitaires-et-protection-note-du-cluster-protection-a%CC%80-lehp-final\\_en.pdf](http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Niger/files/evacuations-humanitaires-et-protection-note-du-cluster-protection-a%CC%80-lehp-final_en.pdf)

<sup>15</sup> Protection Cluster Niger, *Considérations minimales de protection en lien avec le retour des PDIs dans leurs localités d’origine et la sécurité sur les lieux d’installation des PDIs dans la région de Diffa*, 25 June 2016. Available at : [http://www.globalprotectioncluster.org/\\_assets/files/field\\_protection\\_clusters/Niger/files/conside%CC%81rations-de-protection-pour-le-retour-des-pdis-final\\_en.pdf](http://www.globalprotectioncluster.org/_assets/files/field_protection_clusters/Niger/files/conside%CC%81rations-de-protection-pour-le-retour-des-pdis-final_en.pdf)

<sup>16</sup> Nigeria PSWG, *HCT Framework on Durable Solutions for Displaced Persons and Returnees*, April 2015. Available at: [https://www.humanitarianresponse.info/es/system/files/documents/files/english\\_hct\\_framework\\_on\\_durable\\_solutions\\_and\\_checklist\\_0.pdf](https://www.humanitarianresponse.info/es/system/files/documents/files/english_hct_framework_on_durable_solutions_and_checklist_0.pdf)

	(CEDAW); the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the 1989 Convention on the Rights of the Child (CRC); the 2006 International Convention for the Protection of All Persons from Enforced Disappearance (CPED); the 2006 Convention on the Rights of Persons with Disabilities (CRPD); and the 1949 Geneva Conventions and the 1977 Additional Protocols
<b>b. Secondary and multiple displacement</b>	1951 Convention; OAU Convention; Kampala Convention; Guiding Principles; Convention on Statelessness; the 1961 Convention on the Reduction of Statelessness; Banjul Charter; the African Charter on the Rights and Welfare of the Child; ICERD; ICCPR; ICESCR; CEDAW; CAT; CRC; ICPMW; CPED; CRPD and the 1949 Geneva Conventions and the 1977 Additional Protocols
<b>c. Crisis-induced movement of migrants to their home country</b>	ICERD; ICCPR; ICESCR; CEDAW; CAT; CRC; ICPMW; CPED; CRPD; Vienna Convention on Consular Relations; Banjul Charter; the African Charter on the Rights and Welfare of the Child; Convention on Statelessness; the 1961 Convention on the Reduction of Statelessness; and the 1949 Geneva Conventions and the 1977 Additional Protocols
<b>d. Crisis-induced movement of migrants to a third country</b>	ICERD; ICCPR; ICESCR; CEDAW; CAT; CRC; ICPMW; CPED; CRPD; Vienna Convention on Consular Relations; Banjul Charter; the African Charter on the Rights and Welfare of the Child; Convention on Statelessness; the 1961 Convention on the Reduction of Statelessness; and the 1949 Geneva Conventions and the 1977 Additional Protocols
<b>e. Evacuation and relocation</b>	The 1949 Geneva Conventions and the 1977 Additional Protocols; ICERD; ICCPR; ICESCR; CEDAW; CAT; CRC; ICPMW; CPED; CRPD; Banjul Charter; the African Charter on the Rights and Welfare of the Child; 1951 Convention; the 1998 Rome Statute of the International Criminal Court
e.1. Evacuation and relocation initiated by the government for imperative military reasons	
e.2. Evacuation and relocation initiated by humanitarian organisations	
e.3. Evacuation and relocation jointly initiated by the government and humanitarian organisations	
<b>f. Go and see visit</b>	
<b>g. Pendular movements</b>	
<b>h. Return (Refugees and IDPs)</b>	ICERD; ICCPR; ICESCR; CEDAW; CAT; CRC; ICPMW; CPED; CRPD; Banjul Charter; the African Charter on the Rights and Welfare of the Child; OAU Convention; Kampala Convention; and Guiding Principles
h.1. Spontaneous return	
h.2. Return facilitated by humanitarian organisations	
h.3. Return promoted by UNHCR (Refugees)	
h.4. Return to adverse conditions	
<b>i. Forced return of IDPs</b>	ICERD; ICCPR; ICESCR; CEDAW; CAT; CRC; ICPMW; CPED; CRPD; Banjul Charter; the African Charter on the Rights and Welfare of the Child; Kampala Convention; and Guiding Principles
<b>j. Cross-border forced return/transfer</b>	
j.1. Forced return of refugees	1951 Convention; OAU Convention; ICCPR; CAT; CRC; CPED; Banjul Charter; the African Charter on the Rights and Welfare of the Child; and the 1949 Geneva Conventions and the 1977 Additional Protocols
j.2. Expulsion	ICCPR; CAT; CRC; CPED; ICPMW; the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; Banjul Charter; the African Charter on the Rights and Welfare of the Child; the 1949 Geneva Conventions and the 1977 Additional Protocols; and 1951 Convention
j.3. Extradition	ICCPR; CAT; CRC; the 2000 Optional Protocol on the Involvement of Children in Armed Conflict (OPAC); CPED;

Banjul Charter; the African Charter on the Rights and Welfare of the Child; the 1951 Convention; and bilateral or multilateral extradition treaties applicable to the two States concerned, the national law of the requested State

#### a. Forced displacement

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In 2015, as the Boko Haram insurgent group expanded its presence from north-eastern Nigeria into Cameroon, Chad and Niger, the Lake Chad Basin was gripped by widespread violence. Resorting to terror, kidnappings, raids and suicide attacks, Boko Haram sought to seize territory, triggering large-scale displacement across the region, which now hosts significant numbers of refugees.

Over 2.6 million people, including 1.5 million children, are forcibly displaced in the Lake Chad Basin due to the Boko Haram insurgency, and new displacement continues.<sup>17</sup> Multinational Joint Task Force (MNJTF) has become operational at the beginning of 2016, which may contribute to further displacement and retaliation by Boko Haram, both within and outside Nigeria.

The cross-border expansion of Boko Haram has furthermore resulted in border closures as well as the imposition of security measures, forced displacement, including severe restrictions on freedom of movement.<sup>18</sup> Security measures and restrictions on freedom of movement have severely impacted livelihoods of populations, resulting in closure of markets and limiting other trade and fishing activities.

Persecution and serious human rights violations are the key factors which may induce displacement. In the Lake Chad Basin, economic insecurity<sup>19</sup>, natural disasters, communal clashes, lack of access to services add to these factors, and components essential for voluntary repatriation or return. The rights, needs and legitimate interests of refugees and IDPs should be the primary consideration guiding policies, actions and practices by all actors in line with international human rights law, international humanitarian law and refugee laws as well as regional legal instruments such as the OAU Convention and the Kampala Convention.

