

Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges

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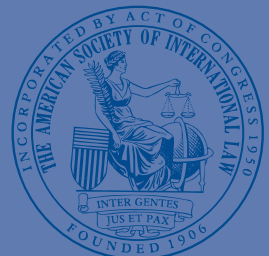
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Brookings-Bern Project on Internal Displacement

THE AMERICAN SOCIETY OF INTERNATIONAL LAW



Chapter 2

Movement-Related Rights in the Context of Internal Displacement

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INTRODUCTION

Movement-related rights and the ability to travel freely within the territory of a state or to decide where to settle are of particular importance not only to those who are threatened with being displaced,¹ but also to internally displaced persons who have been forced or obliged to flee their homes or places of habitual residence in search of safety and security. As citizens in their own right, internally displaced persons should enjoy guarantees to the full range of movement-related rights accorded to other inhabitants of the state. They should also be able to exercise these rights on an equal basis with others and without discrimination on account of the causes or status of their displacement. As this chapter will demonstrate, movement-related rights are not only fundamental human rights; they are also an essential element in finding durable solutions to displacement.

The panoply of movement-related rights enjoyed by IDPs is centered on freedom of movement. This freedom encompasses the right to move freely and to choose one's place of residence within the borders of a state. By implication, these freedoms also guarantee the right of IDPs to move freely into, and outside of, IDP camps or other sites of their displacement. Freedom from arbitrary arrest or detention and the right to liberty and security of persons are particularly germane to confinement in camps and should be considered as a movement-related right in this and other internal displacement

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¹ This chapter does not cover protection from displacement. On this issue, see Walter Kälin, *GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT: ANNOTATIONS 25* (2d ed. 2007), and *PROTECTING INTERNALLY DISPLACED PERSONS: A MANUAL FOR LAW AND POLICYMAKERS*, Brookings-Bern Project on Internal Displacement (2008).

contexts as well. In addition, movement-related rights include the right to leave one's own country, to return to it freely, and to seek asylum abroad.²

The principle of voluntariness is at the core of all movement-related rights. As such, freedom of movement is intended to protect IDPs and others from involuntary movement and expulsion as well as from forcible return or resettlement. Also inherent to movement-related rights is the ability of all individuals, including internally displaced persons, to freely choose to flee to another part of the country in search of protection, to travel freely and in safety within the country, and to return or resettle voluntarily.

Movement-related rights are fundamental in their own right but they also serve as a precondition or prerequisite to other fundamental rights. The importance of movement-related rights in displacement contexts should not be viewed in isolation from other fundamental rights. As previously noted, in addition to the inter-relationship with the right to liberty and security, movement-related rights can have a profound effect on other rights and freedoms. These include rights to life, health, shelter, food and water, education, religion and culture, family life, employment, property, and participation in public life and political affairs. According to the United Nations Human Rights Committee, freedom of movement is an indispensable condition for the free development of a person and is a right that interacts with other fundamental rights.³

The rights to move freely and to choose one's place of residence are inextricably linked to the health and well-being of internally displaced persons and their ability to contribute to the productivity and social fabric of their communities. Not only do restrictions on movement-related rights have adverse effects on the lives and livelihoods of internally displaced persons, and their ability to find durable solutions to their displacement, they also can negatively impact society at large. Therefore, the right of IDPs to freedom of movement and related rights—all of which are recognized under international law—should be safeguarded by national legislation and practice at the national, regional, and local levels.

² JOHAN DE WALL ET AL., *THE BILL OF RIGHTS HANDBOOK* 370 (4th ed. 2001).

³ Hum. Rts. Comm., General Comment No. 27, Freedom of Movement (1999), ¶ 1.

LEGAL FRAMEWORK

Relevant Guiding Principles

The right to freedom of movement and related rights of those who have already been displaced are clearly set forth in the Guiding Principles on Internal Displacement (the Guiding Principles).⁴ Principle 14(1) expressly affirms the rights of internally displaced persons to move freely throughout the territory of a state during their displacement. This right is essential to the personal security and well-being of persons seeking to flee the real or potential effects of armed conflict, situations of generalized violence, human rights abuse, and disasters. It also ensures the right of IDPs to voluntarily choose a place of residence, one ostensibly conducive to securing personal safety as well as access to sustainable livelihoods.

Principle 14(2) makes clear that IDPs may exercise this freedom by finding safety and security in camps and other settlements. Not only does it indicate that IDPs have the right to enter and move freely about within camps and settlements, it also affirms their right to leave these sites on their own volition. In other words, IDPs should not be confined or interned in camps against their will. Although this Principle does not oblige national authorities to take any affirmative measures to provide protection to displaced persons, it does imply an obligation not to interfere with persons seeking to exercise their freedom of movement in contexts of displacement.

The movement-related rights identified in Principle 14 and the ability of IDPs to seek safety from the causes of their displacement are given further effect in Principle 15. According to this provision, if the safety of an IDP is threatened in one part of the country, he or she may exercise his or her freedom of movement in order to find safety elsewhere. This includes moving freely to another part of the country (para. [a]) as well as the right to leave the country in accordance with international human rights law (para. [b]). Paragraph (c) also draws upon international law by affirming the right of IDPs to seek

⁴ U.N. ESCOR, Hum. Rts. Comm., *Guiding Principles on Internal Displacement*, princ. 14, U.N. Doc. E/CN.4/1998/53/Add.2 (1998) [hereinafter *Guiding Principles*]. On protection from displacement, see Principles 5-9.

asylum in another country on the basis of having a well founded fear of persecution.

Particular attention should be given to Principle 15(c), which reflects the international refugee law principle of *non-refoulement* (the prohibition against forcible return), and applies it by analogy to situations of internal displacement. By vesting IDPs with the right to protection against forcible return or resettlement to danger zones within their own country, this Principle suggests that states are obliged to ensure that internally displaced persons are not compelled to return or resettle to locations where their safety and security are at risk.

Finally, Principle 28 on voluntary return and resettlement recognizes the duty of national authorities to create conditions suitable for durable solutions as well as the means for internally displaced persons to return in safety and with dignity to their former places of residence or to resettle in another part of the country. This Principle's significance is also noteworthy for affirming the right of IDPs to choose between durable solutions available to them, i.e., return, local integration, or resettlement.

Legal Basis

The Guiding Principles do not create new law. Rather, they restate existing rights and freedoms provided for in binding international instruments as well as in customary international law. First and foremost, the legal basis of the rights, including movement-related rights, reflected in the Guiding Principles, can be found in the Universal Declaration of Human Rights (UDHR).⁵ Other international treaties that guarantee the human rights that the Guiding Principles apply to internally displaced persons include the International Covenant on Civil and Political Rights (ICCPR),⁶ the International Covenant

⁵ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., 67th plen. mtg., U.N. Doc. A/810 (1948).

⁶ International Covenant on Civil and Political Rights, Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GOAR Supp. No. 16 at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, 6 I.L.M. 368 (1967) [hereinafter ICCPR].

of Economic, Social and Cultural Rights (ICESCR),⁷ the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,⁸ the Convention Relating to the Status of Refugees,⁹ the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),¹⁰ and the Fourth Geneva Convention as well as the two 1977 Additional Protocols.¹¹

In addition, many of the human rights accorded to IDPs in these documents and the Guiding Principles are also guaranteed at the regional level by the following instruments: the African Charter on Human and Peoples' Rights,¹² the European Convention for the Protection of Human Rights and

⁷ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, G.A. Res. 2200A, 21 U.N. GOAR Supp. No. 16 at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, 6 I.L.M. 368 (1967) [hereinafter ICESCR].

⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, G.A. Res. 46, U.N. GAOR, 39th Sess., Supp. No. 51 at 197, U.N. Doc. A/39/51 (1984), 1465 U.N.T.S. 85, 23 I.L.M. 1027, as modified, 24 I.L.M. 535 (1985) [hereinafter Torture Convention].

⁹ See, for example, Convention relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150.

¹⁰ Convention on the Elimination of All Forms of Discrimination Against Women, Sept. 3, 1981, G.A. Res. 34/180, U.N. GAOR Supp. No. 46 at 193, U.N. Doc. A/34/46, 1249 U.N.T.S. 13, 19 I.L.M. 33 (1980).

