

RESEARCHING INTERNAL DISPLACEMENT

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The Prevention of Arbitrary Displacement: A Temporal Understanding

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Abstract

In 2020 alone, 40.5 million people were newly displaced by conflict and disaster, many of them being arbitrarily displaced. In reality this number is even higher as it does not include displacement by large-development projects or displacement of those that were already displaced. Preventing arbitrary displacement remains difficult as there is no coherent understanding of, or cohesion on, what prevention really means in the context of arbitrary displacement. This research represents the first attempt to develop a comprehensive synthesis of the practical and theoretical meaning of the prevention of arbitrary displacement for governments by looking at what specific obligations governments have and what measures they can use to prevent arbitrary displacement.

Using Van der Have's four phases of prevention, it argues for a human rights-based temporal understanding of the prevention of arbitrary displacement covering all phases of displacement. The results showed that, although arbitrary displacement receives little attention, it is the only form of forced displacement that is considered prohibited. Furthermore, a prevention-centred approach is essential if we want to hold governments accountable for human rights violations. Many measures can be taken to exercise due diligence and ultimately be prepared for any risk that might lead to arbitrary displacement. Henceforth, this study developed a model that can be used by other researchers as a starting point for a preventative-approach to arbitrary displacement adapted to local contexts.

Keywords

Arbitrary Displacement; Prevention; Internal Displacement; IDPs; Human Rights

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1. Introduction

Internal displacement has affected millions of people. According to the Internal Displacement Monitoring Centre (IDMC, 2021), 40.5 million people were newly displaced by conflict and disaster in 2020 alone, not including displacement by large-development projects or further displacement of those that were already displaced. Moreover, internal displacement is considered a severe threat to the livelihoods of those displaced (Deng, 1998). IDPs often cope with traumatic experiences and live in dire situations (Deng, 1998). Furthermore, internal displacement can be caused by various phenomenon ranging from ethnic cleansing to large development projects (Kälin, 2014), meaning that internal displacement has not only a set of interrelated effects but is also complex in its origins.

This research focusses on preventing a specific violation related to internal displacement, i.e., arbitrary displacement. Preventing arbitrary displacement remains difficult as there is no coherent understanding of or cohesion on what prevention really means in the context of arbitrary displacement (Cecilia Jimenez-Damary, personal communication, November 12, 2020). Literature is scattered across many international organisations, research institutions, and practitioners. Mostly, prevention is referred to in the broader context of displacement, and only little attention is paid to the prevention of arbitrary displacement (GPC, 2020a; IDMC, 2015; Kälin, 2014). Moreover, when arbitrary displacement is mentioned, it receives little attention meaning that the theoretical and practical definition of the prevention of arbitrary displacement remains vague (e.g., see BBPID, 2005). This hinders the international human rights community from developing a coordinated approach to prevent arbitrary displacement. What further hinders progress on preventing arbitrary displacement is the notion that it is predominantly an “internal affair” (Kälin, 2006, p. 6). Thus, there is a consensus among the international human rights community that the best course of action is the enactment of national and regional laws and policies, rather than a global declaration (GPC, 2010; Kälin, 2006; UNGA, 2015).

Henceforth, the GPC developed an up-to-date account of the national laws and policies regarding internal displacement.¹ The overview draws a telling picture of the enormous work that still must be done to adequately embed the protection of IDPs in national laws and policies. Although some important steps have been taken, we are still far from what the UNGPID set out to achieve. This study is the first attempt to develop a theoretically and practically informed concept of the prevention of arbitrary displacement by establishing what specific obligations governments have and what measures they can use to prevent arbitrary displacement. It argues for a human rights-based temporal understanding of the prevention of arbitrary displacement covering all phases of displacement. Ultimately, this research contributes to an improved strategy to prevent arbitrary displacement.

¹ For an overview, see: <https://www.globalprotectioncluster.org/global-database-on-idp-laws-and-policies/>

2. Conceptualising arbitrary displacement

The article starts by analysing the operationalisation of the prevention of arbitrary displacement.

2.1 *Arbitrary displacement*

The term “arbitrary displacement” is closely related to *forced displacement*. Forced displacement is often used as a synonym to arbitrary displacement, while it is actually its overarching concept, including arbitrary and non-arbitrary forms of displacement. Kälin states that Principle 6 of the UNGPID was written to “defin[e] explicitly what is now only implicit in international law”, namely that IHL and IHRL contain “an express prohibition of arbitrary displacement” (Kälin, 2008, p. 27). According to the UNGPID, Principle 6, “every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence” (Deng, 1998, p. 6). arbitrary displacement is then operationalised as can be seen in Figure 1.

Figure 1: Arbitrary displacement operationalised (Principle 6)

- a) When it is based on policies of apartheid, ‘ethnic cleansing’ or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
- b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
- c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
- d) In cases of disasters, unless the safety and health of those affected requires their evacuation, and;
- e) When it is used as a collective punishment.

Furthermore, Principle 6 closes off by stating that the duration of the displacement should never last longer than is necessary (Deng, 1998). The Kampala Convention (African Union, 2009), in Article 4(4), is more extensive in some regards by explicitly stating that displacement as a method of warfare, caused by generalised violence, and displacement as a result of harmful practises are forms of arbitrary displacement and by including “[...] any act, event, factor, or phenomenon of comparable gravity” as a form of arbitrary displacement (African Union, 2009, p. 13). Furthermore, the Kampala Convention is legally binding, in contrast to the UNGPID.

Next to explaining what arbitrary displacement is, it is useful to indicate what it is not (Mair, 2008). As can be distilled from the operationalisation of arbitrary displacement, some instances allow people to be displaced. These are situations in zones of armed conflict where “[...] the

security of the civilians involved or imperative military reasons” necessitate displacement; situations where displacement due to development projects is “[...] justified by compelling and overriding public interests”, and; in the event of a disaster where “[...] the safety and health of those affected requires their evacuation” (Deng, 1998, p. 6). As the close observer has noticed, protection against arbitrary displacement is framed as a *right*. Framing something as a right strengthens the demand for rights-based solutions; it appeals to governments’ obligation to try to ensure the enjoyment of that right; and it affirms that protection is available to every individual under its jurisdiction (GPC, 2010).

Looking beyond Principle 6, then, the right not to be arbitrarily displaced entails two standards, i.e., (a) some forms of displacement are allowed and some not, explained above, and (b) displacement must adhere to ‘due process’ requirements which can be deduced from the UNGPID and Kampala Convention (Adeola, 2016). According to Adeola (2016), due process demands six elements.² From Adeola (2016) it can be inferred that all due process requirements should be ensured prior to the displacement, while being transferred, and on arrival at the resettlement location. Moreover, the risks the government can *foresee* should be avoided or mitigated, as long as it does not put a disproportionate strain on governmental resources and while taking into account the difficulty of policing a modern state (see *Osman v. United Kingdom* - ECtHR, 1998). Notwithstanding, a due process requirement is always a violation of human rights. However, a violation is only an arbitrary displacement when it adheres to the scope described above. Furthermore, taking note that people can be displaced several times, arbitrary displacement or legitimate displacement can be followed by (further) arbitrary displacement.

2.2 Prevention of arbitrary displacement

The concept of prevention will be explained in relation to the concept of protection that is often used in tandem with prevention. The difference between protection and prevention can be explained as the difference in being reactive and pro-active, respectively. Prevention is more comprehensive as it seeks to stop something from happening rather than merely protecting oneself against what is bound to happen (Lexico, n.d., *prevention*). Principle five of the UNGPID refers specifically to the obligation of nations and non-governmental actors to “[...] prevent and avoid conditions that might lead to displacement of persons” (Deng, 1998, p. 6). Furthermore, the GPC (2010) draws attention to prevention as an active endeavour. Kriebaum (1997) describes prevention more simply as “[...] basically the identification and the addressing of the underlying causes leading to violations of human rights” (p. 157). Additionally, The IDMC divides between preventing drivers, i.e., underlying structural factors, and triggers which are proximate sudden

² According to Adeola (2016, p. 97)), these are that: (1) feasible alternatives must be considered; (2) strategies for minimising displacements must be explored; (3) adequate resettlement must be implemented; (4) displaced persons must be sufficiently informed; (5) displacement must not be carried out in violation of human rights law; and (6) adequate safeguards must exist.

events that leave people with no choice but to migrate (IDMC, 2015). Similarly, prevention differs from prohibition wherein prohibition is the action of forbidding something whereas prevention is the action of stopping that something from happening. Hence, something that is prohibited is also desired to be prevented. However, something that needs to be prevented is not necessarily legally prohibited (Gattini, 2014). Rather something can also be prevented on moral bases. Thus, when we talk about the obligation to prevent, the obligation can be derived from law as well as morality.

