

The role of national law and policy in addressing displacement in the context of disasters and climate change in Asia and the Pacific

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Introduction

This chapter introduces the analytical framework for the research initiative as a whole. Each of the case studies in the volume adopts a human rights-based approach to the study of law, policy and practice relating to displacement in the context of disasters and climate change.

The principal reason for adopting this approach is because human rights are at the heart of the 1998 Guiding Principles on Internal Displacement (the Guiding Principles), which have been repeatedly recognized by actors at international, regional and national levels as an effective tool for addressing internal displacement (MacGuire 2018). However, although the Guiding Principles provide an indispensable cornerstone for a human rights-based approach to addressing internal displacement, important limitations need to be recognised.

This chapter therefore begins with an overview of what the Guiding Principles offer, and where there are limitations when it comes to addressing displacement in the context of disasters and climate change. This part of the chapter shows that insights from the field of disaster risk reduction and management (DRRM), combined with guidance from human rights-based international standards and guidelines and practical recommendations by UN mandate holders considering particular instances of disaster-related displacement, provide critical complements to the Guiding Principles that states can draw upon when seeking to prevent and prepare for displacement, protect people during evacuation and throughout displacement and facilitate durable solutions in the context of disasters and climate change. Additionally, building displacement considerations into measures designed to promote the

realisation of the Sustainable Development Goals, and to further adapt to the adverse impacts of climate change, can help to tackle some of the root causes of displacement, and overcome structural obstacles to durable solutions. The Guiding Principles, on their own, do not provide sufficient guidance to states.

This chapter highlights the critical role of national law and policy in addressing internal displacement in the context of disasters and climate change, and argues that, in light of the insights gained from a detailed review of law and policy across eight countries in Asia and the Pacific, there is a strong case to be made for enhancing the systematic integration of displacement-specific measures into existing legal and policy frameworks. The chapter demonstrates the prevalence of human rights-based approaches to addressing different phases of displacement in legal and policy documents relating to DRRM and, to a lesser extent, climate change adaptation (CCA) from across Asia and the Pacific. This analysis suggests that integrating specific provisions relating to the prevention of and preparedness for displacement, protecting people during evacuation and throughout displacement and facilitating durable solutions to displacement can readily be achieved within existing legal and policy frameworks, even if such measures do not in any way guarantee enhanced outcomes on the ground. Particularly in relation to DRRM, the frameworks often already reflect key human rights principles, and tend to be structured in a similar manner to the Guiding Principles, by addressing measures to prevent and prepare for disasters, protect people during disasters, and help people to rebuild in the aftermath of disasters.

However, although a more systematic integration of displacement considerations into DRRM and CCA law and policy is important and achievable, this strategy is on its own inadequate. As disaster displacement is the consequence of a natural hazard event interacting with

exposed and vulnerable social conditions (consider Wisner et al. 2004), addressing the longer-term structural conditions that underpin the differential exposure and vulnerability of individuals, communities and societies requires a more wide-reaching approach. For instance, agencies tasked with managing disaster risk cannot, on their own, tackle the structural challenges relating to discrimination on grounds such as ethnicity, gender and age. They cannot, on their own, address the complex political and social issues relating to poverty, unequal land ownership, informal urban settlements, and non-compliance with building regulations. These and other issues constitute ‘root causes’ of disaster displacement, and also stand in the way of the achievement of durable solutions to displacement. They are also the issues that tend to receive far less attention in the legal and policy frameworks relating to DRRM and CCA that were considered as part of the research underpinning this volume.

Integrating displacement considerations into DRRM and CCA law and policy is therefore a necessary, but not sufficient measure to address displacement risk. It is also wholly inadequate for addressing existing displacement, which, owing to structural factors such as those identified above, may be protracted (see Peters and Lovell 2020). In countries facing protracted disaster-related displacement, there is good reason to consider adopting legal and policy measures focusing expressly on displacement. This step, as will be discussed later in the chapter, has been initiated in Vanuatu and Bangladesh. However, as will be discussed later in this chapter, only a minority of countries in the region, and indeed in the world, have adopted bespoke legal and policy documents on internal displacement (Global Protection Cluster 2020). Another, complementary approach, entails integrating displacement considerations into wider sustainable development initiatives, and the widespread endorsement of the Sustainable Development Goals (UNGA 2015a) offers a distinctive

opportunity for states and other actors to invest in measures to tackle those structural factors that underpin exposure and vulnerability.

The Guiding Principles on Internal Displacement: A human rights-based framework in need of support

The Guiding Principles on Internal Displacement were adopted by the General Assembly of the United Nations two decades ago, following a broad consultative process led by the Representative of the United Nations Secretary-General on Internally Displaced Persons, Francis Deng. Starting in 1992, Deng's task was to clarify how existing international law, including international refugee law, international human rights law, and international humanitarian law, applied in situations where people were forced from their homes, but did not cross an international border (see Deng 1993 p. 4). The resulting Guiding Principles demonstrate how states have obligations under international law to protect people from and during displacement, and to facilitate durable solutions to displacement. These different phases of displacement are addressed in Sections 2-5 of the Guiding Principles. Section 1 addresses overarching principles of non-discrimination and highlights the core responsibility of the state to address the phenomenon of internal displacement.

Although they were developed during the International Decade for Natural Disaster Reduction (UNGA 1989), and Francis Deng was appointed in the same year as the adoption of the 1992 UN Framework Convention on Climate Change, the Guiding Principles reflect less concern for displacement in the context of disasters and climate change than they do for displacement in the context of armed conflict, communal violence and the systematic violation of human rights. It is clear from the early analytical reports underpinning the Guiding Principles, together with the focus reflected in the first decade of reports by the Representative of the

Secretary-General on the human rights of internal displaced persons (first Francis Deng and from 2005 Walter Kälin) that armed conflict was the primary concern of the international community.

The first analytical report by the Secretary-General (UN Economic and Social Council 1992) briefly identifies 'natural disasters' as one of the causes of internal displacement, but two of the three paragraphs in the section relate to relocation of populations by the Ethiopian government between 1984-1988, with a narrative focusing on the political and military motivations behind such conduct. The first report by Francis Deng, submitted to the Commission on Human Rights in 1993 (Deng 1993) identifies both similarities and differences between displacement in the context of conflict (and other forms of physical violence) and displacement arising in the context of 'natural disasters':

Displacement of large numbers of persons as a result of natural or man-made disasters such as floods, volcanic eruptions, earthquakes, and nuclear or chemical accidents may lead the population to experience some of the same problems as those who have been forced to leave their homes because of war, persecution, generalized violence and similar reasons because of the sudden and large-scale nature of the migration. There are also important distinctions: in most instances, they presumably would not suffer from discrimination, nor is there a priori any reason to presume that the authorities would be unwilling to respect their rights and provide needed assistance within the limits of available resources or with contributions from the international community. However, there have been well-documented cases of massive displacement resulting from a combination of natural

causes and racial, social or political causes, in which serious and widespread human rights violations occurred. For these reasons, it would be preferable to include this particular type of category of displacement within the scope of the mandate on the internally displaced pending the availability of more information which might necessitate a different approach (p. 15).

Writing some years later, in the year the Guiding Principles were adopted by the General Assembly, Walter Kälin considered that ‘displacement caused by natural disasters’ raised ‘few human rights related questions...’ (Kälin 1998 p. 558), suggesting that Deng’s original equivocation on the inclusion of disaster-related displacement in the Guiding Principles may have been well-founded. However, particularly in the aftermath of the 2004 Indian Ocean tsunami, this perspective changed considerably, and will be described in more detail below.

Examining the 39 country reports produced by the Representative of the Secretary-General between 1993-2009,ⁱ the prioritization of conflict-related displacement over disaster-related displacement is evident. First, the choice of countries strongly reflects the concerns of the UN Security Council, with 65 percent of countries visited being the subject of resolutions during the period.ⁱⁱ Countries not the subject of UN Security Council resolutions during the period, including Colombia, Indonesia, Mexico, Nepal, Peru, the Philippines, the Russian Federation, Sri Lanka, Turkey and Uganda, all suffered from protracted armed conflict during the period. Second, conflict-related displacement was actively prioritized by the Representative even when disaster displacement was also prevalent in the country, as noted in the reports on Colombia, Mozambique, Armenia, Georgia, Indonesia, Sudan, Mexico, the Philippines, Turkey, Uganda, Nepal, Sri Lanka, and the Democratic Republic of Congo. Although mention is made of populations displaced by disasters in these countries, neither the phenomenon nor

the human rights considerations that arise in this context, are explored in any depth in these reports.

