

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

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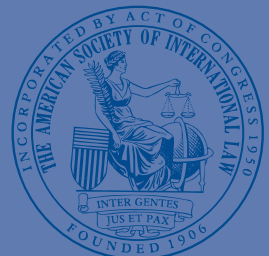
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Chapter 15

Development-induced Displacement and Forced Evictions

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INTRODUCTION

The massive and rapidly growing spate of forced evictions in the name of “development” around the world is creating a grave humanitarian and human rights crisis, which could and should be mitigated through the use of international human rights law and policy and a strong political will of national governments and other actors, including international organizations, involved in such “development” projects. How international law can guide, and how national law can guarantee the human rights of internally displaced persons (IDPs) and the prevention of more IDPs around the world, is a challenge confronting policy-makers, human rights advocates, and others.

This chapter will mainly cover cases of relocation and forced eviction, i.e., “planned” displacement, in the context of ostensible “development” projects (“development-induced” displacement). In some instances, such displacement is justified as “permissible,” though this chapter questions the permissibility component through the lens of the international human rights framework. Such displacement is also generally irrevocable and precludes the right to return, which makes the legal enforcement and protection of the right to resettlement and rehabilitation critical. Planned displacement occurs in various contexts. They include displacement caused by so-called “development” and infrastructure projects such as dams and roads; urban renewal projects; market-based evictions; zoning and planning laws; large sporting events and international conferences necessitating new buildings and infrastructure; environmental and conservation projects; and resettlement on request.

This chapter is concerned, in particular, with the human right to adequate housing as a legal basis for preventing forced evictions or arbitrary displacement of individuals, groups, and communities from their original habitats and places of residence. The principles of human rights law, which

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guarantee the right of every man, woman, child, and youth to an adequate standard of living, including adequate housing, clearly serve to act as affirmative provisions prohibiting the violation of these rights in the case of forced eviction.

The chapter also makes the legal argument for the human right to land, which though not articulated distinctly in international law, has indirect references in various conventions and declarations, and is a fundamental prerequisite to guaranteeing the human right to adequate housing, and thereby preventing displacement. In particular, the human right to land holds significance for natural resource-dependent and land-based communities such as indigenous peoples, pastoralists, peasants, farmers, forest dwellers and others, including those who are legally considered landless.

While drawing on international legal provisions that guarantee these rights, this chapter further expounds on the *Guiding Principles on Internally Displaced Persons* (the *Guiding Principles*) and also makes references to the *Basic Principles and Guidelines on Development-based Evictions and Displacement* (the *Basic Principles and Guidelines*).¹ It attempts to harmonize the key principles in both these documents with a view to preventing displacement, and where it is absolutely inevitable, to ensuring that states and other actors adhere to international human rights standards in all processes related to displacement, including resettlement and rehabilitation.

The *Guiding Principles*, though they contain preventive guidelines, are more relevant during the time people remain in displacement since they cover the rights of those who have already been displaced. The *Basic Principles and Guidelines* cover the phases prior to, during, and after evictions, and especially focus on “development-related” displacement. Displacement resulting from ostensible “development” projects and disasters that tend to be of an irreversible nature require guidelines that go beyond the *Guiding Principles*.

¹ Presented in the report of the former UN Special Rapporteur on adequate housing, A/HRC/4/18, Dec. 2007, available at <http://www2.ohchr.org/english/issues/housing/annual.htm>, and formally acknowledged by the UN Human Rights Council in Human Rights Council Resolution 6/27, A/HRC/6/L.11/Add.1, Dec. 19, 2007, available at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_6_27.pdf.

The *Basic Principles and Guidelines* have thus been cited, where applicable, with the aim of supplementing and strengthening the Guiding Principles to ensure that states respect, protect, and promote the human rights of all IDPs within their countries.

LEGAL FRAMEWORK

Relevant Guiding Principles

Several of the *Guiding Principles* provide for the human rights to adequate housing, land, and property in the context of displacement. Principle 5 is of special significance as it stresses the responsibility of states to avoid displacement. It provides, “[a]ll authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.” Principles 6 through 9, 12, 14, 15, 18, 21, and 28 are also significant.

Principle 6 provides, *inter alia*, that “every human being shall have the right to be protected against being arbitrarily displaced.” Principle 6 further provides that “[t]he prohibition of arbitrary displacement includes displacement...[i]n cases of large-scale development projects, which are not justified by compelling and overriding public interests” and “displacement shall last no longer than required by the circumstances.”

Principle 7 states that “[p]rior to any decision requiring the displacement of persons, the authorities... shall ensure that all feasible alternatives are explored in order to avoid displacement.” If no alternatives exist, Principle 7(2) further provides that “[t]he authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.”

According to Principle 8, “[d]isplacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.”

Principle 9 provides that “States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.”

According to Principle 15, IDPs have “[t]he right to seek safety in another part of the country...[and] [t]he right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.”

Principle 18 provides that “[a]t the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to...[e]ssential food and potable water...[and] basic shelter and housing.”

Principle 21 prohibits, *inter alia*, arbitrary deprivation of property and possessions of IDPs, including pillage, and states that “[p]roperty and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.”

Finally, Principle 28 provides that:

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.
2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Legal Basis: Right to Adequate Housing²

Human Rights Treaties

Adequate housing has been recognized as a distinct human right since the adoption of the Universal Declaration of Human Rights (UDHR) in 1948. Article 25(1) states that “[e]veryone has the right to a standard of living adequate for the health and well being of himself and his family, including food, clothing, housing, medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

Several different texts proclaimed and adopted by the United Nations explicitly recognize the human right to adequate housing. The obligation of states to take steps towards the realization of the right to adequate housing for all is laid down in a number of international legally binding human rights instruments. The International Covenant on Economic, Social and Cultural Rights (ICESCR) perhaps contains the most significant foundation of the right to housing found in international human rights law. Article 11(1) of the ICESCR provides that “State Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions.”

The UN Committee on Economic Social and Cultural Rights (CESCR) further clarified the normative and legal content, as well as state obligations under this right in its General Comment 4 on the International Covenant on Economic, Social and Cultural Rights, “The Right to Adequate Housing.” Consistent with Article 2 of the ICESCR, the Committee detailed how progressive realization of this right is required under international law, and also affirmed that deliberate or negligent retrogression of housing conditions is a violation of the ICESCR. General Comment 4 specifies the state’s obligations to ensure progressive realization of the human right to adequate housing. Key aspects of

² See also Chapter 5 of this volume on planned evacuations and shelter, and chapter ten on the rights to housing, land and property.

the criteria of “adequacy,” are categorized as: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.³ The “minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of” the right to housing is violated, according to the Committee’s General Comment No. 3 on the “Nature of States parties’ obligations.” It establishes that a state party “is, prima facie, failing to discharge its obligations under the Covenant” if a “significant number of individuals is deprived of [...] of basic shelter and housing.”⁴

Article 17 of the International Covenant on Civil and Political Rights (the ICCPR) protects the right to adequate housing implicitly by, affirming that “1. [n]o one shall be subjected to arbitrary or unlawful interference with” inter alia, “his privacy” and that, “2. [e]veryone has the right to the protection of the law against such interference or attacks.” Article 5(e)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination (1965), prohibits any discrimination with regard to “[t]he right to housing.”

As affirmed by the 1989 Convention on the Rights of the Child (the CRC) in Article 27.3, the right to adequate housing is integral to the realization of other basic rights of children. Similarly, women’s right to adequate housing, as an inalienable, integral, and indivisible component of all human rights has been recognized, implicitly and explicitly, in a range of international and regional human rights instruments. This means that women enjoy the equal right to

³ Housing rights groups (such as the Housing and Land Rights Network: <http://www.hlnr.org>) and the UN Special Rapporteur on adequate housing, have further developed the list of components of “adequacy” beyond those mentioned in General Comment 4. These include: physical security; participation and information; access to land, water and other natural resources; freedom from dispossession, damage and destruction; resettlement, restitution, compensation, non-refoulement and return; access to remedies; education and empowerment; and freedom from violence against women. Also see, Questionnaire on Women and Housing, available at <http://www2.ohchr.org/english/issues/housing/docs/questionnaireEn.doc>.

⁴ Committee on Economic, Social and Cultural Rights, General comment No. 3, *The Nature of States Parties’ Obligations* (art. 2, ¶ 1, of the Covenant), U.N. Doc. E/1991/23, ¶ 10.

own, access, use, manage, and control land, housing, and property. Article 14.2(h) of the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) ensures for rural women the right “[t]o enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.” Lack of access to and control over land, housing, and property constitutes a violation of human rights and contributes significantly to women’s increasing poverty and marginalization.⁵

Article 21 of the 1951 Convention relating to the Status of Refugees states that “[a]s regards housing, the Contracting States, insofar as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord refugees lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.”

The right to adequate housing is also guaranteed in Article 43.1 of the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The 2007 Convention on the Rights of Persons with Disabilities protects the right to adequate housing and prohibits discrimination with regards to access to housing for persons with disabilities in Article 9.1 and 28.

⁵ Report of the former Special Rapporteur on adequate housing, E/CN.4/2005/43 (Feb. 25, 2005).

*International Declarations and Recommendations*⁶

The Declaration of the Rights of the Child (1959), proclaimed by General Assembly resolution 1386 (XIV) on 29 November 1959, states in Principle 4 that “[t]he child shall have the right to adequate nutrition, housing, recreation and medical services.” International Labour Organization (ILO) Recommendation No. 115 on Worker’s Housing (1961), Principle 2, provides that:

[i]t should be an objective of national [housing] policy to promote, within the framework of general housing policy, the construction of housing and related community facilities with a view to ensuring that adequate and decent *housing* accommodation and a suitable living environment are made available to all workers and their families. A degree of priority should be accorded to those whose needs are most urgent.