The conceptualisation of prevention has not been static and has also received its fair share of critique. The term *prevention* is often used in treaties concerning a specific violation of a particular human right but is not operationalised (e.g., UNGA, 2016). Moreover, Gattini (2014) says that “in truth, there is uncertainty and disagreement on almost every aspect of an obligation to prevent” (p. 13), both morally and legally. Zapater (2010) explains that the use of the term *prevention of arbitrary displacement* is more useful to practitioners than merely the *prevention of internal displacement*. He elaborates this argument by explaining that displacement can also constitute a protective strategy (Barrs, 2012a; 2012b; Zapater, 2010). Rather than preventing displacement, displacement can be the best course of action to protect people against other threats (e.g., armed conflict or floods), because displacement is often not the only threat to the livelihood of communities.

The term *prevention of arbitrary displacement* is more useful as it allows for displacement as a protective measure and entails preventative measures specific to arbitrary displacement (Zapater, 2010). Moreover, Zapater (2010) stresses the fact that the term *prevention* has not only survived but is regularly mentioned in law and legislation concerning internal displacement. This confirms that the term has its implications for the assistance to IDPs. Nevertheless, little is known about the meaning of prevention in the context of arbitrary displacement. Hence, this paper sets out to reveal what obligations governments have to prevent arbitrary displacement and what concrete measures there are to fulfil these obligations. For that purpose, this research adopts Van der Have’s definition of prevention in the context of GHRV and applies it to the concept of arbitrary displacement as an operationalisation of the prevention of arbitrary displacement. In doing so, this research takes a holistic approach, examining prevention by dividing it into temporal phases. This division helped gain insights into the intricacies of the obligation to prevent and has been promoted and used in previous research (see Cuyckens & De Man, 2011). According to Van der Have (2018), advantages of using temporal phases are: (a) it paints a clear picture of the responsibility to prevent as (the risk of) arbitrary displacement emerges; (b) it acknowledges that legal foundations differ per phase; and (c) it recognises the prominent role of knowledge for the sense of obligation to prevent arbitrary displacement. However, besides these advantages, the temporal phases do not constitute a legal basis on which governments act because, for instance, legal obligations are not confined to one phase but cut across phases. The phases are:

- (i) Long-term prevention: this phase concerns the period where there is no knowledge of a potential violation. Obligations in this phase are triggered by a treaty and/or other international legislation. These measures constitute as deterrence.
- (ii) Short-term prevention: this phase concerns the period where there is *a certain degree of* knowledge of a risk but the violation has not yet occurred. Obligations in this phase are triggered by (desirable) awareness that a violation could occur. The obligation concerns a specific violation, i.e., arbitrary displacement.
- (iii) Preventing continuation: this phase concerns the period where the violation has started to occur as long as it continues to occur. Measures concern halting and mitigating the effects of an ongoing violation.
- (iv) Preventing recurrence: this phase concerns the period after the violation has ended. This phase concerns remedial measures and measures that prevent the violation from reoccurring. (Van der Have, 2018, pp. 16-18)

In the prevention of arbitrary displacement there are always the usual suspects. For example, in cases of conflict, general prevention includes peacebuilding, promoting reconciliation, building trust, and security. In cases of disaster, prevention includes disaster risk reduction mechanisms. In all cases, prevention includes, for example, the provision of public services and economic opportunities. However, as Zapater (2010) points out in the context of armed conflict, most of these measures simply are part of any effort to address the effects of armed conflict but are not displacement specific. Thus, while acknowledging the importance of such measures, this study is limited to more practical measures that are particularly relevant in the case of arbitrary displacement according to the four phases of Van der Have (2018).

Lastly, although the government of the country is primarily responsible for preventing arbitrary displacement (Deng, 1998), it does not operate in isolation. On the contrary, governments work in collaboration with international, national, and local civil society, host communities, IDPs, and other governments. Especially in cases of arbitrary displacement perpetrated by government or government-affiliated actors, it is essential to have actors other than the government itself to fight for the right not to be arbitrarily displaced. Moreover, even if the government is willing to assist IDPs, it most often lacks the knowledge and capacity to do so adequately on its own. Similarly, the interviews suggested that the term arbitrary displacement is also new to many NGO personnel working on internal displacement or related topics. Therefore, it is important that the prevention of arbitrary displacement takes a governance-approach, meaning “working with stakeholders including non-traditional stakeholders” (interviewee C). According to the Special Rapporteur on the Human Rights of IDPs “[...] at the end of the day, this is where there has to be an all-society approach” (Interviewee A).

3. Methodology

While taking a critical philosophical perspective (Orlikowski & Baroudi, 1991; Urquhart, 2013a) this research uses an exploratory research design as it allowed the researcher to flexibly navigate the research question and apply the methodology most appropriate to each aspect of the research. Hence this research developed a comprehensive synthesis of existing knowledge on the prevention of arbitrary displacement and entailed transforming the loose and scattered knowledge on the prevention of arbitrary displacement into a connected whole. In addition to extensive desk research, this research makes use of semi-structured in-depth interviews (Ritchie, Lewis, Nichols, & Ormston, 2014). The aim of the interviews was to collect additional data to either confirm or contradict the findings from the desk research. Moreover, they helped structure the findings and pointed in directions that needed attention.

Furthermore, theoretical sampling was used (Bryant, et al., 2007; Glaser & Strauss, 1967), enabling the researcher “to build up justification for concepts in the theory by finding more instances of a particular concept” (Urquhart, 2013b, pp. 8-9) and allows the researcher “to follow an emerging storyline suggested by the data” (p. 9). As part of the desk research, this study predominately synthesised English academic publications, reports, international treaties, local laws, and policies, to build a theory of the prevention of arbitrary displacement, analysing internal displacement in over 30 countries (see Figure 2).³

Figure 2: Variety of data collected

Countries		Type of literature**
Afghanistan	Kenya	International conventions
Burundi	Lebanon	International treaties
Cameroon	Mexico*	National laws
Central African Republic	Mozambique	National policies
Colombia*	Nepal	Academic articles
East Timor	Nigeria	Academic reports
El Salvador*	Somalia	UN statements
Gambia	South Africa	Country visits of
Iraq	South Sudan	Special Rapporteurs
Jordan	Sri Lanka	NGO policy reports
		Court cases

*Laws and policies are in Spanish and were partly translated into English.

**Over 270 sources were consulted.

³ Although more countries were examined, this article only includes the most vivid examples from 20 countries listed in Figure 2. Moreover, examples were selected rather than countries, meaning that theoretical sampling was used not to select countries but that a post-analysis found that examples from 30 countries had been examined of which 20 are used as an example in this article. However, this does not imply that arbitrary displacement is limited to these countries.

The literature was retrieved through academic search engines, specific academic journals (e.g., Forced Migration Review), the Global Database on IDP Law and Policy, and other databases such as Refworld. Additionally, 5 experts were interviewed through Microsoft Teams. These experts were selected based on their (past) work on arbitrary displacement and were interviewed once.⁴ The effectiveness of the interview template was tested in a mock interview. Furthermore, after transcribing the interviews, coding was done through a combination of open, selective, and theoretical coding (Glaser, 1998), using MAXQDA software.

