



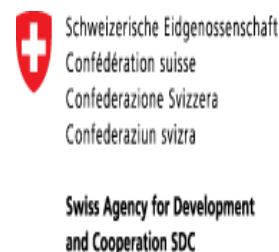
KNOMAD PAPER 47

In Pursuit of Coherence: Internal Displacement Policy across Conflict and Disaster Settings

David Cantor and Beatriz Eugenia Sánchez-Mojica

March 2023





WORLD BANK GROUP

The KNOMAD Paper Series disseminates work in progress funded by KNOMAD, a global hub of knowledge and policy expertise on migration and development. KNOMAD is supported by a multi-donor trust fund established by the World Bank. The European Commission, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH commissioned by and on behalf of Germany's Federal Ministry of Economic Cooperation and Development (BMZ), and the Swiss Agency for Development and Cooperation (SDC) are the contributors to the trust fund.

The research presented in this paper is funded by the Thematic Working Group on Environmental change and migration. The views expressed in this paper do not represent the views of the World Bank or the partner organizations. Please cite the work as follows: **Cantor and Sánchez-Mojica, 2023. In Pursuit of Coherence: Internal Displacement Policy across Conflict and Disaster Settings, KNOMAD Paper 48.**

The views expressed in this paper do not represent the views of the World Bank or the sponsoring organizations. All queries should be addressed to KNOMAD@worldbank.org. KNOMAD working papers and a host of other resources on migration are available at www.KNOMAD.org.

In Pursuit of Coherence: Internal Displacement Policy across Conflict and Disaster Settings*

David Cantor and Beatriz Eugenia Sánchez-Mojica[†]

Abstract

A concern with internal displacement is increasingly evident across the main international regimes that are relevant to conflict and disasters. Each of these five regimes focuses on responding to different kinds of challenges presented by conflict-driven or disaster-driven displacement. This raises the question of whether policy on internal displacement remains coherent across these distinct international regimes.

Against the empirical backdrop of conflicts and disasters as contexts within which internal displacement occurs, this paper analyses the coherence of international policy on displacement prevention and planning, protection and assistance to displaced persons, and solutions to displacement across the five domains of: (i) the international legal regime on internal displacement; (ii) international humanitarian law and the peace and security regime; (iii) the disaster risk reduction regime; (iv) the climate change regime; and (v) the sustainable development framework expressed by the 2030 Agenda and international commitments on urban development in the New Urban Agenda. It concludes that, whilst each of the five international regimes addresses internal displacement from a distinct perspective, there appears to be no generalised incompatibility between their rules as they apply to internal displacement, whether driven by conflict or disasters. Nonetheless, given the dispersed nature of the rules, it suggests that a single document that holistically describes and connects these diffuse international standards across all five regimes, and as they relate to the different stages and contexts of internal displacement, would be useful for integrating those approaches.

* This paper was produced and funded by KNOMAD's Thematic Working Group (TWG) on Environmental change and migration. KNOMAD is headed by Dilip Ratha. The TWG on Environmental change and migration is chaired by Alex Aleinikoff, Director, Zolberg Institute on Migration and Mobility, The New School. The focal point for the TWG is Sonia Plaza, Senior Economist, World Bank.

[†] David Cantor is Professor at the School of Advanced Study, University of London, where he is Director of the Refugee Law Initiative and the Internal Displacement Research Programme (david.cantor@sas.ac.uk). Beatriz Eugenia Sánchez-Mojica is an Associated Professor at the Law School of IE University, as well as a Fellow Researcher at the Institute of Studies on Conflict and Humanitarian Action (IECAH), both in Madrid (Spain) (beasanchezmojica@gmail.com). The views expressed here are the authors' own and should not be attributed to any particular institution. The authors thank Alex Aleinikoff, Walter Kalin, Susan Martin, Sonia Plaza and Jonas Bergmann for their useful comments on earlier drafts of the paper.

Table of Contents

I: Introduction	5
2: Understanding internal displacement in conflict and disaster contexts	6
3: International regimes and internal displacement	11
4: Conclusions	34
5: Recommendations	36

1. Introduction

In the international arena, the concept of ‘internally displaced persons’ (IDPs) gained force during the 1980s and 1990s largely as a counterpart to the established concept of refugees as persons outside their country owing to persecution and violence. Since then, the idea that IDPs represent a matter of international concern has continued to figure most prominently in law, policy and practice relating to displacement driven by conflict and violence. However, even since the 1980s, other drivers of internal displacement, such as disasters linked to natural hazards, have been recognised.¹ Although slower to integrate the concept of IDPs, disaster response frameworks are now starting to engage more often with internal displacement as a matter of immediate humanitarian concern in disaster settings, as are those global regimes concerned with longer-term challenges of development and climate change.²

These developments raise important questions of coherence in the framing of the concept of ‘internal displacement’ and its expression across these many different international regimes, each of which has its own distinct wider objectives and rationales. This working paper offers a preliminary response through its study of internal displacement in the context of, respectively, conflict and disasters. First, it briefly examines the coherence of internal displacement as a concept, before turning to identify points of similarity and difference between its empirical dynamics in each crisis context (section 2). The substance of the paper then evaluates how international law and policy across five different regimes integrate concepts of internal displacement and the degree of compatibility in approaches (section 3). Overall, this generates conclusions and recommendations on international policy coherence in this area (sections 4 and 5).

The paper, in assessing wider questions of coherence in the framing of internal displacement in international law and policy, focuses on displacement driven by conflict and disasters. They appear to be the major drivers of internal displacement, at least as this concept is recognised by the international community (see section 2). Moreover, in practice, questions of regime coherence often come most evidently to the fore where internal displacement takes place in the context of both conflict and disasters. For instance, in the Philippines, the response to persons displaced internally by typhoons and tropical storms is largely distinct from, and markedly more supportive than, the response to persons displaced internally by the conflict in Mindanao.³ In Colombia, by comparison, the same dynamic is evident, but in reverse: a robust system exists for protecting and assisting conflict IDPs, whilst support for disaster IDPs is relatively minimal.⁴ However, conflict and disasters are not the only drivers of internal displacement globally and some of our findings on regime coherence may apply equally to other drivers of internal displacement, such as development projects or criminal violence.⁵

The paper adopts a desk-based methodology, involving a review of the published sources identified by the authors as relevant to the topic. For section 2, in view of the incomplete and fragmentary nature of robust peer-reviewed empirical studies in this area, we have predominantly drawn on data from ‘grey’ literature sources, such as practitioner reports, and inferences from wider contextual data. We acknowledge that this may serve as a limitation or to introduce bias. For section 3, we identified the most pertinent international regimes in consultation with the KNOMAD team. Within each regime, we describe and analyse what seem to us to be the most pertinent rules expressed by the core

¹ See, for example, Essam El-Hinnawi, *Environmental Refugees* (United Nations Environment Programme 1985).

² International regimes are ‘sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations’ (Stephen D Krasner, ‘Structural Causes and Regime Consequences: Regimes as Intervening Variables’ (1982) 36(2) *International Organization* 185; see also Stephen D Krasner, *International Regimes* (Cornell University Press 1983). Here, we focus on the legal and policy rules that constitute their core (Kal Raustiala, ‘Institutional Proliferation and the International Legal Order’ in Jeffrey L Dunoff and Mark A Pollack (eds) *Interdisciplinary Perspectives on International Law and International Relations* (CUP 2013)).

³ Maria Carmen Fernandez, Bai Shaima Baraguir and John Bryant, ‘Inclusion and exclusion in displacement and peacebuilding responses in Mindanao, Philippines: falling through the cracks’ (2020) *HPG Working Paper* <https://cdn.odi.org/media/documents/Inclusion_exclusion_Mindanao.pdf> accessed 20 October 2022.

⁴ Beatriz Sánchez-Mojica and Sebastián Rubiano, *Territorios en transformación, derechos en movimiento. Cambio ambiental y movilidad humana en Colombia* (Universidad de los Andes 2018).

⁵ On development-induced internal displacement, see Christopher McDowell (ed), *Understanding Impoverishment: The Consequences of Development-induced Displacement* (Beghahn 1996) and Michael M Cernea, ‘Internal Refugee Flows and Development-induced Population Displacement’ (1990) 3(4) *Journal of Refugee Studies*, 320. On displacement driven by organised criminal groups, see David J Cantor, ‘Criminal Groups and a Decade of Displacement in Central America and Mexico’ (forthcoming) *Brown Journal of World Affairs*

documents for the particular regime. Within the text, we signal where those rules have legal force as matter of binding international law and where they do not (but instead take the form of policy or ‘soft law’ at the international level). The review has a cut-off date for sources published before 15 May 2022 when that stage of the project was completed.

2. Understanding internal displacement in conflict and disaster contexts

But what is ‘internal displacement’? And how does it relate to conflict or disasters, as crises that produce significant levels of displacement? These questions serve as a point of entry to our substantive analysis of coherence between international regimes in their treatment of internal displacement in contexts of conflict and/or disasters (section 3). Thus, we start by briefly outlining the concept of ‘internal displacement’ as it tends to be understood in international law and policy, interrogating particularly the necessity or otherwise of a link to a crisis setting, such as conflict or disaster (section 2.1). We then compare certain empirical dynamics of ‘conflict displacement’ and ‘disaster displacement’ (using these terms as shorthand for internal displacement in each setting). We analyse the quantitative dimensions of each strand of internal displacement at the global level, giving insight into their respective scale and distribution worldwide (section 2.2). We then consider whether there are similarities and/or differences in the way displacement dynamics and impacts play out in each context (section 2.3), ending with consideration of where the two forms of crisis overlap in complex humanitarian emergencies (section 2.4).

2.1 Conceptualising internal displacement and its relationship to crisis

Concepts of ‘internal displacement’ and ‘IDPs’ have seen ever greater use in the past three decades, as the expanding body of law, policy and practice directly concerned with internal displacement clearly shows. Moreover, no longer confined only to humanitarian circles, these concepts appear increasingly in public, media and other sources.⁶ In describing a form of human mobility, the concepts rest upon two essential definitional elements: firstly, that the flight of affected persons from their homes or places of habitual residence has been forced rather than voluntary; and, secondly, that they have not crossed an internationally recognised State border.⁷ These elements are reflected within international policy, such as the ‘descriptive definition’ of IDPs in the UN Guiding Principles on Internal Displacement,⁸ adopted as a regional legal definition by the Kampala Convention and ICGLR Protocol.⁹ Other policy instruments and academic analysis likewise tend to assume these necessary conceptual elements (see section 3). As a concept, then, the two essential elements of internal displacement give it a high degree of internal coherence.¹⁰

However, in practice, it can be challenging to distinguish IDPs from related categories, including the homeless, forced evictees and crisis-affected persons (for whom the ‘mobility’ element may seem lacking), rural-urban or internal economic migrants (for whom the ‘forced’ mobility element may seem lacking) and refugees (for whom the ‘internal’ nature of mobility may be lacking).¹¹ Such fuzziness at the conceptual boundaries of internal displacement extends

⁶ For example, national broadsheet newspapers and magazines now often use the terms ‘internal displacement’ and ‘IDPs’, as is shown by any search of the online repositories of those with an international readership such as *The Washington Post*, *The Times* or *The Economist* as English-language sources. This can be seen also in news media in countries with conflict-induced internal displacement, such as Pakistan (Dost Muhammad Yousafzai and Mehrunnisa, ‘The Role of Media in the Coverage of Internally Displaced Persons (IDPs) of Malakand Division (Khyber Pakhtunkhwa)’ (2020) V(II) *Global Mass Communication Review* 34.

⁷ Moreover, the response to internal displacement is widely seen as underpinned by the idea of ‘sovereignty as responsibility’, coined by Francis Deng as the first Special Representative of the UN Secretary General and reflected in the UN Guiding Principles, as a riposte to the concern that engaging with issues of internal displacement infringed inappropriately on State sovereignty. However, this concept relates to the response to internal displacement rather than defining what it is

⁸ United Nations Commission on Human Rights (UNCHR), ‘Guiding Principles on Internal Displacement’, UN doc E/CN.4/1998/53/Add.2 (11 February 1998) Annex, para 2.

⁹ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (adopted 23 October 2009, entered into force 6 December 2012) 49 ILM 86 (Kampala Convention) art I(k); International Conference of the Great Lakes Region Protocol to the Pact on Security, Stability and Development in the Great Lakes Region on the Protection and Assistance to Internally Displaced Persons (adopted 30 November 2006, entered into force 21 June 2008) (ICGLR Protocol) art 1(4).

¹⁰ See, however, Jamie Draper, ‘Justice and Internal Displacement’ (2021) *Political Studies* <<https://doi.org/10.1177/00323217211007641>> accessed 20 October 2022.

¹¹ This is not to suggest that refugees (or other non-nationals) cannot be internally displaced due to subsequent events in their host country or even on return to their own country. For example, is there any reason why Rwandan refugees living in eastern Democratic Republic of Congo cannot be considered internally displaced if they are forced to flee militia attacks in the host

also to the important question of whether this concept is limited to certain kinds of drivers or contexts. Certainly, the concept is usually applied to forced movement in crisis contexts. For instance, the Guiding Principles state that internal displacement takes place ‘as a result of or in order to avoid the effects of’ certain specified kinds of crises, and a similar emphasis is evident in the IASC Framework on Durable Solutions.¹² At the same time, the standards outlined in these instruments appear applicable to internal displacement outside crisis contexts (and are based on general human rights standards).

Moreover, if some link to a situation of crisis is required by the concept of ‘internal displacement’, then which kinds of crisis count? Both conflict and disasters (or at least sudden-onset disasters driven by natural hazards)¹³ are widely accepted in international policy as relevant drivers of internal displacement.¹⁴ Yet, beyond this basic consensus, international IDP law and policy is more uncertain. For example, the Guiding Principles refer also to ‘situations of generalized violence, violations of human rights or ... human-made disasters’.¹⁵ That approach is reflected in the Kampala Convention and ICGLR Protocol,¹⁶ but they also speak to internal displacement in the context of development projects.¹⁷ Indeed, the idea that the movement of people caused by development projects should be treated as displacement has long been a feature of academic scholarship.¹⁸ Yet national law and policy appear less clear that internal displacement deriving from those contexts needs addressing.¹⁹ This raises questions about the extent to which international law and policy adopts a uniform view on whether crises or contexts other than conflict and disasters are capable of generating ‘internal displacement’.

2.2 Quantifying conflict and disaster displacement

Country-level annual data collated by IDMC offer a crucial starting point for analysis of the global scale and distribution of conflict-driven and disaster-driven internal displacement.²⁰

They suggest that, at the global level, the scale of internal displacement in disasters appears greater than in conflicts. In 2020, for example, there were 30.7 million new incidents of disaster displacement, compared with only 9.8 million new incidents of displacement driven by violence, of which 7.5 million were due specifically to ‘armed conflict’.²¹ This prevalence is reflected over the entire 2008-2020 period, with 318.7 million new incidents of disaster displacement compared to 97 million new incidents of displacements due to conflict and violence.²² Over this timescale, then, the average annual flow of disaster-driven internal displacements globally is about four times that of internal displacements due to armed conflict. In part, the greater flows of disaster displacement likely reflect the wider distribution of disasters globally and the more significant displacement impact of disaster ‘mega-events’. However, the data on internal displacement due to disasters relate principally to sudden-onset events rather than slow-onset events.²³ Were the latter to be more fully integrated into the IDMC database, the figures for disaster displacement would be even larger. Moreover, a future shaped by climate change is likely to see an uptick in ‘internal climate

country? Certainly, legal and policy definitions of IDPs do not appear expressly to require citizenship as a necessary definitional element

¹² IASC, *Framework on Durable Solutions*. The examples relate exclusively to conflict and disaster settings.

¹³ Hazards can be ‘natural, anthropogenic or socionatural in origin’, whilst disasters can be ‘slow-onset’ (i.e. ‘one that emerges gradually over time’) or ‘sudden-onset’ (i.e. triggered by a hazardous event that emerges quickly or unexpectedly’) (UNGA, *Report of the Open-Ended Intergovernmental Expert Working Group on Indicators and Terminology Relating to Disaster Risk Reduction*, UN doc A/71/644 (2016))

¹⁴ The IASC Framework addresses durable solutions in the context of ‘conflict or natural disaster’ (A1).

¹⁵ Guiding Principles, para 2

¹⁶ Kampala Convention, art I(k); ICGLR Protocol, art 1(4).

¹⁷ Kampala Convention, art X; ICGLR Protocol, art 1(5)

¹⁸ See, for instance, Cernea, ‘Internal Refugee Flows’.

¹⁹ For an exception, see India, *National Policy on Resettlement and Rehabilitation for Project Affected Families* (17 February 2004).

²⁰ For general limitations of the data, see the detailed description of methodology in IDMC, *GRID 2020: Methodological Annex* (2021). For a wider critiques of global data on IDPs, see Gabriel Cardona-Fox, ‘The Politics of IDP Data’ (2020) 39(4) *Refugee Survey Quarterly* 620.

²¹ IDMC, *Global Report on Internal Displacement (GRID) 2021: Internal Displacement in a Changing Climate* (IDMC 2021) 11-12.

²² IDMC, ‘Displacement Data’ (*Global Internal Displacement Database*) <<https://www.internal-displacement.org/database/displacement-data>> accessed 15 May 2022.

