

## Human Rights Defenders' Fact Sheet

### Internal Displacement and Resettlement of Communities

#### **Disclaimer**

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#### 1. Scope of this Fact Sheet

1.1 Involuntary displacement and resettlement of communities can occur for a variety of reasons, which may include: physical displacement (relocation or loss of shelter); environmental harm (destruction of habitat and/or natural resources); and/or economic displacement (loss of assets that leads to loss of income sources or other means of livelihood).

1.2 This Fact Sheet focuses on *internal* displacement and resettlement. Internally displaced peoples (“IDPs”) can be defined as:

*“persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”<sup>1</sup>*

1.3 This Fact Sheet considers the key international legal instruments that relate to internal displacement and resettlement, and the obligations of companies in respect of this issue. It also sets out suggested practical steps that can be taken by human rights defenders (“HRDs”) when faced with communities that have been (or may be) displaced or resettled due to the activities of companies.

#### 2. The legal landscape

2.1 To understand fully the obligations of state and non-state actors regarding displacement and resettlement, one must consider the position under international human rights law and international humanitarian law (“IHL”), and how they overlap.

2.2 IHL is only applicable in situations of armed conflict. It regulates methods of warfare and seeks to limit the impact of conflict on non-participants. IHL violations (such as direct attacks on civilians, destruction of property not as a result of military necessity, sexual violence, and unlawful restrictions on access to health care) are major causes of displacement. International human rights law is applicable to all scenarios, including where internal displacement and resettlement results from any sort of conflict (rather than just armed conflict), environmental damage, development or natural disasters. However, in situations of armed conflict, human rights will often be interpreted in light of IHL.

2.3 This means that conventions and “soft-law” instruments (non-legally-binding instruments that have persuasive effect) that address all forms of internal displacement and settlement

<sup>1</sup> <http://www.unhcr.org/uk/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>

(including resulting from conflict) include elements of both IHL and international human rights law. The key instruments are:

- (A) The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (known as the “Kampala Convention”) is the first legally-binding regional convention that addresses internal displacement.<sup>2</sup> It sets out the obligations of states, non-state armed groups and international organisations, and provides a framework for African states to adopt domestic norms and policies to deal with internal displacement.
- (B) The UN Guiding Principles on Internal Displacement (“**GPID**”)<sup>3</sup> identifies the rights and guarantees relevant to internally displaced persons, and provides guidance for state and non-state actors. Although non-binding, the GPID has also been recognised by the UN General Assembly. It reflects, and is consistent with, international human rights law and IHL. The key obligations under the GPID are summarised below:
  - (1) Obligation to provide protection and humanitarian assistance to IDPs within their jurisdiction;
  - (2) Obligation to provide IDPs with adequate food, shelter and drinking water, documentation and free primary education;
  - (3) Obligation to consider the specific needs of groups of IDPs, including children, the disabled and the elderly; and
  - (4) Obligation to ensure that conditions and means are in place to enable IDPs to return voluntarily to their homes, in safety and with dignity, or to resettle voluntarily in other parts of the country.

2.4 Refer to Schedule 1 of this Fact Sheet for further examples of soft law that addresses specifically internal displacement and resettlement.

2.5 Other IHL and international human rights law instruments include provisions that are relevant to internal displacement and resettlement. The main instruments of note are referred to below.

### **International human rights law**

2.6 Fundamental human rights relevant to displacement and resettlement include the rights to: culture; life; liberty and security of person; an adequate standard of living; equal recognition; self-determination; non-discrimination; property; family; and home.