¹¹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287. *See also* Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1125 U.N.T.S. 3, entered into force Dec. 7, 1978, and Protocol Additional to the Geneva Conventions of Aug. 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, entered into force Dec. 7, 1978.

¹² African Charter on Human and Peoples' Rights, June 26, 1981, O.A.U. Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

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Fundamental Freedoms,¹³ the American Convention on Human Rights,¹⁴ the Organization of African Unity Refugee Convention Relating to the Specific Aspects of Refugee Problems in Africa,¹⁵ the Cairo Declaration on the Protection of Refugees and Displaced Persons in the Arab World,¹⁶ and the African Charter on the Rights and Welfare of the Child.¹⁷

Principle 1(1) of the Guiding Principles, which guarantees equality in the enjoyment of rights under international and domestic law is derived from Articles 1 and 2 of the UDHR, which proclaims that all human beings are born free and equal in dignity and rights and are entitled to all rights set out in the Declaration without distinction of any kind. This right is also found in the ICCPR, which requires states to respect and ensure to all persons the rights protected by the Covenant “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹⁸ The basis for Principle 2(1), which provides for the application of the Guiding Principles without distinction, is also derived from the provisions of Articles 1 and 2 of the UDHR. The Principles shall be observed by all authorities, groups, and persons irrespective of their individual legal status. The international basis for the aforementioned

¹³ Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, E.T.S. No. 5, 213 U.N.T.S. 221. The Convention and its protocols are available at <http://conventions.coe.int/>.

¹⁴ American Convention on Human Rights, Nov. 22, 1969, OEA/Ser. K/XVI/1.1, Doc. 65, Rev.1, Corr. 1, O.A.S.T.S. No. 36 (1970), 1144 U.N.T.S. 123, 9 I.L.M. 99 (1969).

¹⁵ Convention governing the Specific Aspects of Refugee Problems in Africa, Sept. 10, 1969, 1001 U.N.T.S. 45, O.A.U. Doc. No. CAB/LEG/24.3.

¹⁶ Declaration on the Protection of Refugees and Displaced Persons in the Arab World, Nov. 19, 1992.

¹⁷ African Charter on the Rights and Welfare of the Child, July 11, 1990, O.A.U. Doc. CAB/LEG/24.9/49 (1990).

¹⁸ ICCPR, *supra* note 6, art. 2(1). Article 26 takes it further with a broader non-discrimination guarantee of all persons being equal before the law and entitled to equal protection of the law.

principle can be read together with that in Principle 1(1) on non-discrimination and emerges from the realization that certain groups of people are vulnerable on account of the situations they find themselves in.

Principle 4(1), which guarantees the application of the rights found in the Guiding Principles, including movement-related rights without discrimination as to race, color, sex, and other immutable traits, also stems from Article 2 of the UDHR. Article 27 of the ICCPR is couched in almost the same language as Principle 4(1). Principle 4(2) is derived from Article 18(2) of the African Charter on Human and Peoples' Rights, which provides that the aged and disabled shall also have the right to special measures of protection in keeping with their physical or moral needs. Article 10(2) and (3) of the ICESCR calls for special protection and measures to be accorded to mothers and children and thereby, in part, supports Principle 4(2).

The right to liberty and security of the person, guaranteed by Principle 12(1), is a fundamental right that derives from a number of international instruments. For instance, Articles 3 and 9 of the UDHR, Article 9(1) of the ICCPR, and Article 6 of the African Charter on Human and Peoples' Rights, all share the same language as Principle 12(1). Principles 12(2), (3) and (4), which protect internally displaced persons from internment and confinement in camps as well as from arbitrary arrest and detention, are also derived from these instruments, specifically Articles 3 and 9 of the UDHR, Article 9(1) of the ICCPR, and Article 6 of the African Charter on Human and Peoples' Rights.

Principle 14, which guarantees rights to freedom of movement and choice of residence, along with the particular right to move freely in and out of camps or other settlements, is also based on a variety of legally binding international instruments such as Article 13(1) of the UDHR, Article 12(1) of the ICCPR, and Article 12(1) of the African Charter. Article 26 of the Convention Relating to the Status of Refugees of 1951 adopts similar wording.

Principle 15(a) on the right to seek safety in another part of the country derives from Article 13(1) of the UDHR on the right to freedom of movement and residence within the borders of each state. Freedom of movement is also guaranteed under Article 12(1) of both the ICCPR and the African Charter. The right to leave the country under Principle 15(b) derives from Article 13(2)

of the UDHR and Article 12(2) of the ICCPR and the African Charter. Furthermore, Principle 15(c) on the right to seek asylum in another country is derived from article 14(1) of the UDHR and Article 12(3) of the African Charter. The overall importance of the aforementioned provisions is that the right to seek and enjoy asylum is recognized in international law.¹⁹ In 1992, the UNHCR Executive Committee stated “...the institution of asylum, which derives directly from the right to seek and enjoy asylum set out in Article 14 (1) of the Universal Declaration of Human Rights, is among the most basic mechanisms for the international protection of refugees.”²⁰ The right to be protected against forcible return to or resettlement in any place where lives, safety, liberty, or health of internally displaced persons would be at risk as embodied in Principle 15(d) is inspired by the principle of *non-refoulement* as provided for by Article 33 of the 1951 Convention Relating to the Status of Refugees. This article states that a refugee should not be expelled or returned to the frontiers of territories where his life or freedom would be threatened on account of *inter alia* race or religion. Similarly, Article 22(8) of the American Convention on Human Rights states that “[i]n no case may an alien be deported or returned to a country ... if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status or political opinions.” It is also recognized that it amounts to inhuman treatment as prohibited by Article 7 of the ICCPR and corresponding regional instruments to send someone to a country where he or she would risk particularly serious human rights violations.²¹ While

¹⁹ *Id.* at art. 4.

²⁰ See Executive Committee Conclusions on International Protection No. 82 (XLVIII), “*Safeguarding Asylum*” (1997); No. 81 (XLVIII), “*General Conclusion on International Protection*” (1997); No. 85 (XLIX), “*International Protection*” (1998); No. 94 (LIII), “*Civilian and Humanitarian Character of Asylum*” (2002); and No. 99 (LV), “*General Conclusion on International Protection*” (2004).

²¹ See, e.g., Human Rights Committee, No. 20[44], ¶ 9. See also Human Rights Committee, Charles Chitat Ng v. Canada, Communication 469/1991, Views adopted on 5 Nov. 1993, ¶ 16.1; European Court of Human Rights, Cruz Varas Case, Judgment of 20 Mar. 1991, Series A, No. 201, ¶ 69. See also European Court of Human Rights, Saadi v. Italy Case, Judgment of Feb. 28, 2008 (Grand Chamber), ¶¶ 124 - 133.

these provisions refer to returns across internationally recognized borders, the duty to protect life and security suggests applying these principles by analogy to situations of internal displacement.

Under international law, identification documents prove not only the identity of the person but also confirm that he or she is legally present in the territory so as to avoid actions like detention or expulsion. Personal documentation may also be required to pass checkpoints or establish residence in another part of the country. A passport is needed to leave one's own country lawfully. The need for identity documents outlined in Principle 20 is implicitly addressed in Article 6 of the UDHR and Article 16 of the ICCPR, both of which guarantee the right to recognition as a person everywhere before the law. Furthermore, Article 24(2) of the ICCPR specifically provides for the registration of a child immediately after birth, while Article 24(3) protects the child's right to a nationality. These provisions also imply a right to personal identification documents as reflected in Principle 20. The right to a passport under Principle 20(2) derives, as has been explicitly recognized by the Human Rights Committee,²² from Article 12(2) of the ICCPR, which provides for the right to leave the country. The right to documentation is further provided for under international instruments such as the Convention on the Elimination of Discrimination against Women (CEDAW), which addresses the registration of marriages.²³ The Convention on the Rights of the Child (CRC) also requires states parties to respect the right of the child to preserve his or her identity, including nationality, name, and family relations as recognized by law without

²² Human Rights Committee, Communication No. 1107/2002, *Loubna El Ghar v. Socialist People's Libyan Arab Jamahiriya*, Views adopted Mar. 29, 2004, ¶¶ 7.1-8.

