

## Action Sheet 1

# Forced and Unlawful Displacement



### Key message

Forced displacement, which currently affects over 50 million people worldwide, has serious consequences for the lives, health and well-being of individuals and communities. It can occur in a wide range of circumstances and as a result of a variety of factors. Forced displacement is often, but not always, unlawful. While international law provides numerous safeguards against forced displacement, there may be circumstances in which it can serve a legitimate purpose. Even in such cases, however, it must meet certain minimum safeguards and take place in conditions of safety and dignity.

**Note!** All persons have a right to move freely and in safety within their country and to leave the country and seek asylum in another country at any time. Efforts to prevent and/or minimize forced displacement and mitigate its adverse effects must not in any way restrict or limit freedom of movement, impede people's ability to move, or influence their decision to do so.

As a general rule, every effort must be made to prevent unlawful displacement from taking place. When displacement does occur, efforts should be made to minimize and mitigate its adverse impact on individuals and communities and ensure a durable solution for all those affected.

## 1. What is forced 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 as a result of or in order to avoid the effects of events or situations such as armed conflict, generalized violence, human rights abuses, natural or man-made disasters, and/or development projects.

It both includes situations where people have fled as well as situations where people have been forcibly removed from their homes, evicted or relocated to another place not of their choosing, whether by State or non-State actors. The defining factor is the absence of will or consent.

## 2. What does international law say about forced displacement?

In general, international law prohibits any form of forced displacement. There are only a few exceptions from this rule.

See also Principles 5, 6, 7 and 9 of the **Guiding Principles on Internal Displacement**. (in Annex 1).

### 2.1 International (and regional) human rights law

guarantees several rights which provide safeguards against forced displacement. While there is no specific right to protection against forced displacement as such, it is inherent in a number of human rights, including the rights to freedom of movement and choice of residence,<sup>1</sup> the right to respect for the home and for privacy,<sup>2</sup> the right to an

<sup>1</sup> See, at the international level, Art. 13 of UDHR; Art. 12 of ICCPR; Art. 5(d)(i) and (f) of ICERD; Art. 15 of CEDAW; and Art. 16 of ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries; At the regional level, Art. 12 of AfCHPR; Art. 22 of AmCHR; Arts. 20 and 21 of ArCHR; and Art. 2 of Protocol 4 to the ECHR. See also Principle 14 of the Guiding Principles on Internal Displacement.

<sup>2</sup> See, at the international level, Art. 12 of UDHR; Art. 17 of ICCPR; Art. 8(16) CRC. At the regional level, Art. 10 of AfCRWC; Art. 11 of AmCHR; and Art 8 of ECHR.

adequate standard of living, including food and housing,<sup>3</sup> and the right to respect for the family.<sup>4</sup>

Forced displacement can only be justified on an exceptional basis under human rights law and subject to strict conditions. It must be provided for by law and be necessary and proportionate to achieve a legitimate aim, such as to protect national security or public order, public health or morals, or the rights and freedoms of others. It must be non-discriminatory and consistent with other human rights and international legal obligations of the State.

Even when displacement can be justified, it must meet certain substantive and procedural safeguards and take place in conditions of safety and dignity. As an example, any decision to displace individuals or communities must be taken by competent authorities. Those affected must be informed of the reasons and procedures for displacement and given an opportunity to challenge the decision, including through independent judicial review. Wherever possible, their informed consent should be sought, their participation in planning and implementing the decision ensured and fair compensation given. Displacement should never be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

Particular care must be taken to protect indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands from displacement.

Certain human rights, such as freedom of movement can be temporarily suspended by the national authorities in times of a public emergency, such as during armed conflict.<sup>5</sup> Such situations are usually governed by international humanitarian law.

### 2.2 International humanitarian law

requires parties to a conflict to spare the civilian population as much as possible from the effects of hostilities and to treat all civilians in their power humanely (See Part I.2.2).  The law specifically prohibits parties to a conflict to order the displacement of the civilian population, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand, and requires that displaced persons be allowed to voluntarily return in safety as soon as those reasons cease to exist.

#### When is displacement unlawful?

Forced displacement is only permissible on exceptional basis and for a limited number of reasons, as outlined above. **It is *always* unlawful:**

- When it is based on policies of apartheid, ethnic cleansing or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population.
- In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
- In cases of large scale development projects, which are not justified by compelling and overriding public interests;
- In cases of disasters, unless the safety and health of those affected requires their evacuation; and
- When it is used as a collective punishment.

In addition, forced displacement ***can be* unlawful if:**

- Minimum procedural guarantees are not respected;
- If the manner in which it is carried out violates other rights and/or obligations that apply to the State or a party to the conflict, such as the rights to liberty and security, and the prohibition against torture, inhuman and degrading treatment;
- If its effects have a long term negative impact on the enjoyment of human rights.