A notable increase in attention to disaster-related displacement was triggered by the 2004 Indian Ocean tsunami, which prompted a report by the Representative of the Secretary-General Walter Kälin on the human rights dimensions of disaster-related displacement (Kälin 2005). This report represents the first significant engagement by a UN mandate holder with the phenomenon of internal displacement in the context of disasters and climate change. The report uses the framework established by the Guiding Principles to address issues relating to protection from and during displacement, and in relation to durable solutions. Significantly, reflecting the limitations of the Guiding Principles themselves, as well as the lack of clear guidance from the only nascent international disaster law framework,ⁱⁱⁱ the report provides extremely limited guidance on the steps that states may take to reduce displacement risk, noting only the observation by the Special Rapporteur on the Right to Housing that homes should be built in accordance with building codes in order to reduce the risk of them collapsing, highlighting that individuals should have access to legal remedies for loss of property, and recognizing the potential role of early warning systems (Kälin 2005, p. 11-12).

The similarities with conflict-related displacement are more apparent in the recommendations relating to protection of persons during displacement, and include particular attention to the non-discrimination obligation, the question of forced evictions, arbitrary displacement and other restrictions on freedom of movement, family unity, access to education, loss of documentation, and procedural issues relating to active and meaningful participation. In relation to durable solutions, the Special Representative points to the challenges relating to returns to homes that continue to be exposed to disaster risk, together with the human rights

challenges presented by the introduction of exclusion zones, along with issues relating to property rights. The Guiding Principles thus provide a framework for analysis, but in the context of disasters and climate change, there is a need to draw from other sources in order to be able to make relevant recommendations in the context of disasters and climate change. This approach is reflected in later reports by the UN mandate holders on the human rights of internally displaced persons, as discussed later in the chapter.

A human rights-based approach to displacement in the context of disasters and climate change

In addition to the temporal framing of state obligations in relation to the prevention stage, the protection during displacement stage, and the durable solutions stage, the Guiding Principles on Internal Displacement also reflect key elements of a human rights-based approach. Before providing some examples of how these principles apply in the context of disaster- and climate-related displacement, a brief sketch of the normative content of these elements is in order.

Key elements of a human rights-based approach

The focus adopted in this study on the state as the primary duty bearer with responsibility for addressing displacement risk does not diminish the critical role played by civil society, the private sector, religious organizations and other non-state actors, who will often be the first to respond in a disaster. Indeed, in some parts of Asia and the Pacific, the state is a remote actor and disaster risk management falls primarily on communities themselves. Although human rights law almost exclusively binds only states, the approach described below can readily be adopted by non-state actors as well.

Under international human rights law, state obligations extend beyond merely ‘respecting’ rights by not engaging in unlawful interference with their enjoyment. States have additional duties to both ‘protect’ and ‘fulfil’ human rights (Eide 1987). In the context of conflict- and disaster-related displacement, respecting human rights might entail finding a proportionate balance between the duty to protect life through a process of planned relocation, and the right of individuals and communities to freedom of movement and residence (UNHCR, Brookings, Georgetown University 2015). The duty to protect rights means that states need to have mechanisms in place to regulate the conduct of third parties, including both individuals as well as groups, companies, and other non-state actors. With gender-based violence widely understood to increase in situations of disaster displacement, this duty to protect human rights means taking steps to reduce the risk of foreseeable harm, for example in relation to gender-based violence in evacuation centres and temporary shelters (Scott 2019a). Finally, the duty to fulfil human rights means that the state may be required to directly provide food, shelter, water and other forms of material assistance when individuals and groups are unable to enjoy the minimum core of economic and social rights on their own (UN CESCR 1999). This principle is particularly relevant in situations of disaster.

In order to accurately sketch the scope of state obligations to prevent and prepare for displacement, protect people during evacuation and throughout displacement, and facilitate durable solutions, the typology described above can be complemented by the identification of four distinctive elements of a human rights-based approach. Drawing upon and consolidating existing formulations (see Cubie and Hesselman 2015), this volume condenses a human rights-based approach into four key elements. These include

- Governance
- Procedural
- Substantive
- Non-discrimination and equality

The governance element focuses on the existence and quality of the legal and policy framework, as well as principles of transparency, access to justice and accountability. Does the legal and policy framework expressly adopt human rights standards? Is displacement mainstreamed throughout the relevant legal and policy framework? What standard operating procedures have been developed to address the prevention of and preparedness for displacement, protection during evacuation and throughout displacement, and facilitation of durable solutions? Which actors are responsible for the implementation of relevant measures, and what mechanisms are in place for affected individuals to complain about or appeal against decisions or courses of action? These are some of the questions that should be asked when adopting a human rights-based approach.

The procedural element focuses on consultation with and participation of people who have an interest in the particular matter at hand. Individuals have a right under international human rights law to participate in public life (UN CCPR 1996). In the context of displacement, the principle of free, prior and informed consent (UN OHCHR 2013) is highly relevant, and relates to situations such as planned relocation and forced evacuation, both of which are discussed in more detail in this volume. The centrality of participation to DRRM cannot be overstated, and applies to measures relating to each of the three stages in the analytical framework based on the Guiding Principles on Internal Displacement.

The procedural element of the human rights-based approach also includes the right to information. This right, which is closely connected to the transparency obligation, requires states to make information available to the public, both by avoiding restrictions on access that are not for a legitimate purpose, as well as by taking positive steps to disseminate information in accessible formats.^{iv} This right is of critical importance in the context of disasters and climate change, where people have a right to know the kind of risks that they are exposed to, the measures in place to protect them, and to have access to early warning when hazard events take place (see Riccardi 2018).

The substantive element entails the direct and intentional reference to human rights at all levels, including in law, policy and practice. Relevant rights include, but are not limited to, the right to life, the right to work, the right to adequate food, the right to adequate shelter, the right to health, the right to water and the right to social security. Other rights have been established that focus specifically on the rights of persons with disabilities, women, Indigenous Peoples, minority ethnic groups, and children. These rights have been recognized by the vast majority of states in the international community in treaties such as the 1966 International Covenant on Economic, Social and Cultural Rights, the 2006 Convention on the Rights of Persons with Disabilities and others included in the Table of Treaties and International Legal and Policy Documents included in the beginning of this volume. What these rights mean in practice has been developed in detail by treaty monitoring bodies in General Comments and General Recommendations,^v as well as in expressly human rights-based standards and guidelines, such as the Sphere Standards (2018) and the IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters (2011).

However, although substantive human rights have informed the development of key international standards and guidelines relating to protection during evacuation and throughout displacement, a human rights-based approach calls for consideration of substantive rights at each of the three stages of displacement. Preventing and preparing for displacement means taking steps to address the root causes of displacement, including economic and social inequality, access to resources, livelihoods, shelter and so forth. It also entails taking steps to enhance ‘hard’ infrastructure, including flood control systems, homes and evacuation centres. Tackling the particular exposure and vulnerability of informal urban settlements, including through risk-sensitive upgrading initiatives, also falls within this context as part of the right to shelter (see UN CESCR 1991). Substantive rights also inform the question of durable solutions to displacement, as reflected in the set of eight key features articulated and further elaborated in international standards and guidelines, in particular the IASC Framework on Durable Solutions (2010).

Finally, the non-discrimination and equality element is so widely endorsed by states that it has been recognised by some as having attained the status of customary international law (Inter-American Court of Human Rights 2003; International Court of Justice 1971; Lillich 1984). Unsurprisingly, the legal and policy framework in each of the eight countries of this study reflected this principle. In practice, what the obligation represents is a duty on the part of states to both refrain from conduct that unjustifiably treats some people worse than others on account of a particular characteristic such as their ethnicity, disability, gender, age, religious belief and so forth. Equally, the non-discrimination and equality obligation requires states to take positive steps to address existing patterns of discrimination and reasons for inequality. Taking positive steps to ensure equality of treatment for all, irrespective of gender, age, disability, ethnicity and other characteristics entails measures relating to each of the other

three elements of the human rights-based approach. For example, it entails taking account of the particular situation of persons with disabilities when drafting national and local law, policy, plans and procedures. It requires positive measures to ensure the full, active and meaningful participation of women at all levels of disaster management and CCA. It recognizes that children, older people, persons with disabilities, people with non-normative genders and sexualities, and others may face particular challenges accessing humanitarian relief, and therefore require additional support in situations of displacement and in reaching a durable solution to displacement. As noted in the introduction to this volume, a human rights-based and gender equal approach also entails the recognition and promotion of individual capabilities, rather than casting people who fall outside of the majority as ‘vulnerable.’

A human rights-based approach thus focuses on the responsibility of states to take steps, to the maximum of available resources, to prevent and prepare for displacement, protect people during evacuation and throughout displacement, and facilitate durable solutions in a manner that promotes the full and equal enjoyment of human rights by all, tailoring interventions according to intersecting gender, age, ethnicity or other factors that can contribute to differential exposure and vulnerability. The relevance of this approach is becoming increasingly apparent to members of the international human rights treaty monitoring bodies, with a specific General Recommendation being issued by the UN Committee on the Elimination of Discrimination against Women (2018), and multiple comments about state’s overarching DRRM and CCA obligations in Concluding Observations.^{vi}

In what follows, this human rights-based approach is further developed, addressing the three phases of displacement as outlined in the Guiding Principles.