Several conventions of the International Labour Organization (the ILO) also contain provisions that safeguard the human right to adequate housing. The ILO conventions include Convention No. 161 Concerning Occupational Health Services (1985); Convention No. 117 Concerning Basic Aims and

⁶ United Nations resolutions on the right to adequate housing; forced evictions; housing and property restitution; and equal access to, control over and ownership of land and property without regard to social status, are relevant in establishing the rights of persons affected by development-induced displacement and forced eviction. Those UN resolutions include General Assembly resolution 42/146, “The Realization of the Right to Adequate Housing,” adopted on Dec. 7, 1987; Commission on Human Rights resolution 1988/24, “The Realization of the Right to Adequate Housing,” adopted on Mar. 7, 1988; Commission on Human Rights resolution 1993/77, “Forced evictions,” adopted on Mar. 10, 1993; Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1991/12, “Forced evictions,” adopted on Aug. 28, 1991; Sub-Commission on Human Rights resolution 2002/7, “Housing and property restitution in the context of refugees and other displaced persons,”; and Commission on Human Rights resolution 2005/25, ‘Women’s Equal Ownership of, Access to and Control Over Land and the Equal Rights to Own Property and to Adequate Housing.’”

Standards of Social Policy (1962); Convention No. 110 Concerning Conditions of Employment of Plantation Workers (1958); and Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (1989).

The 1969 Declaration on Social Progress and Development⁷ guarantees in Article 10(f) “[t]he provision for all, particularly persons in low-income groups and large families, of adequate housing and community services.” The right to adequate shelter is recognized in Section III (8) of the 1976 Vancouver Declaration on Human Settlements.⁸ The 1986 Declaration on the Right to Development, adopted by General Assembly resolution 41/128, provides in Article 8(1) that “States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, *inter alia*, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.”

Other Relevant Guidelines and Declarations

The June 2006 Inter-Agency Standing Committee (IASC) Operational Guidelines on Human Rights and Natural Disasters (the IASC Guidelines)⁹ contain specific provisions related to the human right to adequate housing in the context of natural disasters. Paragraph B.2.4 provides that “[t]he right to shelter should be understood as the right to live somewhere in security, peace and dignity...[and such] criteria should be used as benchmarks in planning and implementing shelter programs, taking into account the different circumstances during and after the emergency phase.” Paragraph C.3.2 provides that “[t]he criteria for adequacy are: accessibility, affordability,

⁷ General Assembly resolution 2542 (XXIV) of Dec. 11, 1969.

⁸ Habitat: United Nations Conference on Human Settlements, Vancouver, Canada, May 31- June 11, 1976.

⁹ Addendum to the report of the Representative of the Secretary-General on human rights of internally displaced persons, A/HRC/4/38/Add.1 (Jan. 2006). These Operational Guidelines are presently being revised.

habitability, security of tenure, cultural adequacy, suitability of location, ...access to essential services such as health and education...[and] [r]espect for safety standards aimed at reducing damage in cases of future disasters[.]”

Other international guidelines are relevant in reaffirming the human right to adequate housing. Those guidelines include the 2002 *Plan of Implementation of the World Summit on Sustainable Development*,¹⁰ and the *Practice of Forced Evictions: Comprehensive Human Rights Guidelines on Development-Based Displacement*, adopted by the June 1997 Expert Seminar on the Practice of Forced Evictions.¹¹

Regional Treaties, Declarations, and Guidelines

Certain regional instruments also provide the legal basis for the progressive realization of the human right to adequate housing. Article 16 of the 2005 Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa provides that “[w]omen shall have the right to equal access to housing and to acceptable living conditions in a healthy environment. To ensure this right, States Parties shall grant to women, whatever their marital status, access to adequate housing.” Article 19(c) provides for “women’s access to and control over productive resources such as land and guarantee their right to property.” The 1994 Addis Ababa Document on Refugees and Forced Population Displacement in Africa¹² and the 2001 New Partnership for Africa’s Development (NEPAD) framework document also reinforce this right.

Article VIII of the 1948 American Declaration on the Rights and Duties of Man provides that “[e]very person has the right to fix his residence within the

¹⁰http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/WSSD_PlanImp1.pdf.

¹¹ The Realization of Economic, Social and Cultural Rights, Expert Seminar on the Practice of Forced Evictions, Report of the Secretary General, July 2, 1997, E/CN.4/Sub.2/1997/7.

¹² Adopted by the OAU/UNHCR Symposium on Refugees and Forced Population Displacements in Africa, Sept. 8-10, 1994.

territory of the state of which he is a national, to move about freely within such territory, and not to leave it except by his own will.” Article IX provides that “[e]very person has the right to the inviolability of his home.” The 1969 American Convention on Human Rights, the 1948 Charter of the Organization of American States (amended 1993), and the 2003 American Declaration of Human Rights and the Environment reinforce the above-referenced rights.

Article 31 of the Additional Protocol to the European Social Charter provides that “[e]veryone has the right to adequate housing.” Articles 16, 19, 23, 30, and 31 of the European Social Charter, Article 8 of the 1950 European Convention on Protection of Human Rights and Fundamental Freedoms, and Article 34.3 of the Charter of Fundamental Rights of the European Union reinforce the right to adequate housing. In the Middle East and North Africa, the 1995 Rabat Declaration, the 2000 Manama Declaration, and the 2004 Arab Charter on Human Rights recognize the right to adequate housing.

Legal Basis: Forced Evictions and Arbitrary Displacement

The concepts of “forced evictions” as defined in General Comment 7 of the Committee on Economic, Social and Cultural Rights,¹³ the *Basic Principles and Guidelines*¹⁴ and elsewhere, and that of “arbitrary displacement” as defined in the *Guiding Principles*, have attained acceptance as terms in international law. They refer to overlapping practices, which involve the following three basic elements: removal of individuals or groups from their places of habitual residence and work; forced, in the sense of being undertaken involuntarily or through coercion vis-à-vis those removed; and illegal by virtue of their non-conformity with domestic law and/or arbitrary by virtue of their non-conformity with international law.

¹³ General Comment 7 of CESCR, *The Right to Adequate Housing* (art. 11 (1) of the Covenant): *Forced Evictions*, UN Doc E/1998/22, annex IV.

¹⁴ Basic Principles and Guidelines on Development-based Evictions and Displacement, presented in the report of the former UN Special Rapporteur on adequate housing, A/HRC/4/18, Dec. 2007, available at <http://www2.ohchr.org/english/issues/housing/annual.htm>.

At a practical level, arbitrary displacement is a result, in many contexts, of forced evictions. At a conceptual level, the broad concept of displacement from one's community or homeland overlaps with, and may even incorporate, the somewhat narrower concept of eviction from one's specific home or land. The success of both normative frameworks—the human right to adequate housing and protection from internal displacement—depends to a significant degree on their consistent and complementary definition.

In paragraph 4 of the *Basic Principles and Guidelines*, forced evictions are described as sharing many consequences “similar to those resulting from internal displacement, population transfer, mass exodus, ethnic cleansing and other practices involving the coerced and involuntary movement of people from their homes, lands and communities.” When read in conjunction with the *Guiding Principles*, the definitions only serve to reinforce the illegality of such acts under international law, which only allows for evictions under exceptional circumstances and in full conformity with human rights standards.¹⁵ Paragraph 4 of the *Basic Principles and Guidelines* further define forced evictions as:

acts and/or omissions involving the coerced or involuntary displacement of individuals, groups and communities from homes and/or lands and common property resources that were occupied or depended upon, thus eliminating or limiting the ability of an individual, group or community to reside or work in a particular dwelling, residence or location, without the provision of, and access to, appropriate forms of legal or other protection.

The UN Commission on Human Rights resolutions 1993/77 and 2004/28 pronounce that, “the practice of forced evictions constitutes a gross violation of human rights, in particular the right to adequate housing.” Arbitrary displacement could violate the rights to freedom of movement, freedom to choose one's residence, freedom from arbitrary interference with one's home, and the right to adequate housing. In both “development” and disaster-related cases, measures ostensibly justified with reference to development or public

¹⁵ These exceptional circumstances are further elaborated in General Comment 7 of CESCR, *supra* note 13, and the Basic Principles and Guidelines, *supra* note 14, ¶ 21.

health goals may actually evince intent to accomplish ethnically-based segregation, domination, or dispossession. This makes the above principle especially significant.

Forced evictions are said to create situations of arbitrary displacement when they destroy homes, communities, and original habitats. The destruction of livelihoods and dissociation of communities or individuals from their sources of work and residence may amount to arbitrary displacement, even when resettlement is provided. The absence of adequate resettlement that ensures the provision of adequate housing, proximity to original work places, access to natural resources, and access to services, including education, health, sanitation, and water, fosters the undesirable situation of arbitrary displacement. Such arbitrary displacement consists of the forced eviction or removal of large numbers of people who are then forced to search for alternatives in the dire absence of availability of opportunities and options.

While forced evictions and arbitrary displacement are often used to refer to a cause-effect phenomenon (displacement is generally considered to begin when evictions end), for the purpose of this chapter, they will be used interchangeably, as synonyms for the illegal act of forcibly shifting or moving people or communities to alternative locales due to external factors not related to their safety or security. In this context, eviction is not limited to the physical act of removal of people but to the phenomenon, just as displacement is not merely the result of an eviction but also the process itself. A more holistic and encompassing understanding of both “eviction” and “displacement” render both terms as descriptive of, and referring to, the same phenomenon.

General Comment No. 7 of the Committee on Economic, Social and Cultural Rights (CESCR), The right to adequate housing (Art. 11.1 of the International Covenant on Economic, Social and Cultural Rights): forced evictions, recognizes the occurrence of forced evictions as a violation of human rights while laying down guidelines to prevent and mitigate the phenomenon. Paragraph 2 of General Comment No. 7 cites the Habitat Agenda where “Governments committed themselves ‘to protecting all people from, and providing legal protection and redress for, forced evictions that are contrary to the law, taking human rights into consideration; [and] when evictions are

unavoidable, ensuring, as appropriate, that alternative suitable solutions are provided.”

Paragraph 3 of General Comment No. 7 defines forced evictions as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.” Paragraph 3 further provides that:

[o]wing to the interrelationship and interdependency which exists among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.

Paragraph 8 of General Comment 7 defines state responsibility. It provides that “[t]he State itself must refrain from forced evictions and ensure that the law is enforced against its agents or third parties who carry out forced evictions.” This approach is reinforced by Article 17.1 of the International Covenant on Civil and Political Rights (ICCPR), which complements the right not to be forcefully evicted without adequate protection. That provision recognizes, *inter alia*, the right to be protected against “arbitrary or unlawful interference” with one’s home. It is to be noted that the state’s obligation to ensure respect for that right is not qualified by considerations relating to its available resources.