#### b. Secondary and multiple displacement

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In the Lake Chad Basin, some refugees, asylum-seekers, migrants caught in crisis, IDPs and returnees may be forced into secondary and multiple displacement due to persecution, human rights violations and the lack of physical and material safety, including lack of humanitarian assistance or access to services. For example, in the Nigerian states most affected by the insurgency, over 48 per cent of vulnerable displaced households report having been displaced multiple times.<sup>20</sup> Protection monitoring in the Cameroon's Minawao camp also reveals deplorable conditions of IDP camps in Nigeria, leaving

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<sup>17</sup> 1,899,830 individuals displaced (IOM DTM, March 2017) and 195,544 registered returnees in Nigeria (NIS and UNHCR, March 2017); 241,560 individuals (105,491 refugees, 14,678 returnees and 121,391 IDPs) displaced in the Diffa region in Niger (DREC, Dec 2016); 85,900 refugees (UNHCR, March 2017) and 191,908 IDPs in Cameroon (IOM DTM, January 2017) and; 8,596 refugees (CNARR & UNHCR, February 2017), 90,911 IDPs, 14,810 Chadian returnees and 324 TCNs (Shelter/CCCM Cluster, January 2017)

<sup>18</sup> For example, the ban on the use of motorbikes, including for operating moto taxis in some areas such as Diffa in Niger has negatively impacted on the income generating activities of the majority of young people.

<sup>19</sup> Displaced persons and host communities are facing severe food insecurity resulting from successive poor harvests due to abandoned crops, minimal cross-border cash crop trade and lost economic opportunities. A total of 6.3 million people are severely food insecure in affected areas in the four countries. (Lake Chad Basin Emergency, Revised Requirements and Response Priorities, September-December 2016)

<sup>20</sup> The calculation was done based on the two vulnerability screening round II and III. UNHCR, SEMA, NRCS, NEMA, MoWASD, *North East Nigeria: Vulnerability Screening Report*, Round II, June 2016, available at: <http://reliefweb.int/report/nigeria/north-east-nigeria-vulnerability-screening-report-round-ii-june-2016> UNHCR, SEMA, NRCS, NEMA, MoWASD, *North East Nigeria: Vulnerability Screening Report*, Round III, November 2016, available at: <https://data.unhcr.org/SahelSituation/download.php?id=2444>



them seeking an asylum as an only option.<sup>21</sup> In Niger, Boko Haram violence in Diffa region drove 157,945 refugees, IDPs and local villagers to seek refuge alongside Niger's National Route No.1 since January 2016.<sup>22</sup> The attacks by Boko Haram in Bosso in June also created further displacement of around 70,000 people in Diffa region.<sup>23</sup> Most of them have been displaced multiple times.

In Nigeria many returnees have in fact returned to situations of internal displacement, joining IDPs in official and unofficial IDP sites where conditions are grim.<sup>24</sup> Conditions in much of north-eastern Nigeria are not yet conducive for the return in safety and dignity of refugees and IDPs. There is a need to improve local infrastructure and services, and to strengthen livelihood support, access to education, peacebuilding and environmental projects, and to target also host communities in responses. In cases where refugees present in a conflict-affect host country move instead to a third country in search of safety, such people remain protected under international refugee law.

### c. Crisis-induced movement of migrants [back] to their country of origin or nationality

Persons fleeing the violence in the Lake Chad Basin include migrants who are returning back to their country of origin or nationality, due to the crisis, to which they often lack ties.<sup>25</sup> This category of individuals is referred to non-refugee returnees in the Lake Chad Basin (see the definition (vi) above). A study explained that up to 10 million people fled drought and famine in the Sahel region of Africa in the 1970s and 1980s, settling in wetter coastal regions, including neighbouring countries. At least half of them are estimated to have never returned home.<sup>26</sup>

All civilians fleeing conflict, regardless of their nationality, status, or background, should be provided with assistance that gives them immediate physical protection and access to essential services (food, shelter, water & sanitation, health & nutrition, education). The basic physical and psycho-social needs of non-refugee returnees should be met in the broader humanitarian response. In cases where non-refugee returnees find themselves returning to the situations of internal displacement, international human rights law, international humanitarian law (where applicable), the Guiding Principles and the Kampala Convention govern and provide for protection of their rights and needs.

Particular attention should be paid to non-refugee returnees who may be stateless or at risk of statelessness and their specific needs addressed through response activities, including targeted advocacy on their particular situation and needs. Among non-refugee returnees, many have resided in Nigeria for many years and are without documentation, or have children whose birth in Nigeria was not registered, placing them at heightened risk of statelessness.

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<sup>21</sup> See, for example, *Rapport Intersectoriel sur la Situation dans l'Extrême Nord*, Cameroun, août 2016. Available at: <http://reliefweb.int/report/cameroon/cameroun-rapport-intersectoriel-sur-la-situation-dans-l-extr-me-nord-1-31-ao-t-2016> or UNHCR, Cameroon Factsheet, September 2016. Available at: <http://reliefweb.int/report/cameroon/cameroon-factsheet-september-2016>

<sup>22</sup> UNHCR, *Security and humanitarian situations worsen in Diffa, Niger, as Boko Haram continues attacks in the region*, 24 May 2016, available at: <http://www.unhcr.org/news/briefing/2016/5/574418af7/security-humanitarian-situations-worsen-diffa-niger-boko-haram-continues.html>

<sup>23</sup> Direction Régionale de l'Etat-civil et des Réfugiés (DREC-R), *Synthèse des données statistiques des sites de convergences des déplacés de Bosso suite aux événements du 3 juin 2016*, 27 juin 2016.

<sup>24</sup> UNHCR/NHRC, Nigeria: Protection Monitoring Report, November 2015, p. 5. See also Nigeria PSWG, Nigeria Situation Report State-Level PSWGs: Adamawa, Borno, Gombe, Yobe and Taraba, November-December 2015, p.3; Nigeria PSWG, Nigeria: Protection Sector Factsheet, as of November 2015, p. 1. Returnees have reportedly been transported either to: Malkohi, NYSC or Fufore camps in Yola; to Borno State; or to host communities. PSWG, *Protection Sector Factsheet Year End 2015*, 31 December 2015. Available at: [http://reliefweb.int/sites/reliefweb.int/files/resources/pswg\\_year\\_end\\_factsheet\\_2015.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/pswg_year_end_factsheet_2015.pdf)

<sup>25</sup> The Lake Chad Basin is, home to 70 ethnic groups, a reflection of a socio-historical unity based on a history shared among population groups established in the basin, some of which live in several countries in the basin. See more Lake Chad Basin Commission, "Population dynamics of the basin". Available at: <http://www.cbtl.org/en/population>

<sup>26</sup> Norman Myers, *Environmental Exodus: An Emergent Crisis in the Global Arena*, Climate Institute, June 1995. Available at: <http://climate.org/archive/PDF/Environmental%20Exodus.pdf>

For the profile of displaced population, see for example UNHCR Niger, *Collecte rapide de donnée – ressortissants des îles du lac Tchad*, March 2015. The breakdown follows 7501 Niger, 598 Nigeria, 88 Mali, 52 Chad, 27 Cameroon and 1 Burundi.

#### d. Crisis-induced movement of migrants to a third country

Persons fleeing the violence in the Lake Chad Basin also include migrants who had to flee their migration country because of the crisis and crossed a border to a third country that is not their country of nationality.<sup>27</sup> This category of migrants is sometimes referred to as [non-refugee] third-country nationals (TCNs).<sup>28</sup> For example, the Lake Chad Basin crisis reportedly affected at least 322 TCNs in Chad.<sup>29</sup>

According to the Principles of Migrants in Countries in Crisis (MICIC) initiative guidelines<sup>30</sup>, States bear primary responsibility for protecting migrants in countries experiencing conflicts or natural disasters. States experiencing conflicts or natural disasters have responsibilities towards those present in their territory, including migrants, regardless of their immigration status. States of origin also bear responsibility for the safety and welfare of their citizens, even when those citizens are living, working, traveling, or transiting in other countries. The rights and interests of migrants are also protected under human rights law and, in case of armed conflict, humanitarian law. Humanitarian organisations, including IOM, have a key supporting role to play in achieving the effective respect of the human rights of migrants.<sup>31</sup> Migrants have emergency needs same as other displaced population such as food and shelter but also other needs directly linked to their status such as right to leave and right to consular assistance.