Prevention of and preparedness for displacement

From the outset, consideration of displacement in the context of disasters and climate change requires measures not only to prevent displacement, but to prepare for it as well. One consequence of the initial framing of the relationship between disasters, human rights, and internal displacement is that, beyond calling on states to avoid ‘arbitrary displacement,’ Section 2 of the Guiding Principles on ‘Principles Relating to Protection from Displacement’ does not in any way reflect the kinds of measures that states can take to address the risk of displacement in the context of disasters and climate change. The Guiding Principles are also silent on how states may prepare for displacement in this context. This is not surprising given the attention of the legal team drafting the document on the crime of ‘ethnic cleansing’ when developing the content of this duty to prevent displacement (Deng and Cohen 2018. See also Morel et al. 2012; Adeola 2016).

Principle 5 could be read as enjoining states to engage in DRRM and CCA work, but this was not within the frame of reference of the relevant actors at the time, and the international legal landscape has developed considerably since then. Principle 5 reads:

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

It is now an established principle of international law that states have a duty to take steps to reduce the risk presented by foreseeable hazards. Draft Article 9 of the International Law

Commission's Draft Articles on the Protection of Persons in Situations of Disasters (2016)

provides:

1. Each State shall reduce the risk of disasters by taking appropriate measures, including through legislation and regulations, to prevent, mitigate, and prepare for disasters. 2. Disaster risk reduction measures include the conduct of risk assessments, the collection and dissemination of risk and past loss information, and the installation and operation of early warning systems.

This provision reflects findings of the European Court of Human Rights in cases such as *Budayeva v Russian Federation* and *Öneryıldız v Turkey*, as well as judgments from the International Court of Justice in the *Legality of the Threat or Use of Nuclear Weapons* and the *Gabčíkovo-Nagymaros Project* cases (Valencia-Ospina 2013). With a DRRM obligation established under international law, Principle 5 of the Guiding Principles invites an interpretation that emphasizes the obligations of states to take steps to reduce the risk of disaster- and climate-related displacement. This insight complements the annotations to the Guiding Principles, prepared by Walter Kälin (Kälin 2008), which focus exclusively on armed conflict and other “tensions and disturbances” (Kälin 2008, p. 25).

The only provisions in Section 2 that are specifically relevant to disasters are found at Principles 6 and 7. Principle 6 prohibits displacement “unless the safety and health of those affected requires their evacuation” and Principle 7 requires “the free and informed consent of those to be displaced,” along with the involvement of “those affected, particularly women, in the planning and management of their relocation” in situations other than during the emergency stages a disaster. Clearly, the focus is on constraining the potentially malign

conduct of state actors, rather than providing guidance on the kinds of measures that responsible actors can take to actively reduce displacement risk.

Principles 6 and 7 are highly relevant when considering issues of forced evacuations that arise in some of the case studies in this volume (see the Vanuatu chapter by Van Geelen and Wewerinke-Singh, and Quan's chapter on the Philippines), but they fall well short of addressing the myriad measures that states can take to reduce displacement risk arising from natural hazards and climate change. Measures that specifically reduce displacement risk include risk-sensitive land use planning to avoid settlements in exposed areas, identification of individuals and groups who are particularly exposed and vulnerable to displacement risk, targeting resilience-building programmes to those at risk, formally recognizing informal settlements and including them in DRRM and CCA planning, monitoring displacement risk and ensuring incorporation of this issue in early warning, amongst many others (UNDRR 2019a). There is a clear need, in this context, to look beyond the Guiding Principles, to the significant established and emerging body of international standards and guidelines relating to DRRM and CCA. This point was already recognized in the 2008 Brookings Institution manual for law and policy makers on protecting internally displaced persons (Brookings Institution 2008), which notes:

... states have the primary responsibility to protect the people and property in their territory from natural disasters through measures including the integration of risk reduction into development policies and the adoption or modification of legislation (p. 45).

The 2015 Sendai Framework for Disaster Risk Reduction (UNGA 2015b) provides a cornerstone in this regard. Paragraph 17 sets the goal:

Prevent new and reduce existing disaster risk through the implementation of integrated and inclusive economic, structural, legal, social, health, cultural, educational, environmental, technological, political and institutional measures that prevent and reduce hazard exposure and vulnerability to disaster, increase preparedness for response and recovery, and thus strengthen resilience.

The Framework embeds DRRM within the wider project of sustainable development and poverty reduction reflected in the Sustainable Development Goals (para 2), providing a powerful synergistic platform for enhancing measures to prevent and prepare for displacement in the context of disasters and climate change.

Adopted by the General Assembly in June 2015, the Sendai Framework addresses multiple aspects of displacement, from prevention through to durable solutions. Paragraph 27(k) promotes the formulation of

... public policies, where applicable, aimed at addressing the issues of prevention or relocation, where possible, of human settlements in disaster risk-prone zones, subject to national law and legal systems.

Paragraph 33(h) of the Framework calls on national and local actors:

To promote regular disaster preparedness, response and recovery exercises, including evacuation drills, training and the establishment of area-based support systems, with a view to ensuring rapid and effective response to

disasters and related displacement, including access to safe shelter, essential food and non-food relief supplies, as appropriate to local needs.

One of the recommendations to emerge from the 2019 Global Platform on Disaster Risk Reduction called for greater integration of displacement considerations in DRR:

Governments and the international community must do more to reduce the risk of disaster displacement before disasters strike. Disaster risk reduction strategies and policies should address the drivers and consequences of disaster displacement and contribute to durable solutions (UNDRR 2019b, para 28).

The Sendai Framework has been widely endorsed, including across Asia and the Pacific. The 2018 Ulaanbaatar Declaration of the Asian Ministerial Conference on Disaster Risk Reduction, for instance, recognizes “the importance of ensuring coherence among the global frameworks such as the 2030 Agenda for Sustainable Development, the Paris Agreement on Climate Change, the Sendai Framework for Disaster Risk Reduction 2015-2030” amongst others (AMCDRR 2018). A human rights-based approach is expressly endorsed at paragraph 11. Similarly, the Framework for Resilient Development in the Pacific situates itself as a regional contribution to the implementation of these same global frameworks (SPC 2016), and also expressly endorses a human rights-based approach across the Framework. As noted in the introduction to this volume, both of these high-level documents recognise displacement in the context of disasters and climate change as a challenge requiring particular attention. Neither acknowledge the Guiding Principles on Internal Displacement, suggesting that integration of displacement into DRRM, CCA, and sustainable development frameworks may prove more expedient than seeking bespoke legal and policy frameworks focusing on internal

displacement, even if the latter has distinct advantages as recognised above, and later in this chapter.

UN mandate holders on internal displacement have been advocating better integration of displacement considerations into DRRM, CCA and development frameworks since Kälén's 2005 report on tsunami-related displacement. Over the course of his mandate, Chaloka Beyani conducted a number of country visits during which he explored in detail the situation of persons displaced in the context of disasters and climate change. Following visits to Iraq (Beyani 2011) and Kenya (Beyani 2012a), which include considered engagement with the issue of disaster- and climate change-related internal displacement, Beyani conducted the first targeted country visit focusing expressly on this form of displacement. The purpose of his 2011 visit to the Maldives was “to examine the current situation of persons who were internally displaced as a result of the 2004 tsunami, and to assess in particular the achievement of durable solutions” (Beyani 2012b, para 1). He also sought “to study issues related to risks of potential internal displacement in the future, including due to environmental factors and the effects of climate change” (Beyani 2012b, para 1).

In his report, the Special Rapporteur considers the legal and policy framework that the Maldives had developed since the tsunami, including a Disaster Management Bill and a Strategic National Action Plan for Disaster Risk Reduction and Climate Change Adaptation 2010-2020 (SNAP). He argues for more integration of displacement considerations into the Bill. Whilst recognizing that measures included in the SNAP, such as safe housing, coastal protection projects, risk-sensitive use of land and development strategies, amongst others, contribute to the prevention of displacement, Beyani recommends more express integration of displacement considerations, and references key international standards and guidelines, such

as the IASC Operational Guidelines for the Protection of Persons in Situations of Natural Disasters. The remainder of the report focuses on the DRRM measures that the Maldives is taking, which the Special Rapporteur commends. At the same time, he points to an important limitation:

This singular focus on prevention has resulted in a failure to systematically put in place a national framework to actually address internal displacement, which is predicted to increase as a result of both sudden-onset and slow-onset natural disasters (Beyani 2012b, para 37).

He argues that:

a policy, legal and institutional framework on internal displacement in line with the Guiding Principles and a human rights-based approach would be necessary components of a preparedness and climate change adaptation strategy (Beyani 2012b, para 25).