The *Basic Principles and Guidelines* elaborate on the specific human rights violations occurring under situations of forced evictions. Paragraph 6 provides that “[f]orced evictions constitute gross violations of a range of internationally recognized human rights, including the human rights to adequate housing, food, water, health, education, work, security of the person, security of the home, freedom from cruel, inhuman and degrading treatment, and freedom of movement.” Article 10 of the 2007 Declaration on the Rights of Indigenous Peoples provides that “[i]ndigenous peoples shall not be forcibly removed

from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.” Chapter II (A.3) of the Vancouver Declaration on Human Settlements further protects against forced evictions. It states that “[t]he ideologies of States are reflected in their human settlement policies. These being powerful instruments for change; they must not be used to dispossess people from their homes or land or to entrench privilege and exploitation.”

International law thus clearly recognizes the human rights violations inherent in situations of forced evictions. Even where displacement is considered permissible, the process is generally fraught with tension and unrest, which makes adherence to the *Guiding Principles* imperative. Furthermore, national standards should be developed, which go beyond these Principles in order to develop stronger safeguards to protect people from any potentially threatening situations that jeopardize their lives and livelihoods.

Legal Basis: Right to Land¹⁶

Though the right to land is not articulated specifically as a distinct human right in international law, the human right to an adequate standard of living, in particular the human right to adequate housing, has increasingly been interpreted as including the human right to land, as is evident in reports of the former UN Special Rapporteur on adequate housing.¹⁷ It is also an integral part of the human rights to livelihood and food, as expounded in reports of the former UN Special Rapporteur on the right to food.¹⁸ The right to land is arguably also encompassed in the right to work as the right to access productive land. Given the indivisibility of human rights, the right to land

¹⁶ See also Chapter 10 of this volume on the rights to housing, land and property.

¹⁷ See reports of the former UN Special Rapporteur on adequate housing (A/HRC/7/16, and A/HRC/4/18), including his recommendations to the Human Rights Council to recognize the right to land as a human right, *available at* http://ap.ohchr.org/documents/dpage_e.aspx?m=98.

¹⁸ The Special Rapporteur, Report of the former Special Rapporteur on the right to food, E/CN.4/2006/44/Add.2 (Mar. 20, 2006).

cannot be treated in isolation, neither can it be accorded a status other than that of a human right that must be defended and upheld.

The human right to land can be defined as the right of all women, men, youth and, children to land that ensures an adequate standard of living and the right to a productive livelihood, which enables them to live in peace, security, justice, and dignity. All people have the fundamental human right to dignified work and livelihood, including equal access to land and productive resources, and to basic labor protections.

Underlying the human right to adequate housing and land is the human right to life with dignity. The failure to provide adequate living conditions, including adequate housing, land, and the provision of essential services results in a violation of human dignity. The right to life with dignity is the most fundamental and non-negotiable human right and is the core for the realization of all other human rights.

The state must ensure equitable access to, and distribution of, land and, where necessary, implement land reform measures to ensure that marginalized and vulnerable groups are not left out. Similarly, every community must have access to natural resources necessary for its survival and livelihood, including *inter alia*, fuel, fodder, water, and access to agricultural inputs, building materials, and credit. Access to natural resources must be sufficient to meet community needs, including nutritional requirements.

International law specifically recognizes the human right to land of indigenous peoples in Article 17 of the 1989 Indigenous and Tribal Peoples Convention (No. 169) and Articles 25 through 27 of the 2007 UN Declaration on Rights of Indigenous Peoples. The 2004 Voluntary Guidelines to Support the Progressive Implementation of the Right to Adequate Food in the Context of National Food Security¹⁹ also provide useful guidance.

The Inter-American Human Rights Court on August 31, 2001—in a judgment regarding the case *Awas Tingni v. Nicaragua*—ruled that Nicaragua had violated the rights of

¹⁹ Adopted by the 127th Session of the FAO Council, Nov. 2004.

the Awas Tingni community by granting concessions to a company to log within their lands and for failing to uphold the community's rights to its lands. On 14 December 2008, the Government of Nicaragua finally gave the Awas Tingni community title to its ancestral territory, which consists of 74,000 hectares of densely forested lands. This judgment is an important legal precedent for recognizing and protecting the right to land, especially of indigenous communities.

International law is yet to evolve in order to legally recognize the right to land as a human right, but governments can take the lead by incorporating the elements of this right, which have already been widely recognized and promoted, in their own national laws and policies. The progressive realization and legal guarantee of the human right to land is the most fundamental prerequisite to preventing displacement and addressing poverty, and lies at the crux of the development-displacement debate.

Legal Basis: Right to Property²⁰

Though an inherent component of the human rights to adequate housing and land, the right to property is considered a distinct right in law, with broader connotations. Property extends beyond housing and land.

Guiding Principle 21 and paragraph 50 of the *Basic Principles and Guidelines* both clearly specify that IDPs cannot be arbitrarily deprived of their property or possessions. Principle 21, paragraph 3, of the *Guiding Principles* provides that property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation, or use. Without housing and real property restitution, the voluntary, safe, and dignified return of IDPs to their homes and original places of residence often becomes impossible. Authorities are obliged to pay adequate compensation for confiscations and other forms of lawful taking of property. One particular risk internally displaced persons face is the loss of property and the inability to recover it. Legal recognition of property rights is

²⁰ See also Chapter 10 of this volume on the rights to housing, land and property.

thus a crucial element in preventing and also to finding solutions to internal displacement.

The right to property has also been upheld in regional human rights law. The right to property is recognized in Article 17.1 of the 2000 Charter of Fundamental Rights of the European Union, Article XXIII of the 1948 American Declaration of the Rights and Duties of Man, Article 21 of the 1969 American Convention on Human Rights, Articles 14 and 21 of the 1981 African Charter on Human and Peoples' Rights, and Article 1 of the 1952 First Option Protocol to the European Convention on Human Rights.

Legal Basis: Right to Restitution and Return

Principle 2.2 of the Principles on Housing and Property Restitution for Refugees and Displaced Persons (commonly referred to as the Pinheiro Principles),²¹ which were finalized in 2005, establishes the right to restitution. It provides that “States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice.” The Pinheiro Principles contain provisions regarding the right of refugees and IDPs to “have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and / or property that is factually impossible to restore as determined by an independent, impartial tribunal.” Principle 16.1 extends these rights to “tenants, social occupancy rights holders and other legitimate occupants or users of housing, land, and property” and assert that such claimants should, “to the maximum extent possible,” be “able to return to and re-possess and use their housing, land and property in a similar manner to those possessing formal ownership rights.” While the Pinheiro Principles are not legally binding, they are an important tool for strengthening the rights of IDPs if they are applied in conjunction with the *Guiding Principles*.

²¹ The Special Rapporteur, *Final Report of the Special Rapporteur on Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons Submitted in Accordance with Sub-Commission Resolution 2004/2*, E/CN.4/Sub.2/2005/17 (June 28, 2005).

The right to return is critical to the resumption of normal life for IDPs. In the context of development-induced displacement and disaster-induced displacement, the physical return of IDPs to their original homes and lands is often not possible due to changed land use, installation of infrastructure on their original sites of habitation, and in certain post-disaster cases, the actual loss or submergence or erosion of land. International human rights law, however, recognizes the right to choose one's place of residence which includes the right to return to one's own home.²²

Legal Basis: Right to Participation

The right to participation has been internationally recognized as a human right as part of the right to self-expression in several instruments, including the Universal Declaration of Human Rights. Participation forms an integral component of not just the right to adequate housing but also of several other human rights, including the right to live with dignity. Article 19.1 of the ICCPR and regional instruments, including Article 9.1 of the African Charter on Human and Peoples' Rights, guarantee the right to receive information.

Effective participation in decision-making is essential to the fulfillment of all other rights, as well as to the elements of the human right to adequate housing. At all levels of the decision-making process in respect of the provision of and rights to adequate housing and land, individuals and communities must be able to express and share their views. They must be consulted and be able to contribute substantively to processes that affect housing, including location, spatial dimensions, design, cultural aspects, community relations, and livelihood. The state must ensure that building and housing laws, policies, and programs do not preclude free expression, including cultural and religious

²² See Article 13 of the UDHR; General Comment No. 27: art. 12 (Freedom of movement), Human Rights Committee, 1999; Copenhagen Declaration, World Summit for Social Development, 1995; Basic Principles and Guidelines on Development-based Evictions and Displacement, 2007; and Declaration on the Rights of Indigenous Peoples, 2007.

diversity.²³ There can be no democratic participation in decision-making without transparency and information-sharing.

Legal Basis: Rights of Marginalized Groups

While displacement adversely impacts all sections of the population, there are certain groups that suffer more from it because they are already suffering. Certain populations who are already marginalized in society face graver effects of displacement and are more vulnerable to human rights abuses that often accompany unjust evictions and resettlement. These are historically marginalized groups who face violations of their human rights on a systematic basis and thus need special protection in the context of displacement. Such groups include women, especially single women, children, the elderly, persons with disabilities, persons living with HIV/AIDS and mental illness, indigenous peoples, peasants, landless people, migrants, sexual minorities, and communities facing historical discrimination. The principles of non-discrimination and substantive equality are of particular importance in ensuring that the rights of these vulnerable groups are upheld and not violated further.

The rights of women are protected by, *inter alia*, CEDAW in particular in Article 14.2(h) on their right to housing. Women's rights to adequate housing are also supported by paragraph 19 of General Comment 28 of the Human Rights Committee (2000) on the equality of rights between men and women; General comment No. 16 (2005) of the Committee on Economic, Social, and Cultural Rights on "The equal right of men and women to the enjoyment of all economic, social and cultural rights,"²⁴ Commission on Human Rights, resolution 2005/25 on "Women's equal ownership, access to and control over

²³ Housing and Land Rights Network, *Do Peoples' Voices Matter? The Human Right to Participation in Post-tsunami Housing Reconstruction* (Dec. 2006).

²⁴ Committee on Economic, Social and Cultural Rights, General Comment No. 16 (2005), "The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3 of the International Covenant on Economic, Social and Cultural Rights)," E/C.12/2005/4.

land and the equal rights to own property and to adequate housing,²⁵ and Article 10(a) of the Plan of Implementation adopted by the United Nations 2002 World Summit on Sustainable Development.

Certain groups of women such as domestic workers, migrant women, victims of domestic violence, commercial sex workers, elderly women, women living with HIV/AIDS, mental illness and disability, single women, and pregnant women are more vulnerable to the impacts of evictions. An intersectionality approach to gender equality thus needs to be adopted in addressing and mitigating the impacts on such groups of women.

