

# Protection from displacement

## The right not to be displaced

States are required to take all measures to avoid conditions which might lead to displacement. Guiding Principle 5 requires States to adhere to international law so as to prevent or avoid situations that might lead to displacement.

All people have the right to freedom of movement and the right to choose their place of residence. In situations of internal displacement, the right to freedom of movement and freedom to choose one's place of residence is restricted during the period of displacement. The right to freedom of movement is reflected in Principle 6 of the Guiding Principles which elaborates the right of all people not to be displaced arbitrarily – or in other words to enjoy freedom of movement.

## Legal foundations

The right to protection from displacement is derived from the right to freedom of movement and choice of residence contemplated in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) which guarantees that "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". A similar guarantee exists in the African Charter. Protection against displacement is also derived from the right to housing under the Covenant on Economic, Social and Cultural Rights (CESCR). In situations of armed conflict Additional Protocol II of the Geneva Conventions specifically states that "displacement of the civilian population shall not be ordered for reasons related to the conflict...".

Displacement by *force* is a denial of the right to freedom of movement and choice of residence since it deprives a person of the choice of moving or not and of choosing where to reside.

## Limitations or restrictions to this right

Most human rights instruments permit States to place restrictions on freedom of residence and movement during situations of tension and disturbance in limited situations. However, failure to act within these limits will make a decision to displace a population *arbitrary* – in other words a decision that is not in accordance with the law and incompatible with standards protecting liberty and security of person will be in violation of the right to freedom of movement. Freedom of movement may only be limited where such restrictions are:

1. Provided by law – that is to say the power to move a population is written in national legislation, **and**
2. are necessary to protect:
  - national security – which is only endangered in cases of grave political or military threat to the entire nation;
  - public order (*ordre public*)
  - public health or morals – which can only be justified if the health dangers are acute
  - the rights and freedom of others – which may only be justified in cases of eviction to respect private property, in which case States must ensure that

interference in favour of private owners is proportional, reasonable and applied in a non-discriminatory way: **and**

3. must not be inconsistent with other State obligations under international law.

Therefore any interference with the rights to freedom of movement and choice of residence must be *balanced*. It must pursue a legitimate aim and be proportional to that aim.

## Derogations from rights in situations of public emergency

The right to freedom of movement and choice of residence can be derogated from according to the ICCPR. However there are strict limitations including that any derogation is not inconsistent with a State's obligations under international law and does not involve discrimination. For example, a population cannot be displaced in times of emergency based on discrimination. Principle 6(2) of the Guiding Principles further elaborates when limitations on people's freedom of movement are considered arbitrary.

In situations of non-international armed conflict persons are protected from forced displacement in international humanitarian law under article 17 of Additional Protocol II of the Geneva Conventions, which state that:

The displacement of civilian population shall *not* be ordered for reasons related to the conflict *unless*:

1. The security of the civilians so demands, or
2. For imperative military reasons.

Imperative military reasons require a meticulous assessment of a situation, which could not be justified by political motives. The burden of justifying such action falls on the initiating party.

### **Eviction campaign in Zimbabwe under international scrutiny, 2005**

"On 19 May 2005, with little or no warning, the Government of Zimbabwe embarked on an operation to "clean-up" its cities. It was a "crash" operation known as "Operation Murambatsvina", referred to in this report as *Operation Restore Order*. It started in the Zimbabwe capital, Harare, and rapidly evolved into a nationwide demolition and eviction campaign carried out by the police and the army. Popularly referred to as "Operation Tsunami" because of its speed and ferocity it resulted in the destruction of homes, business premises and vending sites. It is estimated that some 700,000 people in cities across the country have lost either their homes, their source of livelihood or both. Indirectly, a further 2.4 million people have been affected in varying degrees. Hundreds of thousands of women, men and children were made homeless, without access to food, water and sanitation, or health care. Education for thousands of school age children has been disrupted. Many of the sick, including those with HIV and AIDS, no longer have access to care. The vast majority of those directly and indirectly affected are the poor and disadvantaged segments of the population. They are, today, deeper in poverty, deprivation and destitution, and have been rendered more vulnerable.

