

New Trends in Regional Development” Conference, Siena, June 3rd 2016.  
Universidad Complense Madrid, Madrid, 2016.

# **International Human Rights Law Aspects of Forced Migrations, Evictions and Displacement: Current Issues and Challenges.**

Scholten, Andrew.

Cita:

Scholten, Andrew (2016). *International Human Rights Law Aspects of Forced Migrations, Evictions and Displacement: Current Issues and Challenges*. New Trends in Regional Development” Conference, Siena, June 3rd 2016. Universidad Complense Madrid, Madrid.

Dirección estable: <https://www.aacademica.org/andrew.scholten/2>

ARK: <https://n2t.net/ark:/13683/pq1o/Qdz>



Esta obra está bajo una licencia de Creative Commons.  
Para ver una copia de esta licencia, visite  
<https://creativecommons.org/licenses/by-nc-nd/4.0/deed.es>.

*Acta Académica es un proyecto académico sin fines de lucro enmarcado en la iniciativa de acceso abierto. Acta Académica fue creado para facilitar a investigadores de todo el mundo el compartir su producción académica. Para crear un perfil gratuitamente o acceder a otros trabajos visite: <https://www.aacademica.org>.*

Andrew Scholten  
Universita Degli Studi di Siena

## **International Human Rights Law Aspects of Forced Migrations, Evictions and Displacement: Current Issues and Challenges**

**Paper Presented at the „New Trends in Regional Development” Conference, Siena, June 3<sup>rd</sup>  
2016.**

**Summary:** The aim of this paper is an analysis of the categories of evictions, forced migrations and internal displacement in the context of international human rights law. Forced migrations and selected categories of internal displacement are important issues of international human rights law and international humanitarian law for more than forty years. The UDHR, adopted in 1948, does not contain any provisions related to forced human mobility and internal displacement. Despite this fact we can mention many important international law regulations focused on citizenship and human mobility. The growing interest of international community on the above-mentioned issues can be dated back to the nineties of the last century. First in-depth studies focused on environmentally-induced displacement and development-induced displacement can be dated back to the seventies and eighties of the last century. Since nineties we are observing the growing number of published on these issues, inter alia by Michael M. Cernea, Bogumil Terminski, Thayer Scudder, Etienne Piguet and many others. The issues of forced migrations, evictions and internal displacement are currently very important areas of international cooperation. Presented articles is focused on global estimations concerning the scale and dynamics of these categories (part 1), international cooperation and its international human rights law aspects (part 2) and the socio-legal consequences of forced migrations, evictions and internal displacement.

**Resume:** Le but de cet article est une analyse des catégories d'expulsions, les migrations forcées et les déplacements internes dans le cadre du droit international des droits humains. catégories forcées migrations et sélectionnées de déplacement interne sont des questions importantes du droit international des droits de l'homme et du droit international humanitaire depuis plus de quarante ans. La DUDH, adoptée en 1948, ne contient pas de dispositions relatives à la mobilité humaine forcée et le déplacement interne. En dépit de ce fait, nous pouvons citer de nombreux règlements du droit international importantes axées sur la citoyenneté et la mobilité humaine. L'intérêt croissant de la communauté internationale sur les questions mentionnées ci-dessus peut être datée des années nonante du siècle dernier. Tout d'abord des études approfondies ont porté sur les déplacements provoqués par l'environnement et le déplacement induit par le développement peuvent être remontent aux années soixante-dix et quatre-vingt du siècle dernier. Depuis des années nonante, nous observons le nombre croissant de publié sur ces questions, entre autres, par Michael M. Cernea, Bogumil Terminski, Thayer Scudder, Etienne Piguet et beaucoup d'autres. Les questions de migrations forcées, les expulsions et les déplacements internes sont actuellement des domaines très importants de la coopération internationale. Les articles présentés sont axés sur des estimations globales concernant l'ampleur et la dynamique de ces catégories (partie 1), la coopération internationale et de ses droits de l'homme aspects de droit international (partie 2) et les conséquences socio-juridiques des migrations forcées, les expulsions et les déplacements internes.