²³ IDMC has made an effort to begin integrating the latter into its global figures since 2019, although they likely remain a major underestimate (IDMC, *GRID 2020: Methodological Annex*, 28).

migration' due to the increasing prevalence of slow-onset climate-related hazards in many regions,²⁴ as well as the increasing frequency, intensity and unpredictability of sudden-onset weather-related disasters.²⁵

Disaster-driven internal displacement is truly global, as it has been documented in every country and territory in the world in the period 2008-2020.²⁶ But it is not evenly distributed across the globe: Asia and the Pacific register the majority of new disaster displacements – 69% of the global total in 2020,²⁷ and 80% of the global total across the 2008-2018 period.²⁸ This reflects the disproportionately high exposure of that region's large and densely located population during the past few decades to floods and storms,²⁹ which drive the majority of disaster displacement.³⁰ By contrast, present day new flows of internal displacement due to conflict take place almost exclusively in low and middle income countries (LMICs): 100% of the global total in 2020 (in 42 LMICs),³¹ and 99.98% of the global total across the 2008-2018 period (in 82 LMICs and one high income country (HIC)).³² Clearly, this distribution reflects the current clustering of conflict in LMICs rather than HICs. In 2020, sub-Saharan Africa registered the majority of new displacements due to conflict (69%), followed by the Middle East and North Africa (21%). These regions together accounted for the great majority of new conflict displacements during the 2010s.³³ In 2022, though, the Russian invasion of Ukraine is likely to have added Europe to the list of regions most affected by conflict-driven internal displacement.³⁴

2.3 Comparing conflict and disaster displacement

There are likely to be strong similarities between conflict and disaster displacement in a number of key areas, despite differences in the scale and distribution of each strand of displacement at the global level. Thus, there is a good case that the 'human experience' of internal displacement is often similar across disaster and conflict contexts, i.e. 'people lose family members, endure the pain of family separation and are deprived of their possessions, home and communities'.³⁵ Moreover, these needs are not distributed equally among the crisis-affected population, but that 'vulnerable groups suffer more' in both conflict and disasters.³⁶ Similarly, needs during displacement are likely to be experienced more acutely by vulnerable groups within the IDP population in both conflict and disaster contexts.³⁷

²⁴ In the most pessimistic scenario, climate change could lead almost 3% of the population in six regions being forced to migrate within their own countries, a total of 216 million people across 106 LMICs in six regions (Viviane Clement et al, *Groundswell Part 2: Acting on Internal Climate Migration* (World Bank 2021).

²⁵ The number of weather-, climate- and water-related disasters has increased by five-fold over the past five decades, driven by climate change, more extreme weather and improved reporting (World Meteorological Organization (WMO), *Atlas of Mortality and Economic Losses from Weather, Climate and Water Extremes (1970–2019)* (2021). In 2010-2019, 83% of all disasters triggered by natural hazards were caused by weather- and climate-related events (IFRC, *World Disasters Report 2020* (2021) 2).

²⁶ IDMC, 'Displacement Data'.

²⁷ IDMC, *GRID 2021*, 7.

²⁸ Ponserre and Ginnetti, *Disaster Displacement*, 7.

²⁹ See, for example, IFRC, *World Disasters Report 2020* (IFRC 2021) 126-127.

³⁰ For the years 2008-2018, the proportion was 87% from weather-related hazards (floods and storms accounted for 85%) and 13% from geophysical hazards (Ponserre and Ginnetti, *Disaster Displacement*, 8).

³¹ Author calculations based on data in annexes to IDMC, 'Displacement Data'

³² Author calculations based on data in annexes to IDMC, 'Displacement Data'. Of 79 million new displacements due to conflict in that period, the only HIC registered is Israel (13480 incidents).

³³ See global reports from IDMC for previous years.

³⁴ The IDMC has not yet published data on 2022 but other sources estimate that between six and eight million people were internally displaced within Ukraine between March and September 2022 (International Organization for Migration, *Ukraine Internal Displacement Report: General Population Survey, Round 9* (26 September 2022) <<https://displacement.iom.int/reports/ukraine-internal-displacement-report-general-population-survey-round-9-12-26-september-2022>> accessed 20 October 2022.

³⁵ Elizabeth Ferris and Diane Paul, 'Protection in Natural Disasters' (Refugee Studies Centre conference, Oxford, 22-24 September 2009) <https://www.brookings.edu/wp-content/uploads/2016/06/0922_natural_disasters_ferris.pdf> accessed 15 May 2022, 6-7.

³⁶ Ferris and Paul, 'Protection in Natural Disasters', 7.

³⁷ Platform on Disaster Displacement (PDD), 'Internal Displacement in the Context of Disasters and the Adverse Effects of Climate Change' (Submission to the High-Level Panel on Internal Displacement, 2 May 2020) <<https://disasterdisplacement.org/staff-member/internal-displacement-in-the-context-of-disasters-and-the-adverse-effects-of-climate-change>> accessed 15 May 2022, 25; Sarah Edgcumbe, 'Roma in Iraq and Syria: On the Margins of IDP Protection' (2021) Researching Internal Displacement Working Paper No. 9 <https://researchinginternaldisplacement.org/wp-content/uploads/2021/12/RID-WP9_Sarah-Edgcumbe_Roma-ID_021221.pdf> accessed 15 May 2022.

However, the distinct kinds of dangers in conflict and disaster settings may result in different dynamics of internal displacement in each context. For instance, the sudden-onset hazards that drive the majority of recorded new disaster displacements globally (i.e. weather-related and geophysical hazards) have the potential to generate primary risks to life and limb and destroy major infrastructure ‘almost simultaneously across huge tracts of geographical territory’.³⁸ By contrast, the generally more diffuse distribution of primary risks across time and space in conflict contexts means that simultaneous displacement *en masse* at this scale is less common.³⁹ Furthermore, the weather-related sudden-onset hazards responsible for most disaster displacement worldwide tend also to be seasonal.⁴⁰ Any ensuing disaster displacement thus partly reflects this seasonal frequency. By contrast, seasonality is a less pronounced feature of conflict and conflict displacement.⁴¹ However, in both contexts, it is important to note that secondary risks generated by the effects of the disaster or conflict can still persist through time in potentially similar ways (as do risks generated by slow-onset events and recurring sudden-onset events).

Potential differences in the political and institutional contexts of conflict and disaster settings may also shape displacement dynamics in different ways. For instance, global data suggest that many disaster displacements, especially those triggered by weather-related events, are ‘evacuations’ or ‘relocations’ organised by the authorities.⁴² By contrast, almost all conflict displacement is spontaneous, in the sense that it is not organised in an orderly fashion by the authorities.⁴³ In part, this difference reflects the more predictable nature of risks in these disaster settings but it also reflects a fundamental difference in political context. The risks to life and limb in disasters linked to sudden-onset natural hazards are far less intensely politicised than in conflict settings, such that the role of the authorities in respect of the displacement of the population differs accordingly. Secondly, institutional approaches to each context tend to differ as a result of their differing degrees of politicisation. Conflict, with its range of warring parties, is an intensely politicised arena for any government (or other actors). By contrast, highly polarised zero-sum politics tends to play a more limited role in the response to disasters, where the risks associated with disaster displacement tend to be related to the capacity of national and local government authorities.⁴⁴ The differing ways in which the subject matter of conflict and disasters is politicised is one factor that shapes institutional responses not only to each crisis

³⁸ UNHCR, *Practical Guidance for UNHCR Staff on IDP Protection in the Context of Disasters and the Adverse Effects of Climate Change* (UNHCR 2021) 6.

³⁹ However, this may be a point of similarity with displacement in the context of slow-onset disasters.

⁴⁰ UNHCR, *Practical Guidance*, 6.

⁴¹ However, seasonality does play a role in some conflicts. For instance, the fighting in Afghanistan tends to damp down where the harsh winters make offensives impractical. At the same time, displacement in these contexts responds to other acts of violence by the warring parties that may not depend on such weather-related constraints.

⁴² For example, in the 2020 data, approximately half the incidents of disaster displacements were identified by the terms ‘evacuated’ or ‘relocated’, whereas those terms account for almost none of the conflict displacement that year (see figure, IDMC, *GRID 2020: Methodological Annex*, 24). A similar proportion can be seen in the disaster displacement reporting terms data relating to 2017 and 2018 (see figure, IDMC, *GRID 2019: Methodological Annex* (2020) 20). Ponsérre and Ginnetti, *Disaster Displacement*, 8. These data do not distinguish between pre-emptive evacuations and displacement in response to disasters, raising questions about whether the former should be treated as displacement (Jane McAdam, ‘Evacuations: A Form of Disaster Displacement’ (2022) 69 *Forced Migration Review* 56). Other research shows that ‘planned’ relocations can take place on either a proactive or reactive basis, usually in response to multiple hazard impacts and risks across time, including those posed by slow-onset hazards, and with considerable variation in the length of time between the decision and the relocation. Nonetheless, ‘[m]any relocations with single origin and destination sites involve relatively small populations, take place in rural areas, and span surprisingly short distances, often less than two kilometres’ (Erica Bower, Sanjula Weerasinghe and Daria Mokhnacheva, ‘Mapping of Planned Relocation Cases: A Foundation for Evidence-Based Policy and Practice’ (2022) 69 *Forced Migration Review* 48, 49).

⁴³ See footnote above.

⁴⁴ PDD, ‘Internal Displacement’, 20. Indeed, some suggest that it is weakness in the capacity of such authorities to prevent or mitigate the risk of the disaster (and to respond once it occurs) rather than the hazard itself which causes displacement (Savaş Alpay, *Managing Disasters and Conflicts in OIC Countries* (SESRIC 2014) 63). In Yemen and Sudan, whilst climate change contributed to forced displacement, it was the policies and inaction of the governments that were critical factors in creating scarcity and prolonged displacement (Rachel Furlow, ‘Addressing the Politics of the Climate-Migration-Conflict Link’ (2022) 69 *Forced Migration Review* 14).

but also to the ensuing displacement.⁴⁵ These different approaches may help mould decisions by the affected population about whether to displace, where to go, how long to stay and whether to return.

2.4 Where conflict and disaster displacement combine?

In many countries, disasters linked to natural hazards occur in the absence of conflict. However, most conflict-affected countries also experience disasters; and many report both conflict- and disaster-driven internal displacement. For example, in 2020, of the 59 countries and territories hosting stock populations of conflict/violence IDPs, 43 (73%) also hosted stock populations of disaster IDPs and 48 of those 59 countries (81%) registered new disaster-driven displacement during the year.⁴⁶ The figures are broadly similar for countries that registered new conflict/violence-driven displacements during that year.⁴⁷ Although this offers a snapshot of only one year (and an arguably exceptional one, given the start of the COVID-19 pandemic), it suggests that countries that host conflict IDPs and/or register new conflict-displacements tend also to host disaster IDPs and/or register new disaster-displacements. In other words, it is relatively unusual for a country affected by conflict displacement not to be simultaneously affected by disaster displacement. This raises some intriguing questions about the intersections between conflict, disasters and displacement.

A considerable literature exists on the interaction between conflict and disasters. It suggests that conflicts may increase exposure and vulnerability to natural hazards through a range of mechanisms, including pushing people into disaster-prone areas, hindering relief efforts, destroying or damaging infrastructure and degrading the environment.⁴⁸ There is some evidence that disasters might help trigger or intensify conflict by degrading the environment and destroying infrastructure and sharpening competition for resources, weakening those state institutions that keep violence in check, or providing a rallying point for suffering-related grievances.⁴⁹ Disasters might act also to reduce the risk of conflict, but the evidence is somewhat weaker here.⁵⁰ Overall, it seems relatively clear that both disaster and conflict risks 'stem from the same underlying vulnerabilities in a given society' and may catalyse social change, making conflict and disasters inherently political processes 'driven primarily by social decisions from those with the most power and resources'.⁵¹ As a result, the causal interaction between disasters and conflict tends to be relatively context-specific.

Although less research exists on displacement in these mixed settings,⁵² three scenarios have been proposed to model how conflict and disasters in a single country might impact on displacement: (i) conflict and disasters exist side-by-side in the same geographical area, creating a mix of simultaneous but separate push factors ('same time, same place'); (ii) conflict and disasters act sequentially on persons, producing separate impacts that lead IDPs to flee for one reason and then to be displaced a second time for different reasons ('different times'); and (iii) conflict and disasters interact, with one factor contributing to, or exacerbating, the other, e.g. where disasters exacerbate the challenges for those

⁴⁵ For instance, the role of natural hazards and the effects of climate change in pushing movement is often concealed behind 'economic' explanations for flows of people from rural to urban areas (Glaucia Boyer, 'Development and Displacement Risks' (2015) 49 *Forced Migration Review* 21).

⁴⁶ Author calculations based on data in annexes to IDMC, 'Displacement Data'.

⁴⁷ Ibid. Specifically, of the 42 countries registering new conflict/violence displacements in 2020, 33 (79%) hosted stock populations of disaster IDPs and 37 (88%) registered new disaster displacements during the year.

⁴⁸ Elizabeth King and John C. Mutter, 'Violent Conflicts and Natural Disasters: The Growing Case for Cross-disciplinary Dialogue' (2014) 35(7) *Third World Quarterly* 1239.

⁴⁹ Ben Wisner, 'Violent Conflict, Natural Hazards and Disaster' in Ben Wisner, JC Gaillard and Ilan Kelman (eds), *Handbook of Hazards and Disaster Risk Reduction* (Routledge 2012). It has tended to be scholars working on climate issues who argue for its importance as a factor for generating conflict, whilst this view has attracted criticism from conflict scholars (Nils Petter Gleditsch, 'Whither the Weather? Climate Change and Conflict' (2012) 49(3) *Journal of Peace Research* 3).

⁵⁰ Ian Kelman, *Disaster Diplomacy: How Disasters Affect Peace and Conflict* (Routledge 2012); United Nations Development Programme, *Disaster-Conflict Interface: Comparative Experiences* (2011).

⁵¹ Laura ER Rivers and Ilan Kelman, 'Critiquing and Joining Intersections of Disaster, Conflict, and Peace Research' (2020) 11 *International Journal of Disaster Risk Science* 555, 559, 561.

⁵² This likely reflects the tendency towards conceptual and policy fragmentation when dealing with the drivers of displacement (Beatriz Eugenia Sánchez-Mojica, 'Parallel Paths? Factors Preventing an Adequate Response to Internal Displacement where Armed Conflict, Generalised Violence and Natural Disasters Converge' (2021) Researching Internal Displacement Working Paper No. 8 <https://researchinginternaldisplacement.org/wp-content/uploads/2021/11/RID-WP8_Beatriz-Sanchez_Convergence_011221.pdf> accessed 15 May 2022.

living in conflict zones or where conflict exacerbates the effect of a disaster ('same time, same place').⁵³ Moreover, conflict and disasters can also affect different parts of a country simultaneously ('same time, different places'). Such 'divided disasters' often occur where long-running conflict exists in one part of the country and a sudden-onset disaster affects another part of it.⁵⁴ Yet, even here, those events are likely to interact indirectly to shape displacement dynamics.⁵⁵ In general, then the direct and indirect links between conflicts and disasters that occur in the same country can help shape the dynamics of internal displacement in that country and the response by the authorities.

3. International regimes and internal displacement

This section explores the main international regimes that, directly or indirectly, govern internal displacement responses in conflict and disaster settings.⁵⁶ By reference to the three stages of prevention/planning, assistance and protection, and solutions, the analysis interrogates the extent to which coherence exists in the five main international regimes relevant to internal displacement: (i) the international legal regime on internal displacement;⁵⁷ (ii) international humanitarian law (IHL) and the peace and security regime; (iii) the disaster risk reduction (DRR) regime; (iv) the climate change regime; (v) the sustainable development framework expressed by the 2030 Agenda and the international commitments on urban development set out in the New Urban Agenda. Finally, in relation to each stage, we consider the interaction between these regimes in regulating approaches to internal displacement driven by conflicts and disasters. The analysis focuses on main global and regional instruments but, where appropriate, it also touches briefly upon how they have been reflected at the level of national laws, policies and practices.⁵⁸

At the outset, it should be emphasised that not all of the international instruments considered here constitute 'hard' law that is binding as a matter of international law. Certainly, some of the regimes have a stronger hard law character overall than others – this would be the case, for example, for IHL, which is rooted directly in a set of treaties, many of which are universally ratified, and rules of international custom – both are sources of binding international law.⁵⁹ By contrast, other regimes are rooted principally in international policy (or 'soft' law, i.e. not binding as a matter of international law),⁶⁰ at least at the global level – such as the internal displacement regime and the DRR regime. The field of international rules regulating internal displacement thus has a rather uneven character in terms of their hard/soft law character, which also varies between global/regional regimes. Further, in this context, it is important to note that a large number of soft law instruments situated in one or other regime, or straddling several, attempt to connect rules from the separate regimes in the pursuit of coherence⁶¹.

⁵³ Sánchez-Mojica, 'Parallel Paths', 5-8; Tamara Wood, "'Human' vs 'Natural' Causes of Displacement: the Relationship between Conflict and Disaster as Drivers of Movement' (*Nansen Initiative Perspectives*, 27 May 2015) <<https://disasterdisplacement.org/staff-member/human-vs-natural-causes-of-displacement-the-relationship-between-conflict-and-disaster-as-drivers-of-movement>> accessed 15 May 2022.

⁵⁴ Jessica Field, 'Divided Disasters: Examining the Impacts of the Conflict-Disaster Nexus for Distanced Crises in the Philippines' (2018) 42(S2) *Disasters* S265.

⁵⁵ Ayesha Siddiqi, 'Disasters in Conflict Areas: Finding the Politics' (2018) 42(S2) *Disasters* S161.

⁵⁶ Internal displacement is defined by the Guiding Principles as a phenomenon that has various causes. However, during the creation of the instrument and its adoption by States in the first years of its existence, the main focus was displacements due to conflict, with forced movements caused by disasters and development projects relegated to a secondary category (see Erin Mooney, 'The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern' (2005) 24 *Refugee Survey Quarterly* 9; Sánchez-Mojica, 'Parallel Paths?').

