

Coherence across Internal Displacement Frameworks: Is it Time to Update the ‘Guiding Principles’?

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Internal displacement is addressed directly or indirectly across a range of international frameworks in regimes as varied as human rights, international humanitarian law, disaster response, climate change and sustainable development, as well as the regime specifically addressing the situation of internally displaced persons (IDPs). This raises questions about whether these frameworks are coherent in terms of the norms and approaches relating to internal displacement. Ultimately, the paper argues that these other frameworks supplement those of the IDP regime in useful ways. It asks whether the time has come to update the UN Guiding Principles on Internal Displacement in light of these broader norms and approaches.

Introduction

Internal displacement¹ occurs in varied contexts, including during armed conflicts and other situations of violence, and as a consequence of disasters and the effects of climate change. As a result, the phenomenon of internal displacement is increasingly addressed by a range of different international legal and policy regimes.² These regimes have their own

¹ ‘Internal displacement’ is usually defined by two essential elements, i.e. that the movement of persons is forced and that it takes place within the same country. The general nature of these elements gives an overall coherence to the concept that makes it amenable to policy usage in both the disaster and conflict contexts.

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

distinctive objectives and rationales; and each has created its own frameworks and norms that touch on the phenomenon of internal displacement and the situation of those exposed to it. But are the rules established by these different regimes on the same subject matter consistent with one another? Do tensions or gaps between the regimes exist at the level of international legal and policy norms?

This short paper draws on a broader review carried out by the authors for the World Bank to engage with these questions of coherence.³ As a baseline, it starts with the international regime concerned specifically with the response to internal displacement and internally displaced persons (IDPs). This IDP regime is rooted primarily in international human rights law (IHRL) but – in its application to armed conflict – it also reflects rules from the international law of armed conflict (ILAC). The paper then assesses how other international regimes – particularly those concerned more closely with disasters, climate change and development – intersect with this regime. Finding that they supplement the IDP regime in useful ways, the paper suggests that a single international instrument describing the totality of applicable norms might be helpful, especially in contexts where disasters drive displacement. Updating the UN Guiding Principles on Internal Displacement to reflect these wider frameworks and other legal developments may be an appropriate way to proceed.

The international regime on internal displacement

No legal treaty addressing internal displacement exists at the global level. Rather, the international regime on internal displacement revolves around the UN Guiding Principles on Internal Displacement, which were presented to the UN in 1998. This instrument is not legally binding in international law but rather constitutes a form of ‘soft law’ at the international level. But its centrality to the IDP regime is widely acknowledged, including by the two hard law regional treaties on IDP protection in Africa that have since come into force: the African Union

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 David Cantor and Beatriz Eugenia Sánchez-Mojica, ‘In Pursuit of Coherence: Internal Displacement Policy across Conflict and Disaster Settings’, 47 *KNOMAD Working Paper* (2023) <<http://documents.worldbank.org/curated/en/099226008222413141>> accessed 20 March 2025.

Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention); and the International Conference of the Great Lakes Protocol to the Pact on Security, Stability and Development in the Great Lakes Region on the Protection and Assistance to Internally Displaced Persons (ICGLR Protocol).

In tandem, the Guiding Principles also claim to have indirect binding effect under international law as their provisions are purported to specify how more general rules of hard international law on the protection of the human person (i.e. IHRL and ILAC) apply to situations of internal displacement.⁴ States have the 'primary duty and responsibility' for implementing the rules of the IDP regime,⁵ but the Guiding Principles claim they equally provide guidance to '[a]ll other authorities, groups and persons in their relations with [IDPs]'.⁶ The Kampala Convention likewise imposes direct obligations on international organizations and humanitarian agencies, members of armed groups in situations of armed conflict, and the African Union, as well as on States parties.⁷

At its core, the IDP regime is based on IHRL. As minimum standards for the protection of individuals rooted in IHRL, its rules tend to be largely context-neutral. In other words, they apply regardless of the specific crisis context in which internal displacement occurs, precisely because IHRL application does not depend on such classifications.⁸ Relatively few provisions of the Guiding Principles and regional IDP treaties expressly apply only to disasters or only to conflict;⁹ and the few provisions that do apply only to armed conflict are rooted directly in existing ILAC rules.¹⁰

⁴ 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).

⁵ Guiding Principles, Principle 3.

⁶ Guiding Principles, introductory para 3; see also Principle 2(1).

⁷ Kampala Convention, arts VI, VII(5) and VIII.

⁸ 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 David Cantor, 'The IDP in International Law: Developments, Debates, Prospects' (2018) 30(2) *International Journal of Refugee Law* 191).