...

The [UN] Special Envoy's findings and their implications are as follows:

(i) Operation Restore Order, while purporting to target illegal dwellings and structures and to clamp down on alleged illicit activities, was carried out in an indiscriminate and unjustified manner, with indifference to human suffering, and, in repeated cases, with disregard to several provisions of national and international legal frameworks. Immediate measures need to be taken to bring those responsible to account, and for reparations to be made to those who have lost property and livelihoods. In parallel, other confidence-building measures need to be taken to restore dialogue between the Government of Zimbabwe and civil society.

...

(iii) The humanitarian consequences of Operation Restore Order are enormous. It will take several years before the people and society as a whole can recover. There is an immediate need for the Government of Zimbabwe to recognise the virtual state of emergency that has resulted, and to allow unhindered access by the international and humanitarian community to assist those that have been affected. Priority needs include shelter and non-food items, food and health support services."

(Report of the Fact-Finding Missions to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlement Issues in Zimbabwe, Mrs. Anna Kajumulo Tibaijuka, July 2005)

## Minimizing the effects of displacement

In light of the narrow circumstances in which a State can make a decision to displace a population, the displacement should not last longer than is required by the circumstances (Guiding Principle 6-3).

Guiding Principle 7 also provides for the following steps to be taken to ensure the protection of internally displaced persons from a violation of the right to freedom of movement.

### ***“Ensure that all feasible alternatives are explored in order to avoid displacement”***

Since internally displaced persons, like all other persons within a territory, have freedom of movement, which can only be restricted in limited situations provided by law, all feasible alternatives must be explored before a decision to displace a population can be taken. It might include considerations of reinforcing local security or diverting conflict from the area.

### ***“Where no alternative exists – minimize displacement and its adverse effects”***

If internal displacement is deemed necessary in situations of non-international armed conflict, States must take particular measures to ensure that “all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition”. [Protocol II article 17] Principle 7 therefore specifies that the authorities shall ensure to the "greatest practicable extent" that internally displaced persons receive:

- Proper accommodation (*see Principle 18: the right to an adequate standard of living*)
- Satisfactory conditions of safety, nutrition, health and hygiene (*see Principle 19 – the right to an adequate standard of care*)
- Family unity (*see principle 17 – family as the fundamental unit*)

States must also ensure that protection is provided during displacement. Guiding Principle 8 provides that "displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected."

## Displacement in situations other than emergencies

If displacement takes place during times other than in emergencies or disasters, additional procedural guarantees are expected of States.

1. The decision to displace a population must be made by the authorities authorised to make that decision on behalf of the State. This ensures accountability, transparency and predictability.
2. The authorities must:
  - (a) Provide full information to displaced persons on issues surrounding their displacement. Full transparency of the process also allows displaced persons to prepare

for orderly relocation. It also provides an opportunity for displaced persons to become involved in matters that affect their lives.

- (b) Gather the free and informed consent of those to be displaced.
- (c) Involve women in the planning and management of the relocation.
- (d) Ensure that law enforcement measures are carried out by competent legal authorities.
- (e) Respect the right to an effective remedy, including review of decision by appropriate judicial authorities.

### **Minimising the adverse effects of displacement** **Planning checklist**

- ✓ Have all alternatives to displacement been considered?
- ✓ Has consultation taken place with the affected population, especially women?
- ✓ Have members of the displaced community visited proposed relocation sites?
- ✓ Have the protection and assistance needs while in transit been considered?
  - Physical safety and security
  - Food and other supplies
  - Shelter
  - Sanitation
  - Family unity
  - Vulnerable populations
  - Emergency medical care
- ✓ Have the protection and assistance needs in the relocation site been considered?
  - Physical safety and security
  - Food and other supplies
  - Shelter
  - Sanitation
  - Family unity
  - Vulnerable populations
  - Medical care
  - Education
  - Income generation
  - Documentation
  - Community decision-making structure
- ✓ Have mechanisms to protect property left behind been considered?