⁵⁷ This paper acknowledges 'IDP law' as a specific body of law, centred globally around the Guiding Principles on Internal Displacement (David Cantor, 'The IDP in International Law: Developments, Debates, Prospects' (2018) 30(2) *International Journal of Refugee Law* 191).

⁵⁸ However, a detailed analysis of institutional and coordination arrangements at the international level (or at the national level) is beyond the scope of this paper.

⁵⁹ See Statute of the International Court of Justice, art 38(1).

⁶⁰ This paper understands soft law to include sets of standards without binding legal force under international law, including non-binding or voluntary resolutions and codes of conduct formulated and accepted by international organisations, rulings from international courts and guidance developed by experts. See, Christine M Chinkin 'The Challenge of Soft Law: Development and Change in International Law' (1989) 38(4) *International and Comparative Law Quarterly* 851.

⁶¹ Elizabeth Ferris and Jonas Bergmann. 'Soft law, migration and climate change governance' (2017) 8(1) *Journal of Human Rights and the Environment*, 6.

In terms of coherence, it is also evident that each regime has a different orientation in how it relates to the issue of internal displacement. The IHL regime tends to focus on immediate issues of physical protection in armed conflicts, and has no application to disasters. The DRR regime, by contrast, does not apply to armed conflicts but tends to focus primarily on the response to immediate issues of assistance in disaster contexts only. Like the IHL and DRR regimes, the IDP regime concentrates on immediate issues, but covers both protection and assistance. In contrast, it applies both to conflict and disaster settings. The climate change and development regimes also have relevance to both conflict and disaster displacement, but take a rather different approach. Specifically, each focuses principally on addressing the underlying factors that drive conflicts and disasters, i.e. the longer-term root causes of displacement and wider structural obstacles to solutions to internal displacement, rather than its immediate manifestation and impacts. These different approaches raise questions about how coherent international policy is across both conflict and disaster displacement settings.

3.1 Internal displacement - prevention and preparedness

We will first consider the ways in which the five international regimes (and instruments that try to connect them) address the challenges of preventing and preparing for internal displacement, i.e. prior to its occurrence. In this context, though, prevention and preparedness are not necessarily the same thing. On the one hand, a duty to prevent internal displacement is not about prohibiting people from fleeing but rather about preventing the emergence of specific situations in conflict or disaster settings in which people find themselves forced to flee their homes or places of habitual residence. On the other, a duty to prepare for internal displacement speaks to the need to develop the knowledge, capacity and plans necessary to provide an adequate response to internal displacement should it occur as a result of conflict or disasters.⁶²

3.1.1 Internal displacement regime

No IDP treaty exists at the global level. Rather, at the global level, the international regime on internal displacement revolves around the Guiding Principles on Internal Displacement. This is a soft law instrument but its centrality to this regime is widely acknowledged, including by the two hard law regional treaties on IDP protection in Africa – the Kampala Convention and the ICGLR Protocol. Moreover, the Guiding Principles claim to have indirect binding effect under international law as their provisions are purported merely to specify how more general rules of hard international law on the protection of the human person apply to situations of internal displacement.⁶³ States may have the ‘primary duty and responsibility’ for implementing the rules of the IDP regime,⁶⁴ but the Guiding Principles claim they equally provide guidance to ‘all other authorities, groups and persons in their relations with [IDPs]’,⁶⁵ and the Kampala Convention also imposes direct obligations on international organizations and humanitarian agencies, members of armed groups in situations of armed conflict, and the African Union.⁶⁶

At its heart, this regime is based on concepts and rules from international human rights law. In general, its rules thus apply to conflict and disaster displacement scenarios without distinction since, in principle, human rights standards apply equally in both contexts.⁶⁷ Relatively few provisions of the IDP regime expressly apply only to disasters or to conflict.⁶⁸ However, several provisions of the Guiding Principles and regional treaties draw on rules of other bodies of

⁶² See also the discussion in Lorenzo Guadagno and Michelle Yonetani, ‘Displacement risk: Unpacking a problematic concept’ (2022) *International Migration* <<https://doi.org/10.1111/imig.13004>> accessed 20 October 2022.

⁶³ Guiding Principles, introductory para 3; Walter Kälin, *Guiding Principles on Internal Displacement: Annotations* (rev edn, American Society of International Law and Brookings–Bern Project on Internal Displacement 2008).

⁶⁴ Guiding Principles, Principle 3.

⁶⁵ Guiding Principles, introductory para 3; see also Principle 2(1).

⁶⁶ Kampala Convention, arts VI, VII(5) and VIII.

⁶⁷ The human rights-based standards articulated by the IDP regime tend to ignore the potential for States lawfully to be able to derogate from certain pertinent obligations under human rights treaties in emergency situations (see Cantor, ‘The IDP in International Law’).

⁶⁸ For example, in the Guiding Principles, Principle 6(2)(d) applies only to disasters and Principle 6(2)(b) applies only to conflicts. In the ICGLR Protocol, art 3(2) applies only to disasters and art 4(2) applies only to conflict. The Kampala Convention has a comparatively greater number of specialised rules for disasters (arts IV(4)(f), V(4) and XII(3)) and conflict (arts IV(4)(b)-(c) and VII).

international law for protection of the human person, particularly IHL⁶⁹ and (in relation to solutions) refugee law by analogy.⁷⁰ Although questions have been raised over whether the IDP regime accurately reflects limitations to the scope of relevant rules in these existing bodies of international law, human rights treaty bodies have often endorsed the generalised rendering of these rules by the IDP regime.⁷¹ The fact that this regime is built largely on a mix of existing international law regimes (for the protection of the human person) has facilitated efforts in later instruments to draw on elements from an even wider range of regimes, including DRR, development and peace-building.

A duty of preparedness is not spelt out by the IDP regime, but may be inferred from the rules generally, which articulate obligations to respond to the challenges of internal displacement.⁷² However, specifically in relation to disaster displacement, the regional Kampala Convention creates an obligation on States parties to 'devise early warning systems' and, in areas of potential displacement, 'establish and implement disaster risk reduction strategies, emergency and disaster preparedness and management strategies'.⁷³ Likewise, the ICGLR Protocol requires States 'to the extent possible, [to] mitigate the consequences of displacement caused by natural disasters and natural causes'.⁷⁴ These provisions represent one of the few areas where there is a lack of parity in the approach to displacement caused by disasters as opposed to conflict within regional IDP treaties. At the same time, they offer clear examples of the way in which the IDP regime has attempted to draw in elements from international regimes such as DRR and articulate their relevance to situations of internal displacement.

In tandem, the IDP regime expressly regulates prevention of forced internal displacement in four distinct ways. Firstly, the Guiding Principles indicates that 'all authorities and international actors' must, by respecting obligations under international law, 'prevent and avoid conditions that might lead to displacement of persons'.⁷⁵ The African IDPs treaties apparently consider that reminding States of their duty to abide by international law is insufficient to prevent displacement. In tandem, they seek to prevent displacement by introducing far-reaching supplementary obligations in the ICGLR Protocol to 'eliminate the root causes of displacement',⁷⁶ and in the Kampala Convention to take pre-emptive action to 'prevent political, social, cultural and economic exclusion and marginalisation, that are likely to cause displacement of populations or persons by virtue of their social identity, religion or political opinion'.⁷⁷ These treaty obligations on root causes also speak to a duty to resolve displacement (section 3.3.1).

Secondly, the Guiding Principles articulate a right to be protected against 'being arbitrarily displaced'.⁷⁸ It is important to note that this prohibition on forcibly displacing a person is not absolute and covers only 'arbitrary' forms of displacement. The Guiding Principles identify two cases where forcing displacement will always be arbitrary and thus unlawful, i.e. when based on ethnic, religious or racial grounds and when used as a collective punishment.⁷⁹ However, they recognise that the grounds for lawful displacement will vary between contexts of armed conflict ('security of the civilians involved or imperative military reasons'), disasters ('safety and health of those affected') and large-scale

⁶⁹ See, for example, Guiding Principles, Principles 6(2)(b), 7(2), 10(2), 16, 19(1), 21(2), 24; ICGLR Protocol, art 3(6)-(7); and Kampala Convention, arts I(1)(e), IV(4)(b)-(c), V(7)-(8), VII(3).

⁷⁰ See section 3.3.1 below.

⁷¹ Cantor, 'The IDP in International Law'.

⁷² The concept of 'preparedness' derives from the DRR regime, where it refers to the 'knowledge and capacities developed by governments, response and recovery organizations, communities and individuals to effectively anticipate, respond to and recover from the impacts of likely, imminent or current disasters' (UNGA, *Report*, 21).

⁷³ Kampala Convention, art IV(2).

⁷⁴ ICGLR Protocol, art 3(2).

⁷⁵ Guiding Principles, Principle 5.

⁷⁶ ICGLR Protocol, art 3(1).

⁷⁷ Kampala Convention, art III(1)(a).

⁷⁸ Guiding Principles, Principle 6(1). No generalised prohibition of forced internal displacement exists in international law, thus arguably limiting the content of the rule recognised in this principle (Romola Adeola 'The right not to be arbitrarily displaced under the United Nations Guiding Principles on Internal Displacement' (2016)16 *African Human Rights Law Journal* 83). However, the jurisprudence of the Inter-American Court of Human Rights has bolstered this duty of prevention by linking it to the State's obligation to respect and protect human rights (*Chitay Nech and others v Guatemala*, (2010) Inter American Court of Human Rights (IACHR), *Defensor de Derechos Humanos and others v Guatemala*, (2014) IACHR, and *Carvajal Carvajal and others v Colombia*, (2018) IACHR).

⁷⁹ Guiding Principles, Principle 6(2)(a) and (e).

development projects ('compelling and overriding public interests').⁸⁰ This rule is articulated as a duty to 'prevent arbitrary displacement' in the ICGLR Protocol, including in large-scale development projects.⁸¹ The Kampala Convention adopts the language of the Guiding Principles, but adds as 'arbitrary' displacement 'used as a method of warfare or due to other violations of [IHL]', 'caused by generalized violence or violations of human rights' or 'harmful practices',⁸² or 'by any act, event, factor, or phenomenon of comparable gravity to all of the above and which is not justified under international law'.⁸³ It also imposes duties on States to ensure individual criminal responsibility for certain acts of arbitrary displacement.⁸⁴

Thirdly, the Guiding Principles introduce general safeguards that must be observed by the authorities before and during any displacement of persons on lawful grounds. They include duties to explore 'all feasible alternatives' to displacement, to 'take measures to 'minimize displacement and its adverse effects', to ensure 'to the greatest practicable extent' proper accommodation, family unity and satisfactory conditions during displacement, and full respect for the rights to 'life, dignity, liberty and security' of those affected.⁸⁵ Other than 'during the emergency stages of armed conflicts and disasters', additional guarantees relating to due process, consultation and participation of those to be displaced are also required.⁸⁶ The Kampala Convention specifies that the concept of 'internal displacement' includes forced 'evacuation or relocation',⁸⁷ but does not contain provisions specifically regulating the process of non-arbitrary forced displacement, except a brief provision on alternatives and consultation in relation to 'displacement caused by projects carried out by public or private actors'.⁸⁸ The ICGLR Protocol also includes a (more extensive) provision on process in development-induced displacement.⁸⁹ In the parallel DRR regime, the 2011 Operational Guidelines on the Protection of Persons in Situations of Natural Disasters include detailed instructions regarding evacuations during disasters, extensively developing the general safeguards set out in the Guiding Principles.⁹⁰

Fourthly, the Guiding Principles affirm 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'.⁹¹ The ICGLR Protocol also affirms a duty of special protection for 'displaced populations, communities, pastoralists and other groups, with a special dependency on and attachment to their lands'.⁹² The Kampala Convention, by contrast, requires States merely to 'endeavour to protect communities with special attachment to, and dependency, on land due to their particular culture and spiritual values from being displaced from such lands, except for compelling and overriding public interests'.⁹³ In part, these special protection provisions reflect wider human rights treaty law on indigenous and tribal peoples' rights to their lands and the framework governing relocation processes in that context.⁹⁴ The jurisprudence of the Inter-American Court of Human Rights has incorporated the rule as a matter of human rights law.⁹⁵

⁸⁰ Guiding Principles, Principle 6(2)(b)-(d). The formulations in subparagraphs (c) and (d) appear to be derived directly from soft law instruments (Kälin, *Annotations*, 31-33). Nonetheless, they likely reflect the scope of protection offered by underlying hard law human rights treaty norms.

⁸¹ ICGLR Protocol, art 5(2).

⁸² Kampala Convention, art IV(4)(c)-(e).

⁸³ *Ibid*, art IV(4)(f).

⁸⁴ *Ibid*, arts III(1)(g) and IV(6).

⁸⁵ Guiding Principles, Principles 7(1)-(2) and 8.

⁸⁶ Guiding Principles, Principle, 7(3).

⁸⁷ Kampala Convention, art I(l).

⁸⁸ *Ibid*, art X(2).

⁸⁹ ICGLR Protocol, art 5.

⁹⁰ IASC, *Operational Guidelines on the Protection of Persons in Situations of Natural Disasters* (Brookings-Bern Project on Internal Displacement 2011) <<https://interagencystandingcommittee.org/meeting-humanitarian-challenges-urban-areas/documents-public/iasc-operational-guidelines-protection>> accessed 1 June 2022.

⁹¹ Guiding Principles, Principle 9.

⁹² ICGLR Protocol, art 4(1)(c).

⁹³ Kampala Convention, art IV(5).

⁹⁴ International Labour Organization Indigenous and Tribal Peoples Convention No. 169 (adopted 27 June 1989, entered into force 5 September 1991) 1650 UNTS 383, art 16.

⁹⁵ See, for example, *Chitay Nech and others v Guatemala* (2010), IACHR, *Masacres de Río Negro v Guatemala* (2012) IACHR.

The implementation of these IDP regime prevention and preparedness rules has been limited in practice. In fact, prevention can be said to have a secondary role both in the international framework and at domestic level.⁹⁶ In part, this is because the root causes of displacement are complex and dealing with them requires confronting profound empirical challenges concerning the rule of law, the fight against extreme inequality, the protection of ecosystems, disaster risk reduction and the viability of development models.⁹⁷ As such, it goes beyond the scope of laws and policies that are focused exclusively on internal displacement.⁹⁸ Moreover, preventing internal displacement can trespass on issues fundamental to the exercise of State sovereignty, which at least partially explains the absence of a mandate linked to prevention in the cluster system of the United Nations.⁹⁹ Even so, some prevention mechanisms can be found in national responses to internal displacement, which focus on addressing the proximate causes of forced displacement. That is the case of the Colombian early warning system, designed exclusively for preventing and preparing for displacement caused by conflict,¹⁰⁰ as well as the provisions regarding prevention and preparedness included in Fiji's Displacement Guidelines in the context of climate change and disasters.¹⁰¹

3.1.2 International humanitarian law

Unlike the IDP regime, IHL is a regime at the global level that is comprised of treaties that are either universally-ratified (the 1949 Geneva Conventions) or widely-ratified (the Additional Protocols),¹⁰² as well as a range of norms that have attained binding legal force as international custom.¹⁰³ However, unlike the generally applicable body of international human rights law on which the IDP regime is largely based, IHL applies only to situations of armed conflict, with separate bodies of treaty rules applying depending on whether the character of the conflict is 'international' or 'non-international'.¹⁰⁴ It thus strikes a balance between human dignity and military imperatives that is absent from human rights law. Moreover, whereas there is debate over the extent to which the rules of international human rights law directly bind non-State actors, IHL binds all parties to the conflict directly, including non-State armed groups. Although the application of IHL rules is triggered only by situations of armed conflict and not by other events, including disasters, certain IHL rules may serve to prevent man-made disasters.¹⁰⁵

⁹⁶ Nina Schrepfer 'Addressing Internal Displacement through National Laws and Policies: A Plea for a Promising Means of Protection' (2012) 24(4) *International Journal of Refugee Law* 667.

⁹⁷ Volker Türk 'Preventing displacement, addressing root causes and the promise of the Global Compact on Refugees' (2019) 62 *Forced Migration Review* 64.

⁹⁸ Some of those deep challenges can be addressed through domestic tools for internal displacement prevention. Fiji's Displacement Guidelines in the context of climate change and disasters, for example, tackles the issue of disaster risk reduction. However, as mentioned below, those mechanisms are few and not always correctly implemented.

⁹⁹ Inter-Agency Standing Committee (IASC), *Guidance Note on Using the Cluster Approach to Strengthen Humanitarian Response* (2006).

¹⁰⁰ The early warning system (SAT) was created by Law 387 of 1997. This established the basis for public policy on displacement in Colombia. This mechanism, under the management of the *Defensoría del Pueblo* (Ombudsman), allows for the identification of situations of risk to the civil population in the context of internal conflict, and the activation of actions by the authorities to address these and guarantee the protection of people at risk, thereby avoiding forced displacement. It should be clarified, however, that this system has faced difficulties. Because the National Army does not always respond to alerts situations of displacement and confinement can occur. The Defence Ministry and the National Army itself have recently been judicially condemned for this (see *Decision 22th March, 2022*, Republic of Colombia-Consejo de Estado, Sala de lo Contencioso Administrativo, Sección Tercera, Sección B, expediente (64094)).

¹⁰¹ Republic of Fiji - Ministry of Economy, *Displacement Guidelines. in the context of climate change and disasters* (2019),14f.

¹⁰² Pertinent treaties on the protection of civilians include the Geneva Convention relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (Geneva Convention IV); Protocol Additional (I) to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (Protocol I); and Protocol II.

¹⁰³ Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law* (CUP 2005).