The quality of the literature was assessed according to their *signal* and *noise*, i.e., the value of their information and, if applicable, their methodological rigour accordingly (see Edwards, Elwyn, Hood, & Rollnick, 2000). Further, inclusion thresholds were not employed as more thresholds could lead to more bias rather than less (Conn & Rantz, 2003; Cooper, 1998; Glass, 2000; Higgins & Green, 2019). To guarantee the quality and transparency of this study, memos were written (Glaser, 1978) and peer reviews were conducted throughout the research process (Creswell & Miller, 2000; Johnson, 1997). The aim of these reviews was not to standardise judgement but rather to reach a consensus. Finally, the results were presented and discussed during an online meeting with 15 stakeholders from various organisations and backgrounds (e.g., UNHCR, UNDP, Academia). Feedback was provided and implemented accordingly.

4. Phases of prevention

In this section, each phase will discuss what governments are obligated to do under international, regional, and national law and policy; and the types of measures that they can enact, i.e., “course of action taken to achieve” the prevention of arbitrary displacement (Lexico, n.d., *measure*). The European Court on Human Rights (ECtHR), in the case of *Osman v. United Kingdom* in 1998, ruled that “an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities” (ECtHR, 1998, para. 116). Thus, not every risk will oblige governments to take operational measures. Governments should undertake:

measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk, [...] bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and resources. (ECtHR, 1998, para. 116)

Hence, throughout each phase the principles of foreseeability and due diligence will play a crucial role in the prevention of arbitrary displacement. Whether a government should have acted comes down to foreseeability. Court cases concerning a government’s negligence often investigate whether the government *ought* to have foreseen an event (see, for example, in *Budayeva & Others v. Russia* - ECtHR, 2008). If so, governments can be held responsible for not

⁴ An overview of the background of the interviewees is given in the appendix.

acting acted due diligently, i.e., not taking reasonable steps to prevent arbitrary displacement. However, the practical reality is that “states are actually not prepared for arbitrary displacement or even displacement and therefore do not have measures in place to deal with it. In most cases, they think that it will be over in a matter of months” (interviewee B). Thus, even if governments foresee displacement, they often do not act with due diligence to prevent arbitrary displacement. However, as the UN Special Rapporteur on the Human Rights of IDPs stated, displacement “is in many cases inevitable, but what is not inevitable is not being prepared” (interviewee A).

4.1 Long-term prevention

Obligations in this phase generate a “deterrence effect” of arbitrary displacement (van der Have, 2018, p. 40), mainly by addressing its root causes. As long-term prevention concerns the phase where there is no knowledge of a potential risk of arbitrary displacement, obligations are triggered by partaking in international law and treaties, and specific national legislation and policy. The main risks of any human rights violation are the low regard for human rights, rule of law, and low governance capacity (van der Have, 2018). Logically, the promotion of the rule of law and respect for human rights are essential obligations of any arbitrary displacement preventative approach. More specifically, obligations concern putting robust legal and administrative structures in place, ensuring that education and training on the topic of displacement are offered to relevant actors, and that the proper monitoring structures and contingency plans are in place (BBPID, 2005). Lastly, governments are obliged to allocate resources to meet the above-mentioned obligations. Each of these measures will be discussed below.

4.1.1 National legal frameworks

Governments first need to establish a national legal prohibition of arbitrary displacement and the associated obligations, among them the prevention of arbitrary displacement (BBPID, 2005). This affirms the commitment of governments to address arbitrary displacement towards themselves and to the international community. Governments have done so in different ways. Either by laws that address specific phases of displacement, comprehensive national laws on internal displacement, or through a review of existing laws to assess to what extent existing laws cover the rights presented in the UNGPID or, in case of Africa, the Kampala Convention (Oxford Pro Bono Publico, 2021; BBPID, 2005).

According to the GPC (May, 2020) there are currently fourteen countries with laws specifically on internal displacement, although not all laws explicitly refer to the concept of prevention.⁵ For example, in 2012 Kenya passed a law that states in section 6 that “the government shall protect

⁵ Azerbaijan, Bosnia and Herzegovina, Colombia, Croatia, El Salvador, Georgia, Kenya, Kyrgyzstan, Mexico, Niger, Peru, Russian Federation, Tajikistan, and Ukraine.

every human being against arbitrary displacement” (Republic of Kenya, 2013, p. 2207) and under section 23 that “no person shall cause, aid or abet arbitrary displacement through acts that amount to genocide, a crime against humanity or a war crime in accordance with international law and shall be punished in accordance with the international Crimes Act, 2008” (pp. 2226-2227). Although the law does not explicitly mention the prevention of arbitrary displacement, this is implicit in the protection against arbitrary displacement and the fact that aiding and abetting can be seen as a failure to take preventative measures to avoid arbitrary displacement (GPC, 2010). More recently, El Salvador passed a law that addresses prevention and the criminalisation of arbitrary displacement (Republic of El Salvador, 2020). However, it does not cover displacement caused by disaster or development projects which cripples a holistic approach to the prevention of arbitrary displacement. Furthermore, in South Sudan, where an internal displacement law is currently awaiting ratification, additional causes of arbitrary displacement were added to fit the local context, i.e., cattle raiding (interviewee B). Such additions are welcomed as they prevent the local context from being neglected.

4.1.2 Policy

Next to a national legal framework, complementary policies must be in place that further elaborate how the prevention of arbitrary displacement will be addressed. For members of the Kampala Convention, this is a legal obligation under Article 2. The policies give life to the legal framework by stipulating what measures can and will be taken to adhere to legislation addressing arbitrary displacement, it specifies who is responsible, and what roles actors have in preventing arbitrary displacement and towards other actors (BBPID, 2005). It is important that such policies take a whole-of-government approach as prevention involves a wide variety of government actors (interviewee C; interviewee D). Furthermore, any comprehensive policy should address all causes of displacement as well as all groups of people. A further essential element of any policy is the involvement of IDPs themselves, their host communities, and those at risk of displacement in drafting, implementing, and evaluating. Lastly, Policies should pinpoint a focal point which constitutes the national, political, and institutional authority with a mandate to address arbitrary displacement specific issues. This authority can either be a newly designated governmental body that focusses specifically on arbitrary displacement, a governmental committee comprised of officials from relevant bodies, or the mandate is given to an existing governmental body (BBPID, 2005). Consequently, this body should be given the resources to facilitate, develop, coordinate, and ensure an effective national response to the issues of arbitrary displacement (BBPID, 2005). The specific content of policies can be deduced from the hereafter mentioned measures that should be taken in each phase displacement.

4.1.3 Administrative structures

Administrative structures are the management, operation, and leadership of respective bodies that together form the national system addressing the prevention of arbitrary displacement, including judicial, legislative, and executive bodies. In response to an assessment of the national internal displacement approach (APRM, 2009), Nigeria developed a law to prevent “[...] incidences of arbitrary and other forms of internal displacement” (Federal Republic of Nigeria, 2012, p.19). The policy gives an insight into what administrative structures can be established. The policy prompts the president to designate a newly established IDP Inter-Agency Coordinating Committee (IACC) as the focal point for coordinating efforts concerning internal displacement. The IACC includes heads of 26 ministries, departments, and agencies. These institutions “[...] shall integrate the responsibilities for protection and assistance of internally displaced persons into their core mandates and shall perform such roles as required” (Federal Republic of Nigeria, 2012, p. 56). The IACC will meet “from time to time” (Federal Republic of Nigeria, 2012, p. 50) to oversee assistance and protection of IDPs related operations. Finally, relevant actors are categorised in 10 sectors, each sector having one lead agency that coordinates efforts within their specific sector. Henceforth, a later mission of the UN Special Rapporteur on the Human Rights of IDPs to Nigeria in 2017 concluded that government institutions are responsive, however limited by their capacity and resources. Thus, more elaborate frameworks are needed that also ensure the proper allocation of resources to relevant actors (UNHRC, 2017).

