Global Campus of Human Rights

Volume 6 No 1
2022

Global Campus Human Rights Journal

The *Global Campus Human Rights Journal (GCHRJ)* is a peer-reviewed scholarly journal, published under the auspices of the Global Campus of Human Rights (see https://gchumanrights.org/research/publications/global-campus-human-rights-journal.html) as an open-access on-line journal. It is supported financially by the European Union Commission and appears twice annually.

This journal should be cited as (2022) 6 *Global Campus Human Rights Journal*

ISSN: 2532-1455

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https://gchumanrights.org

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Volume 6 No 1 2022

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Global Campus Human Rights Journal (2022) Volume 6 No 1

The *Global Campus Human Rights Journal* (GCHRJ) is a peer-reviewed scholarly journal, published under the auspices of the Global Campus of Human Rights as an open-access on-line journal.

Aim: The *Global Campus Human Rights Journal* aims to serve as a forum for rigorous scholarly analysis, critical commentaries, and reports on recent developments pertaining to human rights and democratisation globally, particularly by adopting multi- and inter-disciplinary perspectives, and using comparative approaches. It also aims to serve as a forum for fostering interdisciplinary dialogue and collaboration between stakeholders, including academics, activists in human rights and democratisation, NGOs and civil society.

Publication details: It is published under the auspices of the Global Campus of Regional Human Rights Masters (see https://gchumanrights.org), and is supported financially by the European Union Commission. It appears twice annually, in July and in December.

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Style guidelines: Detailed style gu idelines are on the *Journal*'s website, https://gchumanrights.org/research/publications/global-campus-human-rights-journal.html

Layout and typesetting: Nutthamon Nutthanapong

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Volume 6 No 1 (2022)

DOI http://doi.org/10.25330/2508

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http://dx.doi.org/10.25330/2511

Keynote "Internal displacement: opportunities and challenges in a world of mobility and vulnerabilities"[1]

*Cecilia Jimenez-Damary**

1. Introduction

It is with extreme delight that I join you today as the UN Special Rapporteur on the human rights of internally displaced persons (IDPs). Engaging with students and researchers of the academe has always been a priority in my term as mandate holder, in the hope that the situation of internally displaced persons can be more discussed and be a subject of good governance all over the world. The outcomes that sound research can provide to public policy makers and to the general public at large, with empirical data and analysis, are essential for the human rights of IDPs. So, thank you to those who are here – and those who are online – your presence is much appreciated.

For this opportunity, I thank the Global Campus of Human Rights for their kind invitation and the University of Pretoria for the warm hospitality and welcome. This invitation comes at the cusp of my six-term as UN Special Rapporteur – I have just five more months to go – and this is therefore a treat amongst my other commitments in my dialogues with UN member states, mainstreaming human rights into the United Nations system and engaging with civil society.

It is also so much pleasure for me to meet old friends again and meet new ones. And has been discussed, solidarity and learning from each other enables us all to be stronger together.

As scholars and researchers, you would have come across the worlds of refugees and migrants – an approach mirrored by the international policy making and architecture. On the other hand, a group of people "on the move", i.e. internally displaced persons, are often left out of the equation

* UN Special Rapporteur on the Human Rights of Internally Displaced Persons (IDPs); more information at link in English and link in Français.

1 Keynote address at the Conference on Internal Displacement, for the GC Global Classroom 2022, University of Pretoria, South Africa, 30 May 2022.

of the migration spectrum. While much attention has recently been given to the opportunities and challenges in internal displacement, and now the new appointment of a special adviser to the UN Secretary General on solutions for internal displacement, we need to continuously up the narrative not only of the needs of IDPs but also in relation to prevention and participation.

In fact, in 2018, the 20th anniversary of the UN Guiding Principles on Internal Displacement, I convened with Austria, Honduras and Uganda, the GP20 Plan of Action, which served as a platform for states, UN agencies and civil society to discuss the main issues surrounding internally displaced persons – based on the sound human rights and international humanitarian law (IHL) normative standards provided by the Guiding Principles. The 3-year GP20 Plan of Action was capped by the publication of the best national practices which remain a principal reference for practitioners and academics alike (GP20 Prevent Protect Resolve 2020). From 2020 onwards, many developments ensued, not least the establishment by the UN Secretary General of a High-Level Panel on Internal Displacement whose report is, again, a key document for you. However, the challenges do remain, on the ground.