²³ *Id.* at art. 6.

unlawful interference.²⁴ Documents also enable the person to benefit from treatment at least in accordance with minimum international standards.²⁵

Finally, Principle 28 on voluntary return and resettlement derives from human rights law recognizing the right of an individual outside his or her national territory to return. See, for example, Article 13(2) of the UDHR, Article 12(4) of the ICCPR, Article 22(5) of the American Convention on Human Rights, Article 12(2) of the African Charter, and Article 3(2) of Protocol No. 4 to the European Human Rights Convention. In contrast, there is presently no general rule in human rights law that explicitly affirms the right of internally displaced persons to return to their original place of residence or to move to another safe place of their choice within their own country. However, such a right can be deduced from the right to liberty of movement and the right to choose one's residence as embodied in Article 12 of the ICCPR. The right to return is explicitly reflected in the International Labor Organization (ILO) Convention (No.169) concerning Indigenous and Tribal Peoples in Independent Countries, which, in Article 16, paragraph 3, expressly states that "whenever possible these people (IDPs) shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist." In refugee law, Article 5(1) of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa emphasizes that voluntary repatriation should be respected in all cases and that no refugee shall be repatriated against his or her will. Article 5(2) of the Convention provides that the country of asylum, in collaboration with the country of origin, shall make adequate arrangements for the return of refugees who request repatriation. Article 5(3) provides that the country of origin shall facilitate their resettlement and grant them the full rights and privileges of nationals of the country.

²⁴ Convention on the Rights of the Child, art. 8, G.A. Res. 44/25, U.N. GAOR 61st plen. mtg. at 166, U.N. Doc. A/44/736 (1989), *reprinted in* 28 I.L.M. 1448 (1989), with corrections at 29 I.L.M. 1340 (1990).

²⁵ The Office of the UN High Commissioner for Refugees [UNHCR], *Identity Documents for Refugees*, ¶¶ 2-3, U.N. Doc. EC/SCP/33 (July 20, 1984) [hereinafter UNHCR].

OVERVIEW OF OBSTACLES TO IMPLEMENTATION OF THE GUIDING PRINCIPLES

Implementation of the *Guiding Principles* is faced with a number of obstacles. The primary one is that the Principles are not a legally binding instrument.²⁶ As a result, many states have not incorporated into national regulatory frameworks many of the provisions for guaranteeing the human rights of internally displaced persons, such as the right to freedom of movement, that are enshrined in the *Guiding Principles*. However, in Africa, the member states of the International Conference of the Great Lakes Region (ICGLR) that have ratified the Protocol on the Protection and Assistance to Internally Displaced Persons, which entered into force in June 2008, are obliged to incorporate the *Guiding Principles* into their domestic legal systems.

Moreover, the fact that some national laws are contrary to the letter and spirit of the *Guiding Principles* have, in many instances, also had a negative impact on the enjoyment of the right to freedom of movement along with other fundamental rights and freedoms. In addition, as discussed below, there are a number of practical obstacles IDPs face in realizing their movement-related rights as set forth in the *Guiding Principles*.

Insecurity and Human Rights Abuse

Among the most significant impediments to freedom of movement is insecurity, especially in situations where the displacement has been triggered by armed conflict or situations of generalized violence. In some instances, IDPs may be viewed as belonging to or being sympathetic to a party to the conflict, such as a counterinsurgency group or the political opposition, simply because they are seeking safety in a new location. As a result, they may be subject to human rights violations by one or more parties to the conflict, including government troops who may seek to “protect” them by restricting their movement within designated security areas. In some instances, IDPs may also be held as human shields. It may therefore be dangerous for individuals or groups of displaced persons to exercise their right to freedom of movement by

²⁶ See *id.*

fleeing their homes in search of safety or by venturing outside the perimeters of secured areas.

Designated Security Areas

In addition, it is not uncommon during situations of conflict and generalized violence for governments and other armed groups to encourage or force civilian populations to evacuate from zones of conflict and emergency. Persons who refuse to do so, for whatever reason, also risk being regarded as sympathizing with the opposing force. Moving to “protective” camps and designated security areas—which is essentially an infringement on exercising the right of freedom of movement—may be the only way for one to prove they are not a threat. The imposition of curfews can also limit the ability of IDPs, especially those living in camps and security zones, to exercise their right to freedom of movement.

Internment and Confinement in IDP Camps

IDPs may also face internment in camps or other IDP settlements without the ability to leave despite cessation of the conflict on account of security measures. IDPs may also be confined or have their movement within the camp limited or curtailed by allegations of misconduct that can result in administrative segregation in a separate facility inside or outside the camp. In such cases, the victim typically has no mechanism of redress, let alone being informed of the charges or duration of the disciplinary period and may not enjoy the right to challenge the legality of the detention.

Lack of Documentation

Lack of documentation and identification also threatens the right to freedom of movement. It is not uncommon for IDPs to lose their documents while fleeing from zones of conflict and areas of insecurity. In situations involving natural disasters as well as armed conflict, these documents and other public records can also be destroyed. In addition, documents may sometimes be confiscated at military or police checkpoints that are established to curb the movement of opposing forces. Without any form of identification, such as an internal or external passport, IDPs may not be able to move freely within the country or

leave the country in search of safety or an adequate livelihood. Those civilians, including IDPs, who have either lost or had their documentation confiscated—especially those located in camps or conflict-affected areas—may decide not to exercise their right to freedom of movement as a means of protecting themselves from real as well as perceived risks associated with traveling without the appropriate identity documents.

Security and Law and Order Measures

Following armed conflict and other emergency situations, checkpoints and other security measures may be imposed in a bid to maintain law and order. For instance, certain areas may be cordoned off by the military or law enforcement and residential searches conducted. These measures can negatively impact the willingness or ability of internally displaced persons to exercise their right to freedom of movement as well as negatively infringe upon their right to liberty and security. Those suspected of posing a security threat or having aided and abetted an opposing force may be questioned and held in detention centers known only to the military and therefore outside the protection of civilian law.

Physical Insecurity in Areas of Return or Resettlement

It is also important to note that in many post-conflict situations, areas designated for return or resettlement may not be secure or safe for internally displaced persons. In many instances, anti-personnel landmines and unexploded munitions prove to be a stumbling block to displaced persons who want to return to their communities or resettle elsewhere. IDPs seeking to exercise their freedom of movement by returning or resettling to areas controlled by another ethnic group may also face threats to their personal safety. In situations like these, freedom of movement might be restricted by ethnically motivated harassment by the military or local police and threats of petty violence at the hands of members of the community.²⁷ IDPs, particularly women and children and other vulnerable members of the community, may

²⁷ JOAN FITZPATRICK, HUMAN RIGHTS PROTECTION FOR REFUGEES, ASYLUM SEEKERS, AND INTERNALLY DISPLACED PERSONS: A GUIDE TO INTERNATIONAL MECHANISMS AND PROCEDURES 525 (2002).

also be unwilling or unable to move within the country on account of both petty and organized criminal activity.

REGULATORY FRAMEWORK

Many regulatory frameworks, including constitutions, laws, other normative acts, and policies, can guarantee basic movement-related rights. However, constitutional provisions, in particular, are often general in nature and do not give special attention to the needs and vulnerabilities of IDPs. Where constitutions may be general or vague regarding the needs and vulnerabilities of the displaced, additional safeguards and specificity as to the rights of IDPs should be added. The *Guiding Principles on Internal Displacement* can be very helpful in this regard. Governments should adopt laws and decrees that are consistent with the constitution while also outlining, in considerable detail, provisions for the protection of the movement related rights of the IDPs. Particular attention should also be given to ensuring consistency and coherence among the various elements of the regulatory framework.

Unfortunately, many regulatory frameworks can directly or indirectly restrict freedom of movement and related rights despite constitutional guarantees and other measures designed to protect these freedoms. In the case of Azerbaijan, where the Constitution has officially abolished the *propiska* system (a Soviet-era internal residence system), a variety of laws have continued to refer to it. As a result, the system effectively remains in place along with the restrictions and hardships it can foster. Other post-Soviet states that inherited the *propiska* face similar situations. All states should endeavor to address any inconsistencies that exist between constitutional and legislative sources for protecting the movement rights of the internally displaced. Laws that infringe upon freedom of movement and that are contrary to the letter and spirit of the *Guiding Principles on Internal Displacement* should be amended so as to bring them into conformity with internationally-accepted norms as well as with constitutional and other regulatory provisions that guarantee movement-related rights.