¹⁰⁴ The material field of application of the rules relating to international armed conflict and occupations is set out in the 1949 Geneva Conventions, common art 2, first and second paras, and Protocol I, art 1. For non-international armed conflicts, see common art 3 of the 1949 Geneva Conventions and Protocol II, art 1.

¹⁰⁵ For example, IHL rules provide for the protection of objects indispensable to the survival of the civilian population and the protection of works and installations containing dangerous forces (Protocol I, arts 54 and 56; Protocol II, arts 14-15). Protocol I, art 55, also protects the natural environment.

It may seem curious that, as the regime concerned with conflict, IHL treaties address internal displacement only obliquely for the most part. They contain an obligation to disseminate their rules as widely as possible, particularly within the military.¹⁰⁶ This provision, which requires parties to the conflict to ensure awareness of any IHL duties relating to displacement, is the only one which addresses preparedness on this point. On prevention, IHL does not always stop parties to the conflict from forcibly displacing civilians, and may sometimes even require it.¹⁰⁷ However, it does try to outlaw certain particularly inhumane methods of waging warfare that may result in unnecessary suffering and displacement of civilians, such as targeting civilians, indiscriminate attacks on the civilian population and the use of starvation.¹⁰⁸ It also directly bans certain forced displacement measures: 'forcible transfers' of protected persons out of a territory occupied by a belligerent State are not permitted;¹⁰⁹ in non-international armed conflicts, it is generally prohibited to order the displacement of the civilian population 'for reasons related to the conflict', except on narrow grounds.¹¹⁰ Breach of these 'prevention' rules may attract individual liability for 'grave breaches' or war crimes.¹¹¹

At the same time, IHL does allow certain measures of forced displacement to be carried out by parties to the conflict. Thus, in occupied territory, an occupying State can undertake 'total or partial evacuation of a given area if the security of the population or imperative military reasons so demand' - but to 'the greatest practicable extent' it must ensure proper accommodation, satisfactory conditions of 'hygiene, health, safety and nutrition' and family unity.¹¹² Similarly, in non-international armed conflict, the order to displace can be given where 'the security of the civilians involved or imperative military reasons so demand' - but 'all possible measures' must be taken to ensure 'satisfactory conditions of shelter, hygiene, health, safety and nutrition'.¹¹³ In both scenarios, civilians must not be compelled to cross borders,¹¹⁴ although this is allowed from occupied territory 'when for material reasons it is impossible to avoid'.¹¹⁵ These hard law rules, which are largely reflected in international custom too,¹¹⁶ have been incorporated by the IDP regime effectively as a set of minimum standards for IDPs.

Fulfilment of these IHL obligations is the responsibility of the parties to the conflict. In tandem, the International Committee of the Red Cross (ICRC) has a role to play in overseeing the application of these legal rules, given its status as the guardian of IHL. Indeed, the prevention of forced displacement and the protection of IDPs are expressly addressed in the ICRC institutional strategy for 2019-2024,¹¹⁷ and were the target of a specific institutional strategy for the period 2016-2019.¹¹⁸ According to these strategies, in order to prevent displacement from occurring, warring parties should be encouraged to comply with IHL, and support should be provided both to the populations at risk of displacement as well as to host communities in order to increase their resilience. The ICRC has applied these strategies in settings as diverse as Darfur, the Philippines, Sri Lanka and Democratic Republic of Congo.¹¹⁹ Furthermore, the ICRC has construed its mandate broadly by assuming a role in disaster preparedness work with communities in conflict zones. Through assistance programmes, it enhances resilience in the face of disasters, ensuring access to drinking

¹⁰⁶ See, for example, Geneva Convention IV, art 144.

¹⁰⁷ For instance, in international armed conflict, IHL specifically requires that effective advance warning be given of an attack which may affect the civilian population (Protocol I, art 57(2)(c)).

¹⁰⁸ David Cantor, 'Does IHL Prohibit the Forced Displacement of Civilians during War?' (2013) 24(4) *International Journal of Refugee Law* 840, 842-3.

¹⁰⁹ Geneva Convention IV, art 49, first para.

¹¹⁰ Protocol II, art 17(1).

¹¹¹ See, for example, Geneva Convention IV, art 146; Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90, art 8(2)(b)(viii).

¹¹² Geneva Convention IV, art 49, second and third paras.

¹¹³ Protocol II, art 17(1).

¹¹⁴ Geneva Convention IV, art 49, second para; Protocol II, art 17(2).

¹¹⁵ Moreover, evacuees must 'be transferred back to their homes as soon as hostilities in the area in question have ceased' (Geneva Convention IV, art 49, second para).

¹¹⁶ Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, rules 129 and 131.

¹¹⁷ ICRC, *ICRC Strategy 2019–2024* (2019), objectives 1.2 y 1.3

¹¹⁸ ICRC, *Internal Displacement. Our approach and strategy for 2016–2019* (2016) <<http://www.icrc.org/en/document/internal-displacement-our-approach-and-strategy-2016-2019>> accessed 1 June 2022

¹¹⁹ Jakob Kellenberg, 'The ICRC's response to internal displacement: strengths, challenges and constraints' (2009) 91(875) *International Review of the Red Cross* 475.

water, shelter, health, and sanitation, as well as preserving income and livelihoods. These initiatives have been applied in countries such as Colombia.¹²⁰

The wider peace and security regime to which IHL connects also addresses the rules applicable to internal displacement in conflict and post-conflict settings. For instance, on the issue of prevention, the UN Security Council has adopted resolutions that forcefully condemn the forced displacement of civilians during armed conflict in violation of international law and IHL in particular and demand that ‘all parties put an end to such practices’ as well as other acts of violence or abuses that tend to generate forced displacement of civilians.¹²¹ It articulates an international responsibility to protect populations where national authorities fail to protect their populations from ‘genocide, war crimes, ethnic cleansing and crimes against humanity’.¹²² In this regard, the UN Security Council has expressly characterised the actions that often generate forced displacement – i.e. ‘the deliberate targeting of civilians and other protected persons, and the commission of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict’ – as a potential ‘threat to international peace and security’,¹²³ thus capable of triggering its enforcement powers under Chapter VII of the UN Charter. Deliberations at the Security Council have also begun to reflect on how the impact of climate change may impact on the work of conflict resolution and peace-building institutions.¹²⁴

3.1.3 Disaster risk reduction regime

DRR) is an umbrella term, covering civil defence, disaster measures, disaster risk management, disaster risk reduction, disaster preparedness and response and emergency response.¹²⁵ This regime deals with a range of disasters linked to natural hazards, but categorically it excludes armed conflict as a form of disaster.¹²⁶ This establishes a complete separation in the specialist international regimes for armed conflict and disasters respectively. At the global level, the DRR regime is constituted not by hard law treaties but by well-respected soft law instruments. Historically, this regime has addressed issues of displacement only marginally.¹²⁷ For instance, one of the principal strategic goals of the *Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to Disasters* was the reduction of disaster losses but, within this context, it mentioned displacement only in a recommendation that States ‘[e]ndeavor to ensure, as appropriate, that programmes for displaced persons do not increase risk and vulnerability to hazards’ as a measure to reduce underlying risk factors related to changing ‘social and economic development practices’.¹²⁸ In short, this instrument saw displacement just as a factor contributing to disasters but not as a consequence of disasters.¹²⁹ Similarly, the 2016 ILC Draft Articles on the protection of persons in the event of disasters do not substantively address internal displacement, merely mentioning it as one possible consequence of disasters in their definition of that term.¹³⁰

¹²⁰ Veronika Talviste, Jamie A Williamson and Anne Zeidan, ‘The ICRC approach in situations of pre-displacement’ (2012) 41 *Forced Migration Review* 22.

¹²¹ UNSC res 1674 (28 April 2006) paras 5 and 12.

¹²² *Ibid*, para 4.

¹²³ UNSC res 1738 (23 December 2006) para 9.

¹²⁴ T Alexander Aleinikoff and Susan Martin, ‘The responsibility of the international community in situations of mobility due to environmental events’ (2022) *Zolberg Institute Working Paper Series 2022-1* <<https://zolberginstitute.org/the-responsibility-of-the-international-community-in-situations-of-human-mobility-due-to-environmental-causes/>> accessed 20 October 2022, 23

¹²⁵ M. Picard, ‘Disaster Management, Risk Reduction and International Disaster Response Law in the Commonwealth’ (2016) Senior Officials of Law Ministries Meeting Paper SOLM (16)11, 7.

¹²⁶ Katie Peters, *The next frontier for disaster risk reduction. Tackling disasters in fragile and conflict-affected contexts*, (2017) Overseas Development Institute, 13.

¹²⁷ The only exception to this prior to 2015 was the brief provision included in the Hyogo Action Framework 2005-2015, which, in para 19.i, indicates the need for States to manage internal displacement caused by conflict in a way that does not increase the risk of disaster.

¹²⁸ Para 4(ii)(i).

¹²⁹ Beatriz Sánchez-Mojica, ‘Parallel Paths? Factors Preventing an Adequate Response to Internal Displacement where Armed Conflict, Generalised Violence and Natural Disasters Converge’ (2022) *Researching Internal Displacement*, Working Paper No. 8 LANID Special Issue “Critical Approaches to Internal Displacement” <http://researchinginternaldisplacement.org/wp-content/uploads/2021/11/RID-WP8_Beatriz-Sanchez_Convergence_011221.pdf> accessed 1 June 2022

¹³⁰ ILC Draft Articles on the protection of persons in the event of disasters. Adopted by the International Law Commission at its sixty-eighth session, in 2016, and submitted to the General Assembly as a part of the Commission’s report covering the work of that session (A/71/10) (para 3 (a)).

The *Sendai Framework for Disaster Risk Reduction 2015-2030* marked a break with this trend by substantively addressing displacement for the first time in a global DRR instrument.¹³¹ This instrument has four Priorities: (1) understanding disaster risk; (2) strengthening disaster risk governance to manage disaster risk; (3) investing in disaster risk reduction for resilience; and (4) enhancing disaster preparedness for effective response and to 'Build Back Better' in recovery, rehabilitation and reconstruction.¹³² Priority 2 involves mainstreaming disaster risk reduction across all sectors.¹³³ In this context, 'displacement risk' is to be addressed principally through 'transboundary cooperation' between States in planning and implementing ecosystem-based approaches for shared resources (e.g. river basins and coastlines) in order to reduce disaster risk.¹³⁴ The Sendai Framework also encourages States to adopt national policies and programmes 'addressing disaster-induced human mobility' in order to meet the Priority 3 goal of strengthening the resilience of affected persons and host communities.¹³⁵ Such rules emphasise prevention in the face of displacement risks, aiming to reduce the number of people affected by disasters, including the displaced, by 2030.

In tandem, the Sendai Framework has a strong emphasis on planning in order to address the risks posed by disasters, including the risk of sudden displacement. In line with the Priority 4 objective of enhancing disaster preparedness, response and recovery, the Sendai Framework proactively addresses the need to plan for displacement-related considerations at the national and local levels. Thus, with a view to 'ensuring rapid and effective response to disasters and related displacement', it recommends States undertake evacuation exercises and establish area-based support systems, including access to safe shelter and relief supplies.¹³⁶ Planned evacuation in and to satisfactory conditions is thus a means of preventing chaotic and sudden forced displacement without the prospect of support. These provisions show the important emphasis that is now given to addressing the challenges of displacement in the global DRR regime. However, the approach is rooted in the paradigm of collective relief and makes little reference to the individualised human rights of displaced or evacuated persons.¹³⁷

A subsequent non-binding policy guidance document prepared for the UNDRR has sought to bridge this gap somewhat. This collates provisions from each of the four spheres of Priority action outlined in the Sendai Framework specifically in order to guide national and local authorities on how to include and address displacement in their DRR strategies.¹³⁸ However, the resulting guidance does not merely reproduce these provisions but instead develops them in a number of ways. Most importantly, it deepens and broadens the Sendai Framework's links and synergies with parallel international regimes on climate change, sustainable development goals and urban planning. It also attempts to bridge the separation in the Sendai Framework between the DRR and human rights regimes by making reference to State obligations towards the human rights of displaced people and host communities. For our purposes, it usefully illustrates how the Sendai Framework priorities can connect to other regimes.

For instance, it shows how Sendai Framework Priority 1 - understanding disaster risk - speaks to prevention and planning by requiring the development of systems to collect, analyse and diffuse relevant data and information in order to understand the impact of disasters on human mobility and to identify the specific needs of the most vulnerable population groups.¹³⁹ Likewise, Priority 2 - strengthening of disaster risk governance - can be seen as requiring States to include disaster displacement prevention in any laws and policies relevant to DRR, climate change, economic development and urban planning.¹⁴⁰ They should also be developed with the active participation of IDPs,

¹³¹ Lorenzo Guadagno, 'Human Mobility in the Sendai Framework for Disaster Risk Reduction', (2016) 7 *International Journal of Disaster Risk Science*, 30–40.

¹³² Para 20.

¹³³ Para 26.

¹³⁴ Para 28(d). See also Guadagno and Yonetani 'Displacement risk'.

¹³⁵ Para 30(l). It emphasises that all 'migrants contribute to the resilience of communities and societies and their knowledge, skills and capacities can be useful in the design and implementation' of disaster risk reduction and management (paras 36(vi) and 27(h)).

¹³⁶ Para 33(h)

¹³⁷ Elizabeth Ferris, 'How Can International Human Rights Law Protect Us from Disasters?' (2014) <<http://reliefweb.int/report/world/how-can-international-human-rights-law-protect-us-disasters>> accessed 1 June 2022.

¹³⁸ United Nations Office for Disaster Risk Reduction (UNDRR), 'Words into Action. Engaging for Resilience in support of the Sendai Framework for Disaster Risk Reduction 2015-2030' (2019)

¹³⁹ UNDRR, 'Words into Action'. 28-32.

¹⁴⁰ Sendai Framework, para 6.

who can provide valuable input into prevention and preparedness activities.¹⁴¹ The UNDRR guidance also argues that the design of preventative evacuation programmes in Priority 2 must ensure that they are not only orderly, safe but also protective of human rights.¹⁴² It views Priority 3 - investment in disaster risk reduction - as requiring the specific inclusion of displacement in national DRR plans and strategies, the adoption of measures to strengthen resilience among the most vulnerable groups, and the promotion of safe and voluntary migration as an alternative to displacement.¹⁴³ This is necessary to address the impact of the humanitarian-development gap in DRR practice on longer-term solutions for displaced persons. Finally, the UNDRR guidance states that Priority 4 - improving preparedness - requires the development of early alert systems and evacuation plans.¹⁴⁴

In the disaster context, other instruments have developed guidance on 'planned relocations', which can be forced as well as voluntary and are differentiated from 'evacuations' by the avowedly permanent character of the movement.¹⁴⁵ For instance, in 2015, the office of the United Nations High Commissioner for Refugees (UNHCR), Brookings Institution, and Georgetown University jointly produced *Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation* and, along with IOM, a related 2017 operational Toolbox.¹⁴⁶ This spells out a set of largely recommendatory preventing and planning rules about not only the grounds on which such relocations can be carried out but also the way in which the planning and consultation processes should be implemented.¹⁴⁷ However, the Guidance (and other commentators) have suggested that at least some of the rules governing planned relocations in disaster contexts are underpinned by hard law State obligations, which appear to be derived principally from international human rights law rather than the DRR regime.¹⁴⁸ The guidance is ambivalent on whether relocations constitute a form of internal displacement, arguing that in 'all types of Planned Relocation, distinctions between "forced" versus "voluntary" movement are somewhat artificial'.¹⁴⁹ However, whether a specific relocation amounts to forced displacement may be legally relevant to determining the nature and extent of a State or other authorities hard law obligations towards the relocation process under international human rights law and related regimes.¹⁵⁰

The growing concern with displacement in disaster contexts has resulted in a number of soft law and policy guidance instruments engaging with this issue.¹⁵¹ For instance, the 2015 Nansen Agenda addresses, *inter alia*, 'managing disaster displacement risk in the country of origin', recommending a number of 'effective practices' that States can take to help 'people stay, move out of areas at risk, and address the specific needs of those that have been internally displaced'.¹⁵² In this regard, it adopts a multidisciplinary approach that combines a DRR emphasis on reducing risk exposure, a climate change focus on adaptation actions, a sustainable development focus on root causes and a focus on protecting the human rights of IDPs.¹⁵³ In terms of planning and prevention, the resulting 'effective practices' encourage building resilience to displacement risk, undertaking planned relocations with full respect for people's rights and ensuring national IDP and DRR norms include those displaced by disasters.¹⁵⁴ Similarly, the non-binding 2018

¹⁴¹ Sendai Framework, para 36(a)(vi).

¹⁴² UNDRR, 'Words into Action', 33-39.

¹⁴³ UNDRR, 'Words into Action', 40-42.

¹⁴⁴ UNDRR, 'Words into Action', 46-47.

¹⁴⁵ For a discussion of the difference between concepts of 'evacuation' and 'planned relocation', see Bruce Burson et al, 'The Duty to Move People Out of Harm's Way in the Context of Climate Change and Disasters' (2018) 37 *Refugee Survey Quarterly* 379, 383.

¹⁴⁶ UNHCR, Brookings Institution and Georgetown University, *Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation* (2015) <<https://www.unhcr.org/562f798d9.pdf>> accessed 1 June 2022; UNHCR, IOM and Georgetown University, *A Toolbox: Planning Relocations to Protect People from Disasters and Environmental Change* (2017) <<https://www.refworld.org/pdfid/596f15774.pdf>> accessed 1 June 2022.

¹⁴⁷ Guidance on Planned Relocations, paras 28-35.

¹⁴⁸ See, for instance, Guidance on Planned Relocations, para 6; and Burson et al, *The Duty to Move People Out of Harm's Way*.

¹⁴⁹ Guidance on Planned Relocations, 6.