<sup>3</sup> See e.g. Art. 25 of UDHR; Art. 11 of ICESCR; Art. 5(e)(iii) of ICERD; and Art. 14(2)(h) of CEDAW; and Art. 27 of CRC; and at the regional level, Art. 15 and 16 of the Protocol to the AfCHPR on the Rights of Women in Africa. See also General Comments of the Committee on Economic, Social and Cultural Rights No. 4 (1991) on the right to adequate housing and No. 7 (1997) on forced evictions; and Principle 18 of the Guiding Principles on Internal Displacement.

<sup>4</sup> See Art. 16 of UDHR; Art. 10 of ICESCR; Arts. 17 and 23 of ICCPR, Arts. 16 and 18 of CRC and at the regional level, Art. 18 of AfCHPR; Art. 17 of AmCHR; Art. 38 of ArCHR; Art. 5 of the Cairo Declaration on Human Rights in Islam; Arts. 8 and 12 of ECHR; and Art. 16 of the revised ESC. See also Principle 17 of the Guiding Principles on Internal Displacement.

<sup>5</sup> See e.g. Art. 4 of ICCPR. Derogations are exceptional measures that are subject to strict requirements. See Part I.2.1.

The law also requires that all possible measures be taken to protect any property left behind and ensure satisfactory conditions while in displacement, including shelter, hygiene, health, safety and nutrition, and that members of the same family are not separated.<sup>6</sup>

Depending on the context, the forced displacement of civilians can constitute a war crime and/or crime against humanity.<sup>7</sup>

### 3. The responsibility of the State

The State and its institutions have a responsibility to respect and ensure respect for their human rights obligations at all times. In times of conflict, the parties to the conflict are similarly obliged to respect and ensure respect for the principles of international humanitarian law. The most effective way to minimize the risk of arbitrary displacement is to avoid conditions that might compel people to leave their homes against their will. In most cases, forced displacement could be avoided or greatly reduced if the rules of international law were respected. More specifically, national authorities should:

- Take all possible measures to prevent and avoid conditions that might cause or contribute to forced displacement. This could for instance include ensuring respect for the rule of law, combating impunity and otherwise creating an environment conducive to the realization of rights.
- Refrain from forcing individuals and communities to leave their homes or places of habitual residence and protect them from being arbitrarily displaced by others. The authorities should seek all possible alternatives before resorting to displacement.
- When displacement is necessary and justifiable, the authorities must take action to minimize the scale of displacement and mitigate its adverse effects. In particular, the authorities should ensure to the greatest possible extent, that it takes place in satisfactory conditions of safety, shelter, nutrition, health and hygiene, and that members of the same family are not separated.
- Ensure that displacement lasts no longer than required by the circumstances and that a durable solution is found for all those affected. The authorities should aim to create conditions for and facilitate voluntary return and reintegration and/or settlement elsewhere in the country. Displaced persons should not be discriminated against as a result of having been displaced and should be entitled to restitution and/or compensation for property they may have been arbitrarily deprived of.
- Make special efforts to ensure the full participation of internally displaced persons at all stages of the displacement cycle, including in the search for durable solutions.
- Provide protection and assistance to internally displaced persons. Where the national authorities are unable or unwilling to do so, they should ensure rapid and unimpeded access by humanitarian actors to populations in need and facilitate the free passage of humanitarian assistance.

### 4. The role of humanitarian and human rights actors

Human rights and humanitarian actors can play an important role in preventing and/or minimizing forced displacement and mitigating its adverse effects when it occurs. Such efforts should be based on an understanding of the applicable national and international legal framework and should be undertaken in close coordination with other relevant human rights, humanitarian, developmental and political actors. Humanitarian action must never undermine

<sup>6</sup> See e.g. Rules 129-132 of Customary International Humanitarian Law Volume I: Rules (ICRC, 2005). See also Arts. 49 and 147 of the Fourth Geneva Convention; Art. 85(4)(a) and Art. 4(3)(b) of Additional Protocol I; and 17 of Additional Protocol II.

<sup>7</sup> See Art. 147 of the Fourth Geneva Convention and Art. 85(4)(a) of Additional Protocol I. See also Arts. 7(1)(d); Art. 8(2)(e)(viii) and Art. 8(2)(e)(viii) of the Statute of the ICC.

the right of every person to move freely within and out of his or her country as well as to seek asylum in another country.

### 4. 1 Preventing unlawful displacement

Efforts to prevent or minimize unlawful displacement include a set of strategies and activities that seek to strengthen the rule of law as well as to prevent and respond to violations of human rights and humanitarian law. This can include building the capacities of the authorities to maintain law and order, combat impunity, ensure access to justice and promote the peaceful resolution of conflict and disputes. In times of armed conflict, special efforts must be made to ensure respect for humanitarian law by all parties to a conflict, including in particular provisions relating to the protection of civilians (see Part I.2.2). 