## **Global Trends in Forced Migrations, Evictions and Internal Displacement:**

*Internal displacement:* While the above stresses two important elements of internal displacement (coercion and the domestic/internal movement), it is important to note that, rather than a strict definition, the Guiding Principles offer "a descriptive identification of the category of persons whose needs are the concern of the Guiding Principles". In this way, the document "intentionally steers toward flexibility rather than legal precision" as the words "in particular" indicate that the list of reasons for displacement is not exhaustive. However, as Erin Mooney has pointed out, "global statistics on internal displacement generally count only IDPs uprooted by conflict and human rights violations. Moreover, a recent study has recommended that the IDP concept should be defined even more narrowly, to be limited to persons displaced by violence." Thus, despite the non-exhaustive reasons of internal displacement, many consider IDPs as those who would be defined as refugees if they were to cross an international border, hence, the term refugees in all but name is often applied to IDPs. It is very difficult to get accurate figures for IDPs because populations aren't constant. IDPs may be returning home while others are fleeing, others may periodically return to IDP camps to take advantage of humanitarian aid. While the case of IDPs in large camps such as those in Darfur, western Sudan, are relatively well-reported, it is very difficult to assess those IDPs who flee to larger towns and cities. It is necessary in many instances to supplement official figures with additional information obtained from operational humanitarian organizations on the ground. Thus, the 24.5 million figure must be treated as an estimate. Additionally, most official figures only include those displaced by conflict or natural disasters. Development-induced IDPs often are not included in assessments.

So-called cluster approach constitute an important area of migration studies and research on internal displacement. The cluster approach designates individual agencies as 'sector leaders' to coordinate operations in specific areas to try to plug those newly identified gaps. The cluster approach was conceived amid concerns about coordination and capacity that arose from the weak operational response to the crisis in Darfur in 2004 and 2005, and the critical findings of the Humanitarian Response Review (HRR) commissioned by the then ERC, Jan Egeland. Egeland called for strengthening leadership of the sectors, and introduced the concept of "clusters" at different levels (headquarters, regional, country and operational)'. Unlike the case of refugees, there is no international treaty which applies specifically to IDPs. Some have advocated re-thinking the definitions and protections for refugees to apply to IDPs, but so far no solid actions have come to fruition. IASC Principles deemed it unnecessary to apply the cluster approach to four sectors where no significant gaps were detected: a) food, led by WFP; b) refugees, led by UNHCR; c) education, led by UNICEF; and d) agriculture, led by FAO. The original nine clusters were later expanded to include agriculture and education.

The cluster approach operates on the global and local levels. At the global level, the approach is meant to build up capacity in eleven key 'gap' areas by developing better surge capacity, ensuring consistent access to appropriately trained technical expertise and enhanced material stockpiles, and securing the increased engagement of all relevant humanitarian partners. At the field level, the cluster approach strengthens the coordination and response capacity by mobilizing clusters of humanitarian agencies (UN/Red Cross-Red Crescent/IOs/NGOs) to respond in particular sectors or areas of activity, each cluster having a clearly designated and accountable lead, as agreed by the HC and the Country Team. Designated lead agencies at the global level both participate directly in operations, but also coordinate with and oversee other organizations within their specific spheres, reporting the results up through a designated chain of command to the ERC at the summit. However, lead agencies are responsible as 'providers of last resort', which represents the commitment of cluster leads to do their utmost to ensure an adequate and appropriate response in their respective areas of responsibility. The cluster approach was part of a package of reforms accepted by the IASC in December 2005 and subsequently applied in eight chronic humanitarian crises and six sudden-onset emergencies. However, the reform was originally rolled out and evaluated in four countries: DRC, Liberia, Somalia and Uganda.

Prevention of forced migrations is another important area of international human rights law. Forced migration has accompanied persecution, as well as war, throughout human history but has only become a topic of serious study and discussion relatively recently. This increased attention is the result of greater ease of travel, allowing displaced persons to flee to nations far removed from their homes, the creation of an international legal structure of human rights, and the realizations that the destabilizing effects of forced migration, especially in parts of Africa, the Middle East, south and central Asia, ripple out well beyond the immediate region. Development-induced displacement can be understood as a subset of forced migration. Such displacement is the forcing of communities and individuals out of their homes, often also their homelands, for the purposes of economic development, conservation of nature, dams, urbanization, re-urbanization and population redistribution schemes.