¹⁵⁰ David James Cantor, 'Locating "relocation": is it displacement, and why does that matter?' (forthcoming) *UNHCR Working Paper Series* [paper on file with the author].

¹⁵¹ Another instrument in this category is *The Peninsula Principles on Climate Displacement within States* (2013). Nevertheless, due to its reduced influence in public policies nowadays, it will not be analysed in this document.

¹⁵² The Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Contexts of Disasters and Climate Change* (2015) <http://disasterdisplacement.org/wp-content/uploads/2014/08/EN_Protection_Agenda_Volume_I_low_res.pdf> accessed 1 June 2022, 34.

¹⁵³ *Ibid*, 34-39.

¹⁵⁴ *Ibid*, 34-39.

Global Compact for Safe, Orderly and Regular Migration also asks States to '[i]ntegrate displacement considerations into disaster preparedness strategies'.¹⁵⁵

By contrast, at the regional level, many DRR instruments adopted by States give displacement only minor attention and usually focus exclusively on the area of prevention and preparedness. For instance, the Central American Policy for Integrated Disaster Risk Management,¹⁵⁶ developed by the Central American Integration System (SICA), merely sets out commitments to generate and systematise information on displacement,¹⁵⁷ and to strengthen capacities to prevent it arising.¹⁵⁸ Likewise, the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance (IDRL Guidelines),¹⁵⁹ created by the Federation of Red Cross and Red Crescent Societies¹⁶⁰ and promoted by the UN General Assembly,¹⁶¹ hardly mention displacement, although its general provisions on disaster prevention and preparedness measures might apply equally to the issue of displacement.¹⁶² Similarly, although the ILC Draft Articles on the protection of persons in the event of disasters do not directly address internal displacement, their general provisions on disaster prevention, mitigation, and preparedness can contribute to preventing and preparing for displacement.¹⁶³

The implementation of this wide range of measures remains fragile, although some interesting developments have occurred. At the United Nations level, the International Organization for Migration (IOM), in its capacity as leader of the Global Camp Coordination and Camp Management Cluster in disaster settings, has included prevention in its action framework.¹⁶⁴

At the national level, some countries have included displacements caused by disasters in their official recording systems and databases. The system used by the Philippines is considered a leading model in this regard.¹⁶⁵ Finally, supported by the IDRL guidelines, some national Red Cross and Red Crescent societies have worked with their national authorities to strengthen prevention and preparedness. An example of this is the support provided by the Fiji Red Cross Society and the International Federation of Red Cross and Red Crescent Societies (IFRC) to the Fiji government in its review of disaster regulations, facilitating the inclusion of internal displacement in this national framework.¹⁶⁶ However, a review of national disaster risk reduction (DRR) strategies adopted in line with this target found that more than a third specifically refer to displacement in this disaster context.¹⁶⁷

3.1.4 Climate change regime

International environmental law, comprised of a diverse range of general principles and rules, provides a hard law basis for the climate change regime. Although the precise boundaries and legal status of the principles and rules comprising international environmental law relevant to climate change can sometimes be difficult to ascertain, the following are usually understood as integral to this regime: the responsibility of States not to cause transboundary environmental damage; the preventive action principle; the principle of cooperation; the principle of sustainable development; the precautionary principle; the polluter pays principle; and the principle of common but differentiated

¹⁵⁵ Global Compact for Safe, Orderly and Regular Migration, para 18(j).

¹⁵⁶ Centro de Coordinación para la Prevención de los Desastres Naturales en América Central (CEPREDENAC), *Política Centroamericana de Gestión Integral de Riesgo de Desastres* (2017) <<http://ceccsica.info/sites/default/files/docs/Politica%20Centroamericana%20de%20Gestion%20Integral%20de%20Riesgo.pdf>> accessed 1 June 2022.

¹⁵⁷ *Ibid.*, 9.

¹⁵⁸ *Ibid.*, 25.

¹⁵⁹ Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance, para 4.1.

¹⁶⁰ Adopted in the 30th International Conference of the Red Cross and Red Crescent in November 2007. Doc. 30IC/07/R4 annex.

¹⁶¹ See, most recently, UN General Assembly, Resolution 72/133 (16 January 2018) para 29.

¹⁶² *Ibid.*, paras 7 and 8.

¹⁶³ ILC Draft Articles on the protection of persons in the event of disasters (2016), article 9.

¹⁶⁴ IOM, 'IOM Framework for Addressing Internal Displacement' (2017)

¹⁶⁵ IDMC, *Global Report on Internal Displacement 2017* (IDMC 2018) 86-84.

¹⁶⁶ IFRC, *Displacement in a Changing Climate: Localized humanitarian action at the forefront of the climate crisis* (2021) 14.

¹⁶⁷ IDMC, *Global Report on Internal Displacement 2020*, (2021) 71.

responsibility.¹⁶⁸ International climate change law is rooted in the universally-ratified 1992 UN Framework Convention on Climate Change (UNFCCC).¹⁶⁹ The primary goal of the UNFCCC is prevention and mitigation of climate change but it also contains obligations for States to plan for 'adaptation' to the adverse effects of climate change.¹⁷⁰ The 1992 UNFCCC also establishes a Conference of the Parties (COP) that meets regularly to review implementation and which takes decisions to promote effective implementation.¹⁷¹ Subsequent agreements adopted at these COPs include the 1997 Kyoto Protocol (COP3) and its amendments and the 2015 Paris Agreement (COP21).

The climate change regime is concerned with promoting efforts to prevent, mitigate and adapt to anthropogenic climate change. Obliquely, this may address the environmental factors that feed into armed conflict. However, it is principally aimed at tackling climate-related changes that are likely to affect the frequency, intensity and duration of disasters linked to climate hazards across the globe.¹⁷² It thus speaks directly to disaster displacement. In this regard, a need to plan and prepare for forced displacement in the context of climate change is increasingly acknowledged within the UNFCCC context. This was done first in the 2010 Cancun Agreement (COP16), which invites UNFCCC States parties to enhance action on adaptation by undertaking, *inter alia*, 'measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels'.¹⁷³ Further work to advance the understanding of how 'impacts of climate change are affecting patterns of migration, displacement and human mobility' was acknowledged at Doha (COP18) in 2012.¹⁷⁴

Initially, the climate change regime treated displacement principally as an 'adaption' strategy,¹⁷⁵ albeit a flawed one since it reduces the autonomy of affected persons and increases their vulnerability. Consequently, the regime recommended that States address this issue within their National Adaptation Plans (NAPs) with the aim of preventing its occurrence.¹⁷⁶ Following the principles established in the 2015 Paris Agreement (COP21), relevant measures must seek to reduce vulnerability, strengthen resilience, and broaden capacities to face the challenges posed by climate change.¹⁷⁷ These principles make no direct reference to human rights. However, gender-based and differential approaches are incorporated, thereby linking them to the right to equality and the prohibition of discrimination. Similarly, participation and transparency are required by this framework, although not as rights but rather as effectiveness conditions.

In recent years, there has been a shift in this regime and displacement has become seen not only as a flawed adaptation strategy but also as a negative impact of climate change that is to be prevented and managed. In 2013, the COP19 established the Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts as a platform to enhance understanding, action and support on such loss and damage on a cooperative basis.¹⁷⁸ Consequently, this Mechanism was instructed by the 2015 Paris Agreement (COP21) to create a Task Force to 'develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse

¹⁶⁸ See, for example, Philippe Sands and Jacqueline Peel, *Principles of International Environmental Law* (3rd edn, CUP 2012) 187-237.

¹⁶⁹ United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107.

¹⁷⁰ Arts 4(1)(b), 4(1)(e), 4(3), 4.4. and 4.5

¹⁷¹ Art 7.

¹⁷² Intergovernmental Panel on Climate Change, *Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation* (2012) 7.

¹⁷³ Decision 1/CP.16, para 14(f).

¹⁷⁴ Decision 3/CP.18, para 7(a)(vi).

¹⁷⁵ According to the UNFCCC, 'Adaptation refers to adjustments in ecological, social, or economic systems in response to actual or expected climatic stimuli and their effects or impacts. It refers to changes in processes, practices, and structures to moderate potential damages or to benefit from opportunities associated with climate change. In simple terms, countries and communities need to develop adaptation solution and implement action to respond to the impacts of climate change that are already happening, as well as prepare for future impacts.' (UNFCCC, 'What do adaptation to climate change and climate resilience mean?' <<http://unfccc.int/topics/adaptation-and-resilience/the-big-picture/what-do-adaptation-to-climate-change-and-climate-resilience-mean>> accessed 1 June 2022.

¹⁷⁶ Doc UN FCCC/CP/2010/7/Add.1, para 14(f).

¹⁷⁷ Paris Agreement, art 7.

¹⁷⁸ Decision 2/CP.19. See also 2015 Paris Agreement (COP21), art 8.

impacts of climate change'.¹⁷⁹ Against this backdrop, the 2016 Marrakech Conference (COP22) encouraged States parties to incorporate consideration of, *inter alia*, 'displacement, migration and human mobility' into planning and action and to encourage bilateral and multilateral entities to support such efforts.¹⁸⁰

In its 2018 report, the Task Force recommended that prevention actions incorporate elements from DRR, international human rights law, and the sustainable development regime.¹⁸¹ This was partially taken up in the 2018 recommendations to COP24 by the Executive Committee of the Warsaw International Mechanism for Loss and Damage, which included inviting States parties to 'enhance research, data collection, risk analysis and sharing of information to better map, understand and manage human mobility related to the adverse impacts of climate change in a manner that includes the participation of communities affected and at risk of displacement related to the adverse impacts of climate change', and to 'strengthen preparedness, including early warning systems, contingency planning, evacuation planning and resilience-building strategies and plans, and develop innovative approaches, such as forecast-based financing, to avert, minimize and address displacement related to the adverse impacts of climate change'.¹⁸² This represents a significant strengthening of attention to prevention and planning for internal displacement within the framework of the climate change regime.

Given the global nature of the problem, the international regime on climate change has been developed predominantly on the basis of negotiations between States at the global level. However, a number of regional instruments addressing climate change do exist too. As an example, the Central-American Commission on Environment and Development (CCAD) within SICA has formulated as an operational objective the need to 'develop national strategies designed to deal appropriately with the ever more frequent processes of evacuation, temporary and permanent relocation and migration of populations most affected by the increase of recurring extreme climate events'.¹⁸³

The implementation at the domestic level of the provisions relating to displacement in the international climate change framework has been uneven. In regions such as Latin America, NAPs either completely omit displacement, or refer to it only in general terms without providing any measures to prevent it.¹⁸⁴ On the other hand, countries in the South Pacific region such as Vanuatu have fully developed public policies that include adaptation measures to prevent displacement in slow onset scenarios, including the option to resort to planned relocation.¹⁸⁵ Similar instruments can be found in other regions. For example, Bangladesh has enacted an ambitious national strategy on internal displacement caused by climate-related disasters, including several adaptation measures to prevent forced migration within the country and prepare vulnerable people for potential migration, relocation, or resettlement.¹⁸⁶ Pakistan, for its part, has created a strategy for adaptation to climate change in the region of Gilgit-Baltistan, which envisages migration as an alternative to displacement.¹⁸⁷

¹⁷⁹ Decision 1/CP.21, para 49. The first meeting of the Displacement Task Force was held in 2017. See <https://unfccc.int/event/first-meeting-of-the-task-force-on-displacement>.

¹⁸⁰ Decision 3/CP.22, para 9.

¹⁸¹ Task Force on Displacement, 'Report of the Task Force on Displacement' (2018) <<http://unfccc.int/process-and-meetings/bodies/constituted-bodies/executive-committee-of-the-warsaw-international-mechanism-for-loss-and-damage-wim-excom/workshops-meetings/cop24-side-event-recommendations-of-the-task-force-on-displacement>> accessed 1 June 2022, para 33.

¹⁸² Decision 10/CP.24, para 3, referring to Annex: Recommendations from the report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts on integrated approaches to averting, minimizing and addressing displacement related to the adverse impacts of climate change, paras 1(g)(ii)-(iii).

¹⁸³ SICA - Comisión Centroamericana de Ambiente y Desarrollo, *Estrategia Regional de Cambio Climático* (November 2010) <<http://bvssan.incap.int/local/cambio-climatico/Estrategia-Regional-Cambio-Climatico.pdf>> accessed 1 June 2022, operational objective 1.1.5.3.

¹⁸⁴ Beatriz Sánchez-Mojica, '¿Pájaros a punto de volar? La respuesta a la movilidad humana vinculada a desastres ambientales y cambio climático en América Latina' in Liliana Jubilit et al (eds), *Refugiados Ambientais* (Universidade Federal de Roraima 2018).

¹⁸⁵ Vanuatu, 'National Policy on Climate Change and Disaster-Induced Displacement'(2015) <https://www.iom.int/sites/g/files/tmzbd486/files/press_release/file/iom-vanuatu-policy-climate-change-disaster-induced-displacement-2018.pdf> accessed 1 June 2022.

¹⁸⁶ Bangladesh, National Strategy on the Management of Disaster and Climate Induced Internal Displacement (2020), <<http://www.rmmru.org/newsite/wp-content/uploads/2020/02/NSMDCIID.pdf>> accessed 10 October 2022, 10-15

¹⁸⁷ Gilgit-Baltistan Environmental Protection Agency (GB-EPA), 'Gilgit-Baltistan Climate Change Strategy and Action Plan' 2017 <http://gbepa.gog.pk/files/GBEPA_CCS_and_AP_2018-07-31.pdf> accessed 1 June 2022.

3.1.5 Sustainable development and urban planning regime

The 2030 Sustainable Development Agenda engages with issues of internal displacement in a very broad way. Its thirty Sustainable Development Goals (SDGs) are generally applicable to all human societies and do not depend on the existence of either conflict or disasters. As such, the 2030 Agenda as a regime is relevant both to conflict displacement and disaster displacement. Moreover, the 2030 Agenda allows the challenges of internal displacement to be approached as both a humanitarian concern and a global sustainable development challenge. This approach has two consequences. Firstly, it highlights the responsibilities of States and the international community¹⁸⁸ in relation to the empowerment of IDPs, whom it considers as a particularly vulnerable group who risk being 'left behind' in development efforts.¹⁸⁹ Secondly, it connects the prevention of displacement (and the search for durable solutions) with the broad commitments in this intergovernmental agreement to take action on the root causes of internal displacement by fighting poverty, inequity, climate change, environmental damage, and pursuing peace building and disaster risk management.¹⁹⁰

Indeed, many of the SDGs of the 2030 Agenda directly address these broader root causes of internal displacement,¹⁹¹ which is why progress towards achieving these goals should also reduce the vulnerabilities and threats that give rise to displacement.¹⁹² Moreover, the most immediate drivers of forced internal displacement are addressed through the 2030 Agenda goals relating to the reduction of all forms of violence,¹⁹³ and the reduction of disaster risk (whether related to climate change or not).¹⁹⁴ Regarding the latter, it is recognised that adequate urban and territorial planning¹⁹⁵ also plays a role in avoiding the disasters that give rise to internal displacement. On this point the 2030 Agenda intersects with the New Urban Agenda, which has established a number of important commitments in this regard.¹⁹⁶

Implementing the prevention-related duties enshrined in the 2030 Agenda requires two types of action. It requires intense collaboration between international bodies and agencies in order to establish a continuum between humanitarian action and development. The United Nations has taken significant steps in this regard,¹⁹⁷ which are relevant to the prevention of internal displacement in the sense that a holistic approach will help tackle the root causes of this. It also requires States to include these commitments in their own national and local development plans and strategies. States affected by internal displacement do increasingly recognise the link between displacement and development in their annual voluntary national reviews (henceforth VNR), a follow-up mechanism for reporting progress against the SDGs. Not all of these States publish these VNR reports but, annually, the tendency is for a steady increase in the number of VNRs that acknowledge this link and address it in ever-greater depth, especially for conflict-related displacement.¹⁹⁸ By contrast, still too few States are making a direct link between internal displacement and

¹⁸⁸ The commitments of the international community and the developed countries are set forth in the 17th SDG of 2030 Agenda.

¹⁸⁹ United Nations General Assembly, 'Transforming our world: the 2030 Agenda for Sustainable Development' Doc. UN A/RES/70/1, para 23.

¹⁹⁰ IDMC-NCR 'Leaving no one behind: Internal displacement and the 2030 agenda for sustainable development' (2015) <<http://www.internal-displacement.org/publications/leaving-no-one-behind-internal-displacement-and-the-2030-agenda-for-sustainable>> accessed 1 June 2022.

¹⁹¹ Mathew Scott and Albert Salamanca, 'Human Rights-based Approach to Internal Displacement in the Context of Disasters and Climate Change' (2020) 39(4) *Refugee Survey Quarterly* 564.

¹⁹² Reading the 2030 Agenda in terms of internal displacement allows it to be asserted that only SDGs 7 (accessible and clean energy), 9 (industry, innovation and infrastructure), 12 (responsible production and consumption), 14 (submarine life) and 15 (land ecosystems life) are not somehow related to prevention and the search for durable solutions (Alice Debarre, Archibald Henry, and Masooma Rahmaty 'Reaching Internally Displaced Persons to Achieve the 2030 Agenda' (2018) International Peace Institute <<http://reliefweb.int/report/world/reaching-internally-displaced-persons-achieve-2030-agenda>> accessed 1 June 2022).

¹⁹³ 2030 Agenda, SDG 16(1).

¹⁹⁴ 2030 Agenda, SDG 1(5), 2(4), 11(5), 11.b, 13.1.

¹⁹⁵ 2030 Agenda, SGD 11.

¹⁹⁶ United Nations General Assembly 'New Urban Agenda' Doc. UN A/RES/71/256 para 13(g), 14(c), 29, 65, 67, 77, 101, and 144.

