

LEGISLATIVE BRANCH

THE CONGRESS OF THE REPUBLIC

LAW No. 28223

THE PRESIDENT OF THE REPUBLIC

WHEREAS:

The Congress of the Republic has enacted the following Law:

THE CONGRESS OF THE REPUBLIC :

Has enacted the following Law:

LAW CONCERNING INTERNAL DISPLACEMENTS

SCOPE AND PURPOSE

Article 1.- Objective of the Law

Recognition by the Peruvian State of the specific status of “Displaced Person(s)”, its legal nature and attention to the various legal problems that are not governed by the norms that have thus far been published.

This law has the purpose of defining the rights and guarantees pertaining to the protection of persons against involuntary displacement, assistance during such displacement and during return or resettlement and reintegration, adapting the United Nations Human rights Commission and the Economic and Social Council’s Governing Principles Concerning Internal Displacements to reality and to national legislation.

Article 2. – Definition

Internally displaced persons are those persons or groups of persons which have been forced or obliged to escape or to flee their homes or their places of permanent residence, in particular as the result of, or in order to avoid the effects of an armed conflict, of situations of generalized violence, of human rights violations and who have not crossed an internationally recognized state boundary.

Types of displacement:

- Involuntary displacement resulting from the violence of internal or international conflict or the action of armed groups, that is spontaneous and unpredictable.
- Displacement or evacuation, caused by violent action of unforeseen agents. In that case the displacement would be organized and directed.

Section I

GENERAL PRINCIPLES

Article 3. – Rights of Displaced Persons

Internally displaced persons enjoy the same rights and liberties recognized by international law and internal law for the other inhabitants of the country. They are not to be the objects of any discrimination whatsoever in the enjoyment of their rights and liberties for the simple fact of being internally displaced persons.

Article 4. – Humanitarian Protection and Assistance

- 4.1 National authorities have the obligation and responsibility to provide humanitarian protection and assistance to the internally displaced persons who are within the scope of their jurisdiction. Internally displaced persons have the right to ask for and to receive humanitarian protection and assistance from those authorities.
- 4.2 When the magnitude of the problem demands it, the State must call upon the participation of International Organizations, including Agencies of the United Nations System, in order to participate in terms of protection and assistance or to collaborate in an advisory capacity.
- 4.3 The displaced person should assume the obligation to carry out all pertinent efforts to improve the conditions of his/her life and to generate lasting solutions and to permit him/her to leave the status of displaced person.

Article 5. – The Right of Equality

Humanitarian protection and assistance are provided without any distinction of race, color, sex, language, religion or belief, political or any other kind of opinion, national, ethnic or social origin, legal or social condition, age, handicap, economic position, birth or any other similar condition.

Article 6. – The Principle of Solidarity

By virtue of the principle of solidarity, displaced persons should contribute to the communal work of their own community or of the communities welcoming them.

Section II PROTECTION AGAINST INVOLUNTARY DISPLACEMENT

Article 7. – Arbitrary Displacements

- 7.1 Every human being has the right to protection against arbitrary displacements that remove him/her from his/her home or from his/her place of permanent residence.
- 7.2 The prohibition against arbitrary displacements includes the displacements:
 - a) Based on policies with the object or result of altering the ethnic,

- religious, racial, social or political and apartheid and/or ethnic cleansing of the affected population;
- b) In situations of armed conflict, unless such displacement should be required by the safety of the affected civilian population or by imperative military reasons;
- c) In cases of large scale development projects, when they are not justified by a higher or overriding public interest; and
- d) When they are used as collective punishment.

7.3 The displacements shall not have a duration longer than that imposed by the circumstances.

Article 8. – Concerning Involuntary Displacement

- 8.1 Before deciding on the displacement of persons, the competent authorities shall make sure that they have studied all viable alternatives in order to avoid it. When no alternative remains, all measures necessary in order to minimize the displacement and its adverse effects shall be taken.
- 8.2 The authorities responsible for the displacement shall assure themselves as much as possible that the displaced persons are adequately situated, that the displacement is carried out in satisfactory conditions of safety, nutrition, health and hygiene and that members of the same family will not be separated.
- 8.3 If the displacement occurs in situations different from those exceptional states owing to armed conflicts, then the following guarantees shall be respected:
 - a) The state authority empowered by law to order such measures shall adopt a specific decision;
 - b) There shall be adopted appropriate measures in order to provide the future displaced persons complete information on the reasons and procedures for their displacement and, if applicable, about their indemnification and resettlement;
 - c) The free and informed consent of the future displaced persons shall be obtained;
 - d) The competent authorities shall try to involve the persons affected, the women in particular, in the planning and execution of their resettlement;
 - e) The competent legal authorities shall apply measures aimed at assuring compliance with the law when necessary; and,
 - f) The right to effective legal recourse shall be respected, including the review of decisions by competent judicial authorities.