Protecting people during evacuation and throughout displacement

When it comes to Section 3 of the Guiding Principles on ‘Principles Relating to Protection During Displacement’, the guidance is more evenly applicable to both conflict- and disaster-related displacement, notwithstanding the fact that Principles 10, 11 and 13 are predominantly concerned with issues arising in the context of armed conflict and other forms of physical violence. Subsequent provisions focus on substantive economic and social as well as civil and political rights, and include rights to freedom of movement and to seek asylum (Principle 14 and 15), rights relating to family and private life (Principles 16-17), rights to an adequate

standard of living and health (Principle 18 and 19), the right to recognition as a person before the law (Principle 20), the right to private property (Principle 21), multiple civil and political rights relating to freedom of expression, assembly, voting and others (Principle 22) the right to education (23), along with principles in Section 4 on the delivery of humanitarian assistance. The predicament of being internally displaced gives rise to specific challenges that are not experienced by individuals who, despite being affected by conflict or disaster, do not move. In particular, evacuation centres and temporary shelters can, despite being intended as places of safety, for different reasons become places of exacerbated risk. Gender-based violence is widely reported in such places (Scott 2019a), as is discrimination in relief distribution (IFRC 2007). Issues relating to access to information, participation in centre management, and adaptation of facilities to address the particular situation of persons with disabilities all need to be taken into account by responsible authorities planning for and dealing with situations of internal displacement. A human rights-based approach draws attention to key considerations included in Section 3 of the Guiding Principles.

The relevance of a human rights-based approach is clear from the intervention of several UN mandate holders^{vii} in the aftermath of Cyclone Pam, which struck Vanuatu in 2015. Their observations warrant quoting at length, as they express the intersecting human rights challenges that are common to disaster displacement situations worldwide:

Temporary housing is an essential aspect of an emergency response, however it must still meet human rights standards and it must not be the sole focus. Those who are staying with relatives or families should also be assisted appropriately. Longer-term housing needs must also be considered and planned for immediately.

Lessons learned from past natural disasters around the world shed light on the way forward. In all phases of disaster response the right to adequate housing should be respected and protected. This means ensuring security of tenure; availability of services, materials, facilities and infrastructure; affordability, habitability and accessibility of housing; an appropriate location for housing; and cultural adequacy.

We are concerned over the conditions in evacuation centres, which reportedly vary enormously, with overcrowding, privacy and security identified as serious issues. We are particularly concerned about the risk of sexual violence against women and girls, as lighting is lacking in most of the centres.

In the coming months as the rebuilding process evolves, access to housing, land or space will become an important part of rehabilitation. We are particularly concerned for the most marginalized groups. They will need special attention – for example, women’s privacy needs and the rights and needs of those with disabilities must be addressed. An age perspective has also to be included in all stages of disaster management and policies, from their elaboration to their execution (UN OHCHR 2015).

This intervention highlights how principles developed in the wider field of international human rights law help to add depth to the generality of the Guiding Principles.

Perhaps again owing to the pre-occupation with constraining the malign conduct of state actors, and particularly in the context of armed conflict, what is missing from Section 3 is guidance relating to the protection of people during evacuation. The Guiding Principles do not assist planners and emergency responders in preparing for and responding to situations where

potentially large numbers of people need to be moved from their homes to places of safety. Rather, the Guiding Principles move from provisions discouraging states from engaging in arbitrary displacement in Section 2, to provisions relating to the human rights of people who are displaced in Section 3. The space in between, during which people move from their homes to another location, is overlooked. Consequently, for states concerned with protecting people during this very preliminary stage of displacement, further guidance is required.

Fortunately, some human rights-based guidelines, in particular the MEND Guide (CCCM 2014) produced by the Camp Coordination and Camp Management Cluster, are available. This guide points to considerations relating to the development of evacuation plans, population preparedness and training, hazard monitoring, early warning, decisions to evacuate and conditions in evacuation centres. Human rights considerations, particularly relating to the duty of states to ensure equality and non-discrimination by taking into account the particular situation of potentially vulnerable individuals, such as those with disabilities, elderly people, children, women and so forth are of critical importance in this early stage of displacement. Indeed, well-managed evacuation can be seen as a measure to reduce the adverse impacts of displacement, even if, by definition, it does not prevent displacement from happening in the first place.

Substantial additional guidance has also been produced by international humanitarian actors, in particular by the Global Protection Cluster Handbook for the Protection of Internally Displaced Persons (2010), the Inter-Agency Standing Committee's (IASC) Operational Guidelines on the Protection of Persons in Situations of Natural Disasters (2011), IASC Guidelines for Integrating Gender-Based Violence Interventions in Humanitarian Action (2015), and the Sphere Standards (2018), all four of which elaborate a range of relevant

human rights-based considerations for states to take into account when seeking to fulfil their obligations to protect people who are internally displaced. The guidance produced by the IASC, in particular, represents a conscious effort to mainstream the Guiding Principles into the work of UN agencies and international humanitarian organizations (Kälin et al. 2010).

Significantly, whereas the Guiding Principles are very short and general, the specificity of these four documents makes them extend to more than 1,500 pages, creating a potential accessibility problem for states with more limited resources, particularly when it comes to implementation at the sub-national level. A key challenge for states dealing with internal displacement in the context of disasters and climate change relates to the incorporation of this vast body of key international standards and guidelines into sub-national emergency preparedness planning. Our research project was informed by a consolidation of these key international standards and guidelines (Scott 2019b), which could be of use to sub-national actors. Ongoing collaboration between RWI and the Asia Disaster Preparedness Center (ADPC), Stockholm Environment Institute (SEI) and the Swedish Civil Contingencies Agency (MSB) focuses on integrating human rights into DRRM at national and sub-national levels across Asia and the Pacific, and includes a focus on different phases of displacement, including evacuation and camp management, as well as on how risk-sensitive land use planning can help to prevent displacement.^{viii}

The importance of legal and policy improvements notwithstanding, it is also important to recognize, as several authors in this volume do, that the scale of ambition reflected in these standards is often unattainable at the local level. Although the UN Committee on Economic, Social and Cultural Rights has emphasized that states are obliged to take steps to ensure the enjoyment of a ‘minimum core’ of such rights, even in situations of disasters (UN CESCR

1999), this ambition is often not even attained in everyday life, let alone in disasters (see Patel and Chadhuri 2019). However, as the Committee acknowledges:

If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d'être*. By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2 (1) obligates each State party to take the necessary steps “to the maximum of its available resources”. In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations (UN CESCR 1990, para 10).

Yet again, the connection between the Sustainable Development Goals, DRRM, and a human rights-based approach to displacement are apparent.

Beyani provides a clear example of this human rights-based approach to disaster displacement in his report on the Philippines in the aftermath of the 2013 Typhoon Haiyan. Visiting the country more than 18 months after the typhoon, Beyani describes conditions for some displaced people living in collective bunk houses, some of which lacked running water or electricity and had inadequate waste management systems. In addition to the adverse health implications of such living conditions, Beyani also records a lack of access to health care, as well as a lack of specialized services for “the elderly, persons with disabilities or other vulnerable people, for whom bunkhouses could pose particular challenges, including relating

to access and care” (Beyani 2016, para 25). With displacement becoming protracted, youth complained of lack of access to education, and there was widespread concern about the lack of access to adequate livelihood opportunities. The risk of sexual violence in temporary shelters was voiced by many of the IDPs who spoke with the Special Rapporteur, owing both to the design of the shelters as well as their distance from other facilities, such as schools. Design flaws also exposed residents to the risk of fire and flooding.

Reflecting on this visit, Beyani notes that “[i]nstitutional and policy frameworks have proved effective in the immediate crisis response and as the process of recovery began” (Beyani 2016, para 91). He calls for the immediate needs of the IDPs to be addressed, including through enhanced cooperation and clarification of the respective roles and responsibilities between national government and local government units. Although the examples from the bunk houses demonstrate that national law and policy is not always implemented effectively in practice (a point consistently identified in the chapters in this volume), the more enduring challenges relate to the achievement of durable solutions.

Durable solutions

The question of durable solutions, which is addressed in Section 5 of the Guiding Principles, emphasises the responsibility of the state to facilitate voluntary return home, local integration, or resettlement in another part of the country. Further guidance on what constitutes a durable solution has been developed by the Inter-Agency Standing Committee in its 2010 Framework on Durable Solutions, which recognizes eight factors that need to be addressed. These include:

1. Safety and security
2. Adequate standard of living
3. Access to livelihoods
4. Restoration of housing, land and property
5. Access to documentation
6. Family reunification
7. Participation in public affairs
8. Access to effective remedies and justice

As will be described in more detail in the next section of this chapter, it is in relation to durable solutions that the national DRRM and CCA frameworks considered as part of the research initiative underpinning this volume tended to fall short. This makes sense. Although significant responsibility for taking steps to address disaster (and displacement) risk, and to protect people during and in the aftermath of a disaster can reasonably fall on DRRM and CCA actors (including in a coordinating role with other agencies focusing on, for instance, health, education, employment, and social security), achieving durable solutions to displacement is very much a question of sustainable development and climate change adaptation. It is in relation to the achievement of durable solutions, particularly in situations where displacement becomes protracted, that the development of legal and policy frameworks on internal displacement can be most helpful.