4.1.4 Monitoring structures

To *foresee* a risk, governments must have active monitoring structures that monitor and investigate arbitrary displacement and the risk thereof. Any attempt to address arbitrary displacement cannot do so without the necessary information about the risk of arbitrary displacement and the conditions of displacement. For example, pre-emptive data collection could enable governments to develop early warning systems (EWSs) for those communities most prone to experience displacement. An EWS represents “the set of capacities needed to generate and disseminate timely and meaningful warning information” (UNISDR, 2009, p. 12), enabling those at risk or responsible to take the necessary actions in time to avoid or mitigate the risk of arbitrary displacement. These systems are often tailored to a specific hazard, although there are multi-hazard systems in existence (UNISDR, 2009). Moreover, data collection should not be limited to the period up to the decision of displacement. Data collection should be an integral part of all phases of displacement; to assess whether displacement is necessary, and if so, to where and how they should be displaced (IDMC, 2017; Caterina & Rodríguez, 2020). Furthermore, data collection is crucial to monitor whether the due process obligations are met, and that displacement does not take longer than necessary.

The need to put in place monitoring structures is often included in IDP law. For instance, state law in Mexico (Free and Sovereign *State of Guerrero*, 2012) assigns the *State Program for the Prevention and Attention of internal displacement* with the task to “design and implement mechanisms for documentation, diagnosis and monitor systematic information on the phenomenon of internal displacement” (Free and Sovereign *State of Guerrero*, 2012, unofficial translation, p. 23). This came after the realisation that there is “no official registry that really indicates accurate official statistics or figures on the affected people in a situation of internal displacement” (Free and Sovereign *State of Guerrero*, 2012, unofficial translation, p. 8). However, people who are not yet displaced but are at risk thereof seem to still be neglected. Similarly, El Salvador’s law on internal displacement stipulates that detailed information on the demographics of IDPs should be collected (Republic of El Salvador, 2020). Furthermore, it also states that actors “will establish an early warning system in order to identify in a timely manner the places, causes and situations that generate forced displacement” (Republic of El Salvador, 2020, unofficial translation, p. 6).

Only in the field of disasters are operational EWSs considering internal displacement identifiable. The Sendai Framework for Disaster Risk Reduction’s (SFDRR) guiding principles specifically state that it is important to “invest in, develop, maintain and strengthen people-centred multi-hazard, multisectoral forecasting and early warning systems [...]” (UNODRR, 2015, p. 21). For example, the Global Displacement Risk Model, developed by the IDMC (n.d.), is being used to forecast which communities are at risk of displacement and by what form of sudden-onset disaster. According to the Global Protection Cluster, pre-emptive data collection not only increases disaster preparedness, reducing time and complexity involved in displacing communities, but also decreases the risk of arbitrary displacement (GPC, 2020a). However, such data collection is not at all easy. According to Guadagno (2016), displacement data “is not traditionally included in disaster-related data collection efforts, and that what records exist of [...] displaced persons’ presence at national and local levels may be incomplete, difficult to keep up-to-date, and sensitive” (p. 37). Nevertheless, progress is being made on developing more effective monitoring structures (see European Union & United Nations, 2020)

4.1.5 Contingency plans

Contingency plans take account of what might happen in the future. They are ready-to-use protocols that depict how to, in the first place, mitigate the risks of displacement, assess whether displacement is necessary, and how displacement should be conducted. Additionally, they should cover when and how IDPs could pursue durable solutions in order to prevent arbitrary displacement. Furthermore, specific protocols are developed to address arbitrary displacement in every relevant sector. For instance, military manuals can explain when displacement is and is not allowed. These manuals are developed by asking ‘what if’ questions and defining the steps that need to be taken to prevent arbitrary displacement. The list of possible protocols is too extensive

to cover in this or any one research, but a few examples will be given. To start, arbitrary displacement issues can be integrated into national policies such as national disaster management plans. Afghanistan integrated IDP issues into its *National Disaster Management plan*, specifically referring to integrating disaster risk reduction efforts with IDP needs (Islamic Republic of Afghanistan, 2010). Similarly, Kenya integrated IDP issues into its *National Emergency Response Plan & Standard Operating Procedures* (Republic of Kenya, 2014). It states that in the event of a major disaster or protracted emergency the government shall “avail shelter and planned settlements as well as non-food items to displaced populations following disaster” (Republic of Kenya, 2014, p. 6). Next to the necessity to integrate arbitrary displacement issues into national sector specific policies, it is equally important to incorporate protocols into operational (field) manuals and similar organisational policies. For instance, Kenya Power and Lighting Company integrated arbitrary displacement issues into its resettlement policy (Republic of Kenya, 2012). The framework’s objective is:

to ensure that affected individuals and households, and affected and/or displaced communities are meaningfully consulted, have participated in the planning process, and are adequately compensated to the extent that at least their pre-displacement incomes have been restored and that the process has been a fair transparent one. (Republic of Kenya, 2012, p. ii)

The framework further goes into specifics by explaining what the above objective entails and provides, among others, an outline for funding arrangements for resettlement, an action plan for resettlement, monitoring indicators, a breakdown of costs, forms that can be used to hear and register complaints and claims by project affected people (Republic of Kenya, 2012). Finally, although the above-mentioned framework is not exhaustive and does not explicitly refer to arbitrary displacement, it does address at least some of the operational necessities to avoid arbitrary displacement, particularly the due process requirements.

4.1.6 Training and education

Training and education involve awareness-raising efforts, capacity building, and accountability building efforts to ensure that the relevant bodies and actors are aware of their obligations and the measures they can take to address arbitrary displacement and are prepared to respond where necessary. Next to governmental and non-governmental bodies, the education of IDPs and those at risk of displacement themselves is of utmost importance. According to the Brookings-Bern Project on Internal Displacement (BBPID), education and training should target policymakers on all levels of government, civil society, and IDPs themselves, among other (see BBPID, 2005). The obligation to develop measures that train and educate relevant actors should be engrained in national policy. For instance, an Afghan policy emphasises “the need [...] to help raise awareness of their [IDPs] rights in Afghanistan” as one of its main principles (Islamic Republic

of Afghanistan, 2013, p. 17). The policy proceeds into more detail by stating that one of the preparedness measures for disasters is “organizing education and awareness raising activities” (Islamic Republic of Afghanistan, 2013, p. 31). Furthermore, the Ministry of Interior and the Afghanistan Independent Human Rights Commission will provide the Afghani national and local police training “on the special protection needs of IDPs through amendment of the training curriculum” (Islamic Republic of Afghanistan, 2013, p. 38).

Furthermore, as with contingency plans, it is essential that education and training policies are implemented locally and in organisations posing a risk to or working directly on arbitrary displacement. In Nepal, after a destructive earthquake in 2015, an assessment pointed out a lack of inclusion of people with disabilities in disaster preparedness, response, and recovery efforts (GPC, 2020b). Such lack of inclusion is not in accordance with Principle 4 of the UNGPID (Deng, 1998) and due process requirement 5. In response, the National Federation of the Disabled Nepal set up a training programme that in between 2016 and 2017 trained 17 leaders from organisations of people with disabilities (OPD) on emergency shelter and settlement standards (GPC, 2020b), using the *All Under One Roof* manual (IFRC, 2015). These 17 leaders then went on to train 270 stakeholders in different regions, including “other OPD members, district and municipal officials, members of local disaster management committees, representatives from the police, army and media, as well as humanitarian actors” (GPC, 2020b, p. 129). To further disseminate the knowledge and “know how”, the trained individuals together formed a resource pool that, among others, conducted over 150 audits about the inclusiveness of IDP and refugee shelters. Moreover, the resource pool is also offering its expertise beyond the realm of disasters, in the realm of development projects (GPC, 2020b).

4.1.7 Funding

To implement the above-mentioned measures, the necessary resources need to be provided (interviewee A). These resources can be either in-kind or monetary. According to the UNGPID and Kampala Convention, the government bares the primary responsibility to “provide, to the extent possible, the necessary funds for protection and assistance without prejudice to receiving international support” (African Union, 2009, p. 11). For instance, in Colombia where there are laws and policies on displacement specifically caused by conflict, the lack of proper resource allocations cripples the prevention of arbitrary displacement. In 2008, Ibáñez and Velásquez found that although the laws and policies in place had clear principles for local authorities, the lack of operationalisation of what funds need to be provided to address internal displacement specific issues meant that the plans of local authorities have in some cases become “a list of good intentions that do not translate into real budgetary allocations” (Ibáñez, & Velásquez, 2008, p. 37).