⁹ 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).

¹⁰ 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).

Although questions have been raised over whether the IDP regime accurately reflects limitations to the scope of relevant rules in IHRL and ILAC, human rights treaty bodies have often endorsed the rules as articulated by the Guiding Principles.¹¹ More recent IDP instruments, such as the Kampala Convention, include provisions drawing also on Sustainable Development and peacebuilding approaches. At its heart, then, the IDP regime is constituted by a mix of rules from different existing international regimes.¹²

However, while the IDP regime provides a basis for addressing internal displacement generally, a question arises about its consistency with other international regimes beyond IHRL and ILAC, especially those that have seen significant expansion since the launch of the Guiding Principles in 1998. Thus, whilst the IDP regime rules relevant to armed conflict in particular clearly incorporate the specialised ILAC standards governing those situations, it is less evident that they fully engage with the rules of other international regimes, particularly those concerned with disasters, climate change and development. As such, the remainder of this short paper considers the relevance to the IDP regime of: (i) the Disaster Risk Reduction (DRR) regime; (ii) the Climate Change regime, based around the UN Framework Convention on Climate Change (UNFCCC) architecture; and (iii) the Sustainable Development regime expressed by the 2030 Sustainable Development Agenda (2030 Agenda) and international commitments on urban development set out in the New Urban Agenda.

Structurally, the following analysis reflects on the applicability of these three identified regimes in relation to the three stages of internal displacement response, namely prevention of displacement and planning for that eventuality (i.e. pre-displacement), protection and assistance of IDPs (i.e. during displacement) and, lastly, solutions to internal displacement (i.e. bringing an end to displacement).

Prevention and planning

It is important to recognise that, for this discussion, ‘prevention’ and ‘planning’ (or preparedness) are different concepts. A duty to prevent internal displacement is not about prohibiting people from fleeing, but

¹¹ Cantor, ‘The IDP in International Law’.

¹² See also Walter Kälin, *Internal Displacement and the Law* (OUP 2023).

rather about preventing the emergence of situations in conflict or disaster contexts that may force people to flee their homes. By contrast, the duty to prepare for internal displacement refers 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.¹³

The IDP regime, and the IHRL and ILAC rules on which it is largely based, addresses the prevention of displacement primarily by articulating rules that prohibit specific kinds of harmful actions by potential perpetrators that may generate displacement. This includes serious forms of mistreatment and, during armed conflict, indiscriminate attacks.¹⁴ It also spells out how IHRL-based rules regulate the conditions under which permitted displacements can be carried out, whether during armed conflict or disasters or for the purpose of implementing development projects.¹⁵ By contrast, the duty of planning (or preparedness) is less clearly articulated across the IDP regime as a whole, but can be inferred from the terms of most IDP instruments and is sometimes stipulated for DRR activities.¹⁶ How, though, might the rules of other regimes be relevant to prevention of displacement or planning for that eventuality?

For the disaster context, the DRR regime has obvious relevance. Although consisting of a range of mostly non-binding rules, this regime expressly foregrounds planning by the authorities as a primary way to prevent disasters, mitigate their effects and build the resilience of affected persons – and thus, ultimately, to avert unplanned forced displacement. The Climate Change regime also expressly identifies the need to plan and prepare for forced displacement in the context of climate change. On this approach, displacement is viewed as a potential negative impact of climate change that is to be prevented and managed; such displacement

¹³ 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 March 2025.

¹⁴ For example, article 54 (para. 2) of Protocol I to the 1949 Geneva Conventions bans starvation as a warfare tactic, while article 13(2) of Protocol II forbids attacks against civilian populations and individuals.

¹⁵ See, for example, Guiding Principles, Principles 6 and 7(1).

¹⁶ Kampala Convention, Article IV(2).

also represents a failure in adaptation planning and implementation.¹⁷ Climate Change regime instruments expressly recommend that prevention actions should draw on approaches from other international regimes—most particularly, the DRR regime.¹⁸

But displacement in disaster contexts is not simply a result of the occurrence of a natural hazard. Social, economic and political factors influence whether affected populations can “weather the storm” or whether flight will become necessary. Accordingly, the Development regime can also play an important role in the prevention and planning stage. Many of the SDGs of the 2030 Agenda directly address the root causes of internal displacement,¹⁹ which is why progress towards achieving these goals may help to reduce the vulnerabilities and threats that give rise to displacement.²⁰ The most immediate environmental drivers of forced displacement are addressed through the 2030 Agenda goals relating to the reduction of disaster risk.²¹ This also recognises that adequate urban and territorial planning plays a role in avoiding the disasters that may produce internal displacement.²² On this point the 2030 Agenda marches in line with the New Urban Agenda, which has established a number of important commitments in this regard.²³

Taken together, the regimes point towards a general duty to prevent conditions that might lead to forced displacement. Elements in the IDP

¹⁷ On the other hand, (voluntary) migration may be an appropriate adaptation strategy in certain contexts.