SUBSTANTIVE AND PROCEDURAL ELEMENTS OF STATE REGULATION

During Displacement

Freedom of movement encompasses the right of everyone, including all internally displaced persons, to move freely and to choose a place of residence within the borders of the country without hindrance. It also includes the right of citizens to exit from the country and return to it without facing unreasonable obstacles. As a general rule, states should guarantee these rights at all times, including during displacement. These rights and freedoms, including movement-related rights, should be guaranteed and respected irrespective of the displacement context. Usually, these rights are embodied in some fundamental law of the land, typically the constitution. In addition, other national laws and policies that guarantee the substantive rights of persons during their displacement, including movement-related rights, should exist or be developed.

In addition to guaranteeing the movement-related and other rights of internally displaced persons, states should not impose any procedural obstacles that directly or indirectly give rise to displacement or otherwise infringe on the rights of those already displaced. Where displacement has occurred, it is particularly important to ensure that procedural aspects of state regulation do not negatively affect the rights of IDPs but rather facilitate durable solutions to their displacement. In Angola, in order to ensure the voluntary nature of the resettlement process, the Norms on the Resettlement of Internally Displaced Populations provide that the Sub-Group on Displaced Persons and Refugees must reach agreement with representatives of IDPs who are resettling, as well as with the traditional authorities in host communities. This instrument also stipulates that the Sub-Group must include the displaced persons in the planning and management of their resettlement.²⁸

²⁸ Council of Ministers Decree No. 1 /01 (2001), art. 5(1) (Angola).

Freedom of Movement and Residence

The right to freedom of movement, as embodied in Principles 14 and 15 of the Guiding Principles on Internal Displacement, has been incorporated into various regulatory frameworks, including constitutions. Where these frameworks do not expressly incorporate the rights of IDPs, as reflected by the Guiding Principles, in a specific constitutional provision or other binding norm, guarantees for IDPs may be inferred from more general rights protections. For example, Article 29(2)(a) of the Constitution of Uganda guarantees the freedom of everyone to move freely throughout Uganda and to reside and settle in any part of the country. The Constitutions of the Republic of Sudan,²⁹ Azerbaijan,³⁰ India,³¹ Sri Lanka,³² Bosnia and Herzegovina,³³ Ethiopia,³⁴ and Armenia³⁵ have similar provisions relating to freedom of movement, the right to choose one's residence, the right to leave the country

²⁹ CONST. OF THE REPUBLIC OF SUDAN, art. 23, *available at* <http://www.sudan.net/government/constitution/english.html>.

³⁰ CONST. OF AZER. REPUBLIC, art. 28, *available at* <http://www.un-az.org/doc/constitution.doc>.

³¹ INDIA CONST., *available at* <http://lawmin.nic.in/coi/coiason29july08.pdf>.

³² CONST. OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA, art. 14(1)(h), *available at* <http://www.constitution.gov.lk/constitutionSL1978.shtml>.

³³ CONST. OF BOSN. & HERZ., *available at* http://www.ccbh.ba/public/download/USTAV_BOSNE_I_HERCEGOVINE_engl.pdf. Under Article 1(4), the two Republics have the duty not to impede full freedom of, *inter alia*, persons through their territory and shall not establish controls at the boundaries between the Entities.

³⁴ CONST. OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETH., art. 23, *available at* <http://www.ethiopiafirst.com/Election2008/Constitution.pdf>.

³⁵ CONST. OF THE REPUBLIC OF ARM., art. 22, *available at* <http://www.armeniaforeignministry.com/htms/constitution.html>.

and return to it, the right to liberty, and the right to travel documents.³⁶ Notably, the Constitution of Bosnia and Herzegovina takes a different approach by giving special attention to the movement-related rights of refugees and internally displaced persons, including their right to freely return to their homes of origin.³⁷

In this context, the Ugandan National Policy for Internally Displaced Persons is noteworthy for its specific recognition of the freedom of choice of residence and the right of displaced persons to move freely in and out of camps or other settlements.³⁸ The policy seeks to ensure that all displaced persons enjoy the freedom to move and obtain access to areas of the country where various economic and social activities take place. In regard to return and resettlement, the Ugandan Government has also committed itself to promoting the right of IDPs to return voluntarily in safety and dignity to their homes or habitual residences or to resettle voluntarily in another part of the country. To assist IDPs in making an informed choice as to whether to return, resettle, or integrate locally, the Government has undertaken to use appropriate means to provide IDPs with objective and accurate information.³⁹

The Right to Leave the Country and Return

All citizens, including internally displaced persons, should be able to leave their country of origin and return to it without any arbitrary limitations. The Constitutions of Sudan, Angola, Eritrea, Azerbaijan, India, Sri Lanka, Bosnia and Herzegovina, Ethiopia, Armenia, and Iraq contain provisions on the right to leave the country and to return to it. Article 14 of the Constitution of Iraq, for instance, provides that a citizen cannot be prevented from traveling abroad or outside the country, nor prevented from returning home to the country. In

³⁶ See, e.g., CONST. OF UGANDA, art. 29; INDIA CONST., *supra* note 31, art. 19; CONST. OF BOSN. & HERZ., *supra* note 33, art. 2(3).

³⁷ General Framework Agreement for Peace in Bosnia and Herzegovina, Annex 7, available at <http://www.oscebih.org/overview/gfap/eng/> (Dec. 15, 1995).

³⁸ See Guiding Principles, *supra* note 4, Principle 14.

³⁹ See *id.* at ¶ 3.4.

Azerbaijan, the right to leave the country is also constitutionally guaranteed. Although the right of individuals, including IDPs, to seek refuge in other countries or the right not to be forcibly returned or resettled are not explicitly guaranteed in the legislation of Azerbaijan, it does not expressly restrict these rights for IDPs.⁴⁰ In the case of Uganda, the right to leave the country and return to it can also be implied from constitutional provisions that guarantee the freedom to enter, leave, and return.⁴¹ Similarly, the right to be protected against forcible return to, or resettlement in, any place where one's life, liberty, and or health would be at risk can be implied from provisions that guarantee the right to life,⁴² the right to liberty,⁴³ and the right to health.⁴⁴ This situation illustrates the gap that exists in the regulatory framework of many countries that do not specifically safeguard the movement rights of IDPs and the right to *non-refoulement* in national legislation.

The Right to Freedom of Liberty

The right to freedom of liberty and security of the person is fundamental to all individuals and is an important movement-related right that should be guaranteed by law. Protection from arbitrary arrest and detention and other unnecessary restrictions of this right by public officials and others should be applied at all times. Considering the heightened risk of detention that IDPs may face on account of their displacement, regulatory frameworks should consider including special safeguards to protect IDPs from arbitrary and prolonged detention.

⁴⁰ Law of the Republic of Azerbaijan, On Status of Refugees and Forcibly Displaced Persons (persons displaced within the country) (1999), art. 6.

⁴¹ See, e.g., CONST. OF UGANDA, *supra* note 36, art. 29(2)(b).

⁴² *Id.* at art. 22.

⁴³ *Id.* at art. 23.

⁴⁴ *Id.* at arts. 39, 45.

The Constitution of Bosnia and Herzegovina protects the right to liberty and security of the person. Freedom from arrest is also guaranteed, except for situations set forth by law.⁴⁵ Moreover, the individual under arrest enjoys the right to be informed of the charge at the time of arrest.⁴⁶ In Angola, preventive detention must follow appearance before a judge and a fair trial within the period provided by law.⁴⁷ The right to *habeas corpus* is also recognized as a safeguard against illegal detention.⁴⁸ The Constitution of Georgia also prohibits arrest or other kinds of restrictions on personal liberty and security without a court decision. In Georgia, detention is only permissible by an official designated by law and the detained person enjoys rights that include, but are not limited to, being brought before a judge within forty-eight hours.⁴⁹ The Constitution of Eritrea guarantees the right to liberty and where such liberty is deprived, it should be done pursuant to the law.⁵⁰ Arrests and detentions may only be made pursuant to law, and arrested or detained persons have the right to be informed of the grounds for the arrest or detention.⁵¹ The Constitution of Azerbaijan also guarantees the rights of persons subject to arrest or detention to be immediately informed of his or her rights and the reason for their arrest or detention.⁵²

⁴⁵ CONST. OF BOSN. & HERZ., *supra* note 33, art. 36(1).