Most of you would probably know two Global Compacts adopted by UN member states in 2018. On the other hand, bringing visibility to the continuum of displacement - from internal to cross-border and vice-versa - and emphasising the need for a continuum of protection and solutions for all those forcibly displaced is part and parcel of the big picture. Some of you, I am sure, witness internal displacement in your countries or even, work on it. When I was in Morocco in 2018 for the Global Compact of Migration, I was privileged to have been hosted by some Christian churches who were assisting migrants in Marrakesh. Many of these migrants were from sub-Saharan Africa and were "passing through Marrakesh" in hopes of being able to cross to sea. One woman told me that she had fled war from her country and was separated from her husband. A man informed me that he had to leave behind his family hiding in a forest because of violence and that the family had been able to seek safety in another city. Most of the stories are similar but undocumented. The anecdotal evidence coming out is that there is a firm correlation in many cases between internal displacement in countries of origin and migration or refugee situations in countries of transit and destination. I would call this the complete spectrum of mobility – from internal displacement to external displacement - that needs more quality and quantitative evidence and analysis.

Meanwhile, the latest figures on the number of IDPs from the Internal Displacement Monitoring Centre (IDMC), for the end 2021, have not let up and have grown again. In 2021, there remain 59.1 million IDPs, accumulated over time – 53.2 are IDPs who had fled from conflict and violence; 5.9 million from disasters, including those related to climate change. During 2021, there were a total of 38 million newly internally displaced, of which 23.7 were from disaster and 14.4 million from conflict and violence. It is therefore clear that majority of those who remained IDPs

at the end of 2021 were conflict and violence-driven IDPs. I would also like to inform you that the figure of the number of IDPs – 59 million at the end of 2021 – the biggest so far, do not include the IDPs in the context of the armed conflict in Ukraine which has recently risen to 8 million this month.

There is an increasing rise in the gravity and intensity of internal displacement situations worldwide and the number of internally displaced persons indicate the urgent need for states to dedicate increased efforts to prevent arbitrary displacement. Moreover, amid the increasingly complex nature of armed conflicts and generalised violence, it has become harder to enhance compliance with international humanitarian law and human rights. Political solutions have become more elusive and displacement is increasingly prevalent and protracted. Situations of conflict and violence can also be compounded by disasters as drivers of displacement and, since 2020, by the COVID-19 pandemic and its far-reaching effects.

The majority of those recorded displaced by armed conflict and violence remain in protracted displacement – that is, with no durable solutions in sight – for an average of 20 years. This means that generations of internally displaced children are growing up in displacement, with their education negatively impacted. Disasters, particularly sudden onset natural hazards, are also known to cause multiple displacements, while slow-onset disasters have started to cause internal displacement from areas that will become inhabitable.

In addition, unknown number of people are displaced by development projects, land grabbing and human rights violations such as illegal evictions, which I encounter a lot. I would also like to bring to your attention development-induced development, which no one is systematically monitoring. All over the world, we receive cases and situations where people are being forced to leave their homes because of public and private projects such as hydro-electric projects, mining projects and building of highways, even conservation and forest rehabilitation evictions. This is a much needed research field of study. Meanwhile, the deafening silence on this issue by governments and the UN has motivated me to dedicate half of my upcoming report to the UN General Assembly to development-induced displacement (Jimenez-Damary 2022b).

Over the years, while the numbers keep on rising, the protection issues and assistance needs are becoming more grave and more urgent.

For the protection and assistance to internally displaced persons – or IDPs – the direct and primary responsibility remain firmly and rightly with the states. States, through their governments, also have the primary responsibility for the prevention of arbitrary displacement, to protect IDPs and to find solutions in accordance with international law standards. This important premise is founded on the principle of sovereignty as responsibility, which is embodied in the UN Charter and reiterated in various international instruments, among which is the Guiding Principles on Internal Displacement which was adopted by the United Nations in 1998. The role of international agencies and other actors to protect and

assist IDPs is, on the other hand, complementary, and they have the right to offer protection and assistance to states. Under international law and practice, states are prohibited to refuse such offers on an arbitrary basis.

So, what makes "internally displaced persons" different from refugees and migrants, bearing in mind that there are different groups of persons who compose the spectrum of mobility and that such mobility is a feature of human civilization from prehistoric times to the present?

The UN Guiding Principles on Internal Displacement provide a descriptive definition of IDPs as follows:

> "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border." (Guiding Principles on Internal Displacement, introduction para. 2).