Articles 16(1), 16(2), and 27 of the CRC are the strongest international provisions protecting the rights of children to housing, safety, and security, which should be strictly upheld in the context of displaced children.²⁶ Concerted efforts must be made to address the long-term impacts of evictions on children such as trauma, loss of self-esteem, fear, insecurity, loss of family support systems and break down of community. These often manifest as adverse health effects such as loss of appetite, sleep disorders, and malnutrition. Care must be taken to ensure that children are able to resume

²⁵ UN Commission on Human Rights, Resolution 2005/25, Women's equal ownership, access to and control over land and the equal rights to own property and to adequate housing, E/CN.4/RES/2005/25.

²⁶ Other international human rights treaties, declarations and resolutions that specifically guarantee and protect children's rights to housing, among others, include Resolution 1994/8, Children and the Right to Adequate Housing; Commission on Human Rights resolution 1994/93, The Plight of Street Children; General Assembly resolution 50/153, The Rights of the Child; General Assembly resolution 54/148, The Girl Child; General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child (arts. 4, 42, 44, ¶ 6), Committee on the Rights of the Child; General Comment No. 17: Article 24 (Rights of the child), Human Rights Committee, 1989; World Declaration on the Survival, Protection and Development of Children, World Summit for Children, 1990; Declaration on Social Progress and Development, 1969; Vancouver Declaration on Human Settlements, 1976; and the Istanbul Declaration and Habitat Agenda, 1996.

their education at the earliest. Of particular importance is that evictions are not carried out prior to, or during, school examinations.

International legal provisions protecting the rights of people living with HIV/AIDS, mental illness, and persons with disabilities include Article 28 of the 2006 Convention on the Rights of Persons with Disabilities on their right to housing, including to public housing programs. They are reinforced by the 2006 *International Guidelines on HIV/AIDS and Human Rights*²⁷; the Principles for the protection of persons with mental illness and the improvement of mental health care, adopted by UN General Assembly resolution 46/119 in 1991; and the 1975 Declaration on the Rights of Persons with Disabilities. General Comment No. 5: “Persons with disabilities,” of the UN Committee on Economic, Social and Cultural Rights (CESCR), also provides guarantees for adequate housing for persons with disabilities.²⁸

The rights of migrants are best protected in the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Development projects and natural disasters may sometimes result in the displacement of refugees, who while being protected under international refugee law, find themselves undergoing repeated displacement within the country of their asylum. In such cases, they need to be protected by international refugee law.

Displacement tends to adversely affect older persons, especially the relocation and resettlement component of it, as it is much harder for older people to move and to re-establish their lives. They must be accorded special protection and their rights to housing and land upheld both under the *Guiding Principles* and other provisions, including Principle 1 of the United Nations Principles for Older Persons, adopted by General Assembly resolution 46/91.²⁹

²⁷ http://data.unaids.org/Publications/IRC-pub07/jc1252-internguidelines_en.pdf.

²⁸ <http://www.unhchr.ch/tbs/doc.nsf/0/4b0c449a9ab4ff72c12563ed0054f17d>.

²⁹ <http://www.un.org/documents/ga/res/46/a46r091.htm>.

Across all societies there are certain marginalized groups who have suffered historical discrimination on the grounds of ethnic descent. These include the Quilombos (descendants of slave communities) in Brazil, the Roma in Europe, the Dalits in India, and African-Americans in the United States. Though the Committee on the Elimination of Racial Discrimination (CERD) strictly prohibits such discrimination, it is deep-rooted and often institutionalized. IDPs of these particular groups are therefore more vulnerable to discrimination, particularly when they are resettled in areas where host communities are hostile. Special care has to be taken that religious, ethnic, and other minorities' rights are not further violated in the context of displacement and its aftermath, and that their cultural rights are protected.

General Comment No. 20 of the Committee on Economic, Social and Cultural Rights, *Non-Discrimination in Economic, Social and Cultural Rights* (Article 2, paragraph 2),³⁰ includes strong provisions for non-discrimination with regard to housing, land, water, and sanitation.

Large-scale inequalities in the ownership of land abound in most of the world, with the majority of landholdings concentrated in the hands of a few. Thousands of families, though they toil on the land, do not enjoy ownership rights over it and are legally considered "landless." This includes communities living under flyovers, bridges, along railway tracks in cities, as well as landless agricultural laborers. As mentioned in the report of the former Special Rapporteur on the right to adequate housing, "[a]n average of 71.6 per cent of rural households in Africa, Latin America, and Western and East Asia (excluding China) are landless or near landless."³¹

³⁰ Committee on Economic, Social and Cultural Rights, General Comment No. 20, *Non-Discrimination in Economic, Social and Cultural Rights*, art. 2, ¶ 2, E/C.12/GC/20, June 10, 2009.

³¹ Report of the former Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, E/CN.4/2005/48, ¶ 40.

Development projects severely impact the landless and homeless. Such groups should not be omitted from rehabilitation and compensation plans. Alternative land and housing must be provided to all those who are displaced irrespective of whether they hold legal titles to the land and property they live and work on. This includes tenants who do not hold ownership or property deeds but must still be provided alternative housing and compensation in the event of housing lost as a result of natural disasters or development projects. Such measures could also help in reducing the gross inequalities in wealth ownership and also help to promote more equitable land reform.

OVERVIEW OF OBSTACLES TO THE IMPLEMENTATION OF THE GUIDING PRINCIPLES

The *Guiding Principles* are important as they identify the special needs and rights of IDPs within the international human rights normative framework, and in that they define standards and lay out substantive and operational guidelines to realize the rights of IDPs.

The obstacles to their implementation arise largely from the fact that they are not legally binding and that states are not committed to ensuring their realization. This is also true for development-induced displacement. The lack of political will to adopt and implement the *Guiding Principles* poses one of the greatest obstacles. The absence of institutional frameworks such as special national agencies to address issues of evictions and IDPs, the lack of effective monitoring mechanisms to oversee displacement operations and minimize harm, the failure of states to involve affected communities and consult them in project planning and policy-making, and the inter-play of competing interests including contradictory policies of multilateral development banks, donor agencies and national governments, further contribute to the weakening of the implementation of the *Guiding Principles* and in following the standards that they attempt to establish. Complexities also arise because of the lack of coordination between the multiple actors involved in providing assistance, protection, and development aid to IDPs.

Laws discriminating against returnees, the absence of a corruption-free and independent judiciary, or the loss of land titles and other relevant documentation, can render a just resolution of housing and property difficult to

achieve. Moreover, even where the laws or judicial institutions are adequate to address the task, authorities sometimes resist their implementation.³²

Gender discrimination and gender insensitive practices and policies in countries also tend to affect the equal application of the *Guiding Principles*. Internally displaced married women often face particular problems if their husbands die. Legal norms or rules of customary law on registration and inheritance may discriminate against such women, for instance, by declaring them unable to inherit land or other property. Even where the law is non-discriminatory, women may experience difficulties in regaining their homes and property in practice. For instance, across the northeast coast of Sri Lanka, women have a tradition of owning land. Muslims and Tamils follow a matrilineal system for property inheritance, unlike the Sinhalese. However, this practice is not always followed when houses and land are allocated as compensation. New titles are generally given to “heads of households,” who are perceived to be men, or, at best, women may have joint titles, but never sole title. This is a clear case of denying women their original property rights.

IDPs who depend on customary law are particularly vulnerable to land grabbing and find it more difficult to reclaim land and housing lost during displacement. In several countries, including Indonesia and Sudan, unoccupied land is considered state property that can be sold. In Colombia, it is estimated that 87 percent of the displaced people who owned land have had to abandon it.³³

There must be legal recognition of community-based property rights³⁴ and collective systems of management, ownership, and control of natural resources

³² See Walter Kälin, *Internal Displacement and the Protection of Property*, Swiss Human Rights Book, Vol. 1, Realizing Property Rights, July 2006.

³³ Office of the Coordination of Humanitarian Affairs, <http://www.reliefweb.int/idp/>.

³⁴ For a conceptual discussion on the issue of property rights, see Owen Lynch & Shivani Chaudhry, *Community-based Property Rights: A Concept Note*, Center for International Environmental Law, 2002, available at <http://www.ciel.org/Publications/cbpr.pdf>.

that would ensure that local communities' rights are not unfairly or illegally usurped or violated.

REGULATORY FRAMEWORK

National authorities, not international institutions, are ultimately responsible for implementing and ensuring the protection of human rights within their territories. Legally, they enjoy greater power to enforce human rights and to ensure that national legislation and policies and practices of their various agencies adhere to standards set by international human rights agencies such as the United Nations. In order to address the issues of internal displacement and to mitigate the disastrous consequences that government and non-state actors impose on their people through the implementation of adverse projects, it is imperative that national governments pay attention to, and participate in, standard-setting with regard to IDPs.

Implementation of the *Guiding Principles* and the *Basic Principles and Guidelines* call for review and revision of existing law, including in such matters as development planning, urban development, and protection of natural habitats, to ensure conformity with international human rights standards as well as a strong political will and commitment to adopt specific measures towards ensuring that displacement is minimized. Where absolutely inevitable, planned displacement must incorporate adequate safeguards and protection for IDPs, including just and proper resettlement and rehabilitation grounded in international law obligations. In particular, the standards of Guiding Principle 7, set out above, must be strictly adhered to.

Protecting Internally Displaced Persons: A Manual for Law and Policymakers,³⁵ published in 2008 by the Brookings-Bern Project on Internal Displacement, is intended to provide recommending guidelines to governments that could be incorporated into their action plans and laws, with the ultimate goal of ending all human rights violations related to the forceful displacement of peoples from their homes, homelands, and natural habitats. While the Brookings-Bern Project on Internal Displacement's Framework for National Responsibility provides an excellent and comprehensive starting

³⁵ http://www.brookings.edu/papers/2008/1016_internal_displacement.aspx.

point for states, this chapter focuses more on the housing and land dimensions of displacement, both as a basis to prevent displacement and to ensure that resettlement and rehabilitation ensure the guarantee of adequate housing—whether in temporary or permanent housing settings.

Though the needs of IDPs may vary depending on the cause underlying their displacement, it is important to underline that all IDPs are entitled to the protection and assistance of their governments. National responsibility therefore means that states undertake, to the best of their efforts, measures to ensure that the rights of IDPs are restored without discrimination and regardless of the reason for their displacement. To be truly national, a government's response to internal displacement must be reflected at all levels of government—local, regional, central.