#### e. Evacuation<sup>32</sup> and relocation

In some cases, there may be a need to relocate communities, on a voluntary basis, in order to ensure their safety. Scenarios in which humanitarian actors have provided direct assistance or support to relevant authorities include<sup>33</sup>:

- **Relocation** of populations from endangered areas, such as camps, conflict or disaster areas, to another part of the country, an approach that is justified for reasons of public security, health or safety, and other risks to life, including the presence of armed elements and health risks caused by overpopulation;
- **Humanitarian evacuation** of the wounded, sick and other civilians, including internally displaced persons (IDPs), trapped by armed conflict, an approach that is traditionally carried out by the ICRC and national Red Cross and Red Crescent Societies; and
- **International humanitarian transfer or evacuation** of individuals or groups of persons at particular risk of imminent attack or serious human rights violations into another country.<sup>34</sup>

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<sup>27</sup> IOM, *Migrants caught in crisis: the IOM's experience in Libya*, 2012. Available at: [https://publications.iom.int/system/files/pdf/migrationcaughtincrisis\\_forweb.pdf](https://publications.iom.int/system/files/pdf/migrationcaughtincrisis_forweb.pdf)

<sup>28</sup> Ibid.

<sup>29</sup> See for example, Regional Displacement Tracking Matrix (DTM) - Lake Chad Basin Crisis Dashboard - December 2016. Available at: [http://reliefweb.int/sites/reliefweb.int/files/resources/lcbc\\_regional\\_dtm\\_dashboard\\_december\\_2016.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/lcbc_regional_dtm_dashboard_december_2016.pdf)

<sup>30</sup> The Principles, Guidelines, and Practices provide practical, non-binding, voluntary guidance for States, private sector actors, international organizations, and civil society to protect migrants. Migrants in Countries in Crisis (MICIC) Initiative, *Guidelines to protect migrants in countries experiencing conflict or natural disaster*, June 2016. Available at: [https://micicinitiative.iom.int/sites/default/files/document/MICIC\\_Guidelines\\_english\\_web\\_13\\_09\\_2016.pdf](https://micicinitiative.iom.int/sites/default/files/document/MICIC_Guidelines_english_web_13_09_2016.pdf)

<sup>31</sup> IOM, IOM Policy on Protection, Council 106<sup>th</sup> Session, September 2015. Available at: <https://governingbodies.iom.int/system/files/en/council/106/C-106-INF-9-IOM-Policy-on-Protection.pdf>

<sup>32</sup> The definition of evacuation is "facilitation or organisation of transfer of individuals or groups from one area/locality to another in order to ensure their security, safety and well-being." Global Protection Cluster Working Group, *Handbook for the Protection of Internally Displaced Persons*, June 2010, page 434-440. Available at: <http://www.refworld.org/docid/4790cbc02.html>

<sup>33</sup> See more Global Protection Cluster Working Group, *Handbook for the Protection of Internally Displaced Persons*, June 2010, page 434-440. Available at: <http://www.refworld.org/docid/4790cbc02.html>

<sup>34</sup> Humanitarian Transfer Programmes (HTP) and Humanitarian Evacuation Programmes (HEP) consist of assistance and protection measures undertaken by humanitarian actors and cooperating States to move people to safety, in neighboring countries within a "region"

e-1. Evacuation and relocation initiated by the government for imperative military reasons

According to international humanitarian law and criminal law, in both international and non-international armed conflict, states and non-state actors mustn't deport or forcibly transfer the civilian population, unless evacuation is warranted, in circumstances where the security of the civilians involved or imperative military reasons so demand, in line with international humanitarian law.<sup>35</sup>

In 2015, thousands were moved from the Lake Chad islands for security reasons and remain in displacement. In Nigeria, the military has initiated a relocation plan of moving over 70,000 people from IDP camps in newly liberated areas in the Borno State, in particular Dikwa, Konduga and Mafa which it controls into other areas in September 2016.<sup>36</sup> With ongoing military operations in the Lake Chad Basin, there is also a possibility that governments may impose measures to relocate populations from militarized zones.

Evacuation or relocation must take place in full respect of international standards in line with relevant international law.<sup>37</sup> In cases where evacuation or relocation takes place, states and parties to the conflict should take all possible measures to ensure shelter, hygiene, health, safety and nutrition and that members of the same family are not separated.<sup>38</sup> In cases where armed escorts are used in transfer, non-binding guidelines on the "Use of Military or Armed Escorts for Humanitarian Convoys" provide a relevant methodology for analysis and decision-making although not explicitly covering humanitarian evacuations.<sup>39</sup>

While humanitarian actors must respect humanitarian principles<sup>40</sup> and should not participate in military operations, they can participate in the civilian evacuation and otherwise support persons in need of evacuation or relocation.

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(HTP) and outside the "region" (HEP), respectively. These programmes are different from existing Refugee Resettlement Programmes, which mainly deal with individually recognized refugees and with clearly defined refugee groups in a country of asylum, and are undertaken annually by States independently of other States and humanitarian actors, although in coordination with them, according to their own criteria for humanitarian programmes.

<sup>35</sup> For an international armed conflict, Art. 49 of the *Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War*, Geneva, 12 August 1949. For a non-international armed conflict, Art. 17 of *Additional Protocol II to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts*, 8 June 1977.

<sup>36</sup> Protection actors continue to closely monitor the return of IDPs to these LGAs. The PSWG has developed a return policy framework on voluntary returns to advocate with the authorities. See, for example, UNHCR Nigeria, *Monthly Update* September 2016. Available at: <http://reliefweb.int/report/nigeria/nigeria-unhcr-monthly-update-september-2016-issue-6>

<sup>37</sup> A mandatory evacuation is not considered arbitrary or unlawful and thus permissible if it is done in accordance with the law, absolutely necessary under the circumstances, to protect life, health or the physical integrity of the affected persons, and to the extent the emergency allows, in proper consultation with the affected population. See for example the MEND Guide: Comprehensive Guide for planning mass evacuations in natural disasters, Camp Coordination and Camp Management Cluster, 2014, p. 17. Available at: <http://www.globalccmcluster.org/tools-and-guidance/publications/mend-guide>

<sup>38</sup> For an international armed conflict, Art.49 of the *Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War*, Geneva, 12 August 1949. For a non-international armed conflict, Art. 17 of *Additional Protocol II to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts*, 8 June 1977.

<sup>39</sup> Non-Binding Guidelines on the "Use of Military or Armed Escorts for Humanitarian Convoys" were originally endorsed by members of the Inter-Agency Standing Committee (IASC) on 14 September 2001.

