

Action Sheet 8

Liberty and Freedom of Movement



Key message

The ability to move freely and in safety within one's country is a basic right as well as a pre-condition for the enjoyment of many other rights. Limitations on freedom of movement can have serious consequences for the lives, health and well-being of individuals and communities. Ensuring freedom of movement thus forms an important part of any protection strategy.

1. What do we mean by the term freedom of movement?

Freedom of movement consists of the right and ability to move and choose one's residence freely and in safety within the territory of the State, regardless of the purpose of the move. It also includes the right to leave any country and to return to one's own country. It is closely related to the right to liberty and security of person, which guarantees freedom from arbitrary arrest and detention, and the right to seek asylum in another country. Taken together these rights mean that all persons, including the internally displaced, have the right to:

- **Take flight and seek safety** in another part of the country (of choice), or to leave the country in order to seek asylum in another country.
- **Move freely and in safety** within the country, including in and out of camps and settlements, regardless of the purpose of the move.
- **Voluntarily return** to the place of origin **or relocate** to another part of the country.
- **Not be arbitrarily displaced or forced to return or relocate** to another part of the country.
- **Not be arbitrarily arrested or detained or forced to reside in specific camps or settlements.**

Lack of freedom of movement can have serious **consequences** for the lives, health and well being of displaced individuals and communities. It not only limits their ability to flee and seek safety from the effects of conflict or serious human rights abuses but furthermore impedes their ability to secure a sustainable livelihood. Lack of freedom of movement can result in limited access to work, markets, land and basic necessities (food, water, firewood) as well as life-saving public services, such as education and health care. It may also lead to the separation of families and pose obstacles to family reunification. Overall it is likely to result in increased poverty, marginalization and dependency on humanitarian aid.

2. Freedom of movement in the context of internal displacement

The ability to move freely and in safety is of particular importance for internally displaced persons, who often live in or near areas of conflict, or reside in camps and settlements where access to sustainable livelihoods is limited and threats to life, safety and security frequent. Various obstacles may limit their freedom of movement. These include (1) practical barriers; (2) legal or administrative restrictions; (3) forced encampment; (4) forced population movement; (5) and arbitrary arrest and detention.

2.1 Practical barriers

Practical barriers take different forms, depending on the context, but can include:

- **Lack of safety and security** stemming from crime, armed conflict, generalized violence or the presence of landmines and unexploded ordnance. Such factors can affect the

internally displaced disproportionately or they may be targeted because of perceived association with political factions or parties to a conflict.

- **Lack or loss of identity or travel documents** can limit freedom of movement and expose displaced persons to harassment, extortion, arbitrary arrest or detention. Replacement documentation is often difficult or impossible to obtain, for instance owing to strict administrative requirements, high fees or discriminatory practices. Displaced persons may also be obliged to return to their areas of origin despite the dangers involved in order to obtain new documentation (*see Part V.1*). 
- **Discrimination** on the basis of gender, ethnic origin, political opinion, religion or other status, such as that of being displaced, can curtail freedom of movement. As an example, women and girls are frequently barred from obtaining documentation in their own names and may be prevented from traveling except with the permission of or in the company of male relatives.
- **Lack of adequate infrastructure**, including damaged roads and bridges, lack of safe and affordable **transport**, and poor **physical condition** owing to age, ill-health or disability, can also limit people's ability to travel.

2.2 Legal or administrative restrictions

Legal or administrative restrictions on freedom of movement by local or national authorities are often used to monitor or control movement within a country's borders. Restrictions are **subject to strict criteria under human rights law**. They must be provided for by law, be considered necessary and proportionate to achieve a legitimate aim (such as protect national security or public order, health or morals, or the rights or freedoms of others), and be non-discriminatory and consistent with other human rights.

In situations of displacement restrictions have sometimes been implemented in an arbitrary or discriminatory manner or been used for unlawful purposes, including to isolate or marginalize the displaced population. Common restrictions include:

- **General travel restrictions**, either legal or administrative, which regulate movement within the country, for instance from rural to urban areas. These can include curfews, restricted traveling hours or days, or strict travel criteria, such as need for specific documentation or travel permits. Such restrictions often disproportionately affect displaced persons, for instance owing to lack or loss of documentation.
- **Targeted travel restrictions**, e.g. on movement in and out of camps or settlements for displaced persons. These can include curfews, restrictive traveling hours or days, restrictions on travel distances, strict exit/entry criteria, and documentation requirements. Such restrictions are often imposed to deal with perceived or actual security threats but frequently violate the rights of those residing in the area.