¹⁸ Task Force on Displacement of the Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts, 'Report of the Task Force on Displacement (2018)' <https://unfccc.int/sites/default/files/resource/2018_TFD_report_17_Sep.pdf> accessed 25 March 2025.

¹⁹ 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.

²⁰ 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).

²¹ 2030 Agenda, SDG 1(5), 2(4), 11(5), 11.b, 13.1.

²² 2030 Agenda, SGD 11.

²³ UN General Assembly 'New Urban Agenda' Doc. UN A/RES/71/256 para 13(g), 14(c), 29, 65, 67, 77, 101, and 144.

regime suggest such a duty.²⁴ But this is articulated more fully by instruments from the DRR, Climate Change and Sustainable Development regimes that address the root causes of displacement.²⁵

Assistance and protection

The IDP regime sets out a fairly comprehensive set of standards relating to IDP assistance and protection. These standards are largely rooted in binding IHRL, which gives them general application regardless of whether forcible displacement is driven by conflicts, disasters or other crises. The IDP regime has integrated, as essential elements of the ILAC and DRR rules relevant to IDP assistance and protection,²⁶ the need for minimum conditions to be observed where authorities (including non-State parties to a non-international conflict) displace people on grounds permitted by international law, including in evacuations and relocations.²⁷

As a result, most of the other international regimes - including ILAC, DRR, Climate Change and Sustainable Development - now recognise and defer to the primacy of the IDP regime for the purpose of elucidating the scope of basic standards for the assistance and protection of IDPs during displacement.²⁸ In tandem, many of these other international regimes also now recognise IDP assistance and protection as pertinent to meeting their distinct objectives as regimes. For example, the Climate Change regime has begun to incorporate attention to this issue into

²⁴ The IGCLR Protocol sets the duty to 'eliminate the root causes of displacement' (art. 3 (1)) and the Kampala Convention demands states 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' (art III(1)(a)).

²⁵ That is the case of the Sendai Framework for Disaster Risk Reduction, which promotes investment in structural measures to enhance the resilience of individuals, communities and countries, as well as of the 2030 Agenda, which demands states and the international community to fight poverty, inequity, climate change, environmental damage, and pursuing peacebuilding and disaster risk management.

²⁶ Regarding ILAC, Protocol II to the 1949 Geneva Conventions, art 17(1) is a good example of rules on conducting evacuations during war time, while the Inter Agency Standing Committee (IASC), Operational Guidelines on the Protection of Persons in Situations of Natural Disasters include detailed instructions in regard to evacuation during disasters.

²⁷ See, for example, Guiding Principles, Principle 7(2).

²⁸ See the United Nations Office for Disaster Risk Reduction non-binding policy guidance document *Words into Action. Engaging for Resilience in support of the Sendai Framework for Disaster Risk Reduction 2015-2030* and the 2018 recommendations of the Task Force on Displacement of the Warsaw International Mechanism for Loss and Damage Associated with Climate Change Impacts. See also Jean-Marie Henckaerts and Louise Doswald-Beck (eds), *Customary International Humanitarian Law* (CUP 2005), Rules 129, 131-133.

organizational workplans and processes.²⁹ That regime's new focus on 'loss and damage' is also likely to be relevant to addressing issues of assistance and protection in displacement contexts.³⁰

Solutions

The protection and assistance needs of IDPs do not 'automatically disappear when a conflict or natural disaster ends' nor 'fade away when people initially find safety'.³¹ Rather, the pursuit of 'durable solutions' within the IDP response often involves complex collective processes.³² These processes have the potential to directly engage a number of the identified international regimes.

In general, 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.³³ 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. 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.

Solutions do not figure prominently in the Climate Change regime (although a new focus on 'loss and damage' may provide an opportunity

²⁹ 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; ; see also UNFCCC Conference of Parties, Decision 10/CP.24 (2018), para 3, Decision 1/CP.27 (2022), para 25, Decision 2/CP.27 (2022), para 6(b), Decision 12/CP.27 (2022), para 1.

³⁰ UNFCCC Conference of Parties, Decision 1/CP.28 (2023), paras 6 and 17.