Relocation for development purposes cannot be carried out in the absence of a comprehensive human rights-based resettlement and rehabilitation policy developed through intensive consultation and collaboration with government, civil society, social movements, and the affected people. A national policy must be in place, and in its absence, international law must drive government and other agencies' actions.

Often, independent agencies develop their own resettlement policies. In India, for instance, the National Hydroelectric Power Corporation, a state enterprise responsible for constructing and financing large dams and thereby responsible for displacing hundreds of thousands, has its own resettlement and rehabilitation policy.³⁶ Apart from not being able to replace an overarching national policy and compromising international standards, including those in the *Guiding Principles* and *Basic Principles and Guidelines*, the adoption of such policies by agencies responsible for large-scale displacement often seeks to justify their actions and facilitates the creation of more IDPs while precluding any external safeguards for human rights protection of the affected people.

³⁶ NHPC Policy, available at <http://nhpcindia.com/writereaddata/english/pdf/rnrpolicy2007.pdf>.

Displacement resulting from “development” projects may concern a number of additional mechanisms. Multilateral development banks such as the World Bank, Inter-American Development Bank, Asian Development Bank, and European Bank for Reconstruction and Development all have policies on resettlement from projects in which they are involved.³⁷ These internal policies must in no way compromise international human rights standards, nor must they replace or substitute national policies on the same. Policies of multilateral development banks and other international financial institutions and local policies of national agencies and corporations cannot be the determining standards for resettlement and rehabilitation.

The trend to harmonize towards the lowest common denominator or standard is common in most projects that involve displacement, and effective checks must be maintained by national governments to ensure that this is not the case. For large borrowers, this is of specific importance, as governments are less likely to resist policies or question operations of institutions that provide them substantial loans. Another significant issue of concern is when these international financial institutions ally closely with the government and directly influence and shape national and state policies related to resettlement and displacement, as in the case of several Eastern European countries. National governments must maintain a process of independent and sovereign law and policy making and monitoring that must only be influenced by international human rights standards, not the dictates of donors and financiers or local project-implementing agencies.

³⁷ World Bank, Policy on Involuntary Resettlement—OP 4.12 (2001); Asian Development Bank, Policy on Involuntary Resettlement (1995); Inter-American Development Bank, Policy on Involuntary Resettlement—OP 710 (1998); European Bank for Reconstruction and Development, Policy on Land Acquisition, Involuntary Resettlement and Economic Displacement—PR 5 (2008); African Development Bank, Involuntary Resettlement Policy (2003).

SUBSTANTIVE AND PROCEDURAL ELEMENTS OF STATE REGULATION

Prior to Displacement

Substantive Elements

The overriding priority of any ruling party or government should be prevention of displacement. Governments have a responsibility, as elaborated in the *Guiding Principles* and *Basic Principles and Guidelines*, to prevent and avoid conditions on their territory that might lead to population displacement, to minimize unavoidable displacement and mitigate its adverse effects, and to ensure that any displacement that does occur lasts no longer than required by the circumstances.

The government should ensure that all national policies are based on international human rights standards.³⁸ Laws that do not conform to international human rights standards should be amended or revoked while laws that facilitate displacement such as land acquisition laws should be annulled. National laws must also reconcile provisions to protect both civil and political rights as well as economic, social, and cultural rights without pitting one type of rights against others.

At a minimum, states should enshrine the human right to adequate housing in their legal order, preferably at the constitutional level. The state must take measures to respect, promote, and fulfill the human rights to adequate housing and land of all residents within the country's borders, based on the principle of non-discrimination. Countries that, to differing extents, have enshrined the right to adequate housing in their national constitutions include Belgium, France, the Islamic Republic of Iran, Mexico, Russian Federation, South

³⁸ *Basic Principles and Guidelines*, *supra* note 14, ¶ 29. States should carry out comprehensive reviews of relevant strategies, policies and programs, with a view to ensuring their compatibility with international human rights norms.

Africa, Spain, and the United Kingdom of Great Britain and Northern Ireland.³⁹

A comprehensive national housing law based on international human rights standards on housing should be promulgated for both rural and urban areas where it does not exist, and implemented effectively where it does. Several countries have passed housing policies or have policies in the pipeline, but these are seldom enforced and seldom grounded in international human rights principles.

Pakistan's 2001 National Housing Policy, for instance, seems driven by a market-based approach. India's draft National Urban Housing and Habitat Policy of 2007 fails to even recognize the right to housing as a human right. Cambodia and Sri Lanka have draft housing policies that have been in the pipeline for a while but still not been finalized. While France adopted a new law guaranteeing the right to adequate housing, questions persist on the legal enforceability of this right.

Several national governments, such as the United Kingdom, are increasingly talking about affordable housing and have policies to this effect, but these tend to focus more on market solutions than a human rights-based approach.

States should furthermore enact legislation and set up procedures to protect people against forced eviction, including in the context of development activities. They should include in national development plans and resettlement policies, a clear statement that forced displacement or relocation induced by development projects can only take place in very exceptional cases, must be authorized by law, justified by compelling and overriding public interests, required to protect those interests, and carried out with full respect for the human rights of affected persons, and in accordance with international human rights law and principles.

³⁹ The Special Rapporteur, *Report of the Former Special Rapporteur on Adequate Housing*, E/CN.4/2004/48 (Nov. 2, 2004).

States should also adopt legal and other statutory measures to guarantee security of tenure over all forms of housing and land. Legal security of tenure is the strongest and most effective protection against forced evictions.⁴⁰

States should develop progressive legislation that recognizes communities' rights over their natural resources and collective systems of management, ownership and control of natural resources, including their community-based property rights. This also refers to customary law that recognizes women's separate rights to land, resources, and other property. Even where traditional property rights and tenure systems are not codified, national law should recognize their legal pluralism and ensure that the human rights principles of non-discrimination, equality, and participation underlie all law and policies, especially while ensuring the implementation of the *Guiding Principles*.

The Philippines' Indigenous Peoples' Rights Act of 1997 guarantees indigenous peoples rights over land and other natural resources but its implementation has been fraught with difficulty, from the lack of allocation of sufficient funds to petitions challenging the constitutionality of the Act. The Scheduled Tribes and other Traditional Forest Dwellers' (Recognition of Forest Rights) Act of 2006 in India is a positive step forward towards recognizing the rights of natural resource dependent communities, provided it is implemented effectively.

A comprehensive national resettlement and rehabilitation policy in consonance with international human rights standards should be promulgated and implemented. China's 1993 resettlement rules and regulations for building the Three Gorges Project on the Yangtze River were revised in 2001, but still failed to restore the lives and livelihoods of the millions displaced by the project. They did not recognize the rights of IDPs. While they included provisions for penalties for corruptly using resettlement funds, these have not been implemented.⁴¹ India's 2007 National Rehabilitation and Resettlement

⁴⁰ See Basic Principles and Guidelines, *supra* note 14, ¶¶ 22, 25, 28.

⁴¹ Wei Yi, *Comments on the Revised Resettlement Rules and Regulations of the Three Gorges Dam* (Mar. 29, 2001) available at <http://www.threegorgesprobe.org/tgp/index.cfm?DSP=content&ContentID=1914>.

Policy, while alleging to minimize displacement, fails to protect the human rights to participation, prior informed consent, gender equality, livelihood, adequate housing, land, and rehabilitation.

Specific laws should be in place to deal with concerns of special groups of IDPs, including women, children, indigenous peoples, persons living with HIV/AIDS and mental illness, sexual minorities, migrants, older persons, and persons with disabilities. National laws for these populations should be framed in accordance with international legal standards and in conjunction with policies on internal displacement to ensure that they do not adversely suffer the impacts of forced eviction. Zambia has taken an important step by incorporating displaced persons into the country's National HIV/AIDS Institutional Framework.

Cambodia's 2001 Land Law recognizes the collective ownership of indigenous peoples of their traditional lands (for both residential and agricultural purposes). In principle, a provision like this should protect indigenous people against displacement.

The state should introduce and implement laws to check against the privatization of housing and essential services such as water. Such provisions would help check against market-based evictions.

States should periodically collect disaggregated data on key indicators related to monitoring the progressive realization of the right to adequate housing.⁴²

Programs for public housing and housing subsidies should be in place in the country. A proportion of the state budget must be reserved for social housing for low-income groups, and this should be subject to progressive increases over the years to meet growing costs.

⁴² See Annex II on 'indicators' to the report of the former Special Rapporteur on Adequate Housing, A/HRC/4/18, Feb. 5, 2007, available at <http://www.ohchr.org/english/bodies/hrcouncil/docs/4session/A-HRC-4-18.doc>.

Informal settlements and slums should be regularized, legalized, and upgraded *in situ*, where possible, to ensure they meet the requirements for adequate housing as specified earlier in this paper. All measures relating to upgrades should be undertaken in accordance with human rights standards and must ensure that the residents are better off than they were before and that their human rights, including to the rights to employment, food, water, health, and security of the home and person are not violated.

The *Guiding Principles* should be further disseminated and discussed. They should also be translated into more local languages. The *Guiding Principles* and *Basic Principles and Guidelines* should be incorporated into comprehensive national laws on displacement and rehabilitation. The following human rights in the context of IDPs, in particular, should be recognized and upheld in national law: the right to choice of residence, liberty of movement, return, recognition before law, protection from discriminatory treatment, and return of property and compensation.

Special measures to check the growth of the land mafia and to control excessive speculation in land and real estate need to be enforced.⁴³ This includes the development of legal and regulatory frameworks that place ceilings on both rural and urban land ownership.

Agrarian and land reform should be given priority in order to promote rural development and equality, and to check against the forced migration of people from rural to urban areas in the absence of state support for agriculture and the resulting collapse of agrarian economies. Venezuela's November 2001 Law on Land and Agricultural Development introduced a cap on the size of landholdings, taxes land that is not in production, and provides for the distribution of land to landless peasants. Article 184 of the Brazilian Constitution states that land that is not meeting its social function can be redistributed for purposes of land reform.

Decentralized models of decision-making should be promoted to strengthen local governance to ensure that decisions are not made by those who are

⁴³ See Basic Principles and Guidelines, *supra* note 14, ¶ 30.

disconnected from the needs and problems of the affected communities. This is critical to check against displacement-inducing projects.