2.7 These rights are set out in several binding international instruments, including:

- (A) International Covenant on Economic, Social and Cultural Rights;<sup>4</sup>
- (B) International Covenant on Civil and Political Rights;<sup>5</sup>
- (C) Convention on the Elimination of All Forms of Discrimination against Women;<sup>6</sup>

<sup>2</sup> <https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa>. See Article 4(4) for a non-exhaustive list of the prohibited categories of arbitrary displacement under the Kampala Convention

<sup>3</sup> <https://www.unhcr.org/uk/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>

<sup>4</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>. See Article 11(1), in particular

<sup>5</sup> <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. See Article 17, in particular

<sup>6</sup> <http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>. See Article 14(2)(h) in particular

- (D) Convention on the Rights of the Child;<sup>7</sup> and
  - (E) International Convention on the Elimination of All Forms of Racial Discrimination.<sup>8</sup>
- 2.8 The right to free prior and informed consultation, and/or (in certain circumstances) consent, is also important when dealing with the displacement and resettlement of indigenous and tribal groups.
- 2.9 Article 16 of the International Labour Organisation Convention 169 on Indigenous and Tribal Peoples<sup>9</sup> deals specifically with the displacement and resettlement of these groups, and can be summarised as follows:
- (A) Peoples shall not be removed from the lands which they occupy except where relocation is considered necessary as an exceptional measure, in which case relocation shall take place only with their free and informed consent.
  - (B) Where consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national law and regulations, which provide the opportunity for effective representation of the peoples concerned.
  - (C) Whenever possible, these peoples shall have the right to return to their traditional lands as soon as the grounds for relocation cease to exist.
  - (D) When return is not possible these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them.
  - (E) Where the peoples concerned express a preference for compensation in money or in kind, they shall be compensated under appropriate guarantees.
  - (F) Relocated persons shall be fully compensated for any resulting loss or injury.
- 2.10 For further information regarding the right to Free Prior and Informed Consent, refer to the separate Fact Sheet on this topic.

### International Humanitarian Law

- 2.11 IHL binds state and non-state actors whose activities are closely linked to an armed conflict. The main IHL treaties that contain provisions relating to internal displacement are the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949 (Fourth Geneva Convention) and Additional Protocols I and II of 1977. These are supplemented by customary IHL, which consists of rules derived from the consistent practice of states, accompanied by a belief that the practice is legally required.<sup>10</sup>
- 2.12 The International Committee of the Red Cross has summarised the key provisions of IHL in the context of internal displacement as follows:<sup>11</sup>

<sup>7</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>. See Articles 16(1) and 27(3) in particular

<sup>8</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>. See Article 5(d)(iii) and (iv) in particular

<sup>9</sup> [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C169](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169). See Articles 13-19 under Part II (Land), in particular.

<sup>10</sup> A database of customary IHL is maintained by the International Committee of the Red Cross at <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home>

See also J.M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law*, Vol. I: Rules, 3rd ed., ICRC/Cambridge University Press, Cambridge, 2009: <https://www.icrc.org/eng/resources/documents/publication/pcustom.htm>

<sup>11</sup> See the following link for further details: <https://www.icrc.org/en/document/internally-displaced-persons-and-international-humanitarian-law-factsheet>

- (A) prohibition of forced displacement and the right to voluntary return in safety;
  - (B) non-discrimination;
  - (C) protection as part of the civilian population;
  - (D) respect for life, dignity and humane treatment (including the right to choose a residence and to move freely in and out of camps);
  - (E) adequate standards of living and humanitarian assistance;
  - (F) respect for family life and family unity (including that that all possible measures must be taken to ensure that those displaced are not separated from their families);
  - (G) right to documentation;
  - (H) prohibition of the destruction or seizure of property, unless required by imperative military necessity
  - (I) employment and social protection (which includes the prohibition of uncompensated or abusive forced labour);
  - (J) education of children; and
  - (K) prohibition of forcible recruitment of children and their use in hostilities
- 2.13 For further information regarding operating in conflict-affected areas, refer to the separate Fact Sheet in this series on this topic.

