

Action Sheet 9: Liberty and freedom of movement

Key message

1. The ability to move freely and in safety within one's country is a basic right as well as a pre-condition for the enjoyment of various other rights, including the rights to life, liberty and security. In situations of armed conflict freedom of movement is often severely curtailed with serious consequences for the lives, health and well-being of individuals and communities, including the internally displaced. This action sheet gives an overview of frequent obstacles and restrictions on freedom of movement in the context of internal displacement and provides guidance on how these can be addressed.

Freedom of movement in the context of internal displacement

2. Freedom of movement consists of the right and the ability to move and choose one's residence, freely and in safety, within the territory of the State. It also includes the right to leave any country as well as the right to return to one's own country, and is closely related the right to liberty and security of person, which guarantees freedom from arbitrary arrest and detention.
3. The ability to move freely and in safety is of particular importance for the internally displaced, who often live in or near areas of active conflict, or reside in camps and settlements, where access to sustainable livelihoods is limited and threats to life, safety and security frequent. Together the right to freedom of movement, liberty and security guarantee their right to:
 - ✓ **Take flight and seek safety** in another part of the country (of their choice), or to leave the country in order to seek asylum in another country
 - ✓ **Move freely within the country**, including in and out of camps and settlements, including for the purposes of seeking work, attending fields, accessing schools or markets, or searching for food, water or firewood.
 - ✓ **Voluntarily return to the place of origin or resettle** in another part of the country
 - ✓ **Not be arbitrarily displaced** or forced to return or relocate to another part of the country
 - ✓ **Not be arbitrarily arrested or detained** or forced to reside in specific camps or settlements

4. Lack of freedom of movement can have serious **consequences** for the lives, health and well-being of displaced individuals and communities. It can limit their ability to flee and seek safety from the effects of conflict or serious human rights abuses. It also impedes their ability to secure a sustainable livelihood by blocking access to work, markets or land for cultivation, to basic necessities, such as food, water and firewood, and life-saving services, such as education or health-care. Where families have been separated they may be unable to reunite and support each other. Overall, lack of freedom of movement is likely to result in increased poverty, trauma, marginalisation and dependency on humanitarian aid.

Obstacles to freedom of movement, liberty and security

5. Internally displaced persons often experience a range of obstacles to or violations of freedom of movement. These include various practical barriers; legal or administrative restrictions; forced encampment; forced population movement; and arbitrary arrest and detention, as described in greater detail below.

1. Various practical and other barriers can impede freedom of movement in situations of armed conflict and displacement. These take different forms depending on the context, but can include:

- **Lack of safety and security** owing to crime, armed conflict and generalised violence or the presence of landmines and unexploded ordnance. Internally displaced persons are sometimes directly targeted owing to discrimination, distrust or alleged association with or support for parties to the conflict. Security risks can affect displaced individuals and groups in different ways: for instance, women and girls may be at greater risk of rape and sexual violence while men and boys may be more likely to be forcibly recruited into armed forces or groups.¹
- **Lack or loss of identity or travel documents** often places the internally displaced at risk of

¹ For further information see Action Sheet ** on Physical Safety and Security.

harassment, extortion, or arbitrary arrest or detention, at check-points, exit/entry points into camps or villages, and at other similar locations. Replacement documentation is often difficult or impossible to obtain and may for instance require that the internally displaced return to their areas of origin although these may remain unsafe. In other cases, strict administrative requirements, high fees or discriminatory practices may prevent the internally displaced from obtaining replacement documentation.²

- **Discrimination**, including legal, administrative or cultural norms and practices which directly or disproportionately affect certain individuals or groups, for instance on the basis of their ethnic or religious background or other status, including that of being displaced. Women and girls may also face particular obstacles as a result of discriminatory cultural, social and religious practices, which may prevent them from obtaining documentation in their own name or prevent them from traveling except with the permission and in the company of male relatives.

In addition, various practical difficulties – such as **destruction of infrastructure** and **lack of affordable transport** – may affect people’s ability to move.

2. Restrictions on freedom of movement are frequently used by local or national authorities to monitor or control movement within the country’s border. These include:

- **General travel restrictions** on movement within the country, for instance from rural to urban areas. These can be either legal or administrative and include curfews, restricted traveling hours or days, and strict travel criteria, including the need for specific documentation or travel permits, which often are difficult to obtain. While such restrictions may apply to the population as a whole they often disproportionately affect the internally displaced, whose lives may be at risk and who may lack the necessary documentation.
- **Targeted travel restrictions, e.g. on movement in and out of camps or settlements**, aimed at addressing actual – or perceived – security threats. As above, these can include curfews, restrictive traveling hours or days, limits on permissible travel distances, strict exit/entry criteria, and documentation requirements.