<sup>40</sup> The humanitarian principles are derived from the core principles, which have long guided the work of the International Committee of the Red Cross and the national Red Cross/Red Crescent Societies. The principles are central to the work of humanitarian organizations and formally enshrined in two General Assembly resolutions. The first three principles (humanity, neutrality and impartiality) are endorsed in General Assembly resolution 46/182, which was adopted in 1991. **Humanity:** Human suffering must be addressed wherever it is found. The purpose of humanitarian action is to protect life and health and ensure respect for human beings. **Neutrality:** Humanitarian actors must not take sides in hostilities or engage in controversies of a political, racial, religious or ideological nature. **Impartiality:** Humanitarian action must be carried out on the basis of need alone, giving priority to the most urgent cases of distress and making no distinctions on the basis of nationality, race, gender, religious belief, class or political opinions. **Independence:** Humanitarian action must be autonomous from the political, economic, military or other objectives that any actor may hold with regard to areas where humanitarian action is being implemented.

## e-2. Evacuation and relocation initiated by humanitarian organisations

Humanitarian evacuations are a measure of last resort only in conflicts, where the situation can deteriorate rapidly, resulting in an imminent threat to individuals and groups. They are likewise a temporary measure, and do not constitute a permanent solution.

Humanitarian evacuations can furthermore expose populations to different security and protection risks. Experience has shown that poorly planned or executed humanitarian evacuations may result in a failure to protect and a significant loss of life.

Humanitarian evacuation of the wounded, sick and other civilians, trapped by armed conflict, is an approach that is traditionally carried out by the ICRC and national Red Cross and Red Crescent Societies. In conflict situations, it is part of the ICRC's core mandate and traditional role to negotiate with parties to the conflict for the safe evacuation or transfer of the wounded, the sick and civilians, trapped in conflict. United Nations agencies may also be involved in large-scale humanitarian evacuations and transfers in disaster and conflict situations.<sup>41</sup>

A detailed situation analysis, including the motivations of the main actors, is necessary in each case to determine whether participation in an evacuation might make humanitarian actors accomplices to human rights violations (i.e. by helping to consolidate the displacement) and to what extent immediate assistance is needed as a life-saving measure for the affected populations. There is a need for organisations to work vigilantly to assess risks, agree on principles and standards and mobilize the interest and support of other actors.

Humanitarian evacuations almost always need to involve a range of partners; the risk and complexity of humanitarian evacuations are such that they often exceed the capacity of one organization and thus demand a multi-sector approach.

## e-3. Evacuation and relocation jointly initiated by the government and humanitarian organisations

Humanitarian organisations may, in certain circumstances, be called upon to support evacuation and relocation at the request of the government or other parties when security of civilians are involved. In Cameroon, at the onset of 2015, the Government and UNHCR organised a transfer of displaced persons from the border areas to Minawao camp on a voluntary basis for their physical safety and security. In Niger, in mid-May 2016, at the Government's request, UNHCR assisted relocation of hundreds of refugees who preferred to live at Sayam Forage camp, 50 kilometres from the border mainly from Boudouri, Maina Kaderi, Gagamari and Diffa town.<sup>42</sup>

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<sup>41</sup> Much of this experience has been gained in situations where refugees or asylum-seekers have been in imminent danger in a first country of asylum. In some of these cases, endangered persons were moved away from areas under attack to safer areas within the country (e.g. Sierra Leonean and Liberian refugees relocated from Guinea's border areas in 2001) and, in other cases, they were moved to safety in third countries (e.g. Kosovo refugees in Macedonia in 1999, Uzbek asylum-seekers in Kyrgyzstan in 2005). See more Global Protection Cluster Working Group, *Handbook for the Protection of Internally Displaced Persons*, June 2010, page 433. Available at: <http://www.refworld.org/docid/4790cbc02.html>

Where protection cannot be provided locally, it may be necessary to relocate migrants to other parts of the host country or evacuate them to countries of transit or the country of origin. Some migrants may make these journeys on their own. Many may rely on their governments, their employers, recruiters, or placement agencies, international organizations, civil society, and other migrants for support and assistance. Evacuation is generally a last resort but important if migrants cannot remain safely where they are and cannot be relocated safely to another part of the host country. Migrants in Countries in Crisis Initiative, *Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster*. Available at: [https://micicinitiative.iom.int/sites/default/files/document/MICIC\\_Guidelines\\_web.pdf](https://micicinitiative.iom.int/sites/default/files/document/MICIC_Guidelines_web.pdf)

<sup>42</sup> Experience from other crises include examples such as: in Libya in 2011, at the request from governments to ensure the safe and timely return home of their nationals, IOM and its partners conducted life-saving evacuations for almost 140,700 migrants from Algeria, Chad, Egypt, Niger, Sudan and Tunisia. In Yemen in March 2015, since the eruption of the crisis, IOM and its partners conducted life-saving

In order to ensure the humanitarian nature of evacuations is maintained in these circumstances, humanitarian organisations should make their own determination that the evacuations are a measure of last resort, when other options to provide life-saving assistance and protection have failed or are unattainable. Humanitarian imperatives of saving lives guide any decision of evacuation and relocation so that they are implemented in compliance with the principles of humanity, impartiality and neutrality.<sup>43</sup>

The evacuation of individuals should be based on voluntary decision of people of concern, informed by an understanding of the risks and consequences of evacuation, transfer or relocation. This includes the choice not to return to, or settle in, any place where their life, safety, liberty and/or health may be at further risk.<sup>44</sup> If feasible, planning should allow members of the community to visit the new site.

### Refugees

The measure of relocation of civilian population should be general and impersonal in scope, without discrimination on the basis of status or other criteria. However, evacuation and relocation may expose refugees to additional protection risks.

In the Lake Chad Basin, most of the displaced population does not possess documentation to prove their nationalities and legal status whether they are refugees or IDPs or returnees. With regards to refugees, humanitarian evacuation and relocation must take place in full respect of international law, especially the principle of *non-refoulement*.

### Children

Children and parents or guardian should not be separated against their will or best interest, and family unity needs to be preserved when humanitarian evacuations are planned and implemented. In case children and parents or guardian become separated during a humanitarian evacuation, despite the best efforts of states and humanitarian actors, alternative care arrangements and assistance need to be provided to the children.<sup>45</sup>

#### f. Go-and-see visit

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Go-and-see visits are often organised prior to the process of return or relocation so that displaced persons can go and see the conditions at their former place of residence or travel in the country to find another place in which to settle, if they wish to. This will ensure that refugee and IDPs have access to information about the security situation and other factors that may affect their ability to move freely and in safety.

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evacuations for over 6,000 thousand migrants, primarily from Ethiopia and Somalia, that were stranded in Yemen and have been part of the civilian population affected by airstrikes, ground shelling and street fighting.

<sup>43</sup> Niger Protection Cluster, Conditions minimales de protection relatives au projet de relocalisation des populations dans la région de Diffa, May 2016. Available at: [http://www.globalprotectioncluster.org/assets/files/field\\_protection\\_clusters/Niger/files/evacuations-humanitaires-et-protection-note-du-cluster-protection-a%CC%80-lehp-final\\_en.pdf](http://www.globalprotectioncluster.org/assets/files/field_protection_clusters/Niger/files/evacuations-humanitaires-et-protection-note-du-cluster-protection-a%CC%80-lehp-final_en.pdf)

<sup>44</sup> The IASC Guidelines guard against becoming involved in involuntary evacuations, transfers and relocations. "Unless it is necessary for the protection of affected persons against very serious and imminent threats to their lives, their physical integrity or health, evacuations against their will, or prohibitions against their return, should not be supported by organizations providing protection and assistance to persons affected by natural disasters, even if they have been ordered by the competent authorities."