¹⁹⁷ In 2017, the General Secretary of the United Nations devised the Joint Steering Committee to Advance Humanitarian and Development Collaboration (JSC), aiming to promote greater coherence of humanitarian and development action in crises and transitions to long-term sustainable development and in reducing vulnerabilities to build resilience. This mechanism is composed of UNDP, ER, FAO, IOM, OHCHR, PBSO, DPA, DPKO, UNHCR, UNICEF, UNWOMEN, UNFPA, World Bank, WFP, and WHO.

¹⁹⁸ IDMC, *Global Report on Internal Displacement 2020* (2021) 71.

implementing the SDGs in their national development policies.¹⁹⁹ Moreover, where this is done, the provisions on internal displacement tend to address actions during displacement and durable solutions (see sections 3.2.5 and 3.3.5 below) but not prevention.

3.1.6 Coherence between the regimes – prevention and planning

In relation to forced displacement, this analysis shows how prevention and planning is a concern that cuts across all five of these international regimes. Each of the regimes, though, has a particular approach to the issue. This can be seen in the two situation-specific regimes. IHL, an extensive set of hard law treaty and customary rules applying only to armed conflict, has a relatively weak emphasis on planning. It addresses prevention through rules that prohibit specific kinds of actions by potential perpetrators that may cause unnecessary suffering and displacement of civilians. DRR, applying only to disasters, eschews a prohibitory approach, since it lacks these kinds of perpetrators. Rather, it consists of a range of mostly soft rules that emphasise planning by the authorities as a way to prevent disasters, mitigate their effects and build the resilience of affected persons as a way to prevent unplanned forced displacement. However, both specialist regimes expressly permit, and sometimes even require, authorities (including non-State actors in non-international armed conflicts) to undertake planned forced movements of the population on grounds recognised as valid by each regime.

The IDP regime incorporates the approaches of both IHL and DRR to prevention and planning. However, it also attempts to integrate human rights-based rules into each scenario that more carefully regulate the prevention of displacement (and the conditions under which permitted displacements may be carried out). This also expressly includes regulating the conditions under which development-induced displacement is permitted, as a factor relevant to preventing unnecessary displacement in the development context.²⁰⁰ The duty of preparedness is less clearly articulated across the regime as a whole, but it can be inferred from the terms of most IDP instruments and is sometimes stipulated in relation to DRR activities. The resulting regime is largely coherent on prevention and planning for displacement due to conflict or disasters. Yet the IDP regime goes beyond prevention and planning for individual displacements to also affirm a far-reaching duty to prevent conditions that might lead to forced displacement. The precise scope of this wider duty is somewhat open to question. But it is here where soft law parameters from the parallel DRR, climate change and sustainable development are usefully being brought to bear. In fact, those regimes are increasingly being developed, and interpreted by soft law instruments, in ways that connect them specifically with addressing the root causes of displacement. The examples canvassed here suggest that this ongoing process is adding to, rather than detracting from, the coherence of the international IDP response on prevention and planning.

3.2 Assistance and protection during internal displacement

This section analyses the responses of the different regimes to the assistance and protection needs often experienced by IDPs from the point in time at which they are forced to abandon their homes to the time at which durable solutions begin to be implemented.

3.2.1 Internal displacement regime

The Guiding Principles give national authorities a primary responsibility to provide ‘protection and humanitarian assistance to IDPs’, which IDPs have a right to request and receive.²⁰¹ The scope of the resulting protection duties, for as long as IDPs remain displaced, is outlined by the Guiding Principles as including a broad range of individual rights under international law.²⁰² The Guiding Principles also outline rules for assistance to IDPs by national authorities and

¹⁹⁹ For examples, see Greta Zeender, “The Sustainable Development Goals and IDPs” (2018) 59 *Forced Migration Review* 24, 25-26. For a more in-depth analysis of Iraq and Nigeria, see Debarre, Archibald and Rahmaty, ‘Reaching IDPs’, 8-12.

²⁰⁰ This illustrates how, in the context of drivers other than just conflict and disasters, the development regime can also refer back to the IDP regime rules as a framework for preventing (arbitrary) internal displacement or, at least, making it less costly to people’s well-being.

²⁰¹ Guiding Principles, Principle 3.

²⁰² They include rights to life, dignity, integrity, property, family life, education, an adequate standard of living, medical care and attention, recognition as a person before the law, liberty and security of person, liberty of movement and to seek safety, know the fate and whereabouts of missing relatives and, in conflict contexts, not to require IDP children to take part in hostilities (Guiding Principles, Principles 10-23).

other appropriate actors, based in the humanitarian principles of humanity, impartiality and non-discrimination.²⁰³ This overall framework of rules for protection and assistance in the Guiding Principles is primarily derived from international human rights law, albeit with some reliance on IHL in particular provisions.²⁰⁴ It is largely reflected in the the Kampala Convention and ICGLR Protocol, without significant modification of the overall approach.²⁰⁵ In short, the IDP regime sees the protection and assistance needs of IDPs during displacement as largely identical, regardless of whether their displacement has occurred in the context of disasters or conflict.²⁰⁶

Moreover, in general, the IDP regime requires that IDPs be able to 'enjoy, in full equality, the same rights and freedoms... as do other persons in their country'.²⁰⁷ Equally, it emphasises that discrimination against IDPs on the basis of that status is prohibited.²⁰⁸ However, at the same time, the special vulnerability of IDPs due to the experience of internal displacement is capable of justifying the taking by national authorities and other actors of specific measures solely for IDP assistance and protection.²⁰⁹ Equally, in a number of places, the Guiding Principles require a differentiated approach that gives specific attention to the inclusion of women and girls,²¹⁰ whose protection needs may otherwise be marginalised in the response. That principle is more broadly expressed in the ICGLR Protocol, which requires States to provide special protection for 'women, children, the vulnerable, and displaced persons with disabilities'.²¹¹ This is broadened still further in the Kampala Convention to IDPs 'with special needs, including separated and unaccompanied children, female heads of households, expectant mothers, mothers with young children, the elderly, and persons with disabilities or with communicable diseases'.²¹² Both African treaties also address a gap in the Guiding Principles by emphasising an obligation to extend protection and assistance in displacement situations not only to IDPs but also 'according to need, to communities residing in areas hosting [IDPs]'.²¹³

However, in the response to internal displacement by the UN and other international agencies, the care of IDPs during displacement is framed within the cluster system that has existed since 2005. Arguably, this introduces the potential for fragmentation in the humanitarian response to IDP situations, since the lead agency varies according to both the driver of displacement and the nature of the IDP needs concerned. For instance, UNHCR leads the emergency shelter, camp coordination and protection clusters in the international response to the needs of IDPs displaced by conflict. By contrast, for IDPs displaced by disasters, the response to these needs takes place within the same clusters but under the leadership of other agencies. Protection is co-managed by UNHCR, OHCHR and UNICEF, camp coordination is led by IOM, and the emergency shelter cluster is convened by IFRC.²¹⁴ In practice, attempts to overcome these kinds of institutional fragmentation in the cluster response through work on the humanitarian–development–peacebuilding triple nexus have met with both successes and challenges, not only in terms of IDP protection and assistance but also in relation to solutions.²¹⁵ Another particular challenge in terms of institutional fragmentation is the practice of international humanitarian actors (driven by a problematic understanding of the humanitarian principle of independence) to create parallel systems that undermines the primary responsibility of governments.²¹⁶

²⁰³ Guiding Principles, Principles 24-27.

²⁰⁴ See, for example, Principle 10(2) as it relates specifically to armed conflict.

²⁰⁵ Kampala Convention, art III(d)-(f), VII and IX. ICGLR Protocol, art 3.(3)(a), 3(10) and 4. It is notable that, in conflict settings, the Kampala Convention does not seek to apply positive duties for protection and assistance to members of armed groups but rather articulates a duty not to interfere with relevant rights or with the delivery of humanitarian assistance (see art VII(5)).

²⁰⁶ A few Guiding Principles provisions only apply to situations of armed conflict, e.g. Principles 10(2) and 21(2)(c)-(d)

²⁰⁷ See, for example, Guiding Principles, Principle 1(1).

²⁰⁸ See, for example, Guiding Principles, Principle 1(1).

²⁰⁹ Mooney, 'The Concept of Internal Displacement'; *Comunidades Afrodescendientes Desplazadas de la cuenca del Río Cacarica (Operación Génesis) v Colombia*. 2013, IACHR.

²¹⁰ See, for example, Principles 18(3), 19(2), 23(3) and 23(4).

²¹¹ ICGLR Protocol, art 4(1)(d).

²¹² Kampala Convention, art IX(2)(d).

²¹³ ICGLR Protocol, art4(1)(e); see also Kampala Convention, arts III(2)(c), V(5) and IX(2)(b).

²¹⁴ IASC, 'Guidance note on Using the Cluster Approach to Strengthen Humanitarian Response' (2006) 3.

²¹⁵ Gloria Nguya and Nadia Siddiqui, 'Triple Nexus Implementation and Implications for Durable Solutions for Internal Displacement: On Paper and in Practice' (2020) 39(4) *Refugee Survey Quarterly*, 466.

²¹⁶ PDD, 'Internal Displacement', 28; Nicholas Noe, 'Localizing the International Humanitarian Response in Ukraine' (Refugees International 2022) <<https://www.refugeesinternational.org/reports/2022/9/8/localizing-the-international-humanitarian-response-in-ukraine>> accessed 20 October 2022.

At the domestic level, assistance and protection tends to be the main focus of law and policy as it is implemented by States. By 2017, almost 70 substantive laws and policies regarding IDPs had been adopted across 40 countries.²¹⁷ Although most of these national frameworks address internal displacement due to conflict, a proportion also cover internal displacement due to disasters. For instance, that is the case for countries such as Afghanistan,²¹⁸ Azerbaijan,²¹⁹ Peru,²²⁰ Uganda,²²¹ and Yemen.²²² In recent years, some national frameworks exclusively directed to addressing displacement due to disasters have been developed, mainly in Asia and the Pacific region, but they are often just isolated provisions within broader policies related to DRR or adaptation to climate change.²²³ Exceptions to this are found in Bangladesh, Fiji, and Vanuatu, which have developed complex strategies to tackle displacement caused by disaster that explicitly incorporate the Guiding Principles.²²⁴ Indeed, the definition of the scope of internal displacement, and its recognition in disaster contexts, remains one of the main points of discrepancy between local and international instruments on IDP protection.²²⁵

3.2.2 International humanitarian law

IHL does not make specific provision for the assistance and protection of people displaced internally by conflict. However, the general rules it establishes for the treatment of civilians are fully applicable to civilian IDPs during the armed conflict. These rules combine general civilian protections against being targeted for attack with a set of fundamental guarantees for the treatment of civilians. IHL rules on civilians thus offer a minimum set of protection standards that are applicable even in the fraught and chaotic context of war, although there is much less emphasis here on assistance as such. Many of the protective rules in IHL are reflected in the provisions of the Guiding Principles and other instruments in the international IDP regime (see section 3.2.1). Finally, where a party to the conflict takes specific measures to evacuate or forcibly displace civilians on grounds permitted by IHL, the treaty rules impose duties to ensure satisfactory reception conditions etc. (see section 3.1.2). Whilst IHL rules cease to apply after the 'general close of military operations' (except in case of occupation),²²⁶ 'protected persons whose release, repatriation or re-establishment may take place after such dates shall meanwhile continue to benefit by the present Convention'.²²⁷

Meanwhile, the ICRC, in accordance with its institutional strategy, addresses the assistance and protection of displaced people from a holistic perspective, which includes responding to disaster displacement when it takes place in conflict zones. This means that the needs of this population are provided for at the same time as those of other groups who are not themselves IDPs but have been affected by internal displacement, such as the host communities and those left

²¹⁷ By mid-2017, 40 States which have experienced internal displacement had introduced some 69 domestic legislative instruments and policies. However, only 30 laws and policies explicitly mention the Guiding Principles (Philip Orchard, 'Implementing the Guiding Principles at the domestic level' (2018) 59 *Forced Migration Review* 10).

²¹⁸ Government of the Islamic Republic of Afghanistan, Ministry of Refugees and Repatriation 'National Policy on Internally Displaced Persons', (2013)

<http://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/national_idp_policy_-_final_-_english_0.pdf> accessed 11 October 2022

²¹⁹ Republic of Azerbaijan Heydar Aliyev 'Law on IDPs and Refugee Status' (1999)

<<https://www.refworld.org/pdfid/3ae6b4fd4.pdf>> accessed 11 October 2022

²²⁰ Peru has two different policies for attending IDPs. Law 28223 of 2004 addresses the protection of those uprooted due to conflict, generalized violence, and human rights violations; meanwhile, those displaced by climate-related disasters are covered by Law 30754/2018.

²²¹ Uganda, Office of the Prime Minister, Department of Disaster Preparedness and Refugees 'National Policy for Internally Displaced Persons' (2004) <http://www.brookings.edu/wp-content/uploads/2016/07/Uganda_IDPpolicy_2004.pdf> accessed 1 June 2022.

²²² Republic of Yemen, 'National Policy for Addressing Internal Displacement in the Republic of Yemen' (2013) <https://www.brookings.edu/wp-content/uploads/2016/07/Yemen_Policy_2014_English.pdf> accessed 11 October 2022

²²³ Scott and Salamanca, 'Human Rights-based Approach to Internal Displacement'.

²²⁴ Bangladesh 'National Strategy for the Management of Disaster- and Climate-Induced Internal Displacement' (2015). <http://www.preventionweb.net/files/46732_nsmdcidfinalversion21sept2015withc.pdf> accessed 30 May 2022. Fiji - Ministry of Economy, Displacement Guidelines. Vanuatu, 'National Policy on Climate Change'. See also, for Peru, the discussion in Jonas Bergmann et al, *Assessing the Evidence: Climate Change and Migration in Peru* (IOM/Potsdam Institute for Climate Impact Research 2021)..

²²⁶ See, for example, Geneva Convention IV, art 6, second and third paras.

²²⁷ Geneva Convention IV, art 6, fourth para.

behind.²²⁸ Regardless, as we have shown (section 3.2.1), within the IDP regime, there is an increasing shift away from exclusive status-based approaches to IDPs as a category towards a broader appreciation of the range of ways in which internal displacement can create needs and vulnerabilities not only for those who are displaced but also host communities, as well as those left behind who are unable or unwilling to leave their homes as a result of the conflict.

The wider peace and security regime not only emphasises the applicability of IHL rules for the protection of civilians (see section 3.1.2), which are relevant also during displacement,²²⁹ but equally spells out other rules concerning the assistance and protection of IDPs. Many of these additional rules that have been articulated by UN Security Council resolutions address the situation of IDP camps as a particular concern.²³⁰ For instance, it regularly ‘reaffirms the need to maintain the security and civilian character of refugee and internally displaced person camps, stresses the primary responsibility of States in this regard, and encourages the Secretary-General where necessary and in the context of existing peacekeeping operations and their respective mandates, to take all feasible measures to ensure security in and around such camps and of their inhabitants’.²³¹ It has also reiterated the duty under international law of all parties to a conflict to ensure access by relief organisations and the delivery of humanitarian assistance to IDPs.²³² Meanwhile, ‘peace missions have advanced protection of civilians, thus preventing conflict-induced displacement, and have supported conflict resolution, access to justice and accountability for crimes committed during conflict’.²³³

3.2.3 Disaster risk reduction regime

The predominantly soft law rules of the global DRR regime tend to be focused less on legal protection during disasters and more on assistance to the physical needs of disaster victims. However, the DRR regime touches only lightly on how those displaced due to disasters should be cared for during their period of displacement. The Sendai Framework only establishes, under Priority 4, that persons evacuated or displaced in the context of disasters should have access to safe shelter, essential food and non-food supplies, as appropriate to local needs.²³⁴ This provision has been broadened by the UNDRR guidance, which recommends that the assistance offered to these people should include a wide range of goods and services to ensure their essential needs are covered, with special consideration given to the most vulnerable groups, until such time as their resilience is strengthened.²³⁵ The IDRL Guidelines also briefly mention this topic, noting equally that the delivery of disaster relief and initial recovery assistance should be responsive to the special needs of particularly vulnerable groups that may include, *inter alia*, ‘displaced persons’.²³⁶ Finally, the 2016 ILC Draft Articles include provisions on humanitarian action applicable on displacement scenarios, which stress the affected state’s duty to guarantee protection and relief to disaster victims – including IDPs - and the prohibition on arbitrary denial of humanitarian access.²³⁷

The assistance and protection of disaster IDPs is included in the Nansen Agenda on the basis that a significant majority of population flows in the context of disasters are, initially at least, internal, and if these are not duly addressed, those who are part of them will choose to seek protection by crossing an international border.²³⁸ The guidelines that it sets out draw on the parallel IDP regime in affirming the protection of the rights of those displaced as their main objective. Yet the Nansen Agenda goes beyond the provisions of the Guiding Principles by recommending that national laws and policies on internal displacement, disaster management and adaptation to climate change be reviewed in order to include adequate measures for the assistance and protection of people displaced by disasters and to clarify the

²²⁸ ICRC, *Internal Displacement. Our approach and strategy for 2016–2019* (2016).

²²⁹ UNSC res 1296 (19 April 2000) para 3.

²³⁰ Sanjula Weerasinghe and Elizabeth Ferris, *Security Council, Internal Displacement and Protection: Recommendations for Strengthening Action through Resolutions* (Brooking-LSE Project on Internal Displacement 2011) <<https://www.refworld.org/pdfid/4e92c5372.pdf>> accessed 20 October 2022, 16

²³¹ UNSC res 1674, para 14.

²³² UNSC res 1265 (8 September 1999) para 7.