⁴⁶ *Id.* at art. 39.

⁴⁷ CONST. OF ANGL., art. 38, *available at* <http://unpan1.un.org/intradoc/groups/public/documents/CAFRAD/UNPAN002502.pdf>.

⁴⁸ *Id.* at art. 42.

⁴⁹ CONST. OF GEOR., art. 18.

⁵⁰ CONST. OF ERI., art. 15.

⁵¹ *Id.* at art. 17.

⁵² CONST. OF AZER. REPUBLIC, *supra* note 30, art. 67.

Restrictions of Movement-Related Rights

Regulatory frameworks that guarantee movement-related rights, including the right to freedom of movement, choice of residence, and the right to leave and return to the country along with other rights, often stipulate that they are not absolute rights. Substantive and procedural restrictions on the right to freedom of movement may be legitimately imposed in a number of situations. These include situations of armed conflict and where public order, national security and public health are under threat. Circumstances like these may create a legitimate justification for limiting movement rights in order to protect the general welfare of the population and the rights of others. However, the restriction of movement-related rights under these circumstances and others should ideally be set forth by national law. Similarly, international law requires that any limitation on these rights must not go beyond what is acceptable and demonstrably justifiable in a free and democratic society.

In Sri Lanka, for example, the National Framework for Relief, Rehabilitation and Recognition demands that security-related restrictions on the movement of persons and goods shall be applied “...in a manner consistent both with the need to ensure the basic security of all citizens and with the aim of minimizing hardships among the affected populations.”⁵³ This means that an internally displaced person does not have the right to move freely throughout the country if her or his movements pose a threat to the public interest or if they interfere with the fundamental rights or freedoms of others. Under the Constitution of Uganda,⁵⁴ freedom of movement and the right to liberty and the right to life are all rights that may be derogated in the interests of the fundamental, or other, human rights and freedoms of others or of the public interest.⁵⁵

Restrictions on movement-related rights may also be imposed in order to protect public health. In situations involving the outbreak of disease, for

⁵³ National Framework for Relief, Rehabilitation and Recognition (Triple R Framework) 15 (2002) (Sri Lanka).

⁵⁴ CONST. OF UGANDA, *supra* note 36.

⁵⁵ *Id.* at art. 43(1).

instance, the State may be justified in limiting the right to freedom of movement, especially the rights of those suffering the direct effects of such outbreaks. This has occurred in relation to Ebola hemorrhagic fever and cholera outbreaks, among other contagious and life-threatening epidemics. In highly populated areas where there is a need to prevent the spread of infectious disease, relocation or resettlement may be a legitimate measure to allow public health authorities to adequately remedy the threat. Like in other situations where limiting movement-related rights may be legitimate, the limitation or suspension of movement-related rights in this situation should be carried out within the ambit of the law and in accordance with measures deemed acceptable and necessary in a democratic society. For example, Article 4(1) of the ICCPR permits a state party to temporarily suspend certain rights in times of a public emergency which threatens the life of the nation and the existence of which is officially proclaimed and when they are limited to the extent strictly required by the exigencies of the situation.

National security concerns may be used to justify restrictions of movement-related rights. In such cases, the restriction of these rights should be preceded by the declaration of a state of emergency or martial law in accordance with established legal procedures. It is not inconceivable that situations may arise where the national security interests of the State and the rights of everyone to live in security take precedence over those of IDPs. However, these situations should not be confused with or be used to justify or disguise deliberate policies of forcibly moving civilian populations and resettling them as part of a counterinsurgency strategy or a policy to deny dissident forces a perceived social base or logistical support. In instances where national authorities seek the movement of IDPs to “protected” or secure areas, ostensibly for their own safety, it may be designed to isolate civilians from the insurgency and cutting off its food supplies.⁵⁶ Regulatory frameworks should contain provisions to guard against this type of situation.

⁵⁶ Zachary Lomo, *The Struggle for the Protection of the Rights of Refugees and IDPs in Africa: Making the Existing International Legal Regime Work*, 18 BERKELEY J. INT’L L. (2000).

In Eritrea, freedom of movement may be limited during a state of emergency which can be declared, according to the Constitution, throughout—or in any part of—the country when public safety or the security or stability of the State is threatened by civil disorder or natural disaster.⁵⁷ Measures to ensure that this authority is not abused include the requirement that any measures undertaken, or laws enacted, pursuant to a declaration of emergency shall not suspend Article 26(3) of the Constitution,⁵⁸ which regulates limitations on fundamental rights and freedoms and the introduction of martial law when no external invasion or civil disorder exist. The Constitution of Bosnia and Herzegovina also reflects good practice in that it safeguards against the amendment of the Constitution to permanently limit the rights and freedoms specified in Article 2, which include movement-related rights.⁵⁹

During displacement, IDPs may find themselves resettled into camps, rural settlement schemes, or agricultural settlements. IDPs may find that their ability to move freely will vary depending on where they find themselves. Camps have been described as generally “large...crowded sites” and “holding tanks” that are “dependent on assistance.” The conditions there are far different from small, open settlements where displaced persons have been able to maintain a village atmosphere.⁶⁰ They are typically administered or controlled by the government or by the non-governmental organizations that render assistance to IDPs. If under the direct control of the State, camps can have rules that restrict the freedom of movement of IDPs in ways not experienced by those living in rural and agricultural settlements, where IDPs generally experience only minimal restrictions of their freedom of movement.

The Law Concerning Internal Displacement Ordinance no. 267 in Peru establishes the procedure for special authorization to provide public service for the regular transport of passengers within the province of Lima. According to

⁵⁷ CONST. OF ERI, *supra* note 50, art. 27.

⁵⁸ *Id.* at art. 26(3).

⁵⁹ CONST. OF BOSN. & HERZ., *supra* note 33, art. 10(2).

⁶⁰ Richard Black, *Putting Refugees in Camps*, 2 FORCED MIGRATION REV. (1998).

the law, a call for proposals for return should be made. Such proposals must take into consideration the promotion of human rights⁶¹ and the organized transfer of the communities.⁶² Furthermore, the competent authorities shall make available and provide to international humanitarian organizations and to other competent agencies, in exercising their respective mandates, rapid and unimpeded access to internally displaced persons so that they may provide them assistance in their return or resettlement and reintegration.⁶³ Finally, the treatment given to displaced persons by the State and by civil society must be reviewed in order to find mechanisms favoring return, resettlement, and reintegration.

The National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons in Serbia and Montenegro recognized, *inter alia*, that the process of repatriation directly depends on the creation of conditions for return in the countries of origin (Bosnia and Herzegovina and the Republic of Croatia).⁶⁴ The measures and activities aimed at creating conditions for return that the Federal Government and the Government of the Republic of Serbia pursued included the establishment of the Coordinating Centre for Kosovo and Metohija. One of the main tasks of the Centre was coordination of state actors and agencies in resolving the problems of Kosovo with full observance of United Nations Security Council Resolution 1244 and insisting on the consistent implementation of the joint United Nations Mission in Kosovo (UNMIK)-Federation Republic of Yugoslavia (FRY) document signed in November 2001.

⁶¹ Republic of Peru, Law No. 28223 Concerning Internal Displacements, art. 15(e), May 19, 2004, available at http://www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx.

⁶² *Id.* at art. 15(f).

⁶³ *Id.* at art. 16.

⁶⁴ For a draft of the National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons, see <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=SUBSITES&id=3c6250207>.

In the Context of Durable Solutions

For durable solutions to displacement to be realized, the rights of internally displaced persons to freedom of movement and choice of residence must be guaranteed by law. IDPs should enjoy the right to voluntarily choose between returning to their place of origin, integrating into the community where they are displaced, or to resettle elsewhere. National authorities should guarantee these rights, create conditions conducive to their realization, and enact policies and administrative procedures to facilitate voluntary return and resettlement. This includes putting in place measures to address property ownership disputes, scarcity of land, personal safety and insecurity, and minority tensions and discrimination, all of which can affect the extent to which IDPs are willing and able to exercise their right to freedom of movement and choice of residence.