<sup>45</sup> According to the Committee of the Rights of the Child, states should appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State in compliance with the Convention and other international obligations. With a view to ensuring the respect of the best interests of the child, the guardianship should normally be assigned to an accompanying adult family member or non-primary family caretaker "unless there is an indication that it would not be in the best interests of the child to do so." The Committee also recognises that: "In cases where a child is accompanied by a non-family adult or caretaker, suitability for guardianship must be scrutinized more closely." The legal guardians has to be present in all planning and decision-making processes relating to the child, including immigration and appeal hearings, care arrangements and all efforts to search for a durable solution. See Committee on the Rights of the Child, General Comment n°6, Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, CRC/GC/2005/6, 1 September 2005, § 33 and 34).

In the context of return or relocation, this includes information about travel conditions and conditions in the place of return or intended relocation. Where appropriate, it is recommended to organize “go and see” visits in consultation with the concerned displaced persons or groups and the receiving communities.

#### g. Pendular movements

In contrast to organised “go-and-see visits”, which are organised during the process of return or relocation, displaced persons may go back and forth between a location of displacement and places of origin or other places—including places of potential settlement—on their own decision and by their own means. Examples include checking on their property or working on their land or agriculture.

Such movements may also, for example, include pastoralists moving the herds in search of fresh pasture and water for their livestock. Pastoralists, mostly in the border areas, move according to the rainy season.<sup>46</sup>

#### h. Return (Refugees and IDPs)

While military operations have brought back a number of areas in northeastern Nigeria under Government control, conditions in much of the North East are not yet conducive for the return of Nigerian refugees and IDPs, particularly in Borno state.

UNHCR in partnership with Nigeria Immigration Service (NIS) is currently registering Nigerians who have returned since January 2016. As of March 2017, a total of 195,544 Nigerian returnees have been registered.<sup>47</sup> This includes 121,199 Nigerian returnees from Cameroon registered in Adamawa and Borno States, 74,094 Nigerian returnees from Niger registered in Yobe, and 251 Nigerian returnees from Chad. Many Nigerian refugee returnees have in fact returned to situations of internal displacement, joining IDPs in official and unofficial IDP sites where conditions are grim.

A core component of the protection of refugees and IDPs is the search for durable solutions to allow them to rebuild their lives in dignity and peace. UNHCR promotes durable solutions for refugees<sup>48</sup> as part of its core mandate: voluntary repatriation; local integration; or resettlement to a third country in situations when it is the most appropriate solution. For those who are displaced within their own country, a durable solution can be achieved<sup>49</sup> through sustainable reintegration at the place of origin, sustainable local integration in the areas where they have taken refuge, or sustainable integration in another part of the country.

Alongside persistent threats from Boko Haram, the presence of mines and unexploded improvised devices as well as the absence of basic services pose acute humanitarian and protection risks for the affected populations. For instance, in northeastern Nigeria, 47 per cent of vulnerable displaced households have witnessed or heard reports of land-mines or unexploded devices,<sup>50</sup> which pose

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<sup>46</sup> In the far north of Cameroon, pastoralists stay along the area where the two rivers Logone and Chari cross for the lush fertile land for pasture. Livestock migration usually starts in October during the dry season and pastoralists return in May of the following year. In Niger, pastoralists stay in the south during the dry season from November to July.

<sup>47</sup> UNHCR, Nigeria: Registration of Returning Refugees, March 2017.

<sup>48</sup> International protection of refugees continues until a durable solution has been found.

<sup>49</sup> For IDPs, a durable solution is achieved when persons no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement. See IASC Framework on Durable Solutions for Internally Displaced Persons, April 2010, available at: <http://www.unhcr.org/50f94cd49.pdf>.

<sup>50</sup> The calculation was done based on the two vulnerability screening round II and III. UNHCR, SEMA, NRCS, NEMA, MoWASD, *North East Nigeria: Vulnerability Screening Report*, Round II, June 2016, available at: <http://reliefweb.int/report/nigeria/north-east-nigeria->

critical protection risks to over 1 million people<sup>51</sup> who have returned without facilitation to their areas of origin, mainly in Borno, Adamawa and Yobe. Conditions cited by IDPs as barriers for return include critical access to: food (cited by 72 per cent of vulnerable displaced households), safety/security (cited by 70 per cent), shelter (cited by 515), health services (cited by 44 per cent), education (cited by 31 per cent) and livelihood (cited by 27 per cent).<sup>52</sup>

In Nigeria, findings from protection assessments conducted by PSWG Borno indicate increasing tensions between host communities and IDPs on the one hand, and amongst IDP groups on the other.<sup>53</sup> In Niger, in Diffa, inter-communal tensions remain high with reports of incidents of conflict over livestock and natural resources. Since competition for limited resources may lead to tensions between host and displaced populations, there is a need to invest in peaceful coexistence initiatives that contribute to the resilience of all affected communities.<sup>54</sup>

#### h-1. Spontaneous return

Spontaneous return is return organized at the refugee and IDP's own initiative, and by their own means. Refugees and IDPs choose to spontaneously return for a variety of reasons. Some refugees and IDPs return for a short period to check on properties and to assess the situation of their area of origin (see section (g) above). Others return for an extended period, or permanently, intending to restart their lives in their country of origin or their place of origin.

Premature promotion or facilitation of returns creates serious protection risks, including to the physical security and wellbeing of displaced persons, and may hinder the achievement of long-term peace, stability and recovery in the region more generally. Particular attention must be paid to ensuring the voluntariness of any return movements, including that any decisions to return are well-informed and based on up-to-date and accurate information on conditions in their areas of origin, and that displaced persons are not in reality compelled to return by difficult humanitarian conditions or restrictions on rights in their places of displacement.

The annex lists indicators to help assess the voluntariness of return movements. The list was initially developed for voluntary repatriation of refugees and adapted to the purpose of the present document as it can also apply for return of IDPs. Addressing both refugees and IDPs is relevant particularly in the context of 'mixed situation' like the Lake Chad Basin.

#### h-2. Facilitated return by humanitarian organisations

UNHCR, in collaboration with the UN sister agencies and other humanitarian actors, may facilitate voluntary repatriation when refugees indicate a strong desire to return voluntarily and/or have begun to do so on their own initiative, even where UNHCR does not consider that, objectively, it is safe for most refugees to return.<sup>55</sup> UNHCR, however, has a duty to provide guidance by giving information on

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[vulnerability-screening-report-round-ii-june-2016](#) UNHCR, SEMA, NRCS, NEMA, MoWASD, *North East Nigeria: Vulnerability Screening Report*, Round III, November 2016, available at: <https://data.unhcr.org/SahelSituation/download.php?id=2444>

<sup>51</sup> IOM/NEMA DTM, Round 13, December 2016. Available at:

[https://nigeria.iom.int/sites/default/files/dtm\\_reports/01%20DTM%20Nigeria%20Round%20XIII%20Report%20December%202016.pdf](https://nigeria.iom.int/sites/default/files/dtm_reports/01%20DTM%20Nigeria%20Round%20XIII%20Report%20December%202016.pdf)

<sup>52</sup> UNHCR, SEMA, NRCS, NEMA, MoWASD, *North East Nigeria: Vulnerability Screening Report*, Round II, June 2016. Available at:

<http://reliefweb.int/report/nigeria/north-east-nigeria-vulnerability-screening-report-round-ii-june-2016>

<sup>53</sup> See for example, PSWG Nigeria, *Monthly Note on Protection*, May 2016.