²³³ UNGA, *Report of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary*, UN doc A/76/169 (16 July 2021) para 73.

²³⁴ Sendai Framework, para 33(h).

²³⁵ UNDRR, ‘Words into Action’, 47-48.

²³⁶ Guideline 4(3)(a).

²³⁷ ILC Draft Articles on the protection of persons in the event of disasters, arts 10-17.

²³⁸ Nansen Agenda, 39.

respective roles of relevant DRR and humanitarian actors.²³⁹ It also draws on several different international regimes to identify the standards governing implementation of planned relocations, including the imperative of using it in ways that help to achieve development goals.²⁴⁰ Similarly, guidance specifically on planned relocations in the context of disasters and climate change includes recommendations concerning affected populations above and beyond just those persons who are relocated (e.g. host populations, people who choose not to be relocated and people who live in close proximity).²⁴¹

The relative lack of provisions for the care of displaced people during their displacement within the global DRR regime has resulted in a similar scarcity within domestic instruments. As mentioned previously, isolated references to this topic tend to be included within policies and strategies relating to DRR and adaptation to climate change. This has been found by studies carried out in Asia and the Pacific region,²⁴² as well as in Latin America.²⁴³ On the other hand, implementation of the IDRL Guidelines has been better. Based on these guidelines, Red Cross and Red Crescent Societies from countries as diverse as Australia, Mozambique, Samoa and Honduras have developed actions and programmes for the care of those internally displaced through disasters.²⁴⁴

3.2.4 Climate change regime

The climate change regime has only recently referred to the standards applicable to disaster IDPs during displacement and, even then, in only the most general terms. In 2018, the Executive Committee of the Warsaw International Mechanism for Loss and Damage made recommendations to COP24 on ‘displacement related to the adverse impacts of climate change’.²⁴⁵ They included inviting States parties to formulate laws, policies and strategies that reflect the importance of ‘*integrated approaches* to avert, minimize and address displacement related to the adverse impacts of climate change’, emphasising the need to take account of ‘their respective human rights obligations and, as appropriate, other relevant international standards and legal considerations,²⁴⁶ apparently including the Guiding Principles.²⁴⁷ In short, rather than developing standards on IDP protection and assistance specific to the climate change context, this regime instead recognises the applicability of existing standards from the parallel IDP regime and emphasises the need for integrated approaches in this regard. As mentioned above, national laws and policies concerning adaptation to climate change have also sometimes addressed issues of displacement (see section 3.2.3).

3.2.5 Sustainable development and urban planning regime

The 2030 Agenda identifies IDPs as an especially vulnerable population group that must be empowered. Therefore, a broad reading of this instrument involves recognising the commitment of States – supported by international cooperation – to bring forward their efforts to help these people overcome their state of poverty, meet their nutritional needs, and have access to health and education services, as well as to water and sanitation.²⁴⁸ This regime also sets as goals access to decent employment, gender equity, and social, economic and political inclusion for displaced people.²⁴⁹ Additionally, the commitment to provide care includes access to decent shelter.²⁵⁰ The commitments enshrined in the New Urban Agenda are along similar lines. As such, some have argued that the urban planning process represents a powerful tool in guaranteeing the rights of IDPs, especially the right to decent housing,

²³⁹ Ibid, 39.

²⁴⁰ Ibid, 38.

²⁴¹ See, for example, Guidance on Planned Relocations, paras 2(g), 12, 14, 32 and 47.

²⁴² Scott and Salamanca, ‘Human Rights-based Approach to Internal Displacement’.

²⁴³ Observatorio Latinoamericano de Movilidad Humana, Cambio Climático y Desastres (MOVE-LAM), *Visibilizar para proteger: Un abordaje de datos e información sobre movilidad humana en el contexto de desastres y cambio climático en Brasil, Chile, Colombia, Costa Rica, Guatemala y México* (2021) University for Peace, <<http://www.upeace.org/files/Publications/Primer%20Informe%20MOVELAM.pdf>>_accessed 1 June 2022.

²⁴⁴ IFRC, *Displacement in a Changing Climate*.

²⁴⁵ Decision 10/CP.24, Annex.

²⁴⁶ Ibid, para 1(g)(i).

²⁴⁷ Ibid, para 1(g)(v).

²⁴⁸ 2030 Agenda, SDGs 1(1) and 1(2), 2(1) and 2(2), 3, 4(5), 6(2).

²⁴⁹ 2030 Agenda, SDGs 8(5) and 8(8), 5(a), and 10(2).

²⁵⁰ 2030 Agenda, SDG 11(1).

non-discrimination, equality of access to public services, as well as in promoting strategies that allow IDPs to overcome poverty.²⁵¹

At the domestic level, some development policies have incorporated assistance to IDPs. An example of this is in Nigeria, which has included those displaced by conflict in the Economic Recovery and Growth Plan (NERGP) 2017–2020.²⁵²

3.2.6 Coherence between the regimes – protection and assistance

Regarding the situation of IDPs during displacement, the two specialist international regimes that regulate, respectively, conflict and disasters take contrasting approaches. In IHL, a set of hard law minimum guarantees provide for the protection of civilians from attack or abuse in wartime but say little about wider assistance standards for victims of war. By contrast, in the DRR regime, the standards are predominantly soft not hard law and they tend to focus on the relief and assistance of disaster victims rather than legal protection. Nonetheless, the rules of both specialist regimes converge in the need for minimum conditions to be observed where authorities (including non-State parties to a non-international conflict) forcibly displace people on grounds permitted by international law, including in evacuations and relocations. The distinct logic of each specialist regime has not inhibited the IDP regime from integrating many essential elements of IHL and DRR rules relevant IDP assistance and protection.

However, the IDP regime sets out a more comprehensive set of standards relating to IDP assistance and protection that goes well beyond the sum of the contribution made by the two specialist regimes. These broader standards are largely rooted in binding international human rights law, which gives them general application regardless of whether forcible displacement is driven by conflicts, disasters or other crises. Concerns that some of the Guiding Principles do not accurately reflect the underlying human rights standards are increasingly overtaken by their incorporation in regional treaties and in their application by human rights treaty bodies when interpreting the scope of treaty obligations in IDP situations.²⁵³ Moreover, it seems that the other international regimes - including IHL, DRR, climate change and sustainable development - now recognise and defer to the primacy of the IDP regime for the purpose of determining the scope of basic standards for the assistance and protection of IDPs during displacement. Many of these other regimes also now recognise IDP assistance and protection as pertinent to meeting their distinct objectives in conflict and disaster settings.

3.3 Durable solutions

The protection and assistance need of IDPs do not ‘automatically disappear when a conflict or natural disaster ends’ nor ‘fade away when people initially find safety’.²⁵⁴ Rather, the pursuit of durable solutions within the IDP response often involves complex collective processes,²⁵⁵ which have the potential to directly engage a number of important international regimes.

3.3.1 Internal displacement regime

On solutions to internal displacement, the Guiding Principles refer simply to the duty of competent authorities to ‘establish conditions, as well as provide the means, which allow [IDPs] 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’, and to ‘endeavour to facilitate the reintegration of returned or resettled’ IDPs.²⁵⁶ They add a requirement to ensure the full participation of IDPs in planning and managing solutions.²⁵⁷ The rules for solutions in the Guiding Principles are reflected in the ICGLR Protocol.²⁵⁸ The rules relating to one particular aspect of solutions in the Guiding Principles -

²⁵¹ New Urban Agenda, para 13 and 20.

²⁵² Debarre, Archibald and Rahmaty ‘Reaching IDPs’, 8.

²⁵³ Cantor, ‘The IDP in International Law’.

²⁵⁴ IASC, *Framework on Durable Solutions*, A-1.

²⁵⁵ Walter Kälin and Hannah Entwisle Chapusiat, *Breaking the Impasse: Reducing Protracted Internal Displacement as a Collective Outcome* (2017).

²⁵⁶ Guiding Principles, Principle 28(1).

²⁵⁷ ICGLR Protocol, art 4(1)(b) and 5(6). Kampala Convention art XI(2).

²⁵⁸ The ICGLR Protocol also refers to a State duty to protect the ‘physical and material safety’ of IDPs on return or resettlement elsewhere (art 3(3)).

housing and property restitution²⁵⁹ - was also further elaborated by the soft law framework of the Pinheiro Principles in 2005.²⁶⁰ The IDP regime applies these general rules to both conflict and disaster displacement,²⁶¹ and the breadth of this 'solutions' duty opens it to intersection with other international regimes.

In 2010, the IASC adopted a soft law framework on IDP solutions that confirmed this approach. It built on the idea in the Guiding Principles that displacement cannot be assumed to end with the ending of the conflict or disaster nor with the act of return. Rather, the IASC Framework, affirms that internal displacement ceases only when IDPs 'no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement'.²⁶² Borrowing the concept of 'durable solutions' from the refugee field, this instrument presents three alternatives for overcoming internal displacement, through 'sustainable' return, local integration, or resettlement. Each of them involves 'gradual, often long-term processes' that address not only human rights and humanitarian concerns but also 'development, reconstruction and peace-building challenges'.²⁶³ The Framework elucidates key criteria to determine the extent to which a durable solution has been achieved.²⁶⁴

Nowadays, the IASC Framework is widely recognised as the internationally-agreed benchmark for solutions for IDPs.²⁶⁵ Its broad approach to facilitating solutions was affirmed the following year by the UN Secretary-General in his 2011 decision on ending displacement in post-conflict situations.²⁶⁶ This terminology of 'sustainable' and 'durable solutions' is equally reflected in the Kampala Convention,²⁶⁷ which also specifically obliges States to provide appropriate simplified mechanisms for resolving IDP property-related disputes and to take all appropriate measures to restore lands to communities with special attachment to such lands upon their return or resettlement.²⁶⁸ It is reflected also in the jurisprudence of the Inter-American Court of Human Rights, which emphasises the broad conditions that States must guarantee in order for IDPs to achieve durable solutions to their displacement.²⁶⁹ This instrument has had deep influence at the domestic level as well, having shaped durable solutions in the laws, policies, and strategies of Afghanistan, Burundi, Kenya, Niger, Sri Lanka, and South Sudan.²⁷⁰

²⁵⁹ This is addressed in Principle 29(2).

²⁶⁰ Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights 'Principles on housing and property restitution for refugees and displaced persons' Doc. UN E/CN.4/Sub.2/2005/17 (2005).

²⁶¹ Although the Pinheiro Principles appear to have conflict displacement uppermost in mind, Principle 15(7) seems to confirm that they are intended equally to apply to disaster displacement. The curious stipulation in art XII(3) of the Kampala Convention that 'A State Party shall be liable to make reparation to internally displaced persons for damage when such a State Party refrains from protecting and assisting internally displaced persons in the event of natural disasters' appears to be an exception, especially since a wider duty of reparation regardless of the driver of displacement precedes it in art XII(2).

²⁶² IASC, *Framework on Durable Solutions*, A-1.

²⁶³ IASC, *Framework on Durable Solutions*, A-2.

²⁶⁴ 'IDPs who have achieved a durable solution will enjoy without discrimination: Long-term safety, security and freedom of movement; An adequate standard of living, including at a minimum access to adequate food, water, housing, health care and basic education; Access to employment and livelihoods; Access to effective mechanisms that restore their housing, land and property or provide them with compensation. In a number of contexts, it will also be necessary for IDPs to benefit, without discrimination, from the following to achieve a durable solution: Access to and replacement of personal and other documentation; Voluntary reunification with family members separated during displacement; Participation in public affairs at all levels on an equal basis with the resident population; Effective remedies for displacement-related violations, including access to justice, reparations and information about the causes of violations' (IASC, *Framework on Durable Solutions*, A-4).

²⁶⁵ See Chaloka Beyani, Natalia Krynsky Baal, and Martina Caterina, 'Conceptual challenges and practical solutions in situations of internal displacement' (2016) 52 *FMR* 39.

²⁶⁶ Decision 2011/20. Durable Solutions Follow up to the Secretary General's 2009 Report on peace building.

²⁶⁷ For example, art II(a), II(c) and XI.

²⁶⁸ Kampala Convention, arts XI(4)-(5).

²⁶⁹ For instance, the court sets out the overcoming of poverty and food insecurity, as well as the development of employment and income generation programmes, as necessary conditions for the return of IDPs ("*Masacre de Mapiripán*" v Colombia (2005) IACHR, para 175).

²⁷⁰ Elizabeth Ferris, 'Durable Solutions for IDPs: Research Briefing Paper for the UN Secretary-General's High-Level Panel on Internal Displacement' (2020) <https://www.un.org/internal-displacement-panel/sites/www.un.org.internal-displacement-panel/files/durable-solutions-ferris_1_apr_2021.pdf> accessed 13 October 2022, 5.

This pursuit of durable solutions for IDPs requires that the international humanitarian agencies involved in the cluster system undertake considerable efforts to improve coordination among themselves and the greater involvement of development agencies. This topic was debated during the preparatory works for the 2016 Humanitarian Summit and the 2030 Sustainable Development Agenda, but a fully satisfactory formula has yet to be reached.²⁷¹ In the specific case of displacement due to conflict, the 2011 United Nations Secretary-General (UNSG) decision included a support strategy for countries, led by resident humanitarian coordinators and with technical support from UNHCR and the United Nations Development Programme (UNDP), as well as the early recovery and protection clusters.²⁷² In 2022, this decision was overtaken by the UNSG's Action Agenda on Internal Displacement, which shifts the responsibility from the Humanitarian Coordinator to the Resident Coordinator, thereby emphasizing the relevance of development in the pursuit of durable solutions.²⁷³

Most recently, this approach to facilitating durable solutions for IDPs has been reinforced by the recommendations contained in the 2021 report of the UNSG's High-Level Panel on Internal Displacement. Not only does this document strengthen the linkage between humanitarian assistance, human rights protection and development, but it explicitly bonds the pursuit of durable solutions with the attainment of the Sustainable Development Goals.²⁷⁴ This requires the mainstreaming of internal displacement into development work and financing at national and international levels.²⁷⁵ It also involves building political will so that solutions become a 'whole-of-government' priority and accountability for them is set across the UN system.²⁷⁶ The UNSG's follow-up 2022 Action Agenda on Internal Displacement, which adopts many of the panel's recommendations and also appoints a Special Adviser and Steering Group on Solutions to Internal Displacement, reiterates that internal displacement is not only a humanitarian problem but also a 'priority for development, peace and climate action'. This statement is backed by the appointment of the UN Resident Coordinator as chair of the Steering Group at the domestic level.²⁷⁷

However, at the domestic level, relatively few national IDP frameworks holistically integrate both development and peace building approaches as yet. A good example of this is the case of Colombia, where such approaches are incorporated in the pertinent legal provisions,²⁷⁸ but no public policy as such exists to implement them on the ground.

3.3.2 International humanitarian law

IHL treaty law does not generally regulate solutions to displacement, addressing only the return of civilians evacuated from occupied territories.²⁷⁹ Yet a wide-ranging study by the ICRC has indicated that the right of displaced persons 'to voluntarily return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist' is now a rule of IHL custom in both international and non-international armed conflicts.²⁸⁰ The study also states that customary international humanitarian law in both types of armed conflict contains a rule that 'the property rights of displaced persons must be respected'.²⁸¹ These intriguing findings by the ICRC study suggest that, at least in relation to situations of conflict-driven internal displacement, the rules around IDP solutions that were developed by the soft law global IDP regime may be assuming a hard international law character through developments in customary IHL. Whether that rule applies after the cessation of military hostilities (as is the case for

²⁷¹ Beyani, Krynsky Baal and Caterina 'Conceptual challenges'.

²⁷² UNDP and UNHCR, Global Cluster for Early Recovery and Global Protection Cluster, *Joint Strategies to support Durable Solutions for Internally Displaced Persons (IDPs) and Refugees Returning to their Country of Origin. A Preliminary Operational Guide to the United Nations Secretary-General's Decision on Durable Solutions to Displacement* (2016).

²⁷³ UNSG, *Action Agenda on Internal Displacement* (2022) <https://www.un.org/en/content/action-agenda-on-internal-displacement/assets/pdf/Action-Agenda-on-Internal-Displacement_EN.pdf> accessed 1 July 2022, 12

²⁷⁴ United Nations Secretary-General's High-Level Panel on Internal Displacement, *Shining a Light on Internal Displacement. A Vision for the Future* (2021) <<https://internaldisplacement-panel.org>> accessed 1 June 2022.

²⁷⁵ *Ibid*, see particularly recommendations 1, 5 and 6.

²⁷⁶ *Ibid*, see particularly recommendations 1-5.

²⁷⁷ UNSG, *Action Agenda on Internal Displacement* (2022) <https://www.un.org/en/content/action-agenda-on-internal-displacement/assets/pdf/Action-Agenda-on-Internal-Displacement_EN.pdf> accessed 1 July 2022, 9-11.

²⁷⁸ República de Colombia, Law 1448 of 2011 and Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace f 2016.

²⁷⁹ Geneva Convention IV, art 49 (2)

²⁸⁰ Henckaerts and Doswald-Beck, *Customary International Humanitarian Law*, rule 132.

²⁸¹ *Ibid*, rule 133.

most IHL treaty rules) is not addressed in the ICRC study.²⁸² In this regard, the IHL regime tends to defer to the IDP regime on solutions, but arguably appears to implicitly privilege return as a solution over access to solutions in other locations.