Regular coordination with civil society and social movements should be undertaken to ensure that the needs of local communities are given cognizance and are incorporated into national policies and programs. Efforts must be made to ensure that democratic channels are available to people at all stages and levels of governance.

The most important principle for states is that displacement must not render anyone worse off than before. There must ultimately be an overall improvement in the condition of all displaced people.

Procedural Elements

At a minimum, it is necessary to enact provisions on the procedures for eviction or relocation and the available remedies, including resettlement and compensation. The right of affected people to administrative or judicial review of decisions to evict or relocate them must also be safeguarded, and such procedures must be made accessible, in particular for women and the poor.

Alternative options, which would not require displacement, must be explored and exhausted. This includes exploring other locations, alternative technology, and micro-projects that could deliver the same benefits without the grandiose scale of costs and harms.⁴⁴ Strategies to minimize displacement should be developed in close consultation with the community and other government and non-government agencies.

A senior government delegation should visit the area to be affected by the proposed project and carry out consultations with technical experts to understand the viability of the project and its potential harm, after which a feasibility study and impact assessment should be commissioned. An independent body should verify the feasibility study and the findings should be made public.

⁴⁴ *Id.* ¶ 38; CESCR General Comment 7, *supra* note 13, ¶ 13.

The specific decision authorizing the displacement should be taken by a government authority empowered by law to order such measures. The decision must be in keeping with national and international legal obligations and should not violate the national constitution or any other human rights law.

The affected community must be informed of the proposed decision of the project at least one year in advance of commencement of the project. Information must be provided in the local language, both in writing and orally, through public meetings and community consultations. Separate consultations should be held with women of the community to ensure that their views and concerns are taken into account. The project notice should contain a detailed justification for the decision to relocate the community. All final decisions should be subject to administrative and judicial review.

The anticipated costs of the project, the scale, the total area it would cover, the timeline of completion, as well as the potential hazards and benefits, must be communicated directly to the community. All members of the community must be allowed to ask questions and express doubts regarding the feasibility, logistics, and other details of the project.⁴⁵

Dates for at least three public hearings should be fixed and communicated to the community in an appropriate manner and in the local language, at least two weeks before each hearing date, so that as many people as possible can be present to discuss the alternatives and options to the project.

Comprehensive and holistic impact assessments of the proposed displacement-inducing project must be conducted. These should take account of potential social, environmental, and economic impacts of the project. An evictions impact assessment⁴⁶ framework should be developed in order to conduct exhaustive studies and quantify both the material and non-material costs of the

⁴⁵ Basic Principles and Guidelines, *supra* note 14, ¶ 37; CESCR General Comment 7, *supra* note 13, ¶ 15.

⁴⁶ See Basic Principles and Guidelines, *supra* note 14, ¶¶ 32, 33.

potential displacement.⁴⁷ Assessments must be carried out irrespective of the number of families to be affected, and should look at the differential impacts of the eviction on various groups and ensure the collection of disaggregated data. Only when the benefits of the project significantly outweigh all the costs—social, environmental, technological, and economic, and is approved by the community—should the project gain preliminary approval.

The eviction impact assessment must be community-based and should include, among others, the following indicators:

- cost of house at present market value (that would be lost);
- cost of land at present market value (that would be lost);
- cost of other resources such as agricultural crops/fields/trees (that would be lost), as well as loss of income generated from them;
- cost of material possessions (that would be lost);
- difference between current monthly earnings at present site and earnings estimated at the resettlement site;
- difference between current monthly transportation costs (to work place and to schools) at present site and those estimated from the resettlement site;
- change in access to, and cost of, basic services, food, healthcare, and education;
- non-material costs, including loss of education, psychological harm, breakdown of community and social networks.

Data should be collected on the number of people and families likely to be affected. Such data should be disaggregated by age, gender, and other key indicators to ensure that the specific needs of particular groups of IDPs, such as single women, unaccompanied minors, persons with disabilities, older persons, ethnic minorities and indigenous peoples, are adequately addressed.

⁴⁷ See the “Loss Matrix” developed by the Housing and Land Rights Network, available at <http://www.hlrn.org>, to quantify both material and non-material losses during an eviction.

Land of commensurate or superior quality and size should be selected and acquired by the state at least six months before the physical displacement of the community takes place. Project-affected people must be given the opportunity to assess the land and be given the choice to reject it. A very important element of resettlement is the principle of “land for land.” In the case of agricultural communities, the alternative land provided must be cultivable and irrigated.⁴⁸ It must also be located close to the housing site, preferably not more than 500 meters away from the alternative housing being provided.

Resettlement plans must be discussed with the affected persons as early as possible before the displacement takes place. Full information regarding the resettlement site, its exact location, its layout, proximity to the original living site and work place, and accessibility of services must be provided to the community to be displaced.

All housing plans, including the choice of construction material, size of alternative housing, design and floor plan must be developed in close consultation with the affected community, at least six months before the proposed displacement. Communities should have the right to modify or refuse government plans. Provisions for flexibility within plans must be permitted to accommodate individual preferences, cultural attributes, and family size.

Efforts must be made to ensure that women are included in all consultations and stages of decision-making. In addition, efforts should be made to ensure that their specific inputs and needs are incorporated into the framing of resettlement plans and housing designs.

⁴⁸ Though the Narmada Water Disputes Tribunal Award and the Supreme Court of India’s judgments of 2000 and 2005 regarding the Sardar Sarovar Project on the Narmada River in India clearly call for the allocation of alternative land at least one year prior to submergence, the state governments have failed to provide this for the affected families. Instead, cash compensation in direct violation of the orders is being meted out in lieu of land. Where land has been provided, it has largely been barren and non-cultivable and without any facilities for irrigation.

Communities must be able to visit the proposed resettlement site and assess the living conditions for themselves and propose recommendations regarding its development. A “rehabilitation committee” representing all sections of the community should be formed to follow the development of the resettlement site. The committee should regularly engage with the government department responsible for resettlement and rehabilitation and act as the link between the government and the community.

The resettlement site must, at a minimum, have all the facilities of the original site and should offer improved services to the relocated community. It should be located close to a market, must have a layout that is conducive to social and community interaction, must provide for sufficient space between dwellings, respect cultural and religious norms, and should not impose any negative impacts to host communities.

The resettlement site must be adequately developed and ready for habitation at least one month before the displacement takes place. It must contain the following: (a) adequate, affordable, and culturally appropriate permanent housing for each family, including for each adult daughter and son; (b) services, materials, facilities and infrastructure such as potable drinking water, energy for cooking, electricity, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency services, and access to natural and common resources, where appropriate; (c) habitable housing providing inhabitants with adequate space, protecting them from cold, damp, heat, rain, wind or other threats to health, structural hazards, and disease vectors, and ensuring physical safety of occupants; (d) accessibility for disadvantaged groups, including persons living with disabilities and older persons; (e) access to health-care services, schools, childcare centers, community spaces, markets, and other social facilities, whether in urban or rural areas; (f) sufficient public transport facilities; and (g) proximity to original livelihood sources.⁴⁹

The alternative house must provide for privacy for women and adolescent girls. There should be secure doors, and windows should be built to provide

⁴⁹ See Basic Principles and Guidelines, *supra* note 14, ¶ 55.

adequate ventilation and lighting. Additionally, the resettlement site, including alternative housing, must be culturally appropriate.

Persons likely to be affected by the project must be given a written guarantee that they will gain secure tenure over housing and land at the new site. Legal titles to the alternative house/land must be handed over to the communities before the physical displacement takes place. Titles to housing and land must be issued jointly in the names of both husband and wife for married couples, and individually for single adult women and men.

All existing land records, title deeds, and collective ownership agreements must be documented with the local officials well before relocation to prevent any land and housing related conflicts in the resettlement phase. This would also check against potential disputes arising from the destruction or loss of any documents such as title deeds during eviction.

An inter-ministerial body should be in place to monitor and oversee all issues related to the proposed relocation/eviction. The body should meet regularly and have a permanent office where interested parties may approach them. At the municipal level, a venue should be provided where affected people could file complaints.

During Displacement

Substantive Elements

As an overarching principle, displacement must not be carried out in a manner that violates the human rights to life, liberty, and security of those affected. Moreover, governments have a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists, and other groups with a special dependency on, and attachment to, their lands.

The state must ensure that certain fundamental human rights are respected and guaranteed. These include the right to personal security and safety; right to protection from arbitrary displacement, violence, and injury; and protection of possessions, including personal belongings such as cooking utensils and clothing. Special efforts must be made to ensure that the rights and interests of

special groups such as women, children, older persons, persons with disabilities, persons living with HIV/AIDS and mental illness, indigenous peoples, sexual minorities, and other marginalized and discriminated groups are protected and guaranteed.

Procedural Elements

No displacement is permissible without a reasonable prior notice, which is communicated to all members of the community orally and in writing at least three months in advance of the eviction. Evictions cannot be carried out randomly. Notice of the proposed project must, however, be communicated to the community preferably a year in advance in order to enable their adequate participation in the development of the resettlement site.

Government officials, including women, must be present at the site during the eviction. Paragraph 45 of *Basic Principles and Guidelines* provides that the government officials, their representatives, and persons implementing the eviction must identify themselves to the persons being evicted and present formal authorization for the eviction action.

Neutral observers and representatives of human rights organizations should be present to monitor compliance with international and national human rights standards. At least one lawyer representing the interests of the community should be present to ensure compliance with national and international law.

Evictions must not be carried out in a manner that violates the dignity and human rights to life and security of those affected. States must also take steps to ensure that women are not subject to gender-based violence and discrimination in the course of evictions, and that the human rights of children are protected. Evictions must not take place in inclement weather, at night, during festivals or religious holidays, during working hours, prior to elections, or during or just prior to school examinations.⁵⁰

⁵⁰ *Id.* ¶ 49.

There should be no use of violence or force by authorities against the communities to be displaced. Any legal use of force should respect principles of necessity and proportionality as well as the 1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and should be used only to safeguard the security of the community members.⁵¹

People should be given adequate time to voluntarily collect their belongings and possessions. As indicated in the *Guiding Principles*, there can be no arbitrary damage to property or possessions. Property and possessions left behind involuntarily should be protected against destruction, arbitrary and illegal appropriation, occupation or use. Nobody should be forced to destroy her/his own dwelling or property.