Displacement is regarded as a temporary event, the hope being that sooner or later the IDPs will be able to go back to their homes. Thus, reference to durable solutions such as return and resettlement become catch phrases, especially for humanitarian workers or governments which are responding to internal displacement. However, in many instances such as post-conflict situations, the conditions for return and resettlement may not be favorable. In the event a peace agreement has been signed, it may only put a formal end to the conflict. Unresolved issues, latent tensions, and other inexplicable factors may continue to undermine the return of the IDPs. In assessing conditions for return, attention should be paid to the definitions of “return” and “voluntary return” as provided in the UNHCR’s handbook on voluntary repatriation, which indicates that return should only take place under conditions of “legal safety and dignity,” “physical security,” and “material security.” This entails access to land or to a means of livelihood.⁶⁵

Robert Muggah notes three stages of resettlement, including a period of relief assistance and transportation to the settlement areas where the IDPs build themselves temporary shelter. This is followed by the physical settlement on

⁶⁵ See UNHCR, “Handbook—Voluntary Repatriation: International Protection,” (1996).

the land which may be purchased, leased, exchanged, or granted for the establishment of basic services if there is any humanitarian organization in place.⁶⁶ The plan and mode of resettlement is important and mainly depends on the cause of the displacement. Development-induced displacement is mostly planned with detailed procedures as established in law (at least in some countries) with specific obligations of the state or agency acquiring the property or land. Usually, the process of resettlement leads to permanent relocation. Resettlements arising out of civil war or unrest can often be uncoordinated and abrupt. Thus, they can be said to be temporary; a situation reflective of no guarantees of human rights, the right to freedom of movement included.

Such resettlement may be voluntary and take place based on the free will of IDPs to move to find new opportunities favorable to their survival. Resettlement may also be involuntary and be pursued on the pretext that IDPs have no right whatsoever to remain in their present location despite their wish to do so and therefore must be transferred to another area. The conditions of return must also be favorable to act as incentives for IDPs to do so voluntarily. Different governments have applied different techniques of ensuring the return of the IDPs. Accordingly, treatment of the issue of return varies from one state to the next. To the extent possible, internally displaced persons should be included in the planning and management of their return or of their resettlement and reintegration.⁶⁷ This includes being informed of the conditions that exist in areas of return and resettlement in order to make an informed and voluntary decision for their future.

The most extensive obstacle to return is interference with the rights of IDPs to land, property, and housing through laws, decrees, and administrative practices that prevent displaced persons from repossessing their property. In some cases, the property rights of IDPs may be nullified altogether and transferred permanently to members of the ethnic majority, including those

⁶⁶ Robert Muggah, *A Tale of Two Solitudes: Comparing Conflict and Development-Induced Internal Displacement and Involuntary Resettlement*, 41 INT'L MIGRATION 5, 17 (2003).

⁶⁷ *Id.*

who themselves are displaced. This was most prevalent in Bosnia and Herzegovina, although mechanisms have subsequently been developed to provide compensation to those deprived of their property. Decisions regarding return can often depend on the manner in which property ownership and land scarcity are handled. When the displaced do return, they may have no means of livelihood if they find that their land has either been occupied by others or fraudulently sold.

Many times, the conditions in areas of return and resettlement are not conducive to physical safety. As previously noted, anti-personnel landmines and unexploded munitions may remain active both during and in the aftermath of hostilities. This often makes movement impossible or highly dangerous. In Bosnia, landmines proved to be a major threat to those seeking to go home after the end of the fighting. In Mozambique, mines killed more than ten-thousand displaced people during the course of the return and resettlement program.⁶⁸ Other countries that are similarly affected by this problem include Angola, Burundi, Congo, Eritrea, Ethiopia, Mozambique, Senegal, Sudan, and Uganda.⁶⁹ Although forty-eight African states have signed up to the 1997 Ottawa Convention that calls for the banning of the use of anti-personnel landmines and their destruction, the commitment to implementation of the obligations under this instrument is yet to be fully manifested. Until such a time that landmines are banned and no longer in use, they will continue to threaten IDPs and have a deadly effect on those seeking to return or resettle.

Conditions in some areas may not be conducive to return or resettlement on account of discrimination, including discrimination based on ethnicity. Those at the receiving end of such discrimination are unable to access employment or pension funds and other equally vital social amenities. In Sarajevo, for example, minorities faced discrimination in access to humanitarian assistance and social services. For instance, some IDPs who constructed their own

⁶⁸ Jan Borgen, *Institutional Arrangements for Internally Displaced Persons*, NORWEGIAN REFUGEE COUNCIL 18 (1995).

⁶⁹ Internal Displacement Monitoring Centre, *Internal Displacement: Global Overview of Trends and Developments in 2005, 2006*, INTERNAL DISPLACEMENT MONITORING CTR. 26 [hereinafter IDMC Global Overview].

houses were not permitted to reconnect to electricity and telephone services. Conditions like these can even include the violation of political rights, where minority returnees are unable to enjoy their freedoms of expression or their rights to political participation.

According to the Integrated Strategy Document of Turkey,⁷⁰ the Government's key responsibilities include ensuring the voluntary return of IDPs to their former settlements in safety and developing a more balanced settlement pattern in rural areas. In Sri Lanka, the Joint Strategy Document creates an integrated program to cope with the immediate and initial reintegration of spontaneous returnees into their home communities, while protecting and assisting vulnerable groups, both IDPs and those in the community who remain *in situ*.

In Colombia, the interpretation and application of Law 387 of 1997 is based on the principle that families of the forcibly displaced shall benefit from the right to return to their place of origin. However, the law has a major shortcoming in that it only covers persons displaced by means of violence.⁷¹ Furthermore, the National Government of Colombia is under an obligation to support displaced populations seeking to return to their places of origin in areas of protection and socioeconomic stabilization and integration.⁷²

The Peruvian Law Concerning Internal Displacement Ordinance no. 267 is noteworthy for providing that IDPs enjoy the same rights and liberties pursuant to international law and national law as other inhabitants of the country do. They are not to be discriminated against in any way whatsoever in

⁷⁰ Measures on the Issue of Internally Displaced Persons and the Return to Village and Rehabilitation Project in Turkey, ¶ 11, Aug. 17, 2007, *available at* http://www.brookings.edu/projects/idp/Laws-and-Policies/~//media/Files/Projects/IDP/Laws%20and%20Policies/Turkey/Turkey_StrategyDoc_2005.pdf.

⁷¹ República de Colombia, Ley 387 de 1987, Diario Oficial No. 43.091, art. 2, July 24, 1997, *available at* http://www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx.

⁷² *Id.* at art. 16, sec. 5.

the enjoyment of their rights and liberties for the simple fact of being internally displaced.⁷³ The same law provides that competent authorities have the obligation and responsibility to establish and provide the means to permit the safe, dignified, and voluntary return of internally displaced persons to their homes or to their place of permanent residence, or their voluntary resettlement in another part of the country. The authorities are also responsible for assuring the full participation of internally displaced persons in the planning and management of their return or of their resettlement and reintegration.⁷⁴ Under this law, return to places of habitual residence must be voluntary (so as to guarantee freedom of movement and choice of residence).⁷⁵

In Serbia, the National Strategy on internal displacement aims at offering IDPs durable solutions by ensuring conditions for their homes and by providing conditions for local integration. In Armenia, assistance programs for the return and resettlement of the population from the frontier areas have been elaborated.⁷⁶ In general, the State covers the costs involved related to the protection of IDPs. Pursuant to the Law on Population Protection in Emergency Situations (Chapter VIII), the material and technical support for organizing the activities aimed at the protection of populations is being provided by various institutions and financed through the state and community budgets. In the Federation of Bosnia and Herzegovina, the 2000 Law on Displaced, Expelled Persons and Repatriates obliges the authorities to promote the right to return by ensuring freedom of movement, increasing security conditions, implementing the property legislation, and providing necessary information to potential returnees on the conditions of return, etc.⁷⁷

⁷³ Republic of Peru, Law No. 28223, *supra* note 61, art. 3.