In our work we can...	
<p><b>Assessment</b> (See Part III. 1) </p>	<ul style="list-style-type: none"> <li>• Ensure that protection assessments and analysis gather information about any factors or events that might result in unlawful displacement. Pay special attention to factors such as potential political or ethnic tensions within the country, disputes over land and other resources, incidents of violence and human rights violations, and migratory movements which could result in clashes, for instance between resident farming communities and nomadic herders.</li> <li>• Such information should be shared with relevant actors in order to inform early warning mechanisms and/or contingency planning.</li> </ul>
<p><b>Early-warning and contingency planning</b></p>	<ul style="list-style-type: none"> <li>• Work with other human rights and humanitarian actors to establish early warning mechanisms and develop contingency plans to respond to incidents of forced displacement. Such plans should identify the key actors, their roles and responsibilities and the strategies and/or activities which should be undertaken in case displacement occurs. All staff and partners should be familiar with contingency plans and standard operating procedures.</li> <li>• Where appropriate, help build the capacity of the competent authorities to maintain early warning mechanisms and develop and implement contingency plans in case displacement is imminent or already occurring.</li> </ul>
<p><b>Coordination</b> (see Part III.3) </p>	<ul style="list-style-type: none"> <li>• Ensure that all preventative efforts are coordinated with other relevant human rights, humanitarian, developmental, political and military actors, such as peacekeeping forces where present. This includes protection working groups at all levels, the broader country team and the humanitarian coordinator in the country.</li> </ul>
<p><b>Presence</b> (see Parts IV. 1 and 2) </p>	<ul style="list-style-type: none"> <li>• Maintain high visibility presence in areas at risk of displacement, if security conditions allow. Humanitarian presence can, in some cases, help to deter violations of human rights. Such presence, however, must be carefully evaluated. The presence of humanitarian actors can be perceived as condoning or endorsing serious human rights violations, including forced displacement.</li> </ul>
<p><b>Advocacy</b> (see Part IV.3) </p>	<ul style="list-style-type: none"> <li>• Advocate with relevant authorities and in times of armed conflict with parties to a conflict, and encourage them to respect and ensure respect for human rights and humanitarian principles as outlined in the relevant bodies of international law. Emphasize their responsibility to avoid creating conditions that might lead to displacement; to refrain from forcibly displacing people and protect them from being displaced by others; and to ensure that if displacement occurs it takes place in satisfactory conditions of safety, health, shelter and nutrition and that members of the same family are not separated.</li> </ul>

	<ul style="list-style-type: none"> <li>• As needed, engage with influential stakeholders, such as regional or international organizations or relevant States, to encourage and support their involvement to minimize the risk of displacement.</li> </ul>
<p><b>Mediation and dialogue</b></p>	<ul style="list-style-type: none"> <li>• Encourage open dialogue and support conflict prevention, mediation and resolution efforts at the local, regional and national level.</li> <li>• Help build the capacity of civil society, communities at risk of displacement, national authorities and other stakeholders to participate in such efforts. This may include training on mediation and negotiation skills towards the peaceful resolution of conflicts.</li> </ul>
<p><b>Information</b> (see Part IV.6)</p> 	<ul style="list-style-type: none"> <li>• Support public information campaigns that aim to inform and raise awareness of human rights and humanitarian principles.</li> <li>• In cases where displacement is imminent, work with the community to ensure that people are informed of their rights to move elsewhere within the country and to leave the country, for instance in order to seek asylum abroad.</li> </ul>
<p><b>Capacity-building and training</b> (see Part IV.4)</p> 	<ul style="list-style-type: none"> <li>• Work with human rights and developmental actors to build the capacity of the State to respect and ensure respect for human rights and humanitarian principles. This could for instance include help to strengthen the rule of law and build the capacity of the legislative, judicial, and executive branches of the State.</li> <li>• In coordination with ICRC and other relevant actors, support training for armed forces and groups at all levels on how to meet their obligations under international humanitarian law.</li> <li>• Work with civil society and community groups to strengthen their capacity to raise their concerns and engage with national authorities in order to prevent displacement. This may include providing training, expertise or material support. Support their participation in relevant regional or international fora and take other action to strengthen their message, and enhance the personal security of their membership.</li> </ul>
<p><b>Community mobilization</b> (see Part IV.10)</p> 	<ul style="list-style-type: none"> <li>• Ensure that individuals and communities are informed about and able to participate in public decision-making processes that affect their lives, including identifying alternatives to displacement.</li> <li>• Support initiatives that promote self-reliance and access to basic services, such as education, health care and livelihoods, that can help reduce the need to seek such support elsewhere.</li> </ul>
<p>Do you have suggestions about other activities? If so, share them with us at <a href="mailto:hqidphb@unhcr.org">hqidphb@unhcr.org</a></p>	

## 4.2 Mitigating adverse impact of forced displacement

Detailed guidance on humanitarian involvement in *lawful* relocations or evacuations is provided in Part IV.9. 