### 3. **The obligations of companies regarding internal displacement and resettlement?**

- 3.1 Internal displacement and resettlement is often directly linked to (lawful and/or unlawful) business activity. This might include land acquisition by a company, subsequent development of that land, the carrying out of extractive operations, and/or the imposition of temporary or permanent restrictions on land use, or other negotiated settlements that result in the same.
- 3.2 In such scenarios, there is potential for the rights of communities to be disregarded due to unlawful acquisition, lack of consultation and ongoing discussions with those affected peoples, the use of threats or coercion to obtain communities' consent, and/or the exploitation of divisions within communities.
- 3.3 IHL applies to companies that operate in an armed conflict and carry out activities that are linked to the conflict. However, where business actors carry out regular activities that are not related to armed conflict, they are likely to be considered as civilians.
- 3.4 Although not bound by international human rights law, companies are under increasing pressure to consider their wider human rights obligations. The United Nations Guiding Principles on Business and Human Rights ("**UNGPs**") is a set of international, non-binding standards for preventing and addressing the risk of adverse impacts on human rights linked to business activity.<sup>12</sup> They require that business enterprises: avoid causing, or contributing to, adverse human rights impacts; mitigate any adverse impact that are directly linked to their operations, products or services by their business relationships; and address such

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<sup>12</sup> [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

impacts when they occur.<sup>13</sup>

#### 4. **Practical steps for HRDs**

4.1 Where a company undertakes (or is intending to take) unlawful displacement action against local communities, HRDs should consider whether any of the following events have taken (or will take) place:

- (A) forcible removal of such communities from the land without (or with inadequate) consultation, disregarding their existing legal rights to land, territories and natural resources;
- (B) customs, traditions, culture and economic wellbeing of indigenous groups being disregarded;
- (C) mass expulsions, ethnic cleansing or population transfers;
- (D) no benefit to the local community, including lack of adequate compensation;
- (E) removal or loss of home and/or livelihood;
- (F) coercion, threats or violence against those individuals who are forcibly removed; and/or
- (G) adverse environmental and socio-economic impact in areas to which individuals have been displaced.

4.2 HRDs should assist communities to identify the rights, or claims, to the land, and compile an inventory of assets on the land or use of the land of those communities through consultation. It may not be a simple process to identify the rights that members of local communities possess, which will depend on whether they have:

- (A) formal legal rights to the land/assets;
- (B) a claim to land/assets that is recognisable under domestic law;
- (C) collective ownership of land/assets (as opposed to private ownership); or
- (D) no recognisable legal right/claim to land/assets occupied or used.

4.3 HRDs should identify those groups that are (or will be) affected by the actions of the company, paying particular attention to the most vulnerable groups or groups that may not be properly represented (such as women, children, those who are disabled, and/or indigenous or tribal groups).

4.4 HRDs should arm the representatives of the affected communities with information that will assist them in their discussions and negotiations with companies, including any steps that companies should take and principles they should adhere to before they proceed with any displacement action. These include, but are not limited to:

- (A) conducting research and due diligence to identify whether the land is presently, or

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<sup>13</sup> Guiding Principle 13

For further information regarding the obligations of companies under the UNGPs, refer to separate Fact Sheets on human rights policy statements, human rights due diligence, grievance mechanisms and remediation and leverage. Also consider the Fact Sheets on operating in conflict-affected areas and on private/military security companies.

was historically, inhabited and/or used by local communities, including indigenous communities and, if so, the customs, traditions and religious rights of such communities;<sup>14</sup>