<sup>54</sup> The IOM's Progressive Resolution of Displacement Situations (PRDS) Framework promotes an inclusive, resilience-based approach and embraces mobility strategies that support progression towards resolving displacement while ensuring safety nets are in place to avoid potentially harmful mobility strategies. Available at: <https://www.iom.int/fr/progressive-resolution-displacement-situations>

<sup>55</sup> UNHCR, *Handbook - Voluntary Repatriation: International Protection*, January 1996. Available at:

<http://www.unhcr.org/publications/legal/3bfe68d32/handbook-voluntary-repatriation-international-protection.html>

the profiles of the refugee community and of the country of origin and to ensure that desire to return is truly voluntary and not driven by coercion.<sup>56</sup>

For IDPs, both the Guiding Principles and the Kampala Convention clearly affirm the Government's primary responsibility for securing durable solutions. Humanitarian actors will support governments in their processes aimed at achieving durable solutions, which includes facilitation of voluntary return of IDPs. Humanitarian actors will help IDPs make an informed and voluntary choice and participate in the planning and management of durable solutions.

Support in facilitation of voluntary return of refugees and IDPs may include not only the financial means for movement, but also the securing of guarantees, provision for safe passage, pre-departure screening, provision of food and non-food items, protection including family tracing and reunification and other interventions.

### h-3. Promoted return by UNHCR (Refugees)

Promoted return is repatriation, where refugees' return can actively be encouraged following a careful assessment of conditions in the country of origin foreseeing that most refugees will be able to return in safety and dignity.

These are some of the essential preconditions to be met for UNHCR to promote voluntary repatriation movements<sup>57</sup>:

- There must be an overall, general improvement in the situation in the country of origin so that return in safety and with dignity becomes possible for the large majority of refugees.
- All parties must be committed to fully respect its voluntary character.<sup>58</sup>
- The country of origin must have provided a formal guarantee, or adequate assurances for the safety of repatriating refugees, as appropriate.
- UNHCR must have free and unhindered access to refugees and returnees.
- The basic terms and conditions of return must be incorporated in a formal repatriation agreement between UNHCR and the authorities concerned.

### h-4. Return to adverse conditions

Conditions in much of north-eastern Nigeria are not yet conducive for the return in safety and dignity of refugees and IDPs, particularly in Borno state. Alongside persistent threats from Boko Haram, the presence of mines and unexploded improvised devices as well as the absence of basic services pose acute humanitarian and protection risks. A similar situation of insecurity prevails in the border regions of Cameroon, Chad and Niger, where Boko Haram attacks on civilians also continue.

As the situation in northeastern Nigeria remains fluid and uncertain, UNHCR calls on neighbouring countries to keep their borders open and to allow access to territory and asylum procedures to

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<sup>56</sup> General Assembly Resolution 428 (V) of 14 December 1950, adopting the UNHCR Statute, calls upon governments to cooperate with the High Commissioner in the performance of his functions, inter alia by "assisting the High Commissioner in efforts to promote the voluntary repatriation of refugees". See more UNHCR, *Handbook - Voluntary Repatriation: International Protection*, January 1996. Available at: <http://www.unhcr.org/publications/legal/3bfe68d32/handbook-voluntary-repatriation-international-protection.html>

<sup>57</sup> Ibid.

<sup>58</sup> See the list of key considerations for voluntariness of return in the annex.



persons fleeing the crisis in search of safety.<sup>59</sup> UNHCR's non-return advisory also calls on States to suspend forcible returns of nationals or habitual residents to this part of Nigeria, including those who have had their asylum claim rejected, until the security and human rights situation has improved considerably.<sup>60</sup>

There are situations in which premature return of refugees and IDPs would further destabilize already fragile conditions. Such return may, nonetheless, be sought either by governments, or by refugees or IDPs themselves. Where conditions remain objectively not conducive for return, where the return of large groups of refugees or IDPs would overstretch the absorption capacity of the home country or community, humanitarian actors need to support governments in providing guidance based on the information obtained through the profiles of the refugee or IDP community and of the place of origin.

Economic insecurity, natural disasters, communal clashes, lack of access to services are among key factors inducing displacement and secondary and multiple displacement in the Lake Chad Basin. Collaboration and coordination between humanitarian and development actors need to be strengthened so that solutions are context-specific taking into consideration considerable barriers to return and local integration, such as livelihoods, housing, land & property issues and basic services in areas of return and displacement, and challenges associated with rapid and largely unplanned urbanisation.

Returns without the prospect of a durable solution can be used as a protection strategy in exceptional circumstances, namely where return would pose a lesser risk than continued presence at the site of displacement.<sup>61</sup> In situations where it is the most appropriate solution, resettlement to a third country or relocation in another part of the country will be used as a protection tool.

#### i. Forced return of IDPs

IDPs are sometimes forcibly returned to their places of origin despite the fact that the conditions of their places of origin are still grim. Forced return includes forcibly returning IDPs against their will, but also creating or presenting a coercive environment through lack of protection, material destitution or the infliction of living conditions that makes return the only feasible option.

National authorities have the primary duty and responsibility to create conditions conducive for voluntary return, local integration or relocation on a sustainable basis and in circumstances of safety and dignity, and to enable IDPs to make a free and informed choice on whether to return, integrate locally or relocate by consulting them on these and other options.<sup>62</sup>

Humanitarian and development actors play a complementary role and should support governments in assuming this responsibility. Particular attention should be paid to ensuring the right of IDPs to make an informed and voluntary choice on what durable solution to pursue and to participate in the

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<sup>59</sup> UNHCR, *International Protection Considerations with regard to people fleeing northeastern Nigeria (the states of Borno, Yobe and Adamawa) and surrounding region – Update II*, October 2016, para. 22, available at: <http://www.refworld.org/publisher,UNHCR,COUNTRYPOS,,57ebb35c4,0.html>

<sup>60</sup> Ibid.

<sup>61</sup> See IASC Framework on Durable Solutions for Internally Displaced Persons, April 2010, available at: <http://www.unhcr.org/50f94cd49.pdf>. Humanitarian actors struggle with the dilemma of whether to assist refugees and IDPs who spontaneously return or relocate even though they have been informed that conditions are not safe and that they are likely to be at risk of internal displacement. In some scenarios, it might be appropriate to assist refugees and IDPs with conditions if this decreases the risks they face, while strictly abstaining from promoting such unsafe return or relocation.

<sup>62</sup> See Art. 11 of the Kampala Convention, October 2009, available at: <http://www.unhcr.org/4ae9bede9.pdf>. See also Principle 28 of the Guiding Principles on Internal Displacement, February 1998, available at: <http://www.refworld.org/docid/3d4f95e11.html>.

planning and management of durable solutions. Under no circumstances should IDPs be encouraged or compelled to return or relocate to areas where their life, safety, liberty or health would be at risk.

j. Cross-border forced return/transfer

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j.1. Forced return of refugees

According to the 1951 Convention, *refoulement* is an act to expel or to return ('refouler') a refugee<sup>63</sup> or asylum-seeker in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.<sup>64</sup> This includes also indirect *refoulement*, which is the return of a person to a third country in which a risk of *refoulement* exists. Under the 1951 Convention, protection against *refoulement* can however not be invoked by refugees for whom there are reasonable grounds to consider that they pose a security threat to the country or who have been convicted by final judgement of a particularly serious crime and continue to pose a danger.