Though the procedures for evictions differ depending on the specific laws of various jurisdictions, the general process consists of 1) giving notice to the tenant (and any other person residing there as well) to take prompt action to either correct the problem or otherwise leave the premises (or, in some cases, unconditionally leave the premises), 2) if the tenant fails to leave the premises, filing a lawsuit to evict the tenant and regain possession of the property (along with amounts owed for damages, unpaid rent, and/or court costs and attorney's fees) and appearing in court, and 3) if the tenant still remains in the premises, forcibly removing the tenant from them via legal action. Most jurisdictions do not permit the landlord to evict a tenant without first taking legal action to do so (commonly referred to as a "self-help" eviction; such actions include changing locks, removing items from the premises, or terminating utility services). Such evictions are generally illegal at any time during the process (including after a landlord wins an eviction suit); a tenant facing such measures may sue the landlord. However, self-help evictions may be permitted in some jurisdictions when commercial tenants are involved, as opposed to residential tenants.

Prior to filing a suit in court for eviction, generally the landlord must provide written notice to the tenant (commonly called a *notice to quit* or *notice to vacate*). A landlord may evict a tenant "without cause" (i.e., the landlord simply desires to end the landlord-tenant relationship without the tenant being in breach of the lease, such as when a lease is about to expire) or "for cause" (i.e., the tenant is in breach of the lease, such as non-payment of rent or allowing criminal activity to take place on the premises). The notice to vacate may either be conditional (i.e., the tenant may remain in the premises if certain actions are taken prior to the specified date, such as payment of rent and late fees due; this is sometimes known as cure or quit) or unconditional (i.e., the tenant can not do anything to avoid the eviction and must leave by a specified date, an example would be due to a tenant engaged in criminal activity). If the termination is without cause, the tenant is generally given a longer period of time (generally 30 days) to vacate than if the termination is for cause, in which case the tenant may have a short amount of time (perhaps as few as three days) in which to correct the violation. In some jurisdictions, landlords may not be able to terminate a lease without cause (such as in rent control jurisdictions). Where the law permits, a landlord and tenant may agree to a different period of time for notice requirements than specified in the law.

The issue of land-grabbing is another important category of evictions and displacements worldwide. The issue of agricultural development is a significant driving factor, within the larger umbrella of development, in target governments' agreement to investment by outsiders. The Ethiopian government's acceptance of cash crop-based land acquisitions reflects its belief that switching to cash crop production would be even more beneficial for food security than having local farmers produce crops by themselves. Implicit in the characterization of African agriculture as "underdeveloped" is the rejection of local communities' traditional methods of harvesting as an inadequate form of food production. Foreign investors, through large-scale agriculture, increase the effectiveness of underused resources of land, labor, and water, while further providing additional market connections, large-scale infrastructure development, and provision of seeds, fertilizers, and technology. Proposed increases in production quantity, as touted by investors and hosts, are exemplified by Ethiopia's Abera Deressa, who claims that "foreign investors should help boost

agricultural output by as much as 40%” throughout Ethiopia. In a joint research project between the FAO, IIED, and IFAD, Cotula et al. found that the majority of host countries lacked basic data on the size, nature, and location of land acquisitions through land registries or other public sources, and that “researchers needed to make multiple contacts...to access even superficial and incomplete information.” The World Bank’s own lack of land size information on over half of the reported land grabs that it researched points to the difficulties inherent in gaining access to and researching individual land acquisitions. We can also mention some notable cases of land grabbing as a specific category of internal displacement. In Madagascar, the anger among the population about land sales led to violent protests. The South Korean corporation Daewoo was in the process of negotiations with the Malagasy government for the purchase of 1.3 million hectares, half of all agricultural land, to produce corn and palm oil. This investment, while one of many pursued in Madagascar, attracted considerable attention there and led to protests against the government. In South Sudan, numerous large-scale land acquisitions have taken place in spite of the country's unresolved political and security situation. One of the most prominent, involving a former AIG partner named Philippe Heilberg, garnered attention in *Rolling Stone* for his provocative pursuit of land in conflict-ridden regions. Heilberg, who is planning to invest in 800,000 ha of land in partnership with many of South Sudan's top generals and civilian officials, attracted criticism with his remarks (regarding Africa and land grabbing) that "the whole place is like one big mafia — and I'm like a mafia head."