While restrictions on freedom of movement can be legitimate (see legal section below) and serve a vital public interest, for instance to protect the public from the effects of military operations or limit the strain on environmental resources, such as land or water sources, they are often implemented in an arbitrary, discriminatory or excessive manner. In some cases they also serve an unlawful purpose, such as ensuring the segregation of the displaced and the host population. Where restrictions are imposed they must be provided for by law, be necessary and proportionate to achieve a legitimate aim, and respect human rights and freedoms. As an example, where documentation or travel permissions are required the State must ensure that these can be obtained without delay or hardship and that these are not subject to unreasonable requirements or high fees.

3. Forced encampment

In some countries, local or national authorities have insisted that internally displaced persons seek refuge and reside in special IDP camps or settlements, often despite the fact that they may prefer to seek shelter with close or extended family members, friends or related communities. All too frequently such camps or settlements have been located in remote areas where access to sustainable livelihoods, basic necessities and vital services is limited or lacking entirely and where maintenance of law and order is rendered difficult by remote locations, over-crowding, poverty-induced crime and degrading living conditions, thus resulting in further violation of rights. As a general rule IDPs should be able to reside where they choose. In fact, with few exceptions such **encampment policies** constitute a grave violation of the right to freedom of movement and may amount to *de facto* detention in violation of the right to liberty and security.

4. Arbitrary displacement, forced return or relocation

Displacement and other forced population movement has frequently been used as a political or military strategy – in effect a weapon of war – to further a political or military agenda, to punish the civilian population for alleged support for warring factions, or to unlawfully gain control over land or natural resources. Forced population movement is only lawful in a limited number of cases, for instance to safeguard public safety or interest, or for reasons of military necessity, in which cases it must take place in safety and meet certain minimum standards (see legal section).

² For further information see Action Sheet ** on Legal Identity, Civil Status and Documentation.

In some cases, assessing the voluntariness of movement can be difficult. Displaced individuals may feel unwelcome in the place of displacement, lack access to basic necessities, and may be vulnerable to outside influence, manipulation or extortion. It is important that voluntariness of return or relocation is assessed as thoroughly as possible in each given case.

The principle of voluntariness of return or relocation entails that:

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

For further information, see the *Handbook on Voluntary Repatriation* (UNHCR, forthcoming 2007).

5. Arbitrary arrest and detention

Internally displaced persons may be at risk of arbitrary arrest and detention, as well as ill-treatment while in detention, owing to lack or loss of documentation, discrimination, distrust and stigma. This is often the case where displacement has been politically motivated or where poverty and marginalization force the internally displaced to adopt livelihood strategies which may be in breach of national law, such as brewing of alcohol, trading of goods without permission, or survival sex. Maintaining law and order, including through powers of arrest and detention, is both the right and the duty of the State, but such powers must be exercised in accordance with the law and with respect for the rights of those detained (see legal section). In particular, detainees must be treated humanely, be informed of the charges against them (in a language they understand), be brought promptly before a judge, and be able to contest the lawfulness of their arrest and detention. Any form of torture or ill-treatment – including rape and excessive use of solitary confinement - is strictly prohibited.

Individuals and groups at particular risk

6. Movement-related risks may affect individuals and communities in different ways. As highlighted above, women and girls often face discrimination, are prohibited from obtaining documentation in their own name, or risk being subjected to sexual violence when traveling alone, while men and boys are more likely to be arbitrarily arrested and detained, forcibly recruited into armed forces or groups, or placed at risk of extra-judicial and summary executions. In addition, individuals with special needs, such as unaccompanied and separated children, older persons, and persons living with disability or disease, may face various additional difficulties, as may ethnic or religious minorities and stateless persons, who may have limited access to documentation.

Responsibility of the State and the role of human rights and humanitarian actors

7. The national authorities carry primary responsibility for respecting and ensuring respect for rights to freedom of movement and liberty and security of person. This means that the State must ensure that the right is adequately protected in national legislation and respected by all agents of the State at the national, provincial and local levels.
8. While humanitarian actors rarely have the mandate or the capacity to prevent violations of the rights to freedom of movement, liberty and security they can however play an important role through their advocacy, monitoring and capacity-building efforts with both the authorities and displaced individuals and communities. Table ** presents some activities which can be undertaken by protection staff and partners in this respect.