Article 9. – Indigenous Peoples, Minorities, Campesinos and Other Groups

The State has the obligation to take measures for the protection of Andean indigenous peoples, ethnic groups in the Amazon basin, campesino minorities and other

groups having a special dependency on their land or a special attachment to it.

Section III HUMANITARIAN ASSISTANCE

Article 10. – Humanitarian Assistance

Humanitarian assistance is administered in conformity with principles of humanity and impartiality and without any discrimination whatsoever, for a period of time not to exceed six (6) months from the beginning of the humanitarian assistance provision. Special cases that require it in like manner, shall be dealt with individually.

There shall be no deviation of the humanitarian assistance meant for internally displaced persons, neither for political nor military reasons. The work of supervision and control of the humanitarian assistance that may be authorized is the responsibility of the Ministry of Women and Social Development.

Article 11. – Security and Protection of those Providing Humanitarian Aid

Persons providing humanitarian aid, their means of transportation and their supplies shall enjoy respect and protection. They shall not be subject to attacks or other acts of violence.

Article 12. – The Conduct of Those Providing Humanitarian Services

At the time of providing the assistance, international humanitarian organizations and the other competent agencies shall extend due consideration to the protection of the needs and human rights of the internally displaced persons and shall adopt timely measures in this regard.

In that activity, the aforesaid organizations and agencies shall respect the pertinent national and international standards and codes of conduct.

Article 13. - Concerning Civil Society and Meetings for Negotiating Consensus

The authorities responsible for caring for displaced persons shall create spaces for dialogue, negotiation and support favoring participation of civil society in the aggregate.

Section IV RETURN, RESETTLEMENT AND REINTEGRATION

Article 14. – Conditions for Return, Resettlement and Reintegration

The competent authorities have the obligation and responsibility to establish and provide the means to permit the safe, honorable and voluntary return of internally displaced persons to their homes or to their place of permanent residence, or their voluntary resettlement in another part of the country. Those authorities shall facilitate the reintegration of the internally displaced persons who have returned or have resettled in another part.

To the extent possible, there shall be assured the full participation of internally displaced persons in the planning and management of their return or of their resettlement and reintegration.

Article 15. – Proposals for Return

Return to the places of permanent residence must be voluntary. The proposals for return should unite the following components:

- a) Selection of the possible returnees;
- b) Selection of the communities whose return should be promoted, taking into account the degree of security in the zone and minimum conditions for the reconstruction of infrastructure and the social fabric;
- c) Setting up a health program prior to return;
- d) Initiating psychological and emotional assistance prior to return;
- e) Promotion of human rights;
- f) Organized transfer of the communities;
- g) Reinsertion in the places of origin, following an evaluation of the minimal conditions for self-sufficiency and self-protection, as well as of the possibility to detect imminent conflicts;
- h) Continuation of education;
- i) Health care;
- j) Carrying out community reconstruction works;
- k) Technical assistance for agricultural production;
- l) Reinforcement of social relations through agencies of conflict resolution; and
- m) Integration of mid-range development programs designed to alleviate poverty.

Article 16. – Compulsory Assistance for the Return

All competent authorities shall make available and provide to international humanitarian organizations and to other competent agencies, in exercising their respective mandates, rapid and unimpeded access to the internally displaced persons so that they may provide them assistance in their return or resettlement and reintegration.

**Section V
CONCERNING THE AUTHORITIES**

Article 17. – Concerning the Authorities with Respect to Displaced Persons

The internally displaced persons who return to their homes or to their places of permanent residence or who may have been resettled in another part of the country, shall not be the object of any discrimination whatsoever based on their displacement. They shall have the right to participate fully and equally in public affairs at all levels and to enjoy access to public services in conditions of full equality.