Development-induced displacement and resettlement (DIDR) is the forcing of communities and individuals out of their homes, often also their homelands, for the purposes of economic development. According to Bogumil Terminski (2012) approximately fifteen million people each year are forced to leave their homes following big development projects (dams, irrigation projects, highways, urbanization, mining, conservation of nature, etc.). Anthony Oliver-Smith (2009) and Michael M. Cernea (2006) are also estimating that current scale of DIDR amounts to 15 million people per year. An increase in alcoholism due to displacement has led to a marked rise in domestic violence in India. In the Lincoln Park Community of Chicago, Illinois, where Jose (Cha-Cha) Jimenez founded the human rights Latino organization: Young Lords, Mayor Richard J. Daley displaced tens of thousands Puerto Ricans and the poor. This displacement helped to proliferate growing street gangs. Today these gangs enterprises with murder for hire, arson for profit and drug sales as its prime motivation. Displacement has made men feel helpless or insecure and turned women and children into scapegoats. Displacement also leads to deterioration in health and high mortality rates as services in those selected areas are the first to be cut. The nutrition and health of women, which is worse than that of men even under normal circumstances, is bound to go down in the event of an overall worsening in health caused by displacement. According to Michael M. Cernea the main causes of development-induced displacement include: water supply (construction of dams, artificial reservoirs, irrigation projects), urban infrastructure, transportation (roads, highways, canals); energy (mining, power plants, oil exploration and extraction, pipelines), expansion of agriculture, parks and forest reserves and population redistribution schemes. According to Bogumil Terminski the principal causes of DIDR include: 1. the construction of dams, hydroplants, and large irrigation projects, 2. the building of highways, roads and railroad networks, 3. urbanization and social services (expansion of cities, urban transport, water supply), 4. expansion of agriculture (especially monoculture plantations), 5. mining (oil exploitation, gold, copper, coal mining), 6. conservation of nature, 7. population redistribution schemes, 8. other causes.

### **International Human Rights Law Aspects of Evictions, Forced Migrations and Internal Displacement**

Legal aspects of forced mobility, internal displacement and evictions is an issue well-discussed in existing scientific literature. Guiding Principles of Internal Displacement (1998) and the Kampala Convention (2009) are the only international instruments devoted to this issues he

Kampala Convention (formally, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa) is a treaty of the AU that addresses internal displacement caused by and large-scale development projects in Africa. The Convention was adopted in October 2009. As of 2015 it has been signed by 40 and ratified by 24 of the 54 member states of the African Union. The Convention entered into force on 6 December 2012, 30 days after its ratification by the 15th state. Article 5(4) specifically establishes state responsibilities for the protection and assistance of internally displaced persons, whose displacement is the result of "natural or human made disasters, including cvlimate change. Centre of Housing Rights and Evictions (COHRE) is important NGO actor in the field of evictions worldwide. COHRE's work was based on the assumption that the role of the affected communities is of crucial importance in addressing housing rights violations. The poor themselves should be directly involved in formulating and implementing solutions and alternatives. Communities have a vital contribution to make, without which most housing-related projects simply will not succeed. In housing rights or eviction cases where COHRE became directly involved, COHRE therefore strived to build alliances and partnerships and to embark on joint campaigns with groups and support organisations working at community level. Working at community level is often not sufficient in itself. As national, regional and international action can be very effective in cases of major housing rights violations, COHRE also formed partnerships with organisations working at these broader levels. Another tool is the collection of relevant, accurate information. COHRE regularly sends multi-disciplinary fact-finding teams to key focus countries. They typically conduct in-loco investigations, conduct interviews with the main role players, study relevant laws, policies and programmes and do any additional research required for an assessment of the nature and scope of land and housing rights violations in a particular situation. This would provide the basis for drawing up recommendations and alternatives. These missions are usually conducted at the request of, and in collaboration with, local partners. COHRE used the draft fact-finding reports as tools for consultation and negotiations with key role-players, including governments. This strategy has proven effective in convincing government to grapple with the extent of the violations and the implications of proceeding with current policies and practice. Once finalised, COHRE fact-finding reports are used as information resources for local human rights organisations and the affected communities; for lobbying the relevant government to introduce new policies, laws and programmes. Fact-finding reports are also useful tools at regional and international level to place pressure on the relevant governments; and to form the basis of shadow reports for submission before UN human rights mechanisms and other regional and international bodies. *COHRE* promotes policy and legislative reform at national, regional and international level, to ensure that housing rights and delivery frameworks and legal instruments are improved where it is possible.