Thus, the definition provides a distinct element of non-voluntariness of mobility on the part of those displaced, provides probable causes, as well as territorial application. Moreover, it must be stressed that being internally displaced does not confer a specific legal status (contrary to refugees). In other words, IDPs enjoy the same rights as any other citizens or nationals, or resident foreigners, of the country of displacement.

The purpose of highlighting the situation of IDPs and working to enhance their protection is not to privilege IDPs over other groups; in fact, IDPs have the same rights as others in their country. They often experience many of the same risks as other civilians caught in conflict, who also are in need of protection. Yet, the experience of internal displacement also creates heightened as well as distinct protection risks for the reason they are forcibly displaced. These particular risks need to be understood and addressed so that the rights of IDPs are protected along with those of other non-displaced civilians. A human rights-based approach to internal displacement, is therefore needed to shift the discourse of national sovereignty to state responsibility on human rights law obligations.

As a consequence, we must ensure that attention to the protection of internally displaced persons is placed firmly in the context of the state's national responsibility but also on the continuum of mobility. Data have shown that some internally displaced persons are motivated, and able, to cross borders to become international migrants, refugees or asylum seekers. On the other hand, refugees, migrants and those in exile from their homeland may return to their own home countries only to find themselves in secondary internal displacement.

Given the current situation, there are growing challenges for prevention, protection and solutions that dictate for the need to push for international

support for national responsibility for internally displaced persons. This is the reason that side by side with the developments for enhancement for protection for refugees and migrants, efforts are likewise being stepped up for internally displaced persons, which I will describe later as our opportunities.

In our conversation today, I would like to focus on three important aspects: prevention, climate change and IDPs participation.

2. The importance of prevention of conditions for displacement and of arbitrary displacement

The augmentation of the number of IDPs, the increasing gravity of protection and assistance issues, and the growing pressure on protection and humanitarian aid on states and the international community have made it clear that more has to be done to prevent crises and address the root causes and triggers of displacement. Preventing arbitrary displacement in line with international standards is the primary responsibility of states and protects the population from the harms associated with displacement. Preventing arbitrary displacement is also in the interest of states, as it can avoid fragmentation of social cohesion and be less costly and easier in governance, than responding to displacement once it has occurred.

It is important to emphasise, however, that liberty of movement and freedom to choose one's residence are rights protected under international human rights law,[2] and that displacement can have a protective nature and prevent other harm and human rights violations, particularly in situations where people have to leave their homes or places of habitual residence in search of safety. It is also important to recognize the dangerous situation of persons trapped in conflict zones, who must be allowed and enabled to leave the area.

Therefore, preventive measures must focus on addressing the conditions that lead to displacement and on protecting people from being forced to leave their homes, in line with international standards, and must not hinder civilians from seeking safety or aim to prevent human mobility.

Taking measures to prevent crises and conflict are essential to preventing the conditions leading to displacement. Such important measures are wide in scope and prevent a range of human rights violations, which include, but are not limited to, arbitrary displacement. There are also key measures that states can adopt to prevent arbitrary displacement specifically, which are the focus of my report to the UN General Assembly in 2021 (Jimenez-Damary 2021).

This includes ratifying relevant treaties on international humanitarian and human rights law and, at the regional level, the Kampala Convention, and taking measures to implement their obligations at the domestic level.

Laws and policies relating to the protection of internally displaced persons need to ensure an appropriate response to internal displacement when it

2 International Covenant on Civil and Political Rights (ICCPR), article 12.

occurs, so as to prevent multiple or secondary displacements. Amending any laws and policies that have a discriminatory effect on internally displaced persons in the exercise of their rights, and perpetuates displacement and poses obstacles to durable solutions, is essential in this respect.

Contrary to a common misconception, prevention is not relevant only before displacement occurs; it is relevant to all phases of displacement. Incorporating a preventive approach in the response to displacement prevents further displacement.

Humanitarian assistance and protection measures, while addressing the immediate needs of internally displaced persons, also prevent secondary displacement by creating the conditions for people to stay in safety and dignity in an area pending a solution to their displacement. States must therefore guarantee and facilitate conditions for effective and safe humanitarian access by both international and local actors providing them to populations in need.

Moreover, a preventive perspective is important in durable solutions and development processes, which must be designed and implemented in respect for human rights so as to prevent the recurrence of arbitrary displacement.