However, local authorities should not be expected to assist IDPs and those at risk of arbitrary displacement solely from their regular budgets as they often already have a difficulty providing basic needs to its citizens (Ibáñez, & Velásquez, 2008). Consequently, national governments should create national funds to provide the necessary resources to prevent arbitrary displacement, and to allocate funds to local authorities that deal with or are likely to deal with arbitrary displacement (Ibáñez, & Velásquez, 2008). Without these national arbitrary displacement specific funds, it begs the question whether local authorities “are tasked with responsibilities that they cannot achieve” (Ibáñez, & Velásquez, 2008, p. 37). Additionally, in the process of allocating funds, Mooney (2005) rightfully notes that funding programmes should not neglect the needs of host communities as these might have similar needs (Duncan, 2005). Improving on its earlier effort, the Colombian government passed a new law in 2011 that included more elements on funding. For instance, the establishment of a fund for the Special Administrative Unit for the Management of Restitution of Disposed Lands in Article 111 (Republic of Colombia, 2011). However, these efforts to develop funding mechanisms are still far from being comprehensive as these funds are limited to particular elements of IDP needs and constitute reparations for what has already occurred rather than for the purpose of prevention.

Finally, when governments lack emergency funds for the prevention of arbitrary displacement, it must call upon the international community to assist in pooling the necessary resources for the prevention effort. The Mozambique government, after the spread of COVID-19 further complicated its humanitarian crisis, requested upon the World Bank (2020), among others, to release 73.5 million US dollars under the Immediate Response Mechanism (World Bank, 2020). However, governments should be cautious that the conditions attached to resources received from the international community do not adversely affect the position of the government to assist its own population in the long run.

4.2 Short-term prevention

This phase starts when the occurrence of arbitrary displacement is “foreseeable or ought to be foreseeable” (van der Have, 2018, p. 53). In relation to the previous phase, international, regional, and national laws and regulation, henceforth, oblige governments and other actors to avoid or mitigate the risk of a possible arbitrary displacement. The measures laid out in the and legislation in the previous phase are now tested against their effectiveness. In the short-term prevention phase, having protocols, developed in the previous phase, at hand is essential. When a risk has been or should have been identified these protocols give step-by-step guidance for the measures that should be taken to prevent arbitrary displacement from occurring.

4.2.1 Rapid response mechanisms

The ability of governments to identify and respond to risk is built upon the monitoring structures already put in place in the previous phase. If proper monitoring structures are in place, governments should be able to assess which communities are at risk of arbitrary displacement. Particularly, communities that are already displaced are at risk of arbitrary displacement as displacement is often protracted and IDPs often experience multiple displacements (e.g., see UNHRC, 2020a). Henceforth, the relevant government authorities, in collaboration with civil society and local communities, can enact rapid response mechanisms (RRMs). RRM refers to “any initiative that occurs as soon as the threat [...] is identified and that aims to manage, resolve, or prevent” (OECD, 2009, p. 22). For example, in the Central African Republic a RRM developed by REACH is being used consisting of a collaboration between various organisations, led by UNICEF. The mechanism alerts the involved organisations about the possible occurrence of violence, returning populations, or disaster (UNICEF, 2021; 2018). After an alert is received a team makes sure that an assessment of the situation is conducted to determine what measures should be taken to mitigate or avoid a risk of arbitrary displacement.

4.2.2 Case specific measures

The specific measures that can be enacted, after arbitrary displacement is considered foreseeable, are physical protection or other operational measures to prevent arbitrary displacement. However, these operational measures are often left open at the national or regional level as each case is different and could have different solutions. Consequently, national policies often only mention that measures should be taken, sometimes what categories of measures should be taken, but not what these measures specifically entail. Working out the specifics of these measures is up to local authorities and complementary non-governmental organisations. The obligation to prevent arbitrary displacement in practice is delegated to specific ministries or departments, local authorities and law enforcement. Each of these is obliged to take all “measures within the scope of their powers which, judged reasonably, might have been expected to avoid” arbitrary displacement (ECtHR, 1998, para. 116) and to “allow and facilitate rapid and unimpeded access by humanitarian organizations and personnel” to assist in meeting the needs of IDPs where the government authorities cannot adequately do so on their own, which is often the case (African Union, 2009, p. 10).

First, physical protection will be examined. Knowing that “ensuring safety and security is the responsibility of the state and its institutions”, the government should ensure the rule of law and order (CPC, 2010, p. 180). Furthermore, the government should “build the capacity of individuals and communities to protect themselves and recover from crime, violence and abuse” (CPC, 2010, p. 182). Moreover, physical protection can, for instance, be as simple as helping establish a neighbourhood watch. This has proven to mitigating insurgencies by non-state actors

in the northeast of Nigeria (see Nextier SPD, 2019). Second, operational measures will be examined by using an example in Mozambique. Due to consecutive climate shocks in 2020, Cabo Delgado Province has seen large amounts of displacement (UNOCHA, 2020). The government of Mozambique, through its National Institute of Disaster Management, led the humanitarian response while working together with the international humanitarian and development community (2020). As government resources were already strained (UNRDESA, 2020), not the least because of continuing jihadi insurgencies over the past four years (Morier-Genoud, 2020), the international, national, and local humanitarian communities assisted in offering basic services, to protect the livelihoods of IDPs, among others. For instance, the government's efforts to tackle gender-based violence (GBV) were heavily overstretched, which crippled the effectiveness of these efforts (UNOCHA, 2020). Consequently, the assistance of humanitarian organisations was welcomed and facilitated to prevent GBV and consequently prevent a violation of due process requirement 5 (UNOCHA, 2020).

4.3 Preventing continuation

In this phase the risk has become reality and arbitrary displacement is taking place. A condition for this phase is that the violation has begun but is not yet completed, meaning it “is of a continuing character” (van der Have, 2018, p. 71). arbitrary displacement can cover the entire period from the moment people are arbitrarily displaced until durable solutions have been realised as arbitrary displacement has no simple and swift solution. The obligations in this phase concern halting arbitrary displacement and mitigating its adverse effects. These obligations are part of the obligation to protect people from arbitrary displacement under Article 4 of the Kampala Convention and Principle 6 of the UNGPID (African Union, 2009; Deng, 1998). Furthermore, this phase is distinct from the short-term phase as actors have an obligation to intervene in, halt, or offer solutions to arbitrary displacement while it is already ongoing. Again, in this phase, measures are mostly open-ended. Measures to halt arbitrary displacement can be calling upon the actor to halt the violation and engaging in negotiations or talks with the actor. If that does not halt the violation the government can enact physical interventions or operational measures to avoid the continuation of arbitrary displacement. This includes governments correcting arbitrary displacement perpetrated by their own government authorities as well. Furthermore, the approach used by the international community to define when (arbitrary) displacement ends is founded upon “need-based criteria” (Mooney, 2003, p. 39). This means that IDPs will remain IDPs as long as their needs are distinct from that of the rest of the population (Mooney, 2003). Also, governments should accept and facilitate humanitarian assistance of the international human rights, humanitarian, and development community, and other governments as much as possible as long as it does not endanger state sovereignty (UNHRC, 2020a).

4.3.1 Intervention

First of all, displacement can be based on illegitimate reasons such as displacement due to cartel violence in Mexico or Colombia. Moreover, even if there are convincing reasons to displace a community, the due process requirements must be adhered to. Thus, meaning that displacement based on legitimate reasons can still be arbitrary displacement. As a violation of the due process requirements or displacement based on illegitimate reasons cannot be reversed, a person stays arbitrarily displaced until durable solutions are realised. Thus, arbitrary displacement cannot be quickly resolved. However, any further arbitrary displacement of people and communities can be halted. Still, even though stopping any of the due process requirements from being violated does not rectify what has already happened, these violations should be prevented from continuing.