Whenever restrictions are imposed by the State it must ensure that these comply with the criteria mentioned above. As an example, where documentation or travel permission are required, the State should ensure that these can be obtained without delay or hardship and that they are not subject to unreasonable requirements or high fees.

2.3 Forced encampment

In some countries, internally displaced persons have been forced to reside in special IDP camps or settlements, often despite the fact that they might prefer to seek shelter with members of their family, friends, or extended community. Such camps or settlements are often poor, over-crowded and located in remote areas where access to sustainable livelihoods, basic necessities and vital services are limited or lacking entirely.

As a general rule, internally displaced persons should be able to reside where they choose. Forced encampment, with few exceptions, is likely to constitute a grave violation of a number of human rights, including the right to freedom of movement. It may also amount to *de facto* detention in violation of the right to liberty and security.

2.4 Arbitrary displacement, forced return or relocation

Forced population movements have regrettably been used by both political and military factions to displace individuals and communities, gain control over land and natural resources, or to collectively punish a certain population group for alleged support for opposing factions. Forced population movement, as a general rule, is prohibited. It can only be lawful in a limited number of cases, such as to safeguard public safety or interest, or for reasons of military necessity, in which case it must take place in safety and meet certain minimum standards, as described in the legal section below.

The principle of voluntariness of movement entails that:

- The decision is made freely (without duress, compulsion or undue influence);
- The decision is based on accurate, objective information; and
- The decision is made expressly and individually (women on equal footing with men).

It can be difficult at times to assess the voluntariness of movement, in particular in the context of large-scale return or relocation. Displaced populations may be vulnerable to outside influence or manipulation or may lack information and access to adequate food, water, shelter and other necessities. As a result they may feel compelled to return or relocate although it may not be safe to do so. Conversely, some persons may feel compelled to stay although conditions for a safe and sustainable return exist. The voluntariness of movement needs to be assessed as thoroughly as possible in each given case.

2.5 Arbitrary arrest and detention

Arbitrary arrest and detention, and ill-treatment while in detention, is a serious problem in many countries. Such abuse can affect internally displaced persons disproportionately because of discrimination, distrust, stigma and/or lack or loss of documentation proving legal identity. This is frequently the case in countries where displacement has been motivated by political or ethnic factors. Poverty and marginalization can also force individuals to adopt survival strategies, such as brewing alcohol, trading goods without permission or survival sex, which breach national law and thus place them at increased risk of arrest and detention.

While the State has the right and indeed the duty to maintain law and order, including through powers of arrest and detention, such powers must be exercised in accordance with the law and with respect for human rights. As an example, all detainees must be treated humanely, be informed of any charges against them in a language they understand, and be given the opportunity to contest the lawfulness of the arrest before a judge. Any form of torture or ill treatment, including rape, beating or excessive use of solitary confinement, is prohibited at all times.

3. Individuals and groups at particular risk

Different groups may experience different obstacles or violations of freedom of movement. For instance, women and girls are often discriminated against, prevented from obtaining documentation in their own name, or harassed or subjected to sexual violence when traveling alone. Men and boys, however, may be more likely to be arbitrarily arrested and detained, forcibly recruited into armed forces/groups, or placed at risk of extra-judicial and summary executions. Ethnic and religious minorities and stateless persons, as well as persons with

special needs, such as unaccompanied and separated children, older persons, and persons living with disability or disease, often face additional difficulties.

4. The responsibility of the state

The national authorities carry primary responsibility for respecting and ensuring respect for the rights to freedom of movement, liberty and security of person. This means that the State must ensure that these rights are adequately protected in national legislation and respected by all agents of the State at the national, regional and local levels. The State must also take action to ensure that freedom of movement is not limited by third parties and that any obstacles to the full enjoyment of the right are adequately addressed.

5. The role of human rights and humanitarian actors

Human rights and humanitarian actors can play an important role in ensuring freedom of movement and respect for other human rights through advocacy, monitoring and capacity-building efforts, both with the authorities and with displaced individuals and communities.



In our work we can ...

Assessment and analysis

(see Part III.1)



- Work with displaced communities and relevant colleagues, including security experts, to identify and assess obstacles to freedom of movement, liberty and security, and the ways in which these can be addressed.