The various State entities and services have the obligation and responsibility to provide assistance to the internally displaced persons who have returned or who have been resettled elsewhere, in recovering, insofar as possible,

the properties or possessions they left or of which they were deprived when they were displaced.

Article 18. – Concerning the National Police and the Armed Forces

The National Police of Peru and the Armed Forces, in carrying out their duties or those duties they may have been assigned on an exceptional basis, must provide guarantees of security to the displaced persons at different times of their displacement, such as: during the displacement, during return or resettlement and during reintegration.

Displaced persons with special needs for protection shall be cared for on a priority basis.

Article 19. – Concerning Regional and Local Governments

Regional Governments and the Municipalities shall adjust their jurisdictional capacities and budgets in recognition of the rights and application of the benefits established in this Law.

Within their exclusive competencies, the Regional Governments and their delegated authorities, the Municipalities, shall include caring for the needs of the displaced persons and reestablishing their basic rights, in a systematic manner.

**Section VI
SANCTION**

Article 20. – Loss of Benefits and Penalties

Any person who, taking advantage of the circumstances may have declared untrue facts and conditions, and because of them may have obtained rights and benefits not due to him/her, automatically loses these rights and benefits, as well as being penalized in accordance with the applicable legislation.

**Section VII
CARE OF THE DISPLACED POPULATION**

Article 21. – ASSISTANCE TO THE DISPLACED POPULATION

The Ministry of Women and Social Development has included within its functions, to advise, train and care for the displaced population, as may be the case, according to its budget and with the cooperation of other State entities, and in order to do so it may, through a supreme decree, charge an internal office or one of its Decentralized Public Agencies with those functions.

Article 22. – Objectives

Within that set forth in the preceding article, the Ministry of Women and Social Development has the objectives detailed below, which shall be transferred progressively to the Local and Regional Governments, in agreement with the provisions of Article 188 of the Political Constitution of Peru:

- The service of all sectors to the displaced population, with MIMDES as the governing body being responsible for coordination.
- Integral and sustainable development of the expelling and receiving areas.
- Promotion and protection of human rights and international humanitarian law.
- Articulation of public and private efforts for the appropriate prevention and care of internal displacement cases.

Article 23. – Concerning the National Register of Displaced Persons

The Ministry of Women and Social Development shall create a Consolidated Register, with the object of assuring that the State should know the number of displaced persons, their characteristics and needs.

At the regional and municipal level said register would have special features for servicing the needs and characteristics of the displacement.

The competent authorities for collecting individual information from displaced persons are: the Regional Governments, the Municipalities and the Office of the Public Defender. In the event of mass displacements, said authorities are responsible for requesting the cooperation of other State entities and institutions or of civil society.

TEMPORARY PROVISIONS

First.- Concerning the treatment of displaced persons

The treatment given displaced persons by the State and by civil society must be reviewed in order to find mechanisms favoring return, resettlement and reintegration.

Second. – Concerning the Database

The database of the Truth and Reconciliation Commission as it relates to displaced persons, in aspects that do not gather confidential information, should be incorporated into the database of the National Register of Displaced Persons consigned in Article 23 of this Law.

Third. – Concerning the Training and Specialization of Personnel

The Ministry of Women and Social Development shall promote development of a program for the training, education and specialization of the personnel responsible for applying this Law and shall be alert to establish mechanisms of constant coordination for its effective application. Non-governmental organizations and civil society may facilitate the activities of promotion, coordination and execution of this Law.

Fourth. – Concerning Regulation

The Ministry of Women and Social Development (MIMDES) shall publish the corresponding Regulations within sixty (60) days following the entry into force of this Law.

Let this be sent to the President of the Republic for its promulgation.

In Lima, on April twenty-eighth, two thousand four.

HENRY PEASE GARCÍA
President of the Congress of the Republic

MARCIANO RENGIFO RUIZ
First Vice-President of the Congress of the Republic

**TO THE HONORABLE CONSTITUTIONAL PRESIDENT OF THE
REPUBLIC**

WHEREAS:

I command that it be published and complied with.

Done in the House of the President, in Lima, on the nineteenth day of May of the year two thousand four.

ALEJANDRO TOLEDO
Constitutional President of the Republic

CARLOS FERRERO
President of the Council of Ministers

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