In our work we can ...	
Assessment and analysis*	<ul style="list-style-type: none"> • Ensure that protection assessments and analysis identify and assess obstacles to freedom of movement, liberty and security faced by the internally displaced and the ways in which these can be addressed. This necessarily entails a thorough assessment of the security situation and should take place in cooperation with security experts.
Presence*	<ul style="list-style-type: none"> • Ensure regular visits and visible presence of protection staff in areas or locations where movement-related rights are frequently violated, including at check-points, at exit/entry points into camps and villages, on roads/paths leading to markets and other areas frequently attended by the internally displaced.
Advocacy*	<ul style="list-style-type: none"> • Advocate for and sensitize relevant actors, including both national and local authorities as well as non-state actors, to the importance of respecting freedom of movement, liberty and security, and the prohibition on forced and arbitrary displacement, return or relocation of any kind. → See <i>Chapter ** on Advocacy</i>
Documentation*	<ul style="list-style-type: none"> • Work with relevant authorities to address obstacles experienced owing to lack of documentation including by: (i) ensuring that IDPs have safe and effective access to documentation and/or replacement documentation; (ii) that strict documentation requirements are eased or suspended for IDPs; and (iii) that those without documentation are not arbitrarily arrested and detained. In some cases, modest financial or material assistance may be appropriate in order to assist local authorities to issue or replace lost documentation. → See <i>Action Sheet ** on Legal Identity</i>
Information and education activities*	<ul style="list-style-type: none"> • Provide information about the security situation and other factors that impact upon IDP's ability to move freely and in safety. In the context of return or relocation, this necessarily includes information about travel conditions as well as conditions in the place of return or intended relocation. Where appropriate organised "go and see" visits can be organised. → See <i>chapter ** on Information and Communication Activities</i>
Community mobilisation*	<ul style="list-style-type: none"> • Work with the community to identify obstacles and take steps to strengthen their ability to move freely and in safety. This can, for example, include organisation of joint travel or transportation to access markets, schools, health care or collect food, water and firewood. → See <i>chapter** on Community Mobilisation</i>
Safety and security*	<ul style="list-style-type: none"> • Negotiate for and support measures aimed at increasing safety and security in and around camps, settlements and urban IDP areas, including through the deployment of trained civilian police or peace-keeping forces. Given the importance of ensuring the civilian character of such areas and protecting them from attack, military forces should be involved on exceptional basis only and never within or in the immediate vicinity of such areas. → See <i>Action Sheet ** on Physical Safety and Security</i>
Mine action*	<ul style="list-style-type: none"> • Coordinate with demining agencies and other partners, including local authorities and IDP communities, to ensure the early identification, marking and demining of any areas affected by landmines or unexploded ordnance, and provide support for mine awareness and education activities aimed at the displaced as well as the host population. → See <i>also Action Sheet ** on Landmines</i>
Transport	<ul style="list-style-type: none"> • Assist local or national authorities in improving road infrastructure and public transport to ensure that displaced individuals and communities can seek work, access markets, tend fields, and access education and health-care. This may entail building or improving roads or bridges or providing modest financial or material assistance, for instance in the form fuel or vehicles for public transport. • Consider providing modest financial or other assistance to individuals at particular risk to enable them to use available transport facilities when necessary, for instance to seek education or health-care or access markets.
Protection of detainees	<ul style="list-style-type: none"> • Ensure that effective monitoring mechanisms are put in place to monitor and ensure that conditions in detention and the treatment of individuals deprived of their liberty, meet established minimum standards. Such activities should be undertaken by or in close cooperation with the ICRC or other actors with expertise of monitoring prison conditions. This may include modest financial or material support aimed at improving prison conditions (e.g. providing medical assistance, food rations, etc). • In addition, ensure that appropriate interventions are made on behalf of individuals that have been arbitrarily arrested and detained. This may require providing legal advice and

	assistance and advocating with the authorities to ensure that detainees are informed of the lawfulness charges, brought promptly before a judge; given the opportunity to challenge the of detention, and given a fair trial or released. → See also Action Sheet ** on Access to Justice.
Return or relocation*	<ul style="list-style-type: none"> • Ensure that organised return or relocation is closely monitored and that protection staff and partners are present. Such movement should be informed and voluntary, and minimum standards relating to safety and security and provision of basic needs should be met. • Ensure that any attempt at forced movement, return or relocation of civilians, including internally displaced persons, is closely monitored, documented and reported to relevant stakeholders. Such events should immediately be reported to protection working group as well as the Humanitarian/Resident coordinator.
Durable solutions*	<ul style="list-style-type: none"> • Advocate for and support developmental projects which aim to restore or rehabilitate damaged infrastructure (roads, bridges) or public services (schools, health-clinics, community centers, etc), which facilitate voluntary return, resettlement or integration in the area of displacement.