Kälin's 2009 report on disaster-related displacement in Somalia provides specific guidance relating to durable solutions to disaster-related displacement. The Representative recommends:

Durable solutions are also needed for those displaced by drought and other natural disasters. Many of these IDPs are pastoralists and nomads, who have lost all their livestock. Development interventions should aim to introduce supportive systems that would allow them a sustained living in rural areas, including those affected by drought or other natural disasters (para 58).

The same recognition of the need to integrate durable solutions within wider processes of sustainable development is a recurrent theme in subsequent reports of UN mandate holders addressing internal displacement following Kālin's initial engagement with the issue in this 2009 report on Somalia. In addition to highlighting the central role of a "comprehensive national strategy" on internal displacement in Kenya, Beyani calls for a number of development initiatives, including capacity building, the allocation of sufficient financial and human resources, support for livelihoods and access to basic services. He further calls for "efforts in the areas of urban planning, national development strategies and land reforms [to] include a cohesive approach to internal displacement issues, and the rights of IDPs" (Beyani 2012a, para 65).

Following his 2011 visit, Beyani called on the Government of the Maldives to

[s]pecifically include internal displacement issues, including displacements outside of emergency contexts (in response to slow-onset natural disasters), into all relevant development plans and programmes, in line with a human rights-based approach and the Guiding Principles on Internal Displacement (Beyani 2012b, para 71).

However, whilst legal and policy frameworks play a crucial role in coordinating action, channelling funding, and promoting accountability, social and political factors play a determining role. This point is evident from the report of the Special Rapporteur following his visit to the Philippines:

Funding shortfalls, delays in allocation and distribution of funds and political challenges, including inadequate cooperation between national and local governments, are hampering essential recovery processes. Despite massive allocation of government funds and unprecedented international funding, progress has been slow or stalled in some locations. Allegations of corruption, unaccounted-for funds and mismanagement or redirection of funds must be investigated and the results made public (Beyani 2016, para 94).

The point is made even more clearly in a 2014 study on the challenges associated with securing durable solutions to the earthquake-related displacement in Haiti (Sherwood et al. 2014). The report, published by the Brookings Institution and IOM, records that almost 50 percent of the population of Port au Prince, the Haitian capital, were displaced by the earthquake. Nearly 75 percent described themselves as displaced four years after the earthquake. The authors explain:

Extensive physical destruction, the massive nature of the displacement crisis, and the limited accessibility of urban land have hindered durable solutions. Forced evictions have further compromised many IDPs' ability to find a place to settle, and to create a more stable life in the aftermath of the earthquake. Many of the socio-economic factors underlying exposure to

displacement in the first place are, not surprisingly, factors that also inhibit the durable resolution of displacement. These challenges have put certain IDPs at high risk of recurrent patterns of forced eviction, homelessness, disaster-related displacement, and extreme poverty (p. 2).

The same kind of development approach as advocated by the UN mandate holders is echoed by the authors of this report, with a particular emphasis on tailoring durable solutions to local realities. Alongside recommendations specifically relating to housing market reform, they argue:

Recognizing that displacement is not simply a humanitarian issue but an important development challenge, integrate displacement and durable solutions into relevant plans and policies at the local, national and international levels, including urban, housing, and development plans.

Training and other forms of support may be necessary to achieve this goal (p. 4).

This final point echoes recommendations highlighted throughout this section that addressing displacement in the context of disasters and climate change entails the integration of displacement considerations into legal and policy frameworks relating to DRRM, CCA and sustainable development, from national to local level, whilst recognising that social and political factors will also play a significant role in determining the extent to which people are protected from and during displacement, as well as the durability of any potential solutions to displacement. The remainder of this chapter provides an overview of the rich legal and policy frameworks that were analysed as part of this research initiative. The following section demonstrates the kinds of ways in which displacement is integrated into national law and policy relating to DRRM and CCA,^{ix} pointing out both strengths and limitations with regard

to human rights-based standards that relate to this phenomenon. The final section provides a snapshot of some of the practical challenges that arise in specific situations of disaster displacement where relevant law and policy is supposed to apply, providing a foretaste of the issues that are examined across the remainder of the volume.

National law and policy relevant to disaster displacement in Asia and the Pacific

Internal displacement is widespread across Asia and the Pacific, yet none of the countries in Southeast Asia, South Asia or the Pacific have binding legislation on internal displacement, and only eight countries are identified as having policy documents that focus on internal displacement (Global Protection Cluster 2020). Of these, only four (Nepal, Sri Lanka, Vanuatu and Indonesia) address displacement in the context of disasters.^x With disasters responsible for the displacement of millions of people in the region every year, including nearly 25 million new displacements in 2019 alone (IDMC 2020), how states address displacement in the context of disasters and climate change is a pressing question. Clearly, adopting bespoke law and policy appears to be an exception, but our research demonstrates extensive, if not necessarily always systematic, treatment of displacement across DRRM and, albeit to a lesser extent, CCA frameworks.

An earlier scoping study supported by the Platform on Disaster Displacement (Yonetani 2018) had identified nearly 70 countries worldwide that, to some extent, address displacement within national legal and policy frameworks relating to DRRM, with evacuation the most common phase of displacement in focus. However, that study did not examine in any depth the specific provisions of national legal and policy frameworks, but instead only provided an

overview of the prevalence of key human mobility terms across a selection of documents. There is a clear need to dive deeper into these legal and policy frameworks to gain a more nuanced understanding of how states are addressing this phenomenon. To a substantial extent, the way DRRM and CCA legal and policy frameworks address displacement in the context of disasters and climate change remains an under-explored area of scholarship, which this volume contributes to developing.

We asked two questions of the legal and policy frameworks examined for this research. First, we asked whether states consistently integrate measures to prevent and prepare for displacement, protect people during evacuation and throughout displacement, and facilitate durable solutions, or whether domestic legal and policy frameworks were less systematic in their treatment of different phases of displacement. Acknowledging the value of the human rights-based approach to addressing internal displacement that is reflected in the Guiding Principles, we also asked to what extent domestic legal and policy provisions relating to displacement reflect key international standards and guidelines. Thus, we were not only interested in the question *whether* displacement was addressed, but also *how* it was addressed. These questions are answered in detail in a series of national law and policy reports, produced by the Raoul Wallenberg Institute in collaboration with the academic partners who contributed to this volume.^{xi} Each of the case studies in this volume contains a snapshot of the national legal and policy framework.

Key insights from this research are summarised in five sub-sections below. The first sub-section begins with a general consideration of the extent to which the legal and policy frameworks of the eight countries included in this study reflect a human rights-based approach to disaster displacement. Elements of such an approach include the express adoption

of a human rights-based approach to DRRM and CCA, express mainstreaming of displacement across this framework, and more detailed standard operating procedures tackling specific issues, such as the management of evacuation centres, the conduct of planned relocation and so forth. After describing the legal and policy frameworks at this overarching level, the section turns to specific measures identified that relate to the three stages of displacement identified in the Guiding Principles on Internal Displacement.

Human rights and disaster displacement in national legal and policy frameworks

For a region in which international human rights law is not always a welcome counterpart to the domestic legal and political order (Saul and Nasu 2011), it is noteworthy that a number of countries have adopted expressly human rights-based approaches to DRRM and CCA.

Although human rights language was clearly present in most of the national legal and policy frameworks surveyed as part of the research underpinning this volume, three countries stand out for their development of policy documents relating specifically to displacement in the context of disasters and climate change.

In Bangladesh, the National Strategy for the Management of Disaster- and Climate-Induced Internal Displacement (NSMDCIID) was originally drafted in 2015 by the Refugee and Migratory Movements Research Unit (RMMRU) of the University of Dhaka, at the request of the Ministry of Disaster Management and Relief (MoDMR). However, the Strategy was never formally adopted and, at the time of writing in early 2020, a revised version was undergoing a consultative review process, including state and civil society actors.^{xiii} The Strategy, which expressly incorporates the Guiding Principles on Internal Displacement, describes a rights-based approach:

An RBA to climate-induced internal displacement (CIID) is primarily based on rights and entitlements of the displaced population and enshrined under national and international human rights instruments including economic, social and cultural rights as well as the right to access to information and participation in decision-making. Furthermore, since poor and marginalized groups generally face disproportionate level of risk in any internal displacement situation, an RBA gives particular attention to prioritize their needs and ensure their protection. It also takes due cognizance of the principle of non-discrimination (p. 10).

Similarly, Vanuatu's 2018 National Policy on Climate Change and Disaster-Induced Displacement represents Vanuatu's commitment to addressing displacement from a human rights-based approach:

the policy recognises the specific vulnerabilities, rights, capacities and needs of populations affected by displacement (populations at-risk of displacement, displaced populations, internal migrants and host communities). It also acknowledges the risks of relocation if carried out without appropriate safeguards (p. 18).