Presence

(see Part IV.2)



- Ensure regular visits and visible presence of protection staff in areas or locations where freedom of movement and other rights are frequently violated. This may, for instance, include checkpoints, exit/entry points into camps and villages, roads and paths leading to markets, schools, and other public spaces.

Advocacy

(see Part IV.3)



- Advocate for and sensitize relevant actors, including national and local authorities and non-State actors, to the importance of respecting freedom of movement, liberty and security, and the prohibition on forced and arbitrary displacement, return or relocation of any kind.

Documentation

(see Part V.2)



- Work with relevant authorities to ensure that IDPs have safe and effective access to documentation and/or replacement documentation, that strict documentation requirements are eased or suspended for IDPs, and that those without documentation are not arbitrarily arrested and detained. In some cases, modest financial or material assistance might be appropriate in order to assist local authorities to issue or replace lost documentation.

Information

(see Part IV.6)



- Ensure that IDPs have access to information about the security situation and other factors that may affect their ability to move freely and in safety. 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, “go and see” visits can be arranged.

Community mobilization

(see Part IV.10).



- Work with the community to identify obstacles and take steps to strengthen its ability to move freely and in safety. This can, for instance, include safe transportation; joint travel or transportation to markets, schools, and clinics; joint collection of food, water and firewood; accompanied travel, for instance for women and children; and assisted travel, for example for older persons or persons with disabilities.

<p>Safety and security (see Part V.3) </p>	<ul style="list-style-type: none"> • Negotiate for and support efforts to improve safety and security in and around camps, settlements and urban IDP areas. This may, for instance, include an increase in the number of civilian police and, if present, patrolling by peacekeeping forces. To safeguard their civilian character, military forces should be involved only on an exceptional basis and never within, or in the immediate vicinity of, such areas.
<p>Mine action (see Part V.6) </p>	<ul style="list-style-type: none"> • Coordinate with de-mining experts and other partners, including local authorities and displaced communities, to ensure early identification, marking and de-mining of areas inhabited by IDPs, and provide support for mine-awareness and education activities aimed at both the displaced and the wider population.
<p>Transport</p>	<ul style="list-style-type: none"> • Advocate for and assist the authorities to improve road infrastructure and public transport to enable displaced individuals and communities to seek work, access markets, tend fields, and access education and health care. This can, for instance, include repairing roads or bridges, loaning or donating vehicles, and modest financial or material assistance, for instance in the form of fuel. • Consider providing modest financial or other assistance to persons in need or at particular risk to enable them to travel, for instance to work or attend schools or health clinics.
<p>Persons in detention (see Part V.8). </p>	<ul style="list-style-type: none"> • Ensure that effective monitoring mechanisms are established to monitor that conditions in detention and the treatment of individuals deprived of their liberty meet established minimum standards. Such activities should be undertaken in close cooperation with the ICRC or other actors with expertise of monitoring prison conditions. Where needed modest financial or material assistance can be provided to improve prison conditions and services. • Make interventions on behalf of individuals who have been arbitrarily arrested or detained. This can, for instance, include legal advice and assistance, as well as advocacy with relevant authorities to ensure respect for relevant rights, including the right not to be arbitrarily arrested or detained, to be informed of any charges, be brought before a judge to challenge the lawfulness of detention, and to a fair trial.
<p>Durable solutions (see Part VI) </p>	<ul style="list-style-type: none"> • Monitor return and relocation movements to ensure these are informed and voluntary, and that minimum standards relating to safety and security, as well as the provision of basic necessities, are met. Where such movement is deemed to be involuntary, in part or in whole, ensure that it is monitored, documented and reported to all relevant stakeholders, including in particular the protection working group and the Humanitarian/Resident Coordinator. • Advocate for and support developmental projects that aim to restore or rehabilitate damaged infrastructure (roads, bridges) or public services (schools, health clinics, community centres) that facilitate voluntary return, resettlement or integration in the area of displacement.

Do you have suggestions about other activities? If so, please share them with us at hqidphb@unhcr.org

6. Key legal principles

6.1 Freedom of movement

International (and regional) human rights law guarantees everyone the right to freedom of movement and residence within the borders of the State, and the right to leave and enter one's own country.¹ It consists of the right to move and choose one's residence, freely and in safety, without undue influence or interference from the State, regardless of the length of stay or the reason or purpose of the move.

While States might have a legitimate interest in controlling or monitoring the movement of people in their territory, such restrictions are only permissible if they meet the established criteria of: (i) being provided for and being in accordance with law; (ii) being necessary to achieve a legitimate aim, such as protecting national security, public order, public health or morals or protecting the rights and freedoms of others; and (iii) being consistent with other human rights, particularly the right to non-discrimination, and the State's other international legal obligations.