In situations of displacement based on illegitimate reasons the government must respond quickly to halt the arbitrary displacement. For instance, in a case of a violent ethnic conflict between two communities in Nigeria it took government forces two days to arrive at the scene of the conflict. By the time they arrived many atrocities causing or related to arbitrary displacement had already been committed (Olagunju, 2006). A different, much larger armed conflict in Nigeria, between government forces and the non-state actor Boko Haram, has already displaced around 2.5 million people between the start of the conflict in 2009 and 2018 (Gwadabe, Salleh, Ahmad & Jamil, 2018). The inability of government forces to keep people being displaced secure from violence exposed IDPs to various violations of IHRL and IHL such as “exploitations, child and gender-based violence, human trafficking, family separation and detention with no consideration of the rule of law” (Gwadabe, Salleh, Ahmad & Jamil, 2018, p. 50). Moreover, governments should also be mindful of their use of counterinsurgencies as they can cause displacement as well and can prevent humanitarian actors from assisting people being displaced due to access restrictions (see UNHRC, 2018a).

In cases where the displacement is based on legitimate reasons, the due process requirements can still be violated. For example, requirement 5 includes many violations ranging from non-discrimination and arbitrary arrest to the right to life (UNGA, 1948; 1966). On her mission to Iraq, the Special Rapporteurs on the Human Rights of IDPs (UNHRC, 2020a) noted that “entire families of internally displaced persons have faced allegations by the authorities, security actors and communities that they are associated with ISIL, without any evidence being presented or criminal charges brought against them” (p. 8). Henceforth, these families are “often not allowed to cross the many checkpoints present in the country” (UNHRC, 2020a, p. 8). These families face discrimination and social marginalisation. Moreover, according to the UN Human Rights Declaration, they should be considered innocent until proven guilty (UNGA, 1948). Consequently, the Special Rapporteur called for the lifting of restrictions on the freedom of movement at checkpoints (UNHRC, 2020a).

4.3.2 Durable solutions

A situation in which IDPs no longer have needs specific to their displacement is a situation in which a *durable solution* has been realised. According to the IASC framework on durable solutions (2010), a durable solution can be achieved through “[1] sustainable reintegration at the place of origin [...], [2] sustainable local integration in areas where internally displaced persons take refuge [...], [3] sustainable integration in another part of the country” (p. 5). Furthermore, each IDP must have the freedom to choose one of these three options (IASC, 2010) and must be consulted on “any measures undertaken to provide durable solutions” together with the community hosting the IDPs (Badurdeen, 2010, pp. 30-31). Hence, displacement itself needs to end to prevent arbitrary displacement from continuing. Moreover, as arbitrary displacement can also be caused by displacement lasting longer than necessary, durable solutions can also contribute to the prevention of arbitrary displacement in the first place (Deng, 1998). However, ending displacement does not mean the simple return of IDPs to their places of origins. Such a decision can be problematic. For example, as part of their national plan on internal displacement, the Iraqi government announced to return IDPs to their homes before the end of 2020 (Republic of Iraq, 2008; UNHRC, 2020a). Henceforth, in the second half of 2019, Iraq decided to close down IDP camps and send IDPs either back to their governorates or relocate them to other camps without the consultation of camp authorities or IDPs themselves (UNHRC, 2020a). The governorates where IDPs were returned to were often unsafe and were not prepared to receive them (UNHRC, 2020a). According to the Special Rapporteur on the Human Rights of IDPs, camps can only be closed “when they [the government] ensure returns that are voluntary, informed, safe, sustainable and dignified” (UNHRC, 2020a, p. 7). Hence, such displacement has only created further arbitrary displacement.

As the example above also illustrates, there is not one durable solution to the needs of IDPs. Lessons drawn from studies conducted in Sri Lanka, Somalia, and Sudan concluded that “a holistic and integrated approach” to creating durable solutions should be taken to offer IDPs the option of reintegrating at their place of origins, integrating locally, or integrating elsewhere (Badurdeen, 2010, p. 3). Furthermore, the case studies by Lundkvist-Houndoumadi and Ketabchi (2020) found that local and national authorities using the IASC durable solutions’ framework loosely, but primarily focus on one of the three options while neglecting the principles of non-discrimination and the freedom of IDPs to choose between these options.

4.4 Preventing recurrence

This phase makes use of remedial measures because arbitrary displacement has already ended. The obligations in this phase are triggered when actors are alerted that arbitrary displacement has occurred or is taking place, and thus overlaps with the previous phase. To combat impunity and promote reconciliation, governments have the obligation to provide victims of arbitrary

displacement with the chance to receive justice, reparations, and access to the truth under IHL and IHRL (Mayer-Rieckh, 2017; UNGA, 2006). These measures enforce human rights norms, “foster civic trust and contribute to reconciliation and the democratic rule of law” (de Greiff, 2012; Mayer-Rieckh, 2017, p. 432). Moreover, the failure to take remedial measures is an indicator of a high risk that arbitrary displacement will happen again (Council of Europe, 2011). Furthermore, governments are also obligated to enact non-recurrence measures, i.e., *forward-looking* measures (UNESCCHR, 2005; interviewee B; interviewee E).⁶

4.4.1 Justice

IHRL predominately focusses on holding offenders accountable (van der Have, 2018). This focus is not unexpected due to the following reasons. Holding perpetrators responsible for arbitrary displacement does not only make sure that these actors are punished for their actions, but also that victims are given access to the appropriate reparations by, the right to truth, or non-recurrence measures from the government, i.e., the primary actor responsible for the prevention of arbitrary displacement (Duthie, 2011; UNESCCHR, 2005). Thus, the access to judicial procedures is the basis of any strategy to remedy violations and to prevent the recurrence thereof. According to the UNGA (2006), governments have an obligation to implement a wide range of policies to provide victims of GHRV, that includes arbitrary displacement, with the justice they deserve. For example, the dissemination of information about legal remedies for arbitrary displacement. This is not considered an attractive humanitarian objective, but it has been widely proven to have a direct impact on providing durable solutions (INTEROS & ICVA, 2021, March 4). Take for example, INTEROS: a humanitarian organisation aiming to provide, among others, legal representation throughout legal processes. The provision of their legal services is communicated via its various activities (INTEROS, 2021). In Cameroon and Jordan, they set up a radio programme to talk about legal issues, including awareness raising about the various legal services as well as how to gain access to justice (INTEROS, 2021). In Lebanon, in collaboration with the UNHCR, they were able to offer legal counselling at a UNHCR office. Furthermore, INTEROS opened hotlines in many states for IDPs, host communities, and others to have access to information about legal services and to refer IDPs to the appropriate organisations that could further support their needs (INTEROS, 2021). Also, in Iraq, INTEROS managed a Facebook page, provided in English, Arabic, and Kurdish (2021). As can be understood from the efforts of INTEROS, many methods can be enacted to disseminate information about legal remedies to IDPs. As the causes and circumstances of IDPs are highly diverse, the most effective communication methods should be determined based on the local context. For instance, in Cameroon, the simple use of informative leaflets was considered an effective measure (INTEROS, 2021, p. 21).

⁶ Literature names these ‘non-recurrence’ measures. However, these are not synonymous with the name of this phase.