Efforts to prevent *unlawful* displacement should take place at all times. Where such efforts fail and unlawful displacement occurs, the humanitarian imperative may require that life-saving assistance and services are provided on an emergency basis. Such situations, however, may present a dilemma for humanitarian and human rights actors as their involvement may be interpreted or perceived as condoning or endorsing unlawful displacement. As a result, the neutrality and impartiality of humanitarian action may be placed at serious risk. In light of the complexity of such events and the potential political, legal and security implications, any such involvement **must be cleared at the most senior level and in consultation with the Humanitarian Coordinator.**

## In our work we can...

### Assessment

(see Part III.1)



- Support a rapid assessment of urgent humanitarian needs arising as a result of displacement. Such assessment can take place prior to or during the movement.
- Identify problems requiring specialist expertise and advocate for the timely deployment of technical experts.

### Humanitarian assistance

(see Part IV.7)



- Provide life-saving assistance and services, such as shelter, food, water and medical care. As soon as conditions allow, ensure that thorough assessment, planning and programming is undertaken in areas of settlement to facilitate a more sustainable humanitarian response.
- As soon as possible, reorient assistance activities to enable the displaced population to resume normal economic and social activities and limit dependency on aid.

### Presence and monitoring

(see Parts IV.1 and 2)



- Negotiate for humanitarian access to communities undergoing displacement. If a generic protection presence, such as human rights monitors, is not accepted, try to agree on access for humanitarian assistance purposes, at least.
- To the extent possible and if security conditions allow, monitor forced movement of individuals and communities and ensure that accurate information is channelled to the relevant actors, such as the protection working group, the country team and the humanitarian coordinator.

### Advocacy

(see Part IV.3)



- Undertake continuous advocacy with all relevant stakeholders to minimize and mitigate the impact of the displacement. Those responsible for displacement should be encouraged at all times to treat the displaced population humanely and meet their needs for safety, shelter, food, water and sanitation. Special measures should be taken to meet the needs of persons with specific needs.

### Family unity

(see Part V.9)



- Support and implement measures to avoid family separation, particularly targeting children, older persons and persons with disabilities and ensure that family tracing and reunification activities are undertaken at the earliest opportunity.

### Access to justice

(see Part V.10 and IV.5)



- Build the capacity of displaced individuals and communities to access justice and seek an effective remedy for any rights violated as a result of unlawful displacement. This can include providing legal counselling or other assistance to access the justice system.

### Land and property

- To help reduce the impact of loss of land and property, to the extent possible, inform affected individuals and communities of the importance of safeguarding personal and other documentation, including those relating to ownership or use of land and property.
- At the time of flight or as close to the time of flight as possible, assist the community in gathering and safeguarding information about ownership or use of land and property. Such information can, for instance, include: copies of official records or registries, documents relating to mortgages, property or income taxes, telephone or utility bills, rental slips and photographs.

Do you have suggestions about other activities? If so, share them with us at [hqidphb@unhcr.org](mailto:hqidphb@unhcr.org)



## 5. Key actors

Efforts to prevent, minimize and mitigate the effects of forced displacement require a coordinated effort by a range of actors:

- At the **national level**, key actors include displaced individuals and communities; all levels of government, in particular ministries of the interior, defence, housing and social welfare, the judiciary, law enforcement authorities, and the armed forces; national human rights institutions or commissions; civil society and local NGOs.
- At the **regional level**, key actors include regional organizations, such as the African Union, regional human rights courts, commissions, and special rapporteurs, regional peace-keeping forces, where present, and influential donor or neighbouring States.
- At the **international level**, key actors include various political developmental, human rights and humanitarian actors, as well as peace-keeping forces where present. Relevant actors include, for example, the Humanitarian/Resident Coordinator, OCHA, UNDP, OHCHR, UNHCR, UNICEF, UNIFEM, UNFPA, IOM, ICRC, and NGO partners.



## Resources

- *Addressing Internal Displacement: A Framework for National Responsibility*, the Brookings Institution, April 2005. [www.brookings.edu/fp/projects/idp/idp.htm](http://www.brookings.edu/fp/projects/idp/idp.htm)
- *Handbook for Applying the Guiding Principles on Internal Displacement*, OCHA/Brookings Institution Project on Internal Displacement, 1999.
- *Manual on Field Practice in Internal Displacement: Examples from UN Agencies and Partner Organizations of Field-based Initiatives Supporting Internally Displaced Persons*, IASC Policy Paper Series, No. 1, 1999.
- *Protection of Internally Displaced Persons*, IASC Policy Paper Series, No. 2, 2000.