States' *non-refoulement* obligations also derive from the OAU Convention and international human rights treaties, notably Convention against Torture, International Covenant on Civil and Political Rights (ICCPR) and International Convention for the Protection of All Persons from Enforced Disappearance.<sup>65</sup> They protect a broader class of persons from *refoulement* than the 1951 Convention. It should be noted though that the principle of *non-refoulement* under international refugee law applies not only to recognized refugees but also to asylum seekers who have not had their status as refugees formally recognised.<sup>66</sup>

Under the Convention against Torture, the ill-treatment need not be connected to one of the five grounds enumerated in the 1951 refugee definition (i.e. race, religion, nationality, membership of a particular social group or political opinion) and one in the OAU Convention (i.e. seeking refuge from external aggression, occupation, foreign domination or events seriously disturbing public order).

Protection from *refoulement* includes protection from forced and coerced return. This includes forcibly returning refugees and asylum seekers against their will, but also creating or presenting a coercive environment through lack of protection, material destitution or the infliction of living conditions that makes return the only feasible option.

In the Lake Chad Basin context, in all affected countries of asylum, concerns have been raised since the start of the crisis with regard to incidents and risk of *refoulement*, whether in the form of border closures, forced returns or induced returns.<sup>67</sup>

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<sup>63</sup> The definition of a refugee in the 1951 Convention applies to any person who owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

<sup>64</sup> See Art. 33 of the 1951 *Convention Relating to the Status of Refugees*, July 1951.

<sup>65</sup> See Art. 2-3 of the OAU Convention, September 1969. Art. 3 of the 1984 Convention against Torture. Art. 6 and 7 of the ICCPR. Art. 16 of the International Convention for the Protection of All Persons from Enforced Disappearance.

<sup>66</sup> UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, January 2007. Available at: <http://www.unhcr.org/4d9486929.pdf>

<sup>67</sup> Finding of the Interviews conducted with some 1,700 returnees revealed that they were subjected to the following conditions in Cameroon and Chad: economic hardship; deprived of food and water; discrimination; accusations of affiliations with Boko Haram leading to arbitrary arrests; confiscation of their properties, especially for those engaging in business and; arbitrary arrest. See UNHCR, *Annual Operational Report for the North East 2015*, April 2015.

At the Regional Protection Dialogue held in June 2016 in Abuja<sup>68</sup>, the Lake Chad Basin governments agreed to develop and implement practical measures to ensure an appropriate balance between security and respect for the right to seek and enjoy asylum, including respect for the principle of *non-refoulement*, protection of IDPs and related human rights.<sup>69</sup>

## j.2. Expulsion

For purposes of this document, the term expulsion is used, in line with the International Law Commission (ILC)'s definition, to refer broadly to any formal act or conduct attributable to a State by which a non-national is compelled to leave the territory of that State in whose territory that he or she is present.<sup>70</sup> The definition in the ILC's draft articles also says that expulsion does not include extradition to another State, surrender to an international criminal court or tribunal, or the non-admission of a non-national to a State.

Individuals subject to expulsion may include non-nationals who are not refugees. National law provides states with penal and administrative measures to prevent and control irregular migration. For example, in the Lake Chad Basin, security measures implemented by the affected countries have included deportations of undocumented migrants.<sup>71</sup>

Procedural safeguards are set forth in human rights law to ensure the expulsion of non-nationals is not arbitrary.<sup>72</sup> Certain category of persons may also benefit from protection under international law such as victim of trafficking, children and pregnant women, whose status prevents them from being expelled even though they are technically liable for expulsion.<sup>73</sup>

According to the 1951 Convention, expulsion may amount to *refoulement* in cases where states expel a refugee or an asylum seeker to a country where he or she would be risk of persecution and does not come within the scope of one of its exclusion provisions of the 1951 Convention.<sup>74</sup>

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<sup>68</sup> The Regional Protection Dialogue was held in Abuja from 6 to 8 June 2016. It brought together over 100 participants; government officials, – including at ministerial level – from the Lake Chad Basin as well as high-level representatives of international and regional organisations, donor governments, and civil society. During the Regional Protection Dialogue, the Governments of Nigeria, Cameroon, Chad and Niger, with the support of humanitarian and human rights actors, committed to take concrete steps by adopting the Abuja Action Statement to address key protection risks faced by the affected populations. The Abuja Action Statement outlines the following five key areas of protection: 1) Forced displacement and freedom of movements, 2) Civil-military coordination and the civilian character of refugee and IDP hosting areas, 3) Persons with specific protection risks, 4) Comprehensive solutions approach and 5) Right to nationality and documentation.

<sup>69</sup> Regional Protection Dialogue, *Abuja Action Statement*, June 2016.

<sup>70</sup> Art. 2 of the *draft articles on the Expulsion of Aliens, with commentaries 2014*, United Nations. Available at: [http://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_12\\_2014.pdf](http://legal.un.org/ilc/texts/instruments/english/commentaries/9_12_2014.pdf)

<sup>71</sup> See for example Africa Review, *Chad Expels Scores of Foreigners from N'Djamena*, 30 June 2015; Jeune Afrique, *Terrorisme: Les 9 mesures phares prises par le Cameroun pour se protéger de Boko Haram*, 29 July 2015. See also, generally, IOM, *Within and Beyond Borders: Tracking Displacement in the Lake Chad Basin*, Dec 2016, p. 19.

<sup>72</sup> For example, Art. 13 of the ICCPR stipulates “An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.”

<sup>73</sup> See more on expulsion and the types of protections OHCHR discussion paper, for example, *Expulsions of aliens in international human rights law*, Sep 2006. Available at: <http://www.unhcr.org/protection/migration/4bf6813a9/ohchr-discussion-paper-expulsion-aliens-international-human-rights-law.html>

<sup>74</sup> The prohibition of *refoulement* to a danger of persecution under international refugee law is applicable to any form of forcible removal, including deportation, expulsion, extradition, informal transfer or “renditions”, and non-admission at the border. See for example UNHCR, “Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol”, January 2007. Available at: <http://www.refworld.org/pdfid/45f17a1a4.pdf>

International human rights treaties, notably the Convention Against Torture<sup>75</sup>, the ICCPR<sup>76</sup> and the International Convention for the Protection of All Persons from Enforced Disappearance<sup>77</sup>, also encompass the obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of serious human rights violations, particularly torture and other cruel, inhuman or degrading treatment or punishment, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.

Refugees may be afforded additional protection against expulsion and/or benefit from additional procedural guarantees (i.e. in addition to protection from *refoulement*) under the 1951 Convention which prohibits expulsions except on the ground of national security or public order.<sup>78</sup> The 1951 Convention also contains some procedural safeguards since it provides for instance that such an expulsion can take place only in pursuance of a decision reached in accordance with due process of law, and that the refugee has the right to submit evidence to clear himself, to appeal to and be represented before a competent authority.<sup>79</sup> Such procedural safeguards are not available where there are compelling reasons of national security.<sup>80</sup>

### j.3. Extradition

Extradition is a formal process involving the surrender of a person by one State (the “requested State”) to the authorities of another State (the “requesting State”) for the purpose of criminal prosecution or the enforcement of a sentence. Extradition is also a key instrument in States’ efforts to fight terrorism and other forms of transnational crime.