Indonesia has also adopted a policy on internal disaster-related displacement. Although the 2018 Head of National Disaster Management Agency Regulation No. 03/2018 on the Handling of Internally Displaced Persons during Emergency Response,^{xiii} uses the language of rights, and includes provisions relating to participation, gender equality, and attention to people in vulnerable situations, it does not expressly adopt a human rights-based approach. Further, it does not invoke the Guiding Principles on Internal Displacement, and is not

structured to address measures to prevent and prepare for displacement, protect people during evacuation and throughout displacement and facilitate durable solutions. Although a number of important interventions are identified, including measures relevant to the protection of both substantial and procedural rights, there are also important limitations in this policy. For instance, when describing the steps involved in relocation, the policy does not mention principles such as consultation, or free, prior and informed consent, which are critical features of a human rights-based approach. In contrast to the detailed policies developed in Bangladesh and Vanuatu, the Indonesia policy is brief, and states that further detailed provisions will be set out in implementing instructions (para 23).

However, Indonesia's wider legal and policy environment does embrace human rights. Law No 8 of 2016 on Persons with Disabilities (Law 8/2016) expressly incorporates the 2006 Convention on the Rights of Persons with Disabilities (CRPD) into the domestic legal order, and includes provisions that address the obligation at Article 11 of the CRPD to take "all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters." As discussed further in the chapter on Indonesia, implementing regulations issued by the National Disaster Management Agency (BNPB) provide guidelines relating, for example, to early warning, protection during displacement, and assistance with resettlement.

In relation to each of the three countries mentioned above, the displacement policies have either not yet been formally adopted by the government (in the case of Bangladesh), or were adopted only in 2018. It therefore remains too early to tell how well they will be complied with in practice. Nepal and the Philippines are two other two countries that have policy

documents that reference to the Guiding Principles. Interestingly, although Nepal has had a Policy on Internal Displacement in place since 2007, this document is not referred to in any of the DRRM or CCA documents that make up Nepal's legal and policy framework, making it a surprisingly peripheral document guiding the conduct of responsible actors in the aftermath of the 2015 earthquakes (see Nikku's contribution in Chapter 9 of this volume).

The reference in the Philippines framework is very brief, with the Guiding Principles included in a list of other documents that the 2011 National Disaster Risk Reduction and Management Framework (NDRRMF) adheres to, including the Universal Declaration on Human Rights (UDHR), Guiding Principles on Internal Displacement, as well as the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). In addition, displacement in the context of disasters and climate change is addressed, in different ways, in the following legal and policy documents:

- 2011-2028 National Climate Change Action Plan
- 2010 Philippine Disaster Risk Reduction and Management Act
- 2009-2019 Strategic National Action Plan for Disaster Risk Reduction
- 2016 Children's Emergency Relief and Protection Act
- 2018 National Disaster Response Plans

Thus, displacement in the context of disasters and climate change is extensively addressed in the legal and policy framework relating to DRRM and CCA in the Philippines. At the same time, an initiative to introduce a law on internal displacement has been struggling through political processes for around a decade (Bermudez et al. 2018). The latest attempt to introduce a law on internal displacement was ultimately vetoed by the President, and, as Quan notes in his contribution to this volume, further progress has not been made since then.

Cambodia's legal and policy framework addresses displacement only to a limited extent, and not from a human rights-based approach. The National Action Plan for Disaster Risk Reduction (2014-2018) provides for the development of a policy for maintaining community ownership over the 'safe grounds'^{xiv} and calls for a scoping study to identify appropriate community flood shelters. Planned relocation is identified as a Strategic Objective under the Cambodia Climate Change Strategic Plan 2014-2023 (CCCSP). Planned relocation is one of the increasingly popular measures that states are adopting to address the exposure of populations to disaster-related harm, including as a consequence of climate change (McAdam and Ferris 2015). However, this measure is often associated with serious human rights challenges, as affected groups are rarely consulted in a meaningful way, and inadequate safeguards are put in place to ensure that relocation is genuinely a last resort, and that people will have access to adequate shelter, livelihoods, security, housing, land and property rights, education and so forth (McAdam and Ferris 2015). This is one area where the further integration of key international standards and guidelines into national law and policy would be particularly relevant.

Thailand's 2015 National Disaster Risk Management Plan contains extensive provisions relating to evacuation. Although the document does not expressly invoke a human rights-based approach, important features of this approach permeate the document. Notably, provisions in Chapter 2 of the Plan, relating to evacuation shelters, expressly invoke the Sphere Standards (Sphere 2018), which, as noted above, themselves are expressly rights-based. Evacuation procedures also prioritise 'vulnerable groups', including persons with disabilities, patients with special healthcare needs, the elderly, children and women. The document also contains provisions that are relevant to the facilitation of durable solutions to

displacement, including adopting an expressly participatory approach, and taking steps to address underlying risk factors in order to ‘Build Back Better’. The Plan also envisages a whole of government response, with responsibilities allocated to relevant ministries, such as the Ministry of Transport, the Ministry of Health, the Ministry of Social Welfare and so forth. However, apart from the specific focus on evacuation, the document does not focus expressly on displacement in the context of disasters and climate change.

The Solomon Islands addresses displacement in its legal and policy framework, also with a particular focus on planned relocation. Planned relocation is identified as a priority in the 2008 National Adaptation Programmes of Action and the 2012-2017 National Climate Change Policy, with the latter invoking “principles on the respect for culture and rights of indigenous people and gender equity and involvement of youth, children and people with special needs” (p. 15).

An interesting feature of the country’s 2018 National Disaster Management Plan is that it focuses on alignment with the regional Framework for Resilient Development in the Pacific (FRDP), referred to earlier in this chapter. Priority action i(p) of Goal 1 of the FRDP calls upon national and sub-national governments and administrations to:

Integrate human mobility aspects, where appropriate, including strengthening the capacity of governments and administrations to protect individuals and communities that are vulnerable to climate change and disaster displacement and migration, through targeted national policies and actions, including relocation and labour migration policies (p. 15).

Although the legal and policy framework in the Solomon Islands does not expressly incorporate the Guiding Principles on Internal Displacement, implementing agencies have acknowledged their relevance. The draft template on standard operating procedures for the National Protection Committee, established under the National Disaster Management Plan, suggests the following:

To ensure quality response, the PC will ensure members are briefed on the NDMP and relevant government policies, guidelines and technical standards. The PC will take account of international minimum standards and guidance for protection response, such as the Guiding Principles on Internal Displacement, and the IASC Guidelines on Protection of Persons in Situations of Natural Disasters (p. 8).

Here is a clear example of the Guiding Principles on Internal Displacement informing the conduct of national and potentially sub-national actors, without needing to be adopted in a bespoke legal or policy document. Unfortunately, the National Disaster Management Plan itself does not reflect the systematic treatment of displacement advocated by the Guiding Principles, and durable solutions are, in particular, quite absent from the country's legal and policy framework. This lack of attention to durable solutions at the national law and policy level has implications for how responsible actors address displacement in the context of disasters and climate change, as developed by Joseph Foukona in Chapter 10 of this volume.

Having a legal and policy framework in place that expressly integrates the Guiding Principles on Internal Displacement contributes to the coherent treatment of displacement in national legal and policy frameworks. Without such a cornerstone document, displacement is less systematically addressed. However, many of the legal and policy frameworks that are not

based on the Guiding Principles nevertheless contain robust, rights-based provisions that contribute to the prevention of and preparedness for displacement, protection during evacuation and throughout displacement, and, perhaps to a lesser extent, towards the facilitation of durable solutions. Examples of such measures are provided in the sub-sections below.

Prevention of and preparedness for displacement

Perhaps unsurprisingly given the scale and scope of intervention required to tackle root causes, most legal and policy frameworks surveyed for this volume simply reiterate the importance of taking such measures, rather than setting out an action plan that might be implemented to achieve the objective. In the Philippines, for example, the 2011 National Disaster Risk Reduction and Management Framework sets out to “provide a common direction towards addressing underlying causes of vulnerability to help reduce and manage the risks to disasters” (p. 3). It also highlights the indivisibility of DRRM and sustainable development. The framework expressly recognizes the principle that “hazards become disasters only if vulnerable people and resources are affected by them” (p. 4).

Similarly, in Nepal, strengthening capacity of people “to reduce their vulnerability and to enhance social cohesion” is identified as a recovery outcome in the 2016-2020 Post Disaster Recovery Framework. Notably, Nepal’s 2007 National Policy on Internal Displacement provides for “campaign-oriented programmes on displacement prevention by providing development security and social services to all Nepali people.” However, as noted by Bala Raju Nikku in Chapter 9 of this volume, this Policy has not been mainstreamed into wider

DRRM law and policy, and does not appear to have informed the response to the high levels of internal displacement resulting from the 2015 earthquakes.