Key principles

Freedom of movement

9. **International (and regional) human rights law** guarantees everyone the right to freedom of movement and residence within the borders of the state, as well as the right to leave and to enter one’s own country.³ It consists of the right to move and choose one’s residence, freely and in safety, without undue influence or interference from the State, regardless of the length of stay or reason or purpose of the move.
10. While States may have a legitimate interest in controlling or monitoring movement of people in their territory, such restrictions are only permissible where they meet the established criteria of: (i) being provided for and being in accordance with law; (ii) being necessary to achieve a legitimate aim, i.e. that of protecting national security, public order, public health or morals or to protect the rights and freedoms of others.; and (iii) being consistent with other human rights, in particular the right to non-discrimination, and the State’s other international legal obligations.
11. Women and girls are entitled to equal respect to freedom of movement and residence and States should take all necessary measures to ensure that they are able to exercise this right on equal basis with men and boys.⁴
12. The right to freedom of movement is also a pre-requisite for the enjoyment of other human rights, including the rights to life, liberty and security, to an adequate standard of living, including health, food and water, and to property. It is also closely related to the right to seek asylum from persecution in another State⁵.
13. **International humanitarian law** forbids parties to the conflict to order the displacement of the civilian population in whole or in part, unless their security or imperative military reasons so demand, and requires that they be allowed to voluntarily return in safety as soon as those reasons cease to exist. In case of displacement, the law also requires that all possible measures be taken to ensure satisfactory

Guiding Principles

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

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

³ See e.g. at the international level, UDHR Art. 13; ICCPR Art. 12; ICERD Art. 5(d)(i) and (f); CEDAW Art. 15; and at the regional level, AfCHPR Art. 12; AmCHR Art. 22; ArCHR Arts. 20 and 21 and ECHR P4 Art. 2.

⁴ See e.g. CEDAW Art. 15. See also General Comments No. 27(1999) on freedom of movement (para. 6) and No. 28(2000) on equality of rights between men and women (s.16) of the Human Rights Committee.

⁵ See, in particular, at the international level, the 1951 Convention on the Status of Refugees and its 1967 Protocol, and UDHR Art. 14, and at the regional level, AfCHPR Art. 12(3); AfCRWC Art. 23; AmCHR Art. 22(7) and ArCHR Art. 23.

conditions while in displacement, including shelter, hygiene, health, safety, nutrition and family unity.⁶

The right to liberty and security of person

14. **International (and regional) human rights law** guarantees the right to liberty and security of person.⁷ This includes a prohibition on arbitrary arrest and detention as well as any other deprivation of liberty which is not based on and in accordance with the law. The right also includes the right (i) to be informed immediately of the reasons for arrest; (ii) to be brought promptly before a judge; (iii) to be able to challenge the lawfulness of detention; and (iv) to be brought to trial – or released – within a reasonable time; and, (iv) in case of unlawful arrest or detention, a right to compensation. The law also calls for humane treatment and respect for other human rights while in detention. These are further outlined in the UN Basic Principles for the Treatment of Prisoners; the UN Standard Minimum Rules for the Treatment of Prisoners; and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁸

Guiding Principles

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

15. **International humanitarian law** prohibits arbitrary deprivation of liberty, i.e. detention which is not based on and in accordance with law⁹. It also lays down extensive safeguards for the treatment of detainees during times of armed conflict.¹⁰ In particular, they must be provided with adequate food, water, clothing, shelter and medical attention, and be allowed to correspond with and receive visits from their families. Violations of these rules may amount to inhuman treatment, which may constitute a war crime. Women and children should also be kept separate from adult men, except where families are accommodated as family units.

References

General Comments No. 27(1999) on **freedom of movement** (Art. 12); No. 21(1992), replaces general comment No. 9 concerning **humane treatment of persons deprived of liberty** (Art. 10); and No. No. 8(1982) on the **right to liberty and security of persons** (Art. 9) of the Human Rights Committee. Available at www.ohchr.org/english/bodies/hrc/comments.htm.

Protection of detainees: ICRC action behind bars (Alain Aeschlimann, International Review of the Red Cross, Vol. 87, no. 857, March 2005). Available from www.icrc.org.

⁶ See e.g. Rules 129-132 of *Customary International Humanitarian Law* – Volume I: Rules (ICRC, 2005). See also AP II Art. 17 and 4(3)(b).

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

⁸ These are available from www.ohchr.org/english/law.

⁹ See Rule 99 of *Customary International Humanitarian Law* – Volume I: Rules (ICRC, 2005).

¹⁰ See e.g. Rules 87 and 118-128 of *Customary International Humanitarian Law* – Volume I: Rules (ICRC, 2005). See also Common Art. 3.