⁷⁴ *Id.* at art. 14.

⁷⁵ *Id.* at art. 15.

⁷⁶ THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT AND THE LAW OF THE SOUTH CAUCASUS: GEORGIA, ARMENIA, & AZERBAIJAN (Roberta Cohen, et al. eds., 2003).

⁷⁷ See art. 21, Law on Displaced Persons and Returnees in the Federation of Bosnia and Herzegovina and Refugees from Bosnia and Herzegovina, (FBiH Official Gazette,

INSTITUTIONAL ELEMENTS OF STATE REGULATION

Prior to Displacement

In addition to enacting a regulatory framework to address internal displacement, one that guarantees the movement-related rights of all citizens, including internally displaced persons, states are obliged to put in place the institutional elements necessary to give effect to these rights and to establish the means to facilitate durable solutions to displacement. The institutional elements for implementing this framework may include a combination of government ministries, departments, inter-ministerial committees, and task forces. Courts may also be included along with a variety of humanitarian assistance providers, non-governmental organizations, and academic institutions, both domestic and international.

In identifying these institutional elements, national authorities should ensure that mandates for protecting and assisting IDPs clearly delineate roles and responsibilities of the various actors. If a variety of institutions share responsibility for addressing internal displacement, the government should consider designating an institutional focal point for developing policies and coordinating resources and activities at the national and local level. It is also imperative that this focal point be trained on displacement issues, including on the substantive and procedural aspects of movement-related rights.

In Colombia, Article 6 of Law 387/97 identifies the National Council for Comprehensive Assistance to Populations Displaced by Violence as one of the institutional organs of government for the implementation of the law.⁷⁸ The Council was established as an advisory and planning body responsible for formulating policy and ensuring budgetary allocations for the programs administered by the entities responsible for the functioning of the National System for Comprehensive Assistance to Populations Displaced by Violence. When the nature of the displacement calls for it, other ministers,

no. 15/05 of 16 Mar. 2005), available at http://www.brookings.edu/projects/idp/Laws-and-Policies/idp_policies_index.aspx.

⁷⁸ República de Colombia, Ley 387 de 1987, *supra* note 71.

administrative department chiefs, directors, presidents, managers of decentralized entities at the national level, or representatives from organizations for the displaced, are invited to participate.

In Uganda, the Department of Disaster Preparedness and Refugees in the Office of the Prime Minister is a principle organ for internal displacement, with its Minister bearing overall responsibility for all matters relating to IDPs.⁷⁹ This includes responsibility for establishing the Inter-Ministerial Policy Committee (IMPC) which is charged with policy formulation and overseeing internal displacement matters. It consists of the Ministers of Internal Affairs, Finance, Planning and Economic Development, Agriculture, Animal Industry and Fisheries, Health, Lands, Water and Environment, Defense, Education, Local Government, Gender, Labor and Social Development, Justice and Constitutional Affairs, Works, Housing and Communications, and the Minister of Information. The IMPC may invite the UN Resident Humanitarian Coordinator, heads of relevant humanitarian and development agencies, and representatives of the donors to participate in its deliberations.⁸⁰

During Displacement

In Uganda, the National Policy on internal displacement provides for the District Disaster Management Committee which is tasked with ensuring that appropriate measures to guarantee the physical security of the internally displaced are established and maintained as well as coordinating the registration of IDPs who opt to return, resettle, or reintegrate, paying particular attention to the most vulnerable, including widows, the elderly, children, and the disabled, who may require special assistance. They are also responsible for preparing and implementing plans for the safe return and resettlement of IDPs, including the identification of safe sites, monitoring their overall resettlement

⁷⁹ The Department of Disaster Management and Refugees, Office of the Prime Minister, *Uganda National Report and Information on Disaster Risk Reduction Efforts for the World Conference on Disaster Reduction*, Kobe, Japan, Jan. 19-22, 2005, ¶ 2.1.1, available at <http://www.unisdr.org/eng/mdgs-drr/national-reports/Uganda-report.pdf>.

⁸⁰ *Id.* at ¶ 2.2.1.

and reintegration, verification of the voluntary nature of return and resettlement in collaboration with humanitarian agencies, and determination of transportation needs of IDPs. This body is also responsible for ensuring family reunification and the safety and dignity of internally displaced persons during movements from camps to resettlement sites.⁸¹

Law 387 of 1997 in Colombia provides that when discharging its responsibility in the Comprehensive Assistance to Displaced Populations, the Colombian Institute of Family Welfare shall give priority in its programs to the assistance of infants, minors, especially orphans, and family groups, connecting them with the community and family social assistance project in the settlement zones of the displaced.⁸² In addition, according to Article 7(1) of the Georgian Law on IDPs, the relevant structures of the executive and local authorities—including the Ministry of Refugees and Accommodation—are responsible for *inter alia* ensuring the realization of the rights of internally displaced persons returning to their place of residence.

In the Context of Durable Solutions

In Angola, the Standard Operational Procedures for the Enforcement of the Norms on the Resettlement of Displaced Populations sets forth the institutional elements of state regulation and the different tasks they are responsible for performing. According to Article 3(1), the process of resettlement and return of IDPs is led by the following entities: (a) the National Commission for Social and Productive Reintegration of Demobilized Personnel and Displaced Populations (CNRSPDD); (b) The Provincial Commission (CP), and (c) The Ad Hoc Group for Technical and Administrative Support (GADH). Under Article 3 (2), CP and GADH report to CNRSPDD in accordance with Article 4 of the Presidential Dispatch no.5/02. Under Article 5(1), the Provincial Commission evaluates the provincial plan for the resettlement or return of the displaced populations on a

⁸¹ Office of the Prime Minister, Department of Disaster Preparedness and Refugees, *The National Policy for Internally Displaced Persons*, ¶ 2.4. (Aug. 2004), available at http://www.brook.edu/fp/projects/idp/idp_policies_index.htm.

⁸² *Id.*

monthly basis and submits a monthly report on the resettlement or return of the IDP populations to the National Commission for Social and Productive Reintegration of Demobilized Personnel and Displaced Populations, among other tasks.

In Turkey, the competent authorities responsible for implementation under the Integrated Strategy Document include *inter alia*: ministries, public institutions, and organizations which give priority to the views and suggestions of the relevant governorships while drafting their investment programs. The Ministry of Interior is responsible for the implementation, monitoring, and evaluation of fundamental policies on these issues, as well as consultation and coordination with NGOs that take part in the implementation, monitoring, and evaluation process.⁸³

INTERNATIONAL ROLE

Although there is no international agency with a formal and exclusive mandate to aid and protect IDPs, there are specific international bodies or agencies with mandates and particular expertise with regard to protecting the movement-related rights of IDPs. Displacement as a result of conflict and human rights violations generally arouses the concern of the international community. It is mostly the overwhelming need of these people for protection that moves the international community to address their plight through these bodies and agencies.⁸⁴

Representative of the Secretary General on the Human Rights of Internally Displaced Persons

The Representative of the Secretary General on Human Rights of Internally Displaced Persons serves as the United Nation's principal advocate for the

⁸³ Measures on the Issue of Internally Displaced Persons and the Return to Village and Rehabilitation Project in Turkey, ¶ 11, Aug. 17, 2007, available at http://www.brookings.edu/projects/idp/Laws-and-Policies/~media/Files/Projects/IDP/Laws%20and%20Policies/Turkey/Turkey_StrategyDoc_2005.pdf.

⁸⁴ UNHCR, *The State of the World's Refugees, Human Displacement in the New Millennium*, at 154 (2006).

internally displaced. The Representative's mandate calls upon him to engage in dialogue and advocacy with governments and other actors concerning the rights of IDPs; strengthen the international response to internal displacement; and mainstream work to protect the human rights of IDPs, including movement-related rights throughout the UN system. In exercising this mandate, the Representative monitors displacement problems worldwide; promotes the dissemination and application of the Guiding Principles on Internal Displacement; works with governments, regional bodies, international organizations, and civil society to strengthen the normative framework and create more effective policies and institutional arrangements for IDPs; and convenes international seminars on internal displacement.