Far too often, political interests determine government policies that favour one type of solution to internal displacement over another, and authorities push through plans that might not meet the required standards. In some contexts, Governments have imposed premature camp closures in an attempt to forcefully end a displacement crisis while the conditions for durable solutions were not in place.

Thus, return, relocation and resettlement processes that do not meet the required standards may amount to arbitrary displacement. Internally displaced persons might also undergo secondary displacement to escape forced returns or relocations and move to informal settlements or other temporary accommodations where they are exposed to the risk of evictions and further displacement.

In post-conflict settings, peace processes that include displacement issues and the participation of internally displaced persons and affected communities play a fundamental role in resolving internal displacement and preventing its recurrence. Furthermore, transitional justice can help prevent further displacement by ensuring accountability for acts that had led to displacement. My report to the UN General Assembly in 2018 focused on the important role of transitional justice in internal displacement settings to protect the rights of internally displaced persons (Jimenez-Damary 2018).

A preventive approach to arbitrary displacement cannot be disconnected from a human-rights based approach.

Human rights violations are usually causes and consequences of arbitrary displacement. As such, human rights monitoring constitutes an effective early warning mechanism, and realising human rights is the main path to

preventing crises and related displacement, mitigating their effects when they take place and resolving them.

A human rights-based approach also takes into account the situation of different groups of people, as well as their agency and coping mechanisms, which are essential elements to inform prevention and protection strategies.

The international community has been devoting increasing attention to the prevention of crises and their consequences. The 2030 Agenda for Sustainable Development, which is grounded in human rights, recognises the interdependence of peace, security and sustainable development and the need to redouble efforts to resolve and prevent conflict. The international community has also recognised the importance of human rights and its interlinkages to security and development in sustaining peace (see UN Security Council Resolution 2282 (2016) and UN General Assembly Resolution 70/262).[3] In 2016, the UN Secretary-General called for new and protracted internal displacement to be reduced by at least 50 percent by 2030 (United Nations Secretary-General 2016, paras. 81 to 85; Annex, 54 and 55). In his call to action for human rights in 2020, he recalled that prevention was a top priority across United Nations organizations and that there was "no better guarantee for prevention than for member states to meet their human rights responsibilities" (United Nations Secretary-General 2020). Prevention was one of the four pillars of the Plan of Action for Advancing Prevention, Protection and Solutions for Internally Displaced People 2018-2020 launched by the UN Special Rapporteur and other stakeholders on the twentieth anniversary of the UN Guiding Principles on Internal Displacement (GP20 2018), and was an area examined by the Secretary-General's High-level Panel on Internal Displacement, which just released its findings and recommendations (IDPs Panel 2021).

Prevention therefore is a key challenge – from preventing arbitrary displacement to addressing the root causes directly or indirectly, by reducing the risks of disasters, and by providing solutions to current situations through durable solutions and by preventing its recurrence.

My report to the UN General Assembly in 2021 focuses on the prevention of arbitrary displacement in the context of armed conflict and generalised violence and I invite you to read it. The report covers an analysis of the issue, including prevention of recurrence for example, through arbitrary camp closures, and recommendations on priority actions for states and organisations in facilitating conditions to prevent arbitrary conditions.

3. The reality of climate change emergency linked to internal displacement

Of course, you may ask, what about other causes of internal displacement, such as natural disasters linked to climate change? This is a topical theme given the important decisions just taken in COP26 in Glasgow last year. In

3 See also UN Secretary-General's report A/72/707-S/2018/43, which asserts human rights as a critical foundation for sustaining peace.

fact, my mandate has always been preoccupied with the effects of climate change, both sudden onset and slow-onset adverse hazards that result in disasters, as causes of internal displacement and its consequences on internally displaced persons.

Human mobility linked to the adverse effects of climate change, including displacement, is expected to increase significantly over the coming years and decades, and most displaced persons are expected to remain within national borders. The impacts of displacement on the enjoyment of human rights are extensive, affecting people's rights to freedom of movement, housing, food, water and sanitation, health care and education, as well as their cultural and religious rights, among others.

Two years ago, in 2020, I presented a ground breaking report to the UN General Assembly on the links between internal displacement and the slow-onset adverse effects of climate change in order to increase the attention to the so-called "less dramatic" effects but that, over time, have tremendous effects, including internal displacement, on the daily lives and futures of affected populations (Jimenez-Damary 2020). Among these examples are rising sea levels, melting of glaciers and desertification. The UN Guiding Principles on Internal Displacement clearly stipulate that disasters may be a cause of internal displacement; these slow-onset adverse effects of climate change can turn into a disaster. Moreover, the Guiding Principles likewise provide that internally displaced persons may be persons who are obliged, and not necessarily forced, to leave their homes.