- (B) developing a specific and tailored consultation procedure based on the results of research and due diligence carried out and keeping affected communities informed about the company's plans;
  - (C) negotiating with the community in its native language and in accordance with its traditions;
  - (D) respecting the social structure and governance mechanisms of the community;
  - (E) conducting consultations with representatives of all groups in the relevant community;<sup>15</sup>
  - (F) where the project is large-scale and will have a major impact on the communities, companies must obtain free, prior and informed consent to any action that will impact the human rights or other rights of affected communities;
  - (G) where the project is of a smaller scale, engaging in good faith, free, prior and informed consultation about the project (including redesigning the project to avoid damaging sites of major cultural importance where necessary);
  - (H) implementing training programmes for company employees so that they can better understand the communities with whom they are engaging;
  - (I) implementing community engagement programmes (which may include enterprise development, training, employment, health, social and cultural initiatives);
  - (J) creating a community feedback system which is accessible and transparent and communicating the existence of these procedures and systems to relevant communities in a format that can be easily understood;
  - (K) establishing fair and efficient complaints and grievance procedures;<sup>16</sup>
  - (L) involving independent institutions to investigate claims and complaints.
- 4.5 HRDs may also be able to assist communities in assessing the results of the due diligence/consultation exercise and consider negotiation options, which may include the possibility of designing/amending the project to avoid displacement; resettlement outside the existing site; or adopting a no development option if detrimental human rights impacts are unavoidable.
- 4.6 Companies may seek to resettle and/or negotiate settlement pay-outs with affected communities by lawful means, such as by compulsory acquisition. In this case, HRDs should ensure that communities are aware of the specific impact of the proposed development and of their rights.
- 4.7 Where affected communities are willing to enter negotiations for resettlement, HRDs should work with them to ensure there is consultation with the company with informed participation of, and disclosure of information to, those affected individuals. As part of those negotiations, HRDs can assist the communities to ensure that housing and infrastructure for resettlement

<sup>14</sup> UNGPs 15(b), 17 and 18

<sup>15</sup> UNGP 18(b)

<sup>16</sup> UNGPs 22, 29 and 31

is completed prior to displacement, that displaced persons are resettled to a site that they can lawfully occupy, and that resettlement meets the conditions set out in the instruments referred to in this Fact Sheet.

- 4.8 Where it is not possible to provide land or similar resources as compensation, HRDs can work with the affected communities to consider other options, including:
- (A) seeking education, training, jobs, alternative means of living;
  - (B) creating a Resettlement and/or Livelihood Restoration Plan to mitigate the negative impacts of displacement and to establish the entitlements of those affected;<sup>17</sup> and
  - (C) seeking adequate compensation from companies for loss of assets at replacement cost (such compensation schemes to be transparent and applied consistently).
- 4.9 Where such resettlement, compensation, livelihood restoration or other schemes are put in place, HRDs can assist communities to insist on the regular monitoring of the implementation of such schemes by the implementation by the company of a framework to provide: (i) regular feedback from representatives of the affected communities; and (ii) an adequate (and preferably independent) grievance mechanism for the local community.<sup>18</sup>
- 4.10 Should forced eviction, displacement or resettlement occur, HRDs should, if the community agrees, monitor and observe the process and, as appropriate, report their findings to regional or multilateral human rights organisms, including the relevant UN Special Procedures, the international community, human rights networks, and national authorities.
- 4.11 When faced with a situation of displacement and resettlement, HRDs should also consider the practical steps for HRDs that are set out in the following Fact Sheets:
- (A) UNGPs: Human Rights Policy Statement;
  - (B) UNGPs: Human Rights Due Diligence;
  - (C) UNGPs: Grievance Mechanisms and Remediation;
  - (D) UNGPs: Leverage;
  - (E) Free, Prior and Informed Consent;
  - (F) Operating in Conflict-Affected Areas;
  - (G) Private Military/Security Companies; and
  - (H) Environmental Hazards and Degradation.

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<sup>17</sup> See suggestion under IFC Performance Standard 5 (1 January 2012); page 4

<sup>18</sup> UNGPs 22, 29 and 31

## SCEDULE1: NON-BINDING INSTRUMENTS AND GUIDELINES RELATING TO INTERNAL DISPLACEMENT AND RESETTLEMENT

Below is a selection of non-binding instruments and guidelines that relate to internal displacement and resettlement.

1. **2030 Agenda for Sustainable Development**<sup>19</sup>: This notes the importance of considering the rights of, *inter alia*, vulnerable persons, indigenous peoples and displaced peoples within the overall commitment for global sustainable development.
2. **Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law**:<sup>20</sup> These have been adopted by the UN General Assembly and oblige states to ensure respect for, and implement, international human rights law and international humanitarian law by: (i) taking appropriate legislative and administrative measures; (ii) investigating violations effectively, promptly and impartially, and taking action against those responsible; and (iii) providing victims with access to justice.
3. **Principles on Housing and Property Restitution for Refugees and IDPs (known as the “Pinheiro Principles”)**:<sup>21</sup> The Pinheiro Principles articulate the right of refugees and displaced persons to repossess property lost as the result of armed conflict.
- 3.1 **Basic Principles and Guidelines on Development-Based Evictions and Displacement**:<sup>22</sup> These Principles address the human rights implications of development-linked evictions and related displacement. This includes including coerced or involuntary displacement, and displacement resulting from environmental destruction or degradation, conflict, development and infrastructure projects.