(Handbook for Applying the Guiding Principles on Internal Displacement, OCHA/Brookings, 1999)

## **Special protection of vulnerable groups**

The Guiding Principles recognise a special dependency or attachment to the land among some members of the population compared to others. As such, the Principles place additional obligations on States to protect those people against displacement as the process would have additional negative impacts. Primarily the principle requires respect for the special importance of spiritual, cultural and moral connections to the land. [ILO Convention No 169 16 (1)]

To give effect to this Principle, States have additional responsibilities to the people in the event of displacement. If relocation of indigenous people is considered necessary, it must be in accordance with legal requirements and as an exceptional measure shall only take place with:

- the free and informed consent of the affected communities;  
or
- if consent cannot be obtained, the decision to displace can only be made *if* there was an opportunity for effective representation of the people concerned in the decision-making process, which may also include public inquiries where appropriate. [ILO Convention 169 16(2)]

### **What you can do to minimise displacement and its negative impact**

Collect accurate data on the populations and conditions in communities at risk of displacement and on the factors impelling displacement

Establish early warning systems that alert communities, authorities, and organisations to the risk of displacement

Suggest alternatives to displacement, through studies, analyses and discussions with community leaders and authorities

Identify groups with special needs among populations at risk or communities with a special dependency on or attachment to their lands and target assistance or protection to those groups

Advocate among the displaced and with authorities, donors and international organisations, and others for the rights of communities at risk of displacement

Empower populations at risk to protect themselves and reclaim their rights, through human rights training, and awareness campaigns

Open channels of communication between displaced communities and national or local authorities who may be able to prevent displacement or ensure that it is accomplished with respect for the rights of the displaced

Establish a presence in communities threatened with displacement to reduce the risk of displacement

Preposition staff, transport, shelter materials and other supplies that may be necessary if displacement appears inevitable and develop a contingency plan addressing the potential needs of IDPs, identifying responsibilities and capacity of all relevant actors.

Ascertain optimal locations where communities can settle during the period of displacement, taking into account their need for protection and basic services during the period of displacement, and prepare those sites.

Conduct studies on the potential environmental impact of displacement, when necessary, and seek ways to minimise damage.

*Adapted from: Handbook for Applying the Guiding Principles on Internal Displacement, OCHA/Brookings Institution on Internal Displacement, 1999 and Implementing the Collaborative Response to Situations of Internal Displacement, IASC, 2004*

## Resources

Implementing the Collaborative Response to Situations of Internal Displacement – Guidance for United Nations Humanitarian and/or Residence Coordinators and Country Teams, Inter-Agency Standing Committee, September 2004

*Contains information on how UN and other international agencies can contribute to the prevention of displacement*

<http://www.reliefweb.int/idp/docs/references/IASC%20Policy%20Package%202004r1.pdf>

Prevention of forced displacements of civilian populations – possibilities and limits, Jack M. Mangala, International Review of the Red Cross, 2001, No. 844, p. 1067-1096

<http://www.icrc.org/web/eng/siteeng0.nsf/iwpList185/AF06224C80B7D24BC1256B6600610252>

Platform for the Promotion of Early Warning: <http://www.unisdr.org/ppew/>

UN consultation for the promotion of the development of early warning and preparedness systems to reduce the impacts of disasters.

Reliefweb: [www.reliefweb.int](http://www.reliefweb.int)

The section "Policy and issues" of Reliefweb provides access to reference documents on the issues of prevention, early warning, preparedness. Select the option by subject and consult the topics "conflict prevention", "disaster preparedness", "disaster prevention and mitigation", "early warning".