4.4.2 Reparations

Reparations are divided into restitution and compensation. Restitution includes “restoration of liberty, enjoyment of human rights, identity, family life and citizenship, [the option to] return to one’s place of residence, restoration of employment and return of property” (UNGA, 2006, p. 7); and compensation includes the reimbursement of any economic damages. Furthermore, rehabilitation from medical and psychological harm should also be offered in the form of legal and social services (UNGA, 2006). Thus, the reparations should cover damages incurred due to being displaced from a victim’s place of origins and damages incurred during the arbitrary displacement (Duthie, 2011). For example, in Nigeria, already in 1986, an important court case, i.e., *Military Governor, Lagos State & Ors V. Chief Emeka Odumegwu Ojukwu*, ruled that property should be returned to their rightful owner. This ruling came almost two decades after the hostilities of more than two and a half years of civil war had ended. However, according to Ekpa and Dahlan (2015), although the right to reparations is enforced in international, regional, and national law, properties that were abandoned during the war can still be declared abandoned by the government allowing the property to be sold to someone else without compensating the original owner. Ekpa and Dahlan (2015), conclude that the fact that the Kampala Convention still needs to be domesticated in Nigeria hampers the provision of reparations. Similarly, in Peru, 2009, IDPs were mostly excluded from the reparations after eight years of armed conflict (IDMC, 2009). From the 5,000 officially registered IDPs “not one of them received reparations benefits” (p. 1). Although the UNGPID stipulates that displacement is a situation rather than a legal registration (Deng, 1998), IDPs that were not registered, which is the vast majority, could not apply for reparations. Hence, the limited access to reparations prevented many IDPs from acquiring stable housing (IDMC, 2009). The IDMC (2009) also notes that the Peruvian government saw the reparations as an allocation of development funds rather than a right. Devictor (2017), stresses that if such a *development-approach* is taken, it should not replace but complement existing efforts, i.e., it should not hinder the fulfilment of the right to reparations.

4.4.3 Right to the truth

According to the UNHCR: “every people has the inalienable right to know the truth” (2005, p. 7). Furthermore, the truth should be provided regardless of the filing of any legal proceedings (UNHCR, 2005). To provide the truth, governments can enact measures that are independent of the judiciary to ensure that the independent truth is sought after (UNHCR, 2005). Most often these measures take the form of an ad-hoc *commission of enquiry* with a focus on a specific event or area, or a *truth commission* that focusses on IHRL and IHL violations across a period throughout the whole country (United States Institute of Peace, 2011). Additionally, the government must preserve and provide access to government archives that contains information relevant to GHRV (UNHCR, 2005). In Africa, up to and including 2020, truth commissions

in ten states have in some way considered displacement in their reports (Guematcha, 2020).⁷ In general, they develop an account of what has happened from the perspective of IDPs; then they zoom in on particular vulnerable groups; and finally, the commissions examine national and international law to determine whether the forced displacement is or is not in accordance with international, regional, and national law (Guematcha, 2020).

Although truth commissions can provide a “complete picture of displacement and the problems that it involves” (Guematcha, 2020, p. 136), they should be correctly managed and be allowed to operate freely to be effective and to provide reconciliation (see ICTL, 2014). For instance, a truth commission in South Africa did mention widespread occurrences of displacement but did not investigate “the forced removal and displacement of millions of people based on race” (Hayner, 2011, p. 266). Still, if done right, truth commissions can not only provide the truth to victims of arbitrary displacement, but can also “facilitate return and reintegration, both of victims and of perpetrators of crimes” (Duthie, 2011, p. 257). In East Timor, a truth commission enacted a community reconciliation programme that allowed perpetrators of “lesser crimes” (Duthie, 2011, p. 257) to participate in community-based hearings in which community members and perpetrators together determined how the perpetrators could be re-integrated into the community (Duthie, 2011). Finally, truth commissions publish reports and give recommendations that should be disseminated among the population and government authorities. In Gambia, a truth commission’s final report was submitted in 2019, but only a white paper including some of the recommendations of the entire report was published online for the Gambian people to see (UNHRC, 2020b). According to the government the report was available for purchase, but the population was not made aware of that fact (UNHRC, 2020b). Moreover, the population should have been given unrestricted access to that report (UNGA, 2006).

4.4.4 Non-recurrence measures

The UNHRC concluded that non-recurrence measures might be one of the “least developed pillars of transitional justice” (2018b, para. 3). Still, the UN Human Rights Committee (2004, p. 7) mentions “it has been a frequent practice [...] to include in its views the need for measures, beyond a victim-specific remedy, to be taken to avoid recurrence of the type of violation in question”. In the words of Mayer-Rieckh (2017):

the duty to ensure human rights implies not only a general obligation to prevent any form of future violation, but also a specific obligation to prevent the recurrence of a violation that has already taken place. (p. 422)

Thus, measures taken in this area are distinct from previous areas because they are forward looking (AfComHPR, 2002; UNHRC, 2018b; IACHR, 1998). Most of the measures taken in this

⁷ Chad, Côte d’Ivoire, Ghana, Kenya, Liberia, Libya, Mali, Sierra Leone, South Africa, and Uganda.

area focus on “strengthening *accountability*, particularly of institutions that are more prone to committing serious human rights violations such as security institutions” (Mayer-Rieckh, 2017, p. 428). Future violations can be prevented by improving or adding onto the existing collection of measures (see UNGA, 2006). For instance, in Burundi, after many years of conflict between the Hutu’s and Tutsi’s, one of the elements of the peace agreement was security sector reform (Curtis, 2013). During the conflict the government and security forces were dominated by the Tutsi minority to ensure they remained in control of the Hutu majority population (Curtis, 2013). However, as this ethnic imbalance was seen as one of the reasons for the conflict, the Arusha Peace and Reconciliation Agreement for Burundi (Republic of Burundi, 2000) stipulated that the defence and security forces should correct their ethnic imbalances throughout their apparatus. More specifically, “not more than 50% of the national defence force shall be drawn from any one ethnic group” (Republic of Burundi 2000, p. 38). According to Curtis (2013), the security sector has since reflected “ethnic parity in the national defence forces, the national police and the intelligence services” (p. 87) and has consequently become relatively more peaceful.

5. Conclusions: modelling arbitrary displacement prevention

Synthesising the prevention of arbitrary displacement according to the four phases of prevention has proven useful to create an overview of what prevention entails. It revealed that prevention is not limited to measures governments can take before arbitrary displacement takes place but also concerns measures that need to be taken during and after (arbitrary) displacement. However, the phases do not exist in isolation from each other. They represent an interconnected whole, including reciprocal causation. Especially, realising durable solutions overlaps the preventing continuation and recurrence phases. According to a UN advisor, “durable solution should be seen from the lens of prevention, in terms of actually preventing continuing displacement. However, there is also an aspect of the durable solutions whereby if they are achieved, they should also prevent any further displacement” (interviewee B). Furthermore, apart from non-recurrence measures, durable solutions embody all other measures listed in the recurrence phase, i.e., “access to justice, reparations, and information about the causes of violations” (IASC, 2010, p. IV). Furthermore, durable solutions are not realised overnight. They are complex processes that can have elements that conflict with each other, for example around seeking justice. As Andreu-Guzmán (2012) pointed out, pursuing criminal justice could pose a disincentive to those who would like to return to their place of origins due to the belief that those wanting to return were complicit in a crime or because the criminal justice system set up is “perceived to be one sided or lack[s] adequate due process” (p. 4). Furthermore, La Rosa (2006) points out that humanitarian organisations are sometimes wary of being associated with judicial bodies trying to prosecute actors as it could lead to a perceived violation of the humanitarian principle of impartiality.