Whereas addressing the exposure and vulnerability of individuals and groups presents complex challenges relating to underlying processes of discrimination, marginalization and inequitable distribution of resources, the exposure and vulnerability of infrastructure can, subject to budgetary constraints, be more concretely addressed. Although many policies focus on identification and enhancement of evacuation centres and temporary shelters (consider national law and policy reports for Cambodia (Bernard 2020), Vanuatu (Van Geelen et al. 2020) and Nepal (Nikku and Scott 2020), others take a more holistic approach. Indonesia and the Philippines, for example, emphasize the importance of risk-sensitive land use planning and enhancement of general infrastructure (Umar and Scott 2020; Quan and Scott 2020).

Additional preparedness measures are articulated in the two human rights-based policy documents that are expressly focused on displacement in the context of disasters and climate change. The Bangladesh National Strategy for the Management of Disaster- and Climate-Induced Internal Displacement contains over 40 actions that contribute to the prevention of displacement, including measures relating to the collection of disaggregated displacement risk data, risk forecasting, livelihood diversification, infrastructure upgrading and risk-sensitive land use planning (Khan and Scott 2020). Similarly, Vanuatu's National Policy on Climate Change and Disaster Induced Displacement includes measures such as ensuring Provincial Disaster and Climate Risk Management Plans include planning for people living in informal settlements, and other populations affected by displacement, revisiting rural and urban building codes and implementation practices to ensure they promote and support disaster-risk reduction efforts, and exploring affordable micro-insurance and 'climate insurance' models to

provide additional safety nets to remedy loss of income, damage to housing, infrastructure, crops and other assets from disasters (Van Geelen et al. 2020).

Protection during evacuation and throughout displacement

Unsurprisingly, given the historical focus within disaster management circles on emergency response, measures relating to the protection of persons during evacuation and throughout displacement were far more prevalent in national legal and policy frameworks than measures relating to the prevention of and preparation for displacement. Indeed, legal and policy frameworks in all of the eight countries reflected in this volume contained references to evacuation and to different elements of protection during displacement, even if the concept of displacement was not always directly reflected in the text. Key elements of a human rights-based approach were often reflected in this context, even if human rights were not expressly invoked. Texts included references to substantive rights such as food, shelter and health, as well as procedural rights relating to participation and consultation, and attention to the particular situation of potentially vulnerable groups, reflecting adherence to the non-discrimination and equality element.

Some provisions, such as those reflected in Bangladesh's Standing Orders on Disaster, contain detailed guidance, for example relating to the responsibilities of particular actors at local, provincial and national levels (Khan and Scott 2020). More common, however, is for national level provisions to refer to more local level planning processes for more detailed guidance, including on the running of evacuation centres. In the Philippines, for example, s. 12(3)(16) of the 2010 Disaster Risk Reduction and Management Act provides that the Local Disaster Risk Reduction and Management Office shall:

... ensure that there is an efficient mechanism for immediate delivery of food, shelter and medical supplies for women and children, endeavour to create a special place where internally-displaced mothers can find help with breastfeeding, feed and care for their babies and give support to each other.

Durable solutions

Beyond the specific policies on disaster- and climate-related displacement from Vanuatu and Bangladesh, the concept of durable solutions was rarely expressly invoked in national legal and policy frameworks, and several frameworks, such as those from the Solomon Islands and Cambodia, contained no reference to any of the forms of durable solution at all. Other frameworks contained scattered references to certain elements of durable solutions, such as resettlement or return, such as Indonesia and the Philippines.

The benefits of having a bespoke legal or policy document focusing on displacement comes through clearly at this point, as both the Bangladesh and Vanuatu policies contain robust provisions that have no parallel in the DRRM and CCA frameworks of other countries. For instance, reflecting the cross-sectoral nature of durable solutions, Vanuatu's Minister of Climate Change Adaptation, Meteorology, Geo-Hazards, Energy, Environment and Disaster Management, Hon. Ham. Lini Vanuaroroa, notes in his foreword to the country's National Policy on Climate Change and Disaster-Induced Displacement:

The Ministry urges other government and non-governmental partners leading sectoral-level interventions to use the displacement policy in mainstreaming displacement and migration considerations into their policies

and operational plans in order to support durable solutions for communities affected by displacement (p. 6).

The phase ‘durable solution’ is referenced 55 times in the document, including with specific reference to using the IASC Framework on Durable Solutions to facilitate monitoring and evaluation (p. 47).

Similarly, the draft National Strategy for the Management of Disaster- and Climate-Induced Internal Displacement in Bangladesh also situates durable solutions within a wider legal and policy framework, recognising urban development, rural development, land use policy and housing policy as key sectors where the Strategy needs to be integrated (p. 22). The complexity of the phenomenon is also acknowledged:

Different solutions may be used by different members of a family, as when some family members return to the place of origin (permanently or on a seasonal basis), while others work in another location. Solutions must therefore be flexible, and based on free and informed consent (p. 11).

It therefore follows that, whilst there is much to be gained by focusing on the integration of displacement considerations into DRRM and CCA frameworks, there is a distinct advantage in developing bespoke legal and policy documents focusing on the phenomenon of internal displacement. Although Deng was certainly correct in reflecting on the potential differences between conflict and disaster-related internal displacement, the potential for improved outcomes observed in conflict-affected countries that adopted bespoke legal and policy frameworks on internal displacement (see Cardona-Fox 2018, MacGuire 2018) provides some further impetus for adopting such an approach in the context of disaster- and climate change-related displacement.

Obstacles to implementation of national legal and policy frameworks in particular situations of disaster displacement

In practice, as the case studies in this volume demonstrate, multiple factors beyond national law and policy impact on how displacement (risk) is managed. Prominent amongst these reasons are issues of resources, capacity and structural barriers.

In several of the case studies, including Bangladesh, Indonesia and Cambodia, we found that local actors had not heard of key legal and policy documents relating to disaster displacement, making all questions of their efficacy entirely moot. In other contexts, such as in the Philippines, DRRM actors were aware of both key international human rights standards, as well as specific national level requirements, but simply did not have the resources to take the steps they knew were required.

At times, these limitations appear to present significant obstacles to the protection of people from and during displacement. At other times, resource constraints contributed to the development of innovative local level solutions. A prominent example is the recruitment of local property owners to operate small-scale, community-based evacuation centres in their homes – a strategy identified in the Philippines, Thailand and Vanuatu. Although this strategy raises its own human rights issues, which are examined in the chapters in this volume, it also represents a potentially effective mechanism for enabling people to remain close to home, instead of having to move to evacuation centres where potentially more significant human rights issues are present. This approach differs from the widespread phenomenon of community hosting observed in both conflict and disaster-related displacement contexts

worldwide, as it entails a more formal arrangement between the state, the property owner and the individual who is (at risk of being) displaced. Further research on these mechanisms is indicated.

In Bangladesh, despite detailed provisions relating generally to disaster management, and specifically relating to the rights of persons with disabilities, individuals displaced in the context of flooding received limited relief, none of which was targeted to the particular situation of persons with disabilities (See Khan in Chapter 7 of this volume). A similar scenario played out in the context of evacuations relating to the eruption of Mt. Sinabung in Indonesia (see Umar, Amalia and Putra in Chapter 8). In Nepal, people living in a remote part of Rasuwa district remained displaced three years after the 2015 earthquake, despite government initiatives to support reconstruction, and notwithstanding provisions on durable solutions in the 2007 Policy on Internal Displacement (See Nikku in Chapter 9). These cases identify obstacles relating to resources, public administration, and ways of seeing that systematically overlook certain groups in situations of vulnerability, such as persons with disabilities.

As the challenges relating to implementation were identified in the case studies that make up this volume, the limitations of the human rights-based approach also emerge. Although states may express a commitment to protecting people from and during disasters, and to facilitating reconstruction, implementation is intimately tied to questions of budgetary allocation and human and other resources. This state of affairs is most clearly articulated in legal and policy frameworks from Vanuatu and the Solomon Islands, both of which emphasize a ‘self-sufficiency’ requirement in situations of disaster. The 2018 National Disaster Management Plan for the Solomon Islands, for example, emphasizes:

the driving philosophy for this plan is supporting self-help and avoiding dependence at whatever level is being dealt with – national, provincial, village and individual (p. 12).

Similarly, in Vanuatu, the 2016-2017 National Cyclone Support Plan provides for the public to be informed of the ‘self-sufficiency requirement’ relating to “food, water, bedding, medical supplies... and toiletries” (p. 20).

This ‘self-sufficiency’ requirement appears to operate across many of the countries that were included in the study, even if it was not often highlighted as clearly as in the Vanuatu and Solomon Islands frameworks. This is not surprising for a region where, in everyday life, 1.3 billion people are living in extreme poverty (Conceição 2019) and the state is not always the primary source of authority or assistance (RWI 2020). The scale of support that individuals can hope to receive from the state is minimal, and this fact seriously undermines the potential for national law and policy to have an impact in particular instances of disaster displacement.