The wider peace and security regime also addresses solutions to internal displacement. In some places, the UN Security Council uses the terminology of ‘durable solutions’ in its resolutions when referring to the situation of IDPs.²⁸³ However, it appears to particularly privilege the right of IDPs to return to their homes and property.²⁸⁴ The language here frequently recalls that of the UN Guiding Principles on solutions to internal displacement as, for example, in resolutions that call upon all parties to ensure that ‘all peace processes, peace agreements and post-conflict recovery and reconstruction planning have regard for the special needs of women and children and include specific measures for the protection of civilians including... (iii) the creation of conditions conducive to the voluntary, safe, dignified and sustainable return of refugees and internally displaced persons’.²⁸⁵ More generally, peace actors of all kinds ‘have an important role to play in resolving and preventing the recurrence of displacement by supporting and monitoring peace processes and promoting reconciliation and the participation of internally displaced persons and displacement-affected communities in peace processes’.²⁸⁶

3.3.3 Disaster risk reduction regime

The DRR regime does not expressly advance a concept of durable solutions for IDPs. Yet, in line with its Priority 4, the Sendai Framework usefully specifies that measures to integrate post-disaster reconstruction into the economic and social sustainable development of affected areas ‘should also apply to temporary settlements for persons displaced by disasters’.²⁸⁷ Planned relocation also appears within the DRR regime as a measure for addressing certain human mobility issues associated with disasters. The Sendai Framework envisages this process as a way of preventing disasters and, in consequence, preventing the spontaneous forced displacement that might be caused by them.²⁸⁸ Within the DRR regime, planned relocation is also considered a possible disaster response, albeit one that requires consultation with the affected communities.²⁸⁹ The Priority 4 principle of ‘*build back better*’ is relevant as a way to guide the relocation process within the framework of durable solutions.

In the disaster context, the Nansen Agenda specifically emphasises the importance for durable solutions for IDPs of ‘consistently establishing links between humanitarian and development activities’ by means such as reflecting displacement issues within recovery and reconstruction plans and including resilience measures in development planning in return areas.²⁹⁰ It also integrates the DRR and climate change approaches in envisaging the use of planned relocation as not only a prevention tool but also a solution in the context of internal displacement.²⁹¹ It warns, however, that this process can have adverse effects on the displaced population and for this reason should only be used as a last resort. Similarly, it advances a series of rules based on a rights-based approach that aim to ensure that the relocation processes allow displaced people to overcome their fragile situation.²⁹² Similar provisions regarding preventative and reactive relocation in the DRR regime have also been reflected in guidance prepared by organisations such as the World Bank,²⁹³ the International Law Association,²⁹⁴ and UNHCR and partners.²⁹⁵ Finally, at domestic level,

²⁸² For the more limited case of persons evacuated from occupied territories, Geneva Convention IV, art 6 (3)-(4) expressly extends the application of that treaty for one year after the general close of military operations.

²⁸³ UNSC res 1923 (25 May 2010) seventh preambular paragraph.

²⁸⁴ Weerasinghe and Ferris, *Security Council, Internal Displacement and Protection*, viii-ix.

²⁸⁵ UNSC res 1674, para 11.

²⁸⁶ UNGA, *Report of the Special Rapporteur* (16 July 2021) para 73.

²⁸⁷ Para 33(j).

²⁸⁸ Sendai Framework, para 27(k).

²⁸⁹ Sendai Framework para 33(l).

²⁹⁰ Nansen Agenda, 40.

²⁹¹ *Ibid*, 38.

²⁹² *Ibid*, 38.

²⁹³ Elena Correa and Harris Sanhauja, *Populations at Risk of Disaster A Resettlement Guide* (World Bank 2011).

²⁹⁴ International Law Association ‘Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise’, adopted by Resolution 6/2018 of the 78th Conference of the International Law Association (2018).

²⁹⁵ Brookings, Georgetown University y UNHCR *Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation* (2015).

countries such as Argentina, Brazil, Peru, and Guatemala have included provisions on population relocation, both preventative and reactive in form, in national policies on DRR.²⁹⁶ Others have developed instruments specifically addressing planned relocation, such as Fiji.²⁹⁷

3.3.4 Climate change regime

The climate change regime has recently started to recognise the need to ‘address’ displacement related to the adverse effects of climate change. In the 2018 recommendations by the Executive Committee of the Warsaw International Mechanism for Loss and Damage to COP24, it included inviting States parties to ‘recall the guiding principles on internal displacement and seek to strengthen efforts to find durable solutions for internally displaced people when working to implement integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change, as appropriate’.²⁹⁸ As part of the ‘integrated approach’ to avert, minimize and address displacement related to the adverse impacts of climate change emerging in this regime (see section 3.2.4), the climate change regime is deliberately adopting and integrating standards and concepts relating to solutions from the international IDP regime.

Moreover, as in the DRR context, this regime also expressly acknowledges the utility of planned relocation as a measure to address the adverse effects of climate change. However, in the climate change context, such relocation is framed as an adaptation measure, which means that it can be used either as a prevention strategy or as a response to an established situation. In either case, this process must adhere to the guidelines established by the Paris Agreement for all adaptation measures (see section 3.1.4). Finally, certain international organizations from outside the climate change arena have recently started working on supporting solutions for persons adversely affected by climate change. This includes taking steps to increase resilience in the home community to allow displaced persons to return and people still in the community to remain; and steps to make ‘migration as adaptation’ work more effectively to enable displaced persons (and those still in home communities) to move in safety and do better economically and otherwise than they would if they remained in place.²⁹⁹

3.3.5 Sustainable development and urban planning regime

The fact that IDPs are often ‘left behind’ means that addressing internal displacement is crucial if affected countries are to make progress in achieving sustainable development. The pledge to ‘leave no one behind’ is a key plank of the 2030 Agenda for Sustainable Development and its 17 SDGs, each with its set of targets and indicators.³⁰⁰ Indeed, all of the SDGs are relevant to internal displacement and many are directly related (particularly SDGs 1-6, 8, 10, 11, 13, 16 and 17).³⁰¹ For instance, SDG 1 (no poverty) is directly relevant as ‘IDPs tend to be the poorest people in their countries and poverty increases the likelihood of renewed displacement’.³⁰² As such, the commitments enshrined in the 2030 Agenda are closely linked with durable solutions concepts and achieving the SDGs is necessary in order to overcome the vulnerability associated with conditions of internal displacement. In a similar way, the agreements reflected in the New Urban Agenda help ensure the sustainability of durable solutions in urban areas.

Examples exist of the inclusion of these rules in development policies at national level, albeit in a fragmented form. Iraq has incorporated the decent housing guarantee in return processes for people internally displaced due to conflict in its *Reconstruction and Development Framework*.³⁰³ Meanwhile, the Philippines government has included provisions

²⁹⁶ Elena Correa (Comp.) *Reasentamiento preventivo de poblaciones en riesgo de desastre. Experiencias de América Latina*, (Banco Internacional de Reconstrucción y Fomento y Banco Mundial, 2011). Jonas Bergmann, J., et al. *Assessing the Evidence: Climate Change and Migration in Peru* (International Organization for Migration and Institute for Climate Impact Research, 2021).

²⁹⁷ Government of Fiji ‘Planned Relocation Guidelines A framework to undertake climate change related relocation’ (2019)

²⁹⁸ Decision 10/CP.24, Annex., para 1(g)(v).

²⁹⁹ See, for example, International Labour Organization, *Enhancing protection and empowerment of migrants and communities affected by climate change and disasters in the Pacific region* (Kiribati, Tuvalu, Marshall Islands, Vanuatu, Fiji) <https://www.ilo.org/suva/projects/WCMS_714757/lang--en/index.htm> accessed 20 October 2022.

³⁰⁰ UNGA res 70/1 (21 October 2015).

³⁰¹ Debarre, Archibald and Rahmaty, ‘Reaching IDPs’, 5.

³⁰² *Ibid*, 5.

³⁰³ *Ibid*, 9.

to promote dignified working conditions for those persons who are internally displaced due to disasters in its *National Green Jobs Human Resource Development Plan 2019-2022*.³⁰⁴

3.3.6 Coherence between the regimes – solutions

Solutions to displacement do not figure prominently in the specialist regimes on conflict and disasters. IHL treaties have little to say on point, although customary IHL speaks of a right of return in language that reflects the IDP regime on solutions. The DRR regime does not expressly address solutions, other than noting that temporary settlements for the disaster displaced should benefit from reconstruction. However, both the DRR and the climate change regime also present the prospect that the situation of persons at risk of disasters or the adverse effects of climate change may be resolved through planned relocation. Although such relocation may be voluntary, where it is involuntary it may take on the character of internal displacement.³⁰⁵ In this regard, more recent soft law instruments in the DRR and climate change regimes both reflect and develop pertinent guarantees spelt out in the IDP regime for displacements carried out by the authorities on grounds permitted by international law.

More broadly, though, the IDP regime conceives solutions through a lens that combines the immediate solutions-related needs of IDPs with wider imperatives to (re-)establish conditions that allow such solutions to be sustainable.³⁰⁶ Solutions, seen through this lens, are the mirror image of the preventative duty to both stop individual displacements and address the root causes that might give rise to displacement. As such, international regimes oriented towards addressing the wider conditions in countries over the long term (e.g. DRR, climate change, sustainable development regimes) find an important point of connection here too. The fact that this connection remains somewhat underdeveloped in relation to internal displacement in both conflict and disaster settings was, in part, the impetus for the establishment of the UNSG panel and, in response to its report, the Action Agenda and SRSG role on solutions to internal displacement. This reflects the recognition that, although these regimes are not contradictory at the level of rules in pursuit of solutions to internal displacement, more work is needed to integrate IDP solutions across relevant institutional agendas at the international level.

4. Conclusions

This paper shows that the two essential elements of internal displacement - i.e. that the movement of persons is forced and that it takes place within the country - give a conceptual coherence that makes it amenable to policy usage in both disaster and conflict contexts. In empirical terms, despite differences in the global scale and distribution of conflict and disaster displacement, the paper illustrates not only similarities in the needs of IDPs across disaster and conflict settings, but also parallels in how short-term immediate risks (e.g. attacks in conflicts, sudden-onset hazards in disasters etc.) and secondary risks over the longer-term (e.g. effects of conflict on livelihoods, ruined crops due to flooding after sudden-onset disaster but also environmental degradation as a slow-onset disaster etc.) act to shape displacement dynamics across the two contexts. The paper also shows how distinct kinds of hazards in conflicts and disasters, and the differing political contexts, can shape the resulting displacement and policy responses. This offers important insights as to where IDP interventions might most usefully be targeted in preventing, addressing or resolving displacement. It equally opens the opportunity for joined-up policy interventions on internal displacement in the relatively large proportion of conflict-affected countries which also have a high level of exposure to both sudden- and slow-onset disasters, especially in light of new challenges brought by the changing global climate.

Turning to consider the coherence of existing international policy on IDPs, the paper finds that, whilst each of the five most pertinent international regimes addresses internal displacement from a distinct perspective, there appears to be no generalised incompatibility between their rules as they apply to internal displacement, whether driven by conflict or disasters. The international regime with the most comprehensive and detailed rules on point is obviously that which is specific to internal displacement, which covers both conflict and disaster IDPs. Clearly, this regime takes a standalone

³⁰⁴ Philippine Employment Research Division, 'National Green Jobs Human Resource Development Plan 2019-2022' (2019) I(2) *Philippine Journal of Labor Studies* 145.

³⁰⁵ See discussion in Jane McAdam, 'Displacing Evacuations: A Blind Spot in Disaster Displacement Research' (2020) 39(4) *Refugee Survey Quarterly* 583.

³⁰⁶ For a detailed analysis of how this tension plays out in practice in protracted conflict, see David J. Cantor, *Returns of Internally Displaced Persons during Armed Conflict: International Law and its Application in Colombia* (Brill 2018).

hard international law form only in African regional treaties. Yet the grounding of the global Guiding Principles in UN and regional treaty standards on human rights gives the core of this regime considerable international legal solidity. As such, the analysis points to the importance of reaffirming a systemic presumption that this regime, with the Guiding Principles at its core, serves as the principal reference point for international policy on internal displacement, with which any rules on internal displacement developed in other international regimes should conform. The lack of a global IDP treaty in no way impairs the IDP regime's centrality to international IDP law/policy on internal displacement.

At the same time, the rules in the IDP regime tend to take the form of individualised standards of protection for IDPs, in respect of which States and other actors possess obligations. As human rights-based minimum standards, they tend to be largely context-neutral, both in the sense that they apply regardless of the specific kind of crisis in which displacement occurs and they have little to say about how those standards are to be achieved on a collective basis. This is particularly noticeable for the stages of solutions and (to a lesser extent) prevention and planning. As a result, the trend is for IDP instruments to develop the general and individualised approach to IDP protection standards by addressing specific displacement contexts and/or linking them with collective approaches, often drawn from parallel international regimes. The inclusion in the Kampala Convention of specific provisions on both disaster and conflict IDPs, and on development and peacebuilding approaches, is an example. Thus, the IDP regime increasingly seems to be constituted by a mix of elements from different regimes.

Even where IDP instruments do not expressly incorporate such approaches, a significant level of complementarity exists between this regime and others. For example, the specialist IHL and DRR regimes contain far-reaching provisions that seek to mitigate the manifestation of the specific kinds of immediate risks that may generate forced internal displacement in conflict and disasters respectively, thereby reinforcing and developing the framework for prevention of internal displacement. Meanwhile, the DRR, development, climate change regimes (as well as the peacebuilding regime) are focused particularly on building the broader conditions that not only help to prevent up-stream the kinds of crises that generate internal displacement but also lay the wider ground for IDP solutions in the aftermath of conflict or a disaster. Even if the issue of internal displacement is not addressed in detail by the provisions of these regimes, this paper shows the important work that soft law instruments (often merging several regimes) do to ensure that their application is sensitive to IDP needs. Indeed, on internal displacement, soft law instruments already do a considerable degree of the work of connecting two or (occasionally) more regimes. However, as yet, there is no central document at the international level that holistically connects the diffuse international standards across all five regimes in so far as they relate to the different stage of internal displacement.

Finally, in relation to the drivers of displacement, several international regimes have carefully delimited spheres of application based on the distinction between conflict and disasters. For instance, States negotiating DRR instruments have forcefully resisted calls to allow armed conflict to be treated as a 'hazard' or 'disaster'.³⁰⁷ In part, this is because IHL already exists as a distinct body of rules to regulate armed conflict and its impact. However, it is important that these wider regimes should continue the move towards recognising internal displacement as a key challenge in both conflict and disaster settings and considering how to develop more fine-tuned operational responses where the empirical dynamics differ. In this regard, a holistic guidance document could usefully offer a shared point of reference for a humanitarian system that sometimes gives the impression of being fragmented through the disaster/conflict division of the cluster system. Such a document need not be limited, though, to only conflict or disaster displacement, since many of the common standards would be applicable also to internal displacement taking place in contexts that fall outside the specialised field of application of the IHL and DDR regimes (such as those displaced as a result of criminal violence, communal violence or development projects). Finally, the document would have particular utility in promoting a coherent response to internal displacements in countries where conflict and disasters both drive these dynamics on certain topics, there may be the potential for rules from certain regimes to differ in their emphasis or even enter into conflict.³⁰⁸ This is an area in which a holistic document on internal displacement rules across the regimes would also be well-placed to offer useful guidance.

³⁰⁷ See discussion in Peters, *The next frontier for disaster risk reduction*, 16-24.

³⁰⁸ On this issue in national approaches, see Sanjula Weerasinghe, *Bridging the Divide in Approaches to Conflict and Disaster Displacement: Norms, Institutions and Coordination in Afghanistan, Colombia, the Niger, the Philippines and Somalia* (UNHCR/IOM 2021).

5. Recommendations

These findings, and the likely utility of a single holistic guidance document on the international standards applicable to internal displacement, suggest recommendations for policymakers.

5.1 International organisations, agencies and entities

- Develop a concise guidance document consolidating the main principles and rules from the pertinent international regimes as they apply to the stages of displacement, including a wide process of consultation on the initial draft;
- Consider addressing in the document how those rules relate not only to disaster and armed conflict settings but also to other common drivers of internal displacement, including in the context of criminal or communal violence and development projects;
- Disseminate the document widely among States, international organisations, agencies and other entities at the global, regional and national levels working in each regime, to be utilised as a key reference point for a common approach to internal displacement;
- Promote a stronger common cross-cutting approach to internal displacement within the UN cluster system, alongside greater clarity about specific areas where the responses to conflict and disaster displacement may need to differ operationally;
- Once the document has been disseminated, promote regional and global seminars and workshops for sharing best practices and lessons learned among States, international organisations and NGOs.

5.2 National and sub-national governments and other entities

- Review national laws, policies and practices to ensure consistency of rules in their approach to internal displacement, especially in relation to different drivers such as conflict and disasters, ideally through reference to the envisaged guidance document;
- Consider how institutional arrangements relevant to internal displacement at the national and sub-national levels might most effectively be organised in relation to the standards identified for each stage of displacement by the guidance document;
- Reflect on the appropriate scope of the legal/policy concept of internal displacement in their particular national or sub-national context, specifically with reference to the pertinence of different drivers of displacement as relevant in practice;
- Strengthen national and sub-national law, policies and measures on preventing internal displacement by incorporating approaches from the development and climate change regimes, as a way of tackling the root causes of forced movement;
- Combine approaches from the internal displacement and DRR regimes as the basis for effective early warning systems to prevent displacement caused by conflict or disasters (or by a combination of the two factors);
- Combine approaches from the internal displacement and the DRR regimes as the basis for mechanisms to ensure that the presence of IDPs in designated areas for assistance and protection will not lead to disasters and further consequent displacements;
- Review domestic policies and strategies for durable solutions to include measures from DRR, climate change, sustainable development and urban planning regime, reinforcing the sustainability of such solutions;

- Include IDPs and internal displacement in development and urban planning policies, plans and strategies. This measure could be reinforced by including this topic in the voluntary national reports for High-level Political Forum on Sustainable Development.