With regard to persons detained on suspicion of terrorist links, some of whom may be refugees and asylum seekers as well as children associated with armed groups<sup>81</sup>. Particular attention should be paid to ensure respect for the principle of *non-refoulement*.<sup>82</sup> In cases where the requested State find itself in a conflict of obligations, a duty to extradite from a bilateral or multilateral extradition agreement

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<sup>75</sup> Art. 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 1984.

<sup>76</sup> With regard to the scope of the obligations under Art. 7 of the ICCPR, see the interpretation by Human Rights Committee in its General Comment No. 20: Art. 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), 10 March 1992, U.N. Doc. HRI/ GEN/1/Rev.7, para. 9 (“States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement”); and General Comment No. 31 on the Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 12. Similarly, in its General Comment No. 6 (2005) on the Treatment of unaccompanied and separated children outside their country of origin, U.N. Doc. CRC/GC/2005/6, 1 September 2005, the Committee on the Rights of the Child stated that States party to the Convention on the Rights of the Child “[...] shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under Art. 6 [right to life] and 37 [right to be free from torture or other cruel, inhuman or degrading treatment or punishment and right not to be arbitrarily deprived of liberty] of the Convention.” (para. 27).

<sup>77</sup> Art. 13 of the International Convention for the Protection of All Persons from Enforced Disappearance, December 2006.

<sup>78</sup> Art. 32 of the 1951 Convention Relating to the Status of Refugees, July 1951. For expulsion of a refugee to a country which is not his/her country of origin, see for example, UNHCR, *Note on Expulsion of Refugees* EC/SCP/3, 24 August 1977. Available at: <http://www.unhcr.org/excom/scip/3ae68cbf14/note-expulsion-refugees.html> Expulsion to a country which is his/her country of origin, see, for example, UNHCR, *Note on Non-Refoulement* (Submitted by the High Commissioner) EC/SCP/2, 23 August 1977. Available at: <http://www.unhcr.org/excom/scip/3ae68ccd10/note-non-refoulement-submitted-high-commissioner.html>

<sup>79</sup> Art. 32 of the 1951 Convention Relating to the Status of Refugees, July 1951.

<sup>80</sup> *Ibid.*

<sup>81</sup> The operational protocols to the Convention of the Rights of the Child, in particular Optional Protocol on the Involvement of Children in Armed Conflict (OPAC), as well as the Paris Principles protect the rights and interests of children from unlawful recruitment or use by armed forces or armed groups. The Paris Principles also suggest that alternatives to judicial proceedings should be sought for children accused of crimes under international or national law allegedly committed while associated with armed forces or armed groups. See Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACRC.aspx>

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<sup>82</sup> The principle of *non-refoulement* does not protect from extradition to legitimate prosecution per se.

and *non-refoulement* obligations, bars to the surrender of an individual under international refugee and human rights law prevail over any obligation to extradite.<sup>83</sup>

The United Nations Security Council and General Assembly have stated repeatedly that States must ensure that any measures taken to combat terrorism comply with all their obligations under international law, in particular international human rights, refugee, and humanitarian law.<sup>84</sup>

At the Regional Protection Dialogue, the Lake Chad Basin governments agreed to strengthen access to justice and provide legal assistance. Human rights actors have an important role to play in supporting Governments to implement the actions. Protection strategy of the Lake Chad Basin countries set access to justice as a priority area of intervention for 2016-2018.

## 5. Conclusion

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This document will help all stakeholders understand the categories of population movements in the Lake Chad Basin. Applied legal and policy instruments will help understand specific needs and rights that some categories of people are entitled to benefit from. Different organisations are responsible for ensuring that these rights are respected.

The document also provided a list of definitions of categories of persons such as refugees, IDPs, refugee & IDP returnees, non-refugee returnees and stateless persons. The RPWG suggests that the right terminology is used in various reports, inter-agency advocacy and funding appeal documents such as Humanitarian Response Plan (HRP) and Regional Refugee Response Plan (RRRP).

Finally, the document defined the categories of return movements and protection considerations for return. Particular attention should be paid that return takes place in safety and dignity based on voluntary and well-informed decisions. The RPWG suggests all stakeholders using the tool in annex, which helps assess voluntariness of return movements.

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<sup>83</sup> UNHCR, *Guidance Note on Extradition and International Refugee Protection*, April 2008. Available at: Available at: <http://www.refworld.org/docid/481ec7d92.html>

<sup>84</sup> See Security Council Resolutions SC/RES/1269 (1999) of 19 October 1999, para. 4(iv); SC/RES/1373 (2001) of 28 September 2001, at para. 3(f) and 3(g); S/RES/1456(2003) of 20 January 2003, Annex, at para. 6; S/RES/1535(2004) of 26 March 2004, Annex, at preambular para. 6; S/RES/1566(2004) of 8 October 2004, at preambular para. 4; SC/RES/1617 (2005) of 29 July 2005, at preambular para. 4; S/RES/1624 (2005) of 14 September 2005, at preambular para. 2 and operative para. 4. See also General Assembly Resolutions A/RES/49/60 of 9 December 1994, Annex, at para. 5; A/RES/51/210 of 17 December 1996, Annex, at preambular paras. 6 (with specific reference to Art. 1, 2, 32 and 33 of the 1951 Convention) and 7; A/RES/57/219 of 27 February 2003 on Protection of human rights and fundamental freedoms while countering terrorism, at para. 1; A/RES/58/187 of 22 March 2004 on Protection of human rights and fundamental freedoms while countering terrorism, at para. 1; A/RES/60/1 of 24 October 2005 on the 2005 World Summit Outcome, at para. 85; A/60/43 of 6 January 2006, preambular paras. 11 and 19, op. para. 3; A/RES/60/158 of 28 February 2006 on Protection of human rights and fundamental freedoms while countering terrorism, at preambular paras. 7 and 13, op. paras. 1 and 5; A/RES/62/71 of 8 January 2008 on Measures to eliminate international terrorism, at preambular paras. 12 and 20; and in particular, A/RES/62/159 of 11 March 2008 on Protection of human rights and fundamental freedoms while countering terrorism.

## Annex – Key considerations for assessing the voluntariness of return movements

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### Free choice

- ✓ The individual has made the decision in the absence of physical, psychological, social or material coercion.
- ✓ [At the time of making their decision,] the individual continues to benefit from an adequate protection environment in the country of asylum (in the case of a refugee) or the place where they have taken refuge (in the case of an IDP).
- ✓ Each individual has had the opportunity to make a free and informed choice in their own case as to whether or not to return.

### Informed choice

- ✓ Refugees and IDPs have been provided with relevant and up-to-date information which reliably relates to the current situation in the area of return, including developments which have occurred since their flight, and are associated with flight.
- ✓ Refugees and IDPs have been provided with relevant and reliable information regarding the availability of services in the country and area of intended returns. Refugees and IDPs participate in the planning and management of durable solutions strategies and programmes. To the extent possible, arrangements should be made for refugees and IDP representatives to visit and assess conditions of the area of return.
- ✓ Refugee and IDPs understand the logistics of the repatriation process or procedures for returning. Information may also include issues of a legal and administrative nature, what items they can take with them, available transport, and arrangements for those with special needs.
- ✓ Refugees and IDPs are aware of their right to choose not to return [if it is not yet safe or reasonable for them to do so] [, and to continue to have access to protection and assistance should they choose not to return].

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