The aim of the guidelines is to assist states and agencies in developing policies, legislation, procedures and preventive measures to ensure that forced evictions do not take place, and to provide effective remedies to those whose human rights have been violated, should prevention fail.

The Principles address:

- (A) the content of eviction notices, the length of notice periods and the circumstances in which evictions should not be carried out (including in inclement weather or at night);
- (B) the provision of legal and technical advice to affected populations;
- (C) the right to a public hearing and to challenge the eviction;
- (D) the fact that any legal use of force must respect the principles of necessity and proportionality; and
- (E) the obligation to construct and provide resettlement measures, such as homes and potable water prior to the eviction taking place.

The Principles also emphasise the importance of protecting the rights of women, children and indigenous peoples, and ensure that they are represented in the process. They restate

<sup>19</sup> <https://sustainabledevelopment.un.org/post2015/transformingourworld>

<sup>20</sup> <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

<sup>21</sup> <http://www.unhcr.org/uk/protection/idps/50f94d849/principles-housing-property-restitution-refugees-displaced-persons-pinheiro.html>

See also the Handbook on Housing and Property Restitution for Refugees and Displaced Persons Implementing the Pinheiro Principles: [https://www.un.org/ruleoflaw/files/pinheiro\\_principles.pdf](https://www.un.org/ruleoflaw/files/pinheiro_principles.pdf)

<sup>22</sup> [http://www.ohchr.org/Documents/Issues/Housing/Guidelines\\_en.pdf](http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf)

that affected persons have the right to full and prior informed consent regarding relocation.

4. **Voluntary Principles on Security and Human Rights (“Voluntary Principles”):**<sup>23</sup> The Voluntary Principles is a collaborative effort by governments, major multinational extractive companies and NGOs to provide guidance to companies on tangible steps that they can take to minimise the risk of human rights abuses in communities specifically located near extraction sites. Member organisations have also collaborated to produce associated guidance documents to assist companies and civil society actors to work within the Voluntary Principles.<sup>24</sup>
5. **European Bank for Reconstruction and Development (“ERBD”) Performance Requirement 5 on Land Acquisition, Involuntary Resettlement and Economic Displacement:**<sup>25</sup> EBRD-financed projects are expected to be designed and operated in compliance with good international practices relating to sustainable development. The objectives of this guidance (aimed at the EBRD’s clients) is to: avoid or minimise involuntary resettlement by exploring alternative project designs; mitigate adverse economic and social impact on communities’ use of, and access, to assets and land; restore the standards of living of displaced people to pre-displacement levels; and improve living conditions of displaced people.
6. **EU Council Conclusions on Indigenous Peoples:**<sup>26</sup> The Counsel has emphasised that, in the context of development, specific attention should be given to women, children, youths and persons with disabilities, as well as to those in situations of forced displacement or in violent/armed conflict.

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<sup>23</sup> <https://www.voluntaryprinciples.org/the-principles/>

<sup>24</sup> For example, in 2015 the Global Compact launched a Guidance Document on the Assurance of the Voluntary Principles (VPs) on Security and Human Rights to assist companies in assessing their degree of implementation of the VPs.

<sup>25</sup> [http://www.ebrd.com/downloads/about/sustainability/ESP\\_PR05\\_Eng.pdf](http://www.ebrd.com/downloads/about/sustainability/ESP_PR05_Eng.pdf)

<sup>26</sup> Paragraph 6: <http://data.consilium.europa.eu/doc/document/ST-8814-2017-INIT/en/pdf>