Special observers, including women, should be assigned the responsibility of ensuring that there is no damage to property and personal possessions and in the eventuality that there is, they should be entrusted with the task of immediately documenting the losses and damage incurred. This would include documenting any loss of material goods, loss of housing, injury/loss of limbs, and damage to any other movable or immovable property. The special observers must also check that there is no incident of enticing fear or intimidation on the part of external actors responsible for carrying out the eviction. Guiding Principle 12 provides that IDPs shall be protected from discriminatory arrest and detention as a result of their displacement.

The actual cost of transporting a family, its domestic animals, moveable properties, moveable building materials and other belongings from the place of displacement to the place of resettlement shall be entirely borne by the project implementing authority. The cultural heritage of communities as well as other items of religious, archaeological, and historical value must not be destroyed during the eviction.

⁵¹ *Id.* ¶¶ 47, 50.

In the Context of Durable Solutions

Substantive Elements

The state must ensure that the following human rights of all those who have been displaced are protected and guaranteed:

- right to freedom of movement and settlement/ residence;
- right to adequate, timely, gender-sensitive and just rehabilitation;
- right to work and livelihood (ensuring relocation in an area close to original sources of livelihood and the provision of land of commensurate or improved quality and size, including for agricultural communities, cultivable and irrigable land);
- right to adequate housing with full provision of essential services including potable water, food, education, healthcare, transportation;
- rights of children (ensuring that education is not lost and provision of childcare facilities—childcare centers, crèches, schools, and safe play spaces).
- right to effective and timely legal remedy; and
- right to restitution and return, where applicable, and if possible.

The population subject to resettlement should, at a minimum, be able to maintain its current standard of living and should have the opportunity to achieve a higher standard of living after resettlement has taken place. Resettlement should achieve the social and economic re-establishment of those dislocated, on a viable productive basis, through the creation of project-funded new industrial, service sector and agricultural employment and activities. Measures need to be taken to ensure that the resettled community does not suffer from any social, political, or cultural marginalization.

Procedural Elements

In the immediate aftermath of an eviction, all affected persons must have access to timely remedy, including legal counsel. All evicted persons must be immediately taken to the completely developed and approved resettlement

site. Adequate transportation should be provided to all affected persons, and special care must be taken to ensure that the needs of children, women, older persons, persons with disabilities, and those living with mental illness and HIV/AIDS are met.

No person should be rendered homeless,⁵² and no woman, man, child, youth or older person should be subjected to spend even one night without adequate shelter. In no event must a displaced person be forced to spend even one night on the street in the absence of alternative housing.

States should ensure that members of the same extended family or community are not separated as a result of evictions. Entire communities or villages should be resettled together.

In the event that communities are first relocated to a transit camp/intermediary housing site, Guiding Principle 12 regarding camps should apply. All temporary housing, including in camps, must be child-friendly with spaces for children to study and play safely. It should also be accessible to older persons and persons with disabilities. No one should have to live in a transit camp for more than two weeks. Transit camps must be constructed in culturally appropriate and gender sensitive ways to ensure privacy and safety of women.

At a minimum, regardless of the circumstances and without discrimination, competent authorities must ensure that evicted persons or groups have immediate and secure access to: (a) essential food, potable water and sanitation; (b) appropriate clothing; (c) essential medical services and healthcare facilities; (d) livelihood sources; (e) fodder for livestock and access to common property resources previously depended upon; and (f) education for children and childcare facilities.

Immediate and free access to psychologists and counselors must be ensured, especially for children and others who suffer psychological trauma during the eviction and resettlement process. The resettlement site must have facilities for

⁵² CESCR General Comment 7, *supra* note 13, ¶ 16; Basic Principles and Guidelines, *supra* note 14, ¶ 43.

a public health centre where regular and adequate counseling facilities are provided.

Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counseling for victims of sexual and other abuses. Principle 19 provides that special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

Of specific importance is paragraph 56(d) of the *Basic Principles and Guidelines*, which specifically states that “[n]o affected persons, groups or communities, shall suffer detriment as far as their human rights are concerned nor shall their right to the continuous improvement of living conditions be subject to infringement. This applies equally to host communities at resettlement sites, and affected persons, groups and communities subjected to forced eviction.”

Living conditions at the resettlement site must ensure the protection of the human rights of all religious, ethnic, linguistic and cultural groups. These groups should not face any threats from host communities and should be able to freely carry on their cultural activities in the new site without any intimidation or discrimination.

The time and financial cost required for travel to and from the place of work or to access essential services should not place excessive demands on household budgets.

Relocation sites must not be situated on polluted land or in immediate proximity to polluting or other hazardous sources that threaten the right to the highest attainable standards of mental and physical health of the inhabitants. The resettlement site must be completely ready at least one month before the eviction takes place, and must fulfill the criteria of adequacy mentioned in the previous section. All displaced persons have a right to refuse to stay in the resettlement site if it does not meet the conditions of adequacy.

Alternative housing developed in close consultation with the community and that meets the criteria of adequacy should be handed over to the community well before the day of eviction. Residents should be given legal security of tenure over the new housing. Titles should be given jointly in the name of both man and woman for couples, and individually for single women and men. Where communities held collective rights over land and other natural resources, these rights should be restored.

House plots and dwelling allocated at new rural and urban sites should ensure improved conditions and take into account predictable growth of affected households. Bathrooms must be adjacent to the houses, if they are not attached, and must have adequate sanitation facilities. Adequate and sufficient street lighting must be in place at the resettlement site.

A thorough and comprehensive assessment of losses suffered as a result of the eviction should be carried out and documented. Disaggregated data should be collected to address the differential impacts on various population groups. Post-eviction impact assessments should look at social, environmental, and economic impacts of the project. The quantification of the effects of the violation would strengthen the argument for remedy and, consequently, help mobilize support to end, redress, and obtain restitution for the violations. The material and calculable costs resulting from the violation are determined for each dwelling unit (household) affected, and then totaled. Alternatively, for estimating values of multiple units affected, a representative sample should be obtained to determine the average values that then would be multiplied by actual numbers of units affected. Both short-term and long-term values should be assessed. In the case of loss of education or bodily injury from the violation, the methods applied in traffic law, insurance law, or divorce settlements in various countries could serve as a rational legal basis for determining compensation and restitution values.

Trained surveyors should assist the community in carrying out a loss assessment. This should cover the following elements:

- Current market value of house lost;
- Current market value of plot/land lost;

- Inventory of items lost calculated at replacement value (the cost of repurchasing/ replacing the items);
- Cost of relocation—of moving items, livestock, and people;
- Increased cost of transportation from new site to workplace, schools;
- Loss of livelihood earnings due to relocation for both women and men (lost monthly earnings);
- Increased cost of access to basic services (in case water was previously free and has to be paid for at the resettlement site) and natural resources, increase in cost of food at resettlement site;
- Increase in cost of access to healthcare and costs of treatment being undergone during eviction/relocation;
- Physical injury incurred during the eviction/relocation and cost of treating the same;
- Loss of vital documentation;
- Educational costs—in case schools are no longer accessible, or children need to enroll in another school where the fees are higher;
- Loss of access to crèches and other childcare facilities;
- The value of livestock lost and the treatment of livestock injured by the event;
- The value of space for livestock and other supportive livelihood goods such as machinery, tools, implements, and space for continuing livelihoods for self-employed persons, especially women;
- Monetary value of loss of women’s time—extra time spent in accessing resources for daily life, for instance, increased distance to walk in order to collect water and other required resources such as fodder, livestock. Loss of access to crèches and social networks also often impacts women’s ability to work;
- Value of loss of cooking facilities;
- Value of loss of sanitation facilities;
- The value of lost agricultural earnings from crops or returns from fruit-bearing or other trees or vegetation;

- Loss of timber and fuel wood and access to other non-timber forest products;
- Ecological damages;
- Cost of alternative housing. This housing value must be calculated on the basis of current market rental rates;
- The time and monetary costs incurred by both bureaucratic processes and legal advice and defense work should be quantified;
- Other incidental costs incurred; and
- Non-material costs such as psychological trauma, loss of community, social disintegration, political marginalization.

All affected persons must have the right to remedy, including a fair hearing, access to legal counsel, legal aid, resettlement, rehabilitation, and compensation.⁵³ The rights accorded to the affected persons should comply with the *Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.⁵⁴

Compensation must be immediately paid to all affected persons for losses incurred by them as calculated in the eviction impact assessment. The state is obliged to ensure that no individual is worse off than before the eviction. Cash compensation should under no circumstances replace real compensation in the form of land and common property resources.⁵⁵ Non-material losses including psychological harm, disintegration of the family, and loss of community (including support systems, child-care arrangements) must also be calculated and added to the final total costs. Women and men must be co-beneficiaries of

⁵³ See Basic Principles and Guidelines, *supra* note 14, ¶¶ 64-67.

⁵⁴ *Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, Commission on Human Rights Res. 2005/35, U.N. Doc. E/CN.4/2005/L.10/Add.11 (Apr. 19, 2005), adopted and proclaimed by General Assembly resolution 60/147 of Dec. 16, 2005.

⁵⁵ Basic Principles and Guidelines, *supra* note 14, ¶ 60.

all compensation packages. Single women and widows should be entitled to their own compensation. Where bank accounts are set up to pay cash compensation, they should be created in the names of both men and women for married couples, and individually for single men and women.

All resettlement must occur in a just, efficient, gender-sensitive, and equitable manner and in full accordance with international human rights law. In case of proven violation of human rights during the eviction, the state must take exigent measures to ensure that the perpetrators are brought to justice and the victims have immediate recourse.

A grievance redressal commission should be established at both the national and local levels. It must have regular working hours and consist of a body of experts, including preferably at least one legal expert, a social worker, a civil society representative and a government official, who can provide counseling, advice and assistance to all affected persons who suffer violations of their human rights. At least two members of the commission must be women. The functioning and hours of operation of the commission must be communicated to the affected community. Translation facilities must be provided in case the members do not speak the language of the affected people.

National responsibility requires that governments devote, to the greatest extent possible, resources to address the needs and protect the rights of their internally displaced populations. States should consistently track displacement within their countries. Data should be disaggregated by age, gender, ethnicity, population status, physical conditions, and other relevant categories so that the needs of specific groups of IDPs, in particular vulnerable groups, can be adequately addressed.