Indeed, human mobility in the context of slow-onset processes can take many forms, including displacement, migration and planned relocation. In most cases, movement is not entirely voluntary or forced, but rather falls somewhere on a continuum between the two, with different degrees of voluntariness and constraint. In many cases, movement can be an effective adaptation strategy and prevent arbitrary displacement. People are displaced when they are obliged to leave because they can no longer adapt to the changing climate; they have no option other than to leave, when, for example, an area has become uninhabitable or too dangerous for human habitation. Slow-onset processes can also compound other displacement drivers, such as intercommunal tensions, violence and armed conflict. The intersecting risks of climate change and armed conflict heighten the vulnerability of people and communities and undermine their adaptive capacity, increasing their risk of displacement.

Internal displacement in the context of slow-onset processes poses particular challenges and needs increased attention. While climate change is global, its adverse effects and related mobility affect people differently.

Communities living in certain areas, such as low-lying coastal areas, small island states and Arctic ecosystems, are more exposed to slow-onset events and therefore at higher risk of disaster displacement. People whose livelihoods depend heavily on ecosystems, such as indigenous peoples, farmers, herders, pastoralists and fisherfolk, are affected more directly and at higher risk of

displacement. Slow-onset processes and related displacement also intersect with gender, age, ethnicity, socioeconomic status, cultural background and disability, resulting in differentiated impacts on different groups and exacerbating pre-existing inequalities and vulnerabilities.

The COVID-19 crisis has increased the vulnerability of communities to natural hazards, while climate change increases the frequency and intensity of natural hazards, together resulting in a higher risk of disaster and displacement. Climate action undertaken in respect for human rights is essential to prevention, protection and solutions for internal displacement

States must take action to protect people from direct threats to life and other human rights impacts of foreseeable natural hazards and related displacement. It is crucial to enhance climate change mitigation and adaptation efforts and honour and increase commitments to reduce greenhouse gas emissions, to prevent human rights harms and the conditions leading to displacement associated with the adverse effects of climate change. States must also protect vulnerable groups from the adverse effects of climate change, disasters and displacement.

Disaster risk reduction, preparedness and climate change adaptation that is undertaken with respect for human rights and integrate the specific challenges of internal displacement in the context of the slow-onset adverse effects of climate change are essential for an effective provision of humanitarian assistance and protection, and to support durable solutions in these contexts.

Climate action cannot wait longer. This is one reason why we – in the Inter-Agency Standing Committee (IASC)[4] – issued a collective statement (IASC Statement 2021) where we urged governments to take certain measures, among which are:

- Ensure a focus on the most vulnerable and marginalised people in crises, with a particular focus on women, youth, internally displaced people and refugees.
- Listen to communities and grassroots leaders, particularly women, youth and indigenous people, and engage them in decision-making and co-creating and owning solutions that put people, climate and nature at the centre of all actions.
- Invest in more effective preventative risk management and capacities at the local level, including on climate risk monitoring, early warning and early action.
- Increase financing for climate-adaptation action that targets the most vulnerable countries and communities.
- Turn global commitments into effective local action that empowers those most at risk.

4. The essentiality of participation of IDPs

States must ensure the participation of affected persons in decision-making, obtain their free, prior and informed consent and ensure transparency and access to information, equality and non-discrimination, accountability and access to effective remedies. When I presented my first report to the UN General Assembly upon assumption of my mandate in 2017, this was the theme of my report and it garnered immediate support from the international community (Jimenez-Damary 2017). Unfortunately, much still remains to be done at policy, programmatic and operations levels in responding to the prevention, protection and durable solutions. Lately, in a women leadership webinar on the situation of forcibly displaced women, one IDP woman strongly put forward that narratives on their plight, while important, should be elevated to their involvement and genuine participation in leadership in decision-making on their present and their futures.

Let me add at this point also the importance of IDP participation in your research – not only as subjects but also as end users. One of the most interesting researches I have advised on was a conflict-related research that was conducted on the inter-play between conflict and natural disasters on the internal displacement of indigenous peoples in the Philippines. The researcher not only gathered her data and evidence from the IDPs themselves in their place of displacement; after the publication of her research, she also undertook two important post-research activities:

1. Made formal presentations of the findings of her academic research to the government and civil society interlocutors in the Davao City and in Manila; and
2. Conducted a workshop with the indigenous peoples IDPs on how the findings could be used to the advocacy of the IDPs.