## **Bibliography:**

- Cernea M.M., *Putting people first: Sociological variables in rural development*, World Bank & Oxford University Press, Oxford-Washington, 1985, (1991).
- Chakrabati A., Dhar A., *Dislocation and Resettlement in Development: From third world to the world of the third*, Routledge, Abingdon Oxon, 2010.
- Hansen A., Oliver-Smith A, (eds.), *Involuntary Migration and Resettlement: The Problems and Responses of Dislocated People*, Westview Press, Boulder, Colorado, 1982.
- Hart D., *The Volta River Project: A case study in politics and technology* , Edinburgh University Press, Edinburgh, 1980.
- Heggelund G., *Environment and resettlement politics in China: The Three Gorges Project*, Ashgate Publishing Ltd., London, 2004.
- Holtzman S.B., *Living in limbo: Conflict-induced displacement in Europe and Central Asia*, World Bank Publications, Washington, 2004.
- Mahapatra L.K., *Resettlement, Impoverishment and Reconstruction in India: Development for the Deprived*, Vikas Publishing House, New Delhi, 1999.

- McDowell Ch., *Understanding impoverishment. The consequences of development-induced displacement*, Berghahn Books, New York, 1996.
- McDowell Ch., Morrell G. (ed.), *Displacement Beyond Conflict. Challenges for the 21<sup>st</sup> century*, Berghahn Books, New York, 2010.
- Mehta L., *Displaced By Development: Confronting Marginalisation And Gender Injustice*, SAGE Publications Ltd, New Delhi, 2009.
- Oleschak R., *The international law of development-induced displacement*, University of St. Gallen, St Gallen, 2009.
- Oliver-Smith A., *Defying Displacement. Grassroots Resistance and the Critique of Development*, University of Texas Press, Houston, 2010.
- Oliver-Smith A., *Displacement, resistance and the critique of development. From the grass-roots to the global*, Queen Elizabeth Refugees Centre, Oxford University, Oxford, 2002.
- Penz P., Drydyk J., Bose P.S., *Displacement by Development: Ethics, Rights and Responsibilities*, Cambridge University Press, Cambridge, 2011.
- Phuong C., *The international protection of internally displaced persons*, Cambridge University Press, Cambridge, 2004.
- Piguet F., Pankhurst A. (eds.), *Moving People in Ethiopia: Development, Displacement & the State (Eastern Africa Series)*, James Currey, 2009.
- Rahman K.N., *Adversities of development: A case study of involuntary resettlement*, Academic Press and Publishers, 2004.
- Terminski B., *Environmentally-Induced Displacement: Theoretical Frameworks and Current Challenges*, CEDEM Research Paper, University of Liege, Liege, Septemeber 2012.
- Thukral E., *Big Dams, Displaced Peoples: Rivers of Sorrow, Rivers of Joy*, Sage Publications, New Delhi, 1992.
- Wali A., *Kilowatts and crisis: Hydroelectric power and social dislocation in eastern Panama*, Westview Press, Boulder, 1989.
- Weiss T.G., Korn D.A., *Internal displacement: conceptualization and its consequences*, Taylor & Francis, London-New York, 2006.
- Vandergeest P., Bose P.S., Idahosa P., *Development's displacements: Ecologies, economies, and cultures at risk*, UBC Press, Vancouver, 2007.
- Verma M.K., *Development, displacement, and resettlement*, Rawat Publications, New Delhi, 2004.
- Vora R., *World`s First Anti-Dam Movement: Mulshi Satyagraha 1920-1924*, Orient Blackswan, New Delhi, 2009.