INSTITUTIONAL ELEMENTS OF STATE REGULATION

Prior to Displacement

States should entrust an independent national body, such as a National Human Rights Institution, to monitor and investigate forced evictions and state compliance with the *Guiding Principles* and other relevant elements of international human rights law. The Government of Burundi, for example,

with the involvement of national and international NGOs, launched the Permanent Framework for Consultation on the Protection of IDPs in February 2001. This provided a much-needed permanent institutional forum for key issues related to displacement while strengthening the applicability of the *Guiding Principles*.

A housing rights taskforce could be established consisting of government and non-government representatives. Such a taskforce was set up in Cambodia in the wake of widespread and violent evictions in order to prevent housing rights violations and to address emergency situations, particularly those of forced evictions with violence. The long-term goal of the taskforce is to develop a comprehensive strategy on housing rights for the use of practitioners.

Municipal authorities should set up facilities to address complaints related to evictions. An inter-ministerial body should be entrusted with the responsibility to monitor, track, and prevent displacement.

There should be close collaboration and consultation with the National Human Rights Institution and other local government bodies responsible for the eviction to ensure that policies and practices are developed in accordance with international human rights standards. National Human Rights Institutions should regularly conduct human rights training programs for judges, lawyers, police personnel and staff of local governing bodies. This could help prevent human rights violations within the context of evictions. Trainings should also be conducted for those who will be evicted and those already displaced on their human rights and constitutional guarantees.

The judiciary should ensure that its judgments are consistent with international law obligations and constitutional provisions. It should ensure that forced evictions and resulting human rights violations are not carried out as a result of its orders. The human right to adequate housing was interpreted as an extension of the right to life by the Indian Supreme Court, though this trend of progressive judgments has been reversed over the last decade with court orders directly resulting in evictions.

The Johannesburg High Court passed a groundbreaking judgment on March 3, 2006, that evictions of occupants of “bad buildings” by the Johannesburg Metropolitan Council were illegal, unless the authorities provided alternative accommodation. It further stated that the City of Johannesburg’s housing policy failed to comply with the Constitution of South Africa as it does not cater to the needs of the inner city poor.

During Displacement

Apex human rights institutions should deploy at least one of their members, preferably a woman, to be present during the relocation to prevent any human rights violations. There should be coordination between various government departments responsible for the eviction to ensure that the relevant human and civil rights institutions are informed about the time and location of the eviction. Such institutions should communicate the human rights standards to be followed by the government agency responsible for the displacement and ensure they are followed during the displacement process.

In the Context of Developing Durable Solutions

The National Human Rights Institution or other human rights institution should, in the event of human rights violations, conduct an investigative fact-finding mission after the eviction. The fact-finding team must have equal representation of women. The report of the findings should be made public within a month of the fact-finding. Recommendations should be made to ensure that the perpetrators are brought to justice and that the victims are fairly compensated.

A land management board should be set up to look into any land, housing, or property related conflicts or disputes arising in the post-displacement context. This would also deal with issues arising from loss of land records and titles. Land courts could be organized to ensure smooth and democratic resolution of land and property-related disputes.

States should actively monitor and carry out quantitative and qualitative evaluations to determine the number of evictions, the number of people affected, the number of IDPs, as well as the long-term consequences of

evictions that occur within their jurisdiction and territory of effective control. Monitoring reports and findings should be made available to the public and concerned international parties in order to promote the development of positive practices and problem-solving experiences based on lessons learned. These findings should feed into national policies that prevent displacement.

INTERNATIONAL ROLE

The principle of international cooperation clearly lays down the responsibility of the international community in assisting national governments to implement human rights standards and meet their legal commitments. With regard to displacement and resettlement, the international community can play an important role in helping states to amend their policies and mitigate the impacts and violations against their people. The UN and other humanitarian organizations need to work more closely and collaborate better with one another to address the problem of internal displacement.

International Donors and Financial Institutions

International donors and financial institutions, while often exacerbating displacement, are also responsible for the failure to tackle the issue of internal displacement adequately. They are obliged to collaborate with other international organizations and exert pressure on national governments to minimize displacement and uphold the rights of IDPs. Their policies should not be internally inconsistent and neither should they violate international human rights standards, as is often the case. Projects funded by international financial institutions (IFIs) like the World Bank, Asian Development Bank, Inter-American Development Bank and others, are often responsible for large-scale displacement. IFIs and donor agencies should also be mandated to carry out comprehensive community-based eviction impact assessments of all projects being funded by them—prior to their implementation—in order to minimize displacement. Their internal policies on resettlement must incorporate international human rights standards, be implemented effectively, and be reviewed periodically. For example, the Organization for Economic Cooperation and Development's (OECD's) Development Assistance Committee (DAC) has never evaluated the impact of its Guidelines for Aid

Agencies on Involuntary Displacement and Resettlement in Development Projects adopted by its members in 1992.

Regional Organizations

Regional institutions should also be strengthened. The Inter-American Commission on Human Rights (IACHR) had a special rapporteur on IDPs from 1996 to 2004, but the mandate has not been renewed since. Outside the Organization of American States (OAS) structure, but in collaboration with Commission members, a unique hemispheric initiative was created in 1992 by the Inter-American Institute of Human Rights to focus on the problem of internal displacement. It is called the Permanent Consultation on Internal Displacement in the Americas, or CPDIA in its Spanish language initials. The *Guiding Principles* were included in the Compendium of the Organization for African Unity (OAU), now reconstituted as the African Union (AU), Instruments and Texts on Refugees, Returnees and Displaced Persons in Africa, published in 2000.

The African Commission on Human and Peoples' Rights has a rapporteur on refugees, internally displaced persons, and migrants in Africa who, however, focuses only on conflict-induced displacement.

UN Agencies and Procedures

The Representative of the UN Secretary General on the human rights of internally displaced persons has a very specific mandate on addressing and protecting the rights of IDPs. Civil society actors across the world can approach the representative for concerns and violations of the rights of IDPs within their countries.

In the case of development-related displacement, depending on the human rights violated and the issues involved, various special procedures can be invoked. The special rapporteurs on the rights of indigenous peoples, adequate housing, health, food, and violence against women, among others, could provide assistance and guidance on issues of IDPs, which concern their mandates.

The Office for the Coordination of Humanitarian Affairs (OCHA) was established to manage complex emergencies (through the Consolidated Appeals Process), natural disasters, and other humanitarian crises. General Assembly Resolution 46/182 established three tools to speed up the response of the international community to emergencies. The Inter-Agency Standing Committee (IASC) formulates and coordinates policy, the Central Emergency Revolving Fund (CERF) is a quick source of emergency funding, and the Consolidated Inter-Agency Appeals Process (CAP) assesses the needs of a critical situation and prepares a comprehensive inter-agency response strategy.

The principal function of the United Nations Disaster Reduction Organization (UNDRO) is that of catalyst and coordinator of donors of aid and services. Its mandate also includes assisting governments in preventing disasters or mitigating their effects by contingency planning, in association with similarly concerned voluntary organizations. It promotes the study, prevention, control, and prediction of natural disasters, and gathers and disseminates information relevant to disaster relief. These mechanisms, however, are hardly relevant for development-induced displacement.

SUMMARY OF RECOMMENDATIONS

1. The people who directly depend on natural resources for their subsistence should have the authority to be involved in decentralized decision-making regarding management and control of such resources.
2. “Public interest” should be well defined in national law. Any project that is approved purportedly for the public interest must meet certain specified, predetermined criteria to ensure that it truly is in the interests of the majority of the people.
3. “Development” needs to be defined and evaluated with certain indicators to assess whether a project is in reality a “development” project, i.e., does it bring about an overall improvement in well-being for the people or does it result in more harm than good? Development also needs to be understood as a process and not merely an outcome.

4. Sustainable alternatives to the displacement inducing project must be explored and adopted where possible. Decision-making processes should address the question of choice of appropriate technology and ideology.

5. Where displacement is absolutely inevitable, utmost priority must be given to ensuring that just and adequate rehabilitation is provided immediately and is based on the principles of community participation, adequate consultation, prior informed consent, substantive equality, non-discrimination, indivisibility of human rights, progressive realization and non-retrogression. Land must be compensated by land of commensurate or better quality. Livelihoods and land rights must be restored where violated. The rights of special groups such as women, children, indigenous peoples, older persons, persons with disabilities, persons living with HIV/AIDS and mental illness, sexual minorities, migrants, and historically discriminated communities must be taken into account and upheld.

5. Comprehensive gender-sensitive eviction impact assessments must be used to determine the just and accurate compensation to be paid, and this must be paid to the affected persons at the earliest through appropriate means that they are able to access. The principle of “justice delayed is justice denied” holds true in all instances of displacement and eviction. Rehabilitation delayed is rehabilitation denied.

6. It is imperative that certain internationally accepted minimum benchmarks are met in order to claim that resettlement and rehabilitation of a displaced community has taken place. These might include:

- Provision of adequate housing;⁵⁶

⁵⁶ Adequacy should be based on the criteria elaborated in General Comment 4 of the Committee on Economic, Social and Cultural Rights as well as other components identified by housing rights groups and the UN Special Rapporteur on adequate housing. These additional useful elements include physical security; participation and information; access to land, water and other natural resources; freedom from dispossession, damage and destruction; resettlement, restitution, compensation, non-refoulement and return; access to remedies; education and empowerment; and freedom from violence against women.

- Provision of cultivable and irrigable land;
- Proximity to natural resources, livelihood sources, workplaces, schools, food sources, hospitals, markets, and police stations;
- Access to healthcare;
- Safe drinking water and adequate access to water for daily needs;
- Access to other basic services, including sanitation, electricity, food and education;
- Provision of public transport and proper roads;
- Child safe spaces, including child-care centers, crèches, and play areas;
- Spaces for community activity, such as community centers;
- Safety of the site—it must not be located on polluted or environmentally hazardous or low-lying land;
- Maintenance of regular income—there should be no loss of income/employment at the new site;
- Regular access to food—there should be no forced change in dietary habits and nutritional intake;
- Overall improvement in lifestyle—no person in the community should be worse off than before the eviction;
- Safety and security for women—there should be no threat of violence or abuse;
- Adequate space and opportunities for women to carry on livelihood activities.

7. Any government guidelines or manuals on addressing development-induced displacement should include the inputs of IDPs and potential IDPs. The final outcome of such a consultation must be vetted among affected communities. The interests of these communities must be factored into the calculus of “national interest” and “public interest.”