Women and girls are entitled to equal respect of freedom of movement and residence, and States are obliged to take all necessary measures to ensure that they can exercise this right on equal basis with men and boys.²

The right to freedom of movement is also closely related to, and often a prerequisite for the enjoyment of, other human rights, including the rights to life, liberty and security, to an adequate standard of living, including health, food and water, and to property. It is also closely related to the right to seek asylum from persecution in another State.³

International humanitarian law forbids parties to the conflict to order the displacement of the civilian population in whole or in part, unless their security 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. 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, nutrition and family unity.⁴

Guiding Principles (Annex 1)

Principle 14: 1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence. 2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Principle 15: Internally displaced persons have: (a) The right to seek safety in another part of the country; (b) The right to leave their country; (c) The right to seek asylum in another country; and (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

¹ 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, 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 ECHR.

² See e.g. Art. 15 of CEDAW. See also General Comment of the Human Rights Committee No. 27(1999) on freedom of movement (para. 6) and No. 28(2000) on equality of rights between men and women (s.16).

³ See, in particular, at the international level, the 1951 Convention on the Status of Refugees and its 1967 Protocol, and Art. 14 of UDHR, and at the regional level, Art. 12(3) of AfCHPR; Art. 23 of AfCRWC; Art. 22(7) of AmCHR; and Art. 23 of ArCHR.

⁴ See e.g. Rules 129-132 of *Customary International Humanitarian Law* Volume I: Rules (ICRC, 2005). See also Art. 49 of the Fourth Geneva Convention and Arts. 4(3)(b) and 17 of Additional Protocol II.

6.2 The right to liberty and security of person

International (and regional) human rights law guarantees the right to liberty and security of person.⁵ This includes a prohibition on arbitrary arrest and detention as well as any other deprivation of liberty that is not based on and in accordance with the law. The right also includes the right to (i) be informed immediately of the reasons for arrest; (ii) be brought promptly before a judge; (iii) be able to challenge the lawfulness of detention; (iv) be brought to trial or released within a reasonable time; and, (v) in case of unlawful arrest or detention, a right to compensation. The law also calls for humane treatment and respect for other human rights while in detention.

Guiding Principles (Annex 1)

Principle 12: 1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. 2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances. 3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement. 4. In no case shall internally displaced persons be taken hostage.

The UN *Basic Principles for the Treatment of Prisoners*, the UN *Standard Minimum Rules for the Treatment of Prisoners*, and the UN *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* provide useful and more detailed information about the standards that should be followed.⁶

International humanitarian law prohibits arbitrary deprivation of liberty, i.e., detention that is not based on and in accordance with the law.⁷ It also establishes extensive safeguards for the treatment of detainees during times of armed conflict.⁸ In particular, they must be provided with adequate food, water, clothing, shelter and medical attention, and be allowed to correspond with and receive visits from their families. Violations of these rules might amount to inhuman treatment, which may constitute a war crime. Women and children should also be kept separate from adult men, except where families are accommodated as family units.



References

- General Comments No. 27(1999) on **freedom of movement** (Art. 12); No. 21(1992) replaces general comment No. 9 concerning **humane treatment of persons deprived of liberty** (Art. 10); and No. 8(1982) on the **right to liberty and security of persons** (Art. 9) of the Human Rights Committee: www.ohchr.org/english/bodies/hrc/comments.htm.
- **Protection of detainees:** “Action Behind Bars,” Alain Aeschlimann, *International Review of the Red Cross*, Vol. 87, No. 857, International Committee of the Red Cross, Geneva, March 2005: www.icrc.org.

⁵ At the international level, see e.g. Art. 3 of UDHR; Art. 9 of ICCPR; Art. 5(b) of ICERD; Arts. 9(4) and 37 of CRC, and at the regional level, Art. 6 of AfCHPR; Art. 7 of AmCHR; Art. 4(c) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women; Art. 8 of ArCHR; and Art. 5 of ECHR.

⁶ These are available www.ohchr.org/english/law.

⁷ See Rule 99 of *Customary International Humanitarian Law* Volume I: Rules (ICRC, 2005).

⁸ See Rules 87 and 118-128 of *Customary International Humanitarian Law* Volume I: Rules (ICRC, 2005). See also Common Art. 3 to the Geneva Conventions.