UNHCR

The United Nations High Commissioner for Refugees (UNHCR) responds to humanitarian emergencies that effect displaced populations. UNHCR's primary mandate is to offer protection to refugees and it does this by assisting them integrate in countries where they have been granted asylum, repatriate to their countries of origin, or resettle in third countries. In some instances, UNHCR has gone beyond its mandate of protecting refugees and extended it to protecting and assisting internally displaced persons. States can work with UNHCR to ensure the movement-related rights of IDPs are guaranteed and to facilitate IDP returns, resettlement, and other forms of movement. For example, in Liberia in 2003, UN troops helped UNHCR relocate thousands of IDPs from public buildings in Monrovia to proper camps or settlements.⁸⁵ In situations of displacement, states may also call upon UNHCR for assistance in transporting materials and providing assistance in establishing and maintaining camps for the displaced. UNHCR also organizes workshops to educate government officials on fundamental principles of refugee law, especially on the right to *non-refoulement*, and on the normative framework for the protection of internally displaced persons. UNHCR can also strengthen the protection regime through documentation campaigns, human rights training and other education-oriented activities, and integration initiatives.

⁸⁵ *Id.* at 173.

Other UN Agencies and International Actors

The primary role of the United Nations Children’s Fund (UNICEF) is the protection of children, including internally displaced children. This includes addressing the needs of children who are internally displaced and working to assist in their reunification with other family members. UNICEF may work closely with other agencies like the International Committee of the Red Cross, Food for the Hungry, and Save the Children (UK) as well as other NGOs to trace missing children and family members. In addition, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) and its Inter-Agency Internal Displacement Division works to ensure that UN agencies in the field, under the leadership of United Nations Resident and Humanitarian Coordinator (UNRC/HCs), develop and implement strategic initiatives to meet the needs of internally displaced persons, including their movement related rights.

African Union

The mandate of the African Union allows it to address the security situation in member states by monitoring and responding to human rights violations and by pursuing other activities, including peacekeeping operations. It may enhance the protection of civilians, including internally displaced persons, by deploying police and military units to provide security in IDP camps and in areas of return. Through this presence, the African Union can deter armed groups from committing hostile acts against displaced persons and facilitate their movement. The African Union can also deploy resources and assist with mine and ordinance disposal in order to facilitate the safe return of IDPs. Finally, the African Union has elaborated a binding Convention on Assistance and Protection for Internally Displaced Persons in Africa.⁸⁶

SUMMARY OF RECOMMENDATIONS

1. States should establish the appropriate legal framework to guarantee all movement-related needs of IDPs and abolish any legal impediments that may

⁸⁶ At the time of this writing, the draft text to be adopted at an African summit in Kampala, Uganda in October 2009 was not available.

cause limitations on movement rights that go beyond internationally recognized restrictions. This may require harmonization or revision of existing laws or the introduction or simplification of certain procedures for IDPs (e.g., residence/registration requirements). More specifically, states that have not domesticated important norms relating to the movement rights of IDPs, particularly those enshrined in the Guiding Principles on Internal Displacement are encouraged to do so through legislation.

2. Restrictions on freedom of movement should only be imposed in cases of an emergency declared in accordance with the provisions of existing law. Areas where this freedom is restricted should be declared a “disaster” or “disturbed” area in the Official Gazette or via a similar official pronouncement. Where restrictions of movement rights are necessary during national emergencies and threats to the general population, they should be introduced for only a limited period of time and regularly reviewed. IDPs should be kept well informed on these measures and the reasons for their enactment. To borrow the wording of Article 4 of the Great Lakes Protocol On the Protection And Assistance to Internally Displaced Persons, states “... should undertake to ensure freedom of movement and choice of residence within designated areas of location, except when restrictions on such movement and residence are necessary, justified, and proportionate to the requirements of maintaining public security, public order and public health.”

3. States should identify existing obstacles that hinder IDPs from effectively accessing their rights and design policies that address these problems in a meaningful way. In particular, where there are circumstances that necessitate the restriction of the right to movement of the IDPs, such circumstances should be addressed as soon as possible. Furthermore, states should provide security, take measures against harassment by local authorities or communities where IDPs reside, return or resettle, and facilitate access to areas where economic and social activities take place.

4. The human rights of internally displaced persons should be guaranteed and protected by national mechanisms, such as national human rights institutions and non-governmental organizations that monitor the human rights situation, help to raise awareness of IDPs about their rights, offer assistance on issues of law and policy, provide legal assistance, and act on formal complaints.

5. States should avoid assertions that IDPs who exercise their right to choose their residence do so at their own peril. IDPs are still citizens of the state and should not be deprived of their right to exercise their freedom of movement or choice of residence because of the situation in which they find themselves. States should instead fulfill their duty to create a safe haven in new areas IDPs find themselves to enable them to exercise their freedom of choice of place of residence.

6. States should adopt laws and policies that guarantee the principle of family unity, assign responsibility for the protection of the family, and create mechanisms for family reunification of IDPs during all phases of displacement. In particular, states should guarantee support for establishing the whereabouts of missing relatives.

7. State legislation and policies should offer alternatives for durable solutions, i.e., return to place of origin in safety and with dignity, resettlement to another part of the country or integration at the place of displacement, and ensure that IDPs receive the necessary information so that decisions are made on a voluntary and informed basis. States should also clearly define the roles and duties of the authorities concerned with addressing displacement and ensure that IDPs are included in the planning and management of any relocation and the provision of assistance.

8. Internally displaced persons should be involved in decision making, especially when it comes to making the policies that govern their movement. Their insight and knowledge should be taken into consideration especially through formal and informal representatives and the non-governmental organizations that are well equipped to articulate IDPs rights and needs. IDPs should be active participants in protection programs and be equipped with information about human rights and humanitarian standards and relevant domestic mechanisms that they may access to promote their rights.

9. States should establish procedures for the issuance of new documents or the replacement of lost or destroyed documents. States should also make arrangements to avoid requirements for IDPs to return to their places of origin in order to obtain certain documentation. IDPs should have the possibility to have documents issued at their place of permanent, temporary or factual

residence. If specific offices are created for the issuance of documentation, they should be placed in areas that are easily accessible for IDPs, including the vulnerable among them.

10. Reconstruction and recovery programs that follow armed conflict and disasters should include rule of law promotion strategies that facilitate access to justice and respect for human rights, including the right to freedom of movement. Demilitarization of areas of return and reinstatement of civilian justice and police systems should also take place.

11. Internally displaced persons should be trained in mine awareness and clearance programs in order to safeguard their personal security and to facilitate movement related to finding durable solutions.

12. States should maintain the civilian character of IDP camps and limit the presence of the military once security and protection measures are in place and functioning. Continued military presence may lead to the infringement of the right to freedom of movement and also increase the likelihood that camps will be targeted by insurgents and other armed actors.

13. States should provide for the issuance of certificates which entitle IDPs to receive benefits and make use of the privileges made available to them.

14. When applying security restrictions, states should ensure that the rights of all citizens, including IDPs, are protected and that access to goods and services is guaranteed without discrimination. Security measures must be taken in accordance with the law and through legal means. They should be introduced for a limited period of time and periodically reviewed, including judicial review.

15. States should avoid invoking sovereignty as a justification for resisting or obstructing international humanitarian assistance. States should be encouraged to cooperate with international and regional organizations when national capacity is insufficient. States should also comply with UN resolutions to provide security, which, in the long run, fosters freedom of movement.

16. International humanitarian efforts to protect IDPs should never be allowed to substitute for domestic solutions to internal displacement. Sovereignty demands that states should assume their responsibilities to protect IDPs who are still citizens and thus have a right to be protected by the state.

17. States should train government officials, military, police, immigration and local authorities on the Guiding Principles, including the movement related rights of IDPs. The focus on immigration authorities is particularly important in cases where there is an eminent need for a displaced person to seek asylum outside her or his country. States should also designate an institutional focal point for coordination within the government and with local and international partners.

18. Disaster risk reduction should be emphasized among states as a means of combating the effects of natural disasters on the right to freedom of movement in particular and other human rights generally. The Hyogo Declaration adopted at the World Conference on Disaster Reduction held in Kobe, Japan, in 2005 should be adapted into local legislation.