Figure 3: The prevention cycle of arbitrary displacement

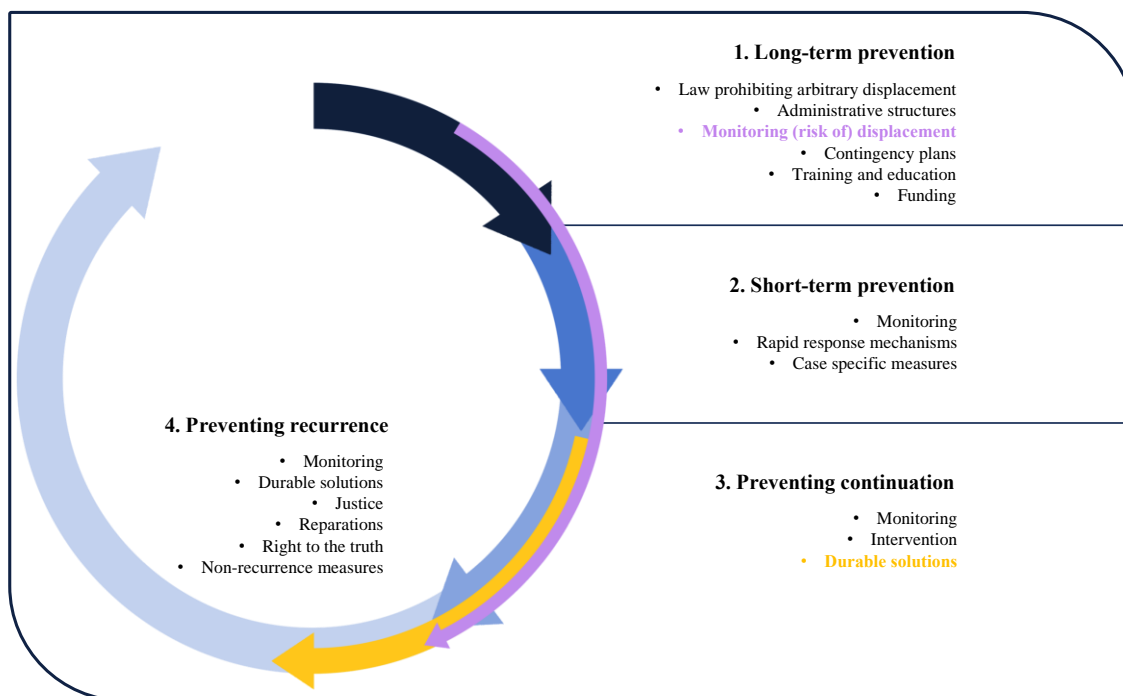


Figure 3 was developed to visualise the synthesis of the prevention of arbitrary displacement. The model is and did not aim to be exhaustive. For instance, concerning data collection, as the goal of the interviews was to collect additional data to either confirm or contradict the findings from the desk research, the small number of in-depth interviews was sufficient for an initial exploration, but future research could utilise the delineation of the prevention of arbitrary displacement presented above and extent input through interviews with experts and, most of all, victims of arbitrary displacement.

The model indicates the interlinkages between measures and how measures build upon each other. Next to the overlap of durable solutions,⁸ explained above, monitoring structures need to be put in place for the government to foresee displacement in the first place. Moreover, governments must actively monitor the reasons for and conditions of displacement as well as efforts to remedy arbitrary displacement and prevent similar cases from recurring.⁹

What has become apparent is that when governments do not act due diligently, i.e., the absence of adequate measures, one phase cripples the following phases. Similarly, prevention is a continuous activity that should be seen as a cyclical process. The occurrence of arbitrary displacement is more likely if measures are not enacted or improved based on the lessons learned

⁸ The overlap of durable solutions is visualised by the yellow arrow in Figure 3.

⁹ The overlap of monitoring measures is visualised by the purple arrow in Figure 3.

from previous cases of arbitrary displacement. Furthermore, prevention is not a linear process as the failure to provide remedies or hold actors accountable instils impunity. For instance, calling upon actors to halt arbitrary displacement or face prosecuting becomes an empty threat when previous offenders were not held accountable for their actions. Furthermore, IDPs that do not receive proper documentation can easily be looked over by government agencies and fall prey to further GHRVs, including arbitrary displacement. Therefore, a feedback loop must be firmly in place to learn from ineffective or absent measures and improve where necessary.

It is important to stress that the model in Figure 3 does not represent a one size fits all theory on what the important steps are to prevent arbitrary displacement in any situation. On the contrary, this research revealed that many of the preventative measures are context dependent. For example, in cases of arbitrary displacement caused by displacement that lasts longer than necessary many of the measures are obsolete as the IDPs have already been displaced for a long time. A UN advisor stated, “once displacement has become protracted, the measures of prevention [...] would not work unless there is a durable solution, and then the durable solution becomes the basis for ensuring that no further displacement will take place” (interviewee B). Henceforth, the model must inevitable be adapted to the local context and the cause(s) of (arbitrary) displacement. Thus, although the model provides a starting point for a preventative approach to arbitrary displacement, further research should investigate the prevention of arbitrary displacement on a country level. For instance, although this study did analyse some Spanish documents from Mexico, El Salvador, and Colombia, the desk research was predominantly limited to English literature. Also, as a consequence of selecting examples of arbitrary displacement rather than countries, Asian states were almost absent from the analysis. These could be fruitful starting points for further research.

The concept of arbitrary displacement prevention is a useful concept to policy makers and human rights workers as it is the only form of forced displacement that can be considered prohibited, and possibly as a criminal offence (Oxford Pro Bono Publico, 2021; Andreu-Guzmán, 2012). However, arbitrary displacement often remains ambiguous and underutilized, it often being confused with terms such as forced displacement. Henceforth, as underlined by the UN Special Rapporteur on the Human Rights of IDPs, more discussion on and attention to arbitrary displacement needs to be fostered to raise awareness of its harmful nature and to raise political will to prevent it (interviewee A). Moreover, the prevention-centred approach seems to be a fruitful basis upon which to discuss arbitrary displacement issues as its broad scope, as defined in this research, goes beyond *ad hoc* protection. Conversely, governments see prevention as “a sensitive matter, that if you pressed it, then governments might not cooperate if they think that ultimately they are going to end up before the ICC” (interviewee B). But in that same breath the UN advisor said, “I think we have reached a kind of threshold” where it is possible to address these issues with a prevention lens. A prevention-centred approach would be strengthened by delineating what the indicators of foreseeability are for each cause of arbitrary displacement (e.g.,

earlier occurrences of arbitrary displacement, degree of violence in the vicinity, and vulnerability to natural hazards). A consensus on these indicators, in combination with the framework on what can be done to prevent arbitrary displacement presented above, would settle when a government should act and what actions correspond to exercising due diligence. In the words of van der Have, with clarity on the prevention of arbitrary displacement governments can no longer “pass the buck and remain bystanders” (2018, p. 3).

Correspondingly, this research recommends, first, that NGOs bolster their efforts to monitor the actions of governments; put pressure on governments to ensure respect for human rights and protection against displacement. This can be achieved through the use of the term arbitrary displacement in discourse concerning displacement to hold (non-)governmental actors accountable as the term refers to more specific responsibilities and prohibitions than general terms such as forced displacement. Furthermore, NGOs should actively engage with national and local governments to determine the roles and responsibilities of the various organisations in preventing arbitrary displacement. This could save scarce resources and make efforts more effective and efficient. Moreover, by asking governments about how NGOs can assist government authorities to prevent arbitrary displacement, government officials are prompted to consider the due diligence of their own policies. Also, NGOs should ensure that contingency plans take the prevent arbitrary displacement into account.

Secondly, governments bear the primary responsibility for the prevention of arbitrary displacement. Hence, they need to be the driving force behind arbitrary displacement prevention. Where they are unable to take the lead, they should be inviting to assistance from local, national, and international NGOs, international organisations, and foreign governments. Considering their resources and capacities, governments should domesticate international legislation or treaties ultimately to formally prohibit the perpetration of arbitrary displacement. Furthermore, governments can review the extent to which their own administrative and monitoring structures are robust enough to respond to (arbitrary) displacement and the threat thereof. Also, governments should review whether the adequate contingency plans of organisations that deal with or can cause displacement take arbitrary displacement prevention into consideration, including government authorities. Such a review can for example be conducted through random sample inspections as part of existing periodical reviews. Lastly, after the occurrence of arbitrary displacement, governments should actively seek to improve structures and measures already in place in light of their failed attempt to prevent arbitrary displacement to prevent similar cases from reoccurring. Concluding, although arbitrary displacement, and the prevention thereof, receive little attention, it has tremendous impact on the lives of those affected. Thus, arbitrary displacement is deserving of greater and continued attention.

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Appendix 1: Interviews conducted

Number	Profession	Area of focus
A	Expert on internal displacement, human rights lawyer.	Worldwide
B	Member of Expert Advisory Group for the UNSG's HLP on Internal Displacement	Worldwide
C	Employee of Public Services International	Nigeria
D	Employee of Public Services International	Nigeria
E	Former Human Rights Officer, OHCHR Mexico	Chihuahua State, Mexico