³¹ IASC, Framework on Durable Solutions, A-1.

³² Walter Kälin and Hannah Entwisle Chapusiat, *Breaking the Impasse: Reducing Protracted Internal Displacement as a Collective Outcome* (2017).

³³ 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).

for addressing long-standing displacement situations).³⁴ Nor do specialist regimes on conflict and disasters directly take up solutions to displacement. ILAC treaties have little to say on point, although customary ILAC speaks of a right of return in language that reflects the IDP regime on solutions. The DRR regime notes only that temporary settlements for the disaster displaced should benefit from reconstruction.³⁵ 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.³⁶ Although such relocation may be voluntary, where it is involuntary it may take on the character of internal displacement.³⁷ 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.³⁸

Conclusions and next steps

The IDP regime contains the most comprehensive and detailed rules on internal displacement. As it is the international regime focused specifically on this phenomenon, this is hardly surprising. The majority of its rules apply regardless of the context in which internal displacement occurs. Although this regime takes a stand-alone hard international law form only in African regional treaties, the grounding of the global Guiding Principles

³⁴ Loss and Damage Collaboration and Researching Internal Displacement, 'It's Time for Solutions! Addressing Displacement and Other Human Mobility Challenges in the Context of Climate Change Loss and Damage', *Researching Internal Displacement* (1 November 2024) <https://researchinginternaldisplacement.org/short_pieces/its-time-for-solutions-addressing-displacement-and-other-human-mobility-challenges-in-the-context-of-climate-change-loss-and-damage/> accessed 20 March 2024.

³⁵ Sendai Framework para 33(j) and Cancún Adaptation Framework, UN Doc FCCC/ CP/2010/7/Add.1. para 14(f).

³⁶ Sendai Framework, para 27(k).

³⁷ See discussion in Jane McAdam, 'Displacing Evacuations: A Blind Spot in Disaster Displacement Research' (2020) 39(4) *Refugee Survey Quarterly* 583.

³⁸ Planned relocation as a durable solution has been included in Nansen Agenda and extended addressed by guidance prepared by several international organisations, grounded on dispositions from IDP, DRR, and climate change regimes, e.g. Elena Correa and Harris Sanhauja, *Populations at Risk of Disaster A Resettlement Guide* (World Bank 2011), 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), and Brookings, Georgetown University, and UNHCR, *Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation* (2015).

in UN and regional IHRL treaty standards (and ILAC) gives the core of this regime considerable international legal solidity. As such, our 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.

Moreover, even where IDP instruments do not expressly incorporate the rules of other international regimes, a significant level of complementarity exists between this regime and others. For example, the specialist ILAC 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, Sustainable Development, Climate Change (and Peacebuilding) regimes focus particularly on building the broader conditions that not only help to prevent up-stream the crises that generate internal displacement but also lay the groundwork for IDP solutions in the aftermath of a displacement crisis. Even if the issue of internal displacement is not addressed in detail by these regimes, soft law instruments (often merging several regimes) do important work in ensuring that their application is sensitive to IDP needs. However, as yet, there is no single document at the international level that holistically connects the diffuse international standards across these distinct regimes as they relate to the different stages of internal displacement.

A holistic guidance framework 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. Significantly, initiatives such as the 2015 Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change developed by the Nansen Initiative, and the 2013 Peninsula Principles on Climate Displacement within States have established guiding principles to improving responses to environmental displacement. Yet both initiatives concentrate on but a single cause. In contrast, the present study suggests a need to identify how standards

from a range of international regimes beyond just IHRL and ILAC apply to internal displacement; and not only in the context of conflict or disasters but in relation to other drivers of displacement, such as criminal violence, communal violence, or development projects, and in situations where such diverse drivers of displacement overlap or interact.

In this regard, perhaps the time has now come for revising and updating the UN Guiding Principles as the central point of reference internationally for the standards governing the IDP response. Since their initial dissemination in 1998, the Guiding Principles have served as a crucial tool for raising awareness and guiding States and the international community in their efforts to assist and protect IDPs. Their core remains firm as to applicable IHRL and ILAC standards. But whether they wholly reflect the range of legal and policy developments in varied international regimes since then, or adequately address the complex range and entanglement of displacement drivers that we now recognise, is something of an open question. If this path is to be followed, then should the UN Special Rapporteur on the human rights of IDPs again be the entity to lead this process? How should the redrafting be done? What is the role of States and other entities concerned with internal displacement? Should such redrafting be planned as periodic? Is this, perhaps, a step towards a global treaty on internal displacement?

We welcome your views.

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