Against this backdrop, the notion highlighted earlier in this chapter that states are required under international human rights law to ensure the enjoyment of a minimum core of economic, social and cultural rights, including in situations of disaster (CESCR 1990) is unlikely to resonate powerfully. Alternatively, there could be further gains to be made by engaging more closely with non-state actors, such as faith-based and civil society organizations, who are often at the forefront of relief efforts. As noted earlier, the human rights-based approach developed in this chapter is not exclusive to states, and can readily be adopted by non-state actors as well.

Other contexts identified in this research provide potentially more concrete sites for emphasizing the importance of adherence to a human rights-based approach, whether found in national law and policy, or inspired by international standards and guidelines. A number of cases in this volume recount instances of the state actively assuming responsibility for the management of disaster displacement. In this kind of situation, where the state directs the response, the argument is even stronger that it needs to adhere to human rights principles. It is less a question of resource constraints in this context, and more a question of the procedure the state chooses to adopt, and the knowledge and commitment of responsible actors.

Responding to Cyclone Pam in Vanuatu, or the 2014 floods in the Solomon Islands, or the 2018 eruption of Mt. Sinabung in Indonesia, state actors told people where to go, and assumed responsibility for the management of evacuation centres. In each of these cases, our research reveals spaces where key international standards and guidelines, including in relation to participation, access to information, and the prohibition on arbitrary displacement, could have been more closely followed. Whereas in the first two examples there was not then in place a relevant legal and policy framework for domestic actors to guide their actions, in the example of Mt. Sinabung in Indonesia, a host of relevant laws and policies directed the conduct of state actors towards the particular situation of persons with disabilities.

Nonetheless, research suggests that the rights of persons with disabilities were not fully addressed in this context.

Whereas some of the cases studies point to technical and financial measures that might be taken to address the displacement issues arising, others highlight the seemingly intractable nature of some displacement risk. The Thailand, Bangladesh, Nepal and Solomon Islands studies relate to the particular situation of people living in informal settlements. With the population of urban areas expanding at an unprecedented rate in many parts of the world (UN

Habitat 2016a), informal settlements are burgeoning, with significant implications for the enjoyment of human rights, including in the context of disaster displacement (McCallin et al. 2015). Often excluded from municipal DRRM initiatives, informal settlements are characterized by high levels of exposure and vulnerability (McCallin et al. 2015). In order to prevent displacement in the first place, states will often need to take steps to upgrade existing infrastructure, or to relocate populations to areas that are not exposed to hazards. The political and economic costs of such measures can be prohibitive. Consequently, living in an informal settlement presents itself as potentially a primary determinant of exposure to recurrent displacement, as people who lived in exposed and vulnerable informal settlements before being displaced are unlikely to see their circumstances approximating the eight durable solutions indicators set out in the IASC Framework on Durable Solutions (2010). Indeed, with approximately one billion people living in informal settlements (UN Habitat 2016b) the scale and complexity of urban displacement risk warrants substantial, multidisciplinary academic and policy-level engagement.

Conclusion

This chapter opened with an explanation for the adoption of a human rights-based approach to addressing displacement in the context of disasters and climate change. Recognising the 1998 Guiding Principles on Internal Displacement as the cornerstone document setting out the key parameters for how states should protect people from and during displacement, and facilitate durable solutions, the chapter also highlighted important limitations in this framework, including in particular in relation to measures relating to the prevention of and preparedness for displacement, and protection of people during evacuation and in relation to durable solutions. The case was made for a human rights-based approach to draw heavily on advances

in fields including international disaster law and sustainable development, and in particular on the normative momentum generated by the adoption of the Sendai Framework for Disaster Risk Reduction and the Sustainable Development Goals.

With states across Asia and the Pacific acknowledging the importance of addressing displacement in the context of disasters and climate change, the chapter considered select examples of the kinds of provisions states have adopted in DRRM and, to a lesser extent, CCA legal and policy documents. One reason why less focus is placed on CCA in this chapter, and indeed throughout the volume, is because the CCA legal and policy frameworks we reviewed as part of the research tended to engage less with displacement than did the DRRM legal and policy frameworks. Additionally, as noted in Chapter 1, the volume is more immediately focused on displacement in the context of disasters, with climate change understood as playing a ‘risk amplifier’ role. Future research might examine forms of displacement more closely associated with climate change adaptation, such as planned relocation, as suggested in the conclusion to this volume.

Although the research found widespread human rights language throughout these documents, and considerable guidance relating to different phases of displacement, displacement tended to be treated in an ad hoc manner, lacking the systematic approach that is provided when using the Guiding Principles as a framework document. Countries that had adopted an expressly human rights-based policy on disaster- and climate change-related internal displacement had only done so very recently, making it too early to draw lessons about the extent to which such measures enhanced protection on the ground.

Having established that law and policy across the region does address displacement, the remaining question, to which the remainder of this volume is devoted, asks about the role this legal and policy framework actually plays in addressing specific instances of disaster displacement.

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Cambodia

- 2014 - Cambodia The National Action Plan for Disaster Risk Reduction
2018
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2023

Indonesia

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- 2016 Law No 8 of 2016 on Persons with Disabilities

Nepal

- 2016-2020 - Nepal 2016-2020 Post Disaster Recovery Framework.
- 2007 Nepal Policy on Internal Displacement in place since 2007

Philippines

- 2018 National Disaster Response Plans
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2011 National Disaster Risk Reduction and Management Framework (NDRRMF)
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Solomon Islands

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ⁱ See <https://www.ohchr.org/EN/Issues/IDPersons/Pages/Visits.aspx>, Accessed 24 April 2020

ⁱⁱ See <https://www.un.org/securitycouncil/content/resolutions-0>, Accessed 24 April 2020

ⁱⁱⁱ Kälin references the 2005-2015 Hyogo Declaration. This declaration was adopted at the same time as the Hyogo Framework for Action, which is the precursor to the 2015-2030 Sendai Framework for Disaster Risk Reduction. Paragraph 22 of the Hyogo Framework calls for ‘the implementation and strengthening of relevant international legal instruments related to disaster risk reduction,’ and this provided part of the impetus to the decision by the International Law Commission to include in 2006 the topic ‘Protection of Persons in Situations of Disasters’ in its programme of work - See Official Records of the General Assembly, Sixty-second Session, Supplement No. 10 (A/62/10), para 375. This process culminated in the presentation of the Draft Articles on the Protection of Persons in Situations of Disasters to the General Assembly. Whether the Draft Articles underpin an eventual convention, as recommended by the International Law Commission, remains to be determined. Thus, the field of international disaster law has matured significantly in the fifteen years since Kälin’s first report on the role of the Guiding Principles in the context of disasters. This body of law provides an important complement to the Guiding Principles.

^{iv} See the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 2161 UNTS 447.

^v General Comments and General Recommendations are available on the website of the UN Office of the High Commissioner for Human Rights, which includes pages for each of the treaty monitoring bodies. See

<https://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>, accessed 4 May 2020

^{vi} See the National Law and Policy Reports on Displacement in the Context of Disasters and Climate Change at <https://rwi.lu.se/disaster-displacement/>, which include an entire section devoted to Concluding Observations from treaty monitoring bodies.

^{vii} Ms. Leilani Farha, Special Rapporteur on adequate housing; Mr. Chaloka Beyani, Special Rapporteur on the human rights of internally displaced persons; Ms. Catalina Devandas-Aguilar, Special Rapporteur on the rights of persons with disabilities; and Ms. Rosa Kornfeld-Matte, Independent Expert on the enjoyment of all human rights by older persons.

^{viii} See <https://www.adpc.net/igo/contents/Publications/publications-Details.asp?pid=1439> (Accessed: 28 May 2020).

^{ix} The study began with a focus on the role of legal and policy frameworks relating expressly to DRRM and CCA play in addressing disaster- and climate change-related internal displacement. Addressing wider legal and policy frameworks, including those relating to sustainable development, was considered too ambitious a project at the time. The conclusion to this volume highlights this area as part of an agenda for further research.

^x The Global Protection Cluster (2020) identifies the National Strategy on the Management of Disaster- and Climate-Induced Internal Displacement as the basis for recognizing Bangladesh as a country with a national policy on internal displacement. However, at the time of writing in early 2020, this policy had still not been formally adopted by the government. In addition, the Global Protection Cluster identifies Indonesia as not having a policy relating to disaster displacement. However, the Head of National Disaster Management Agency Regulation No. 03 Year 2018 on the Handling of Internally Displaced Persons during Emergency Response (currently only available in Bahasa Indonesia), sets out detailed provisions relating to protection of persons during evacuation and throughout displacement, and towards durable solutions. Consequently, Bangladesh has not been included amongst the countries

^{xi} Available at <https://rwi.lu.se/disaster-displacement/>

^{xii} Personal communication with RMMRU, 23 April 2020.

^{xiii} Currently only available in Bahasa Indonesia.

^{xiv} See description of this concept in Ly's contribution in Chapter 6 of this volume.