Indeed, it is important to also acknowledge the great agency of IDP groups, as well as the host communities, and how we can support them. In many contexts they display remarkable strength, resourcefulness and resilience in the face of disasters and displacement, despite the challenges, barriers and discrimination that they face. They also have traditional knowledge and valuable perspectives that can contribute to the design of programmatic responses, disaster risk reduction strategies and durable solutions. Affected communities in all their diversity must be an integral part of response and solutions to internal displacement. IDP participation in decisions affecting there is also a human right and, as citizens of their country, a political right of which they are disenfranchised by reason of their forced displacement. This year, my final report to the UN Human Rights Council is on the participation of IDPs in electoral processes (Jimenez-Damary 2022a).

Dear colleagues, students and researchers: it is clear that the situations of internal displacement and that of internally displaced persons grow dire every year. Since 2020, the COVID-19 pandemic has exacerbated the vulnerabilities of internally displaced persons and the rate of vaccinations for persons of vulnerabilities have not been equal in access and availability.

In fact, despite the pandemic, conflict and violence continue to rage in some countries and hundreds of thousands of new people have been forced to leave their homes to seek for safety, while natural catastrophes and slow-onset disasters are catching us all on the edge.

Your presence and participation in this course commit you to a path of responsibility for the tasks of prevention, protection and durable solutions for internally displaced persons. At this point, I would like us to reaffirm the universality, indivisibility and interdependence of human rights – which I recall entailed enormous work in the 1993 World Conference on Human Rights, with your Secretary-General Manfred Nowak at that time. These remain key principles in the application of human rights in all times, and to the most vulnerable and marginalised of populations – including internally displaced persons.

Lastly, during my term as Special Rapporteur, which ends on October 31, 2022, I have had the most amazing engagement with many committed people like you. As the first IDP mandate holder from Asia, the first woman and the first from an IDP-hosting country, it continues to be a privilege to engage. While a new mandate holder will be appointed, please continue to inter-act with the mandate. Meanwhile, I look forward to learning from your research papers and, after this week, I hope our paths will cross again. As the Global Campus President Veronica Gomez stated, take advantage of my presence this week, this is why I am here.

Thank you for listening. And from here on, I would like to listen to you.

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http://doi.org/10.25330/2507

The intersection of internal displacement in the context of armed conflict and violence with climate change and disasters

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1. Introduction: the Global Classroom

The Global Classroom is one of the flagship international activities of the Global Campus of Human Rights, the aim of which is to bring together students, professors and experts from all its regional programmes. The Classroom conducts team research on a topic of current interest for all the regions involved, and this is studied, analysed and discussed through the lenses of different regional perspectives in a week-long conference. The discussion is enriched with the participation of experts including representatives of states, United Nations (UN) agencies and civil society organisations (CSOs). The uniqueness of this annual event lies in the possibility of understanding key regional perspectives and deepening the study of global human rights and democracy challenges.[1]

Since 2014, it has become an established practice to link the Global Classroom event to the annual Global Campus (GC) research programme. The benefit of this is the opportunity for students, academics and experts to interact in an open lively forum and provide inputs which could feed into the research programme and enrich its findings. The 2022 Global Classroom was hosted by GC Africa and coordinated by the University of Pretoria's Centre for Human Rights in Pretoria, South Africa, from 30 May to 4 June 2022. This year's Global Classroom research theme was **internal displacement**. Students from the GC regional programmes came together to present their work on internal displacement to an audience made up of experts from academia, government agencies, UN and CSOs. Notably, the event was attended by the UN Special Rapporteur on the Human Rights of Internally Displaced Persons (IDPs).

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1 See Global Campus of Human Rights. Link (last visited 13 August 2022)

2. Internal displacement

Globally, the number of people affected by internal displacement has sharply risen in recent years. According to the Internal Displacement Monitoring Centre (IDMC), there were 59.1 million internally displaced persons (IDPs) at the end of 2021, across fifty-nine countries and territories, which is the highest number ever recorded. Of these, 53.2 million people were internally displaced due to conflict and violence, while 5.9 million people were displaced due to disasters such as floods, landslides, drought, extreme temperature, wildfires, storms and earthquakes (IDMC 2021c). The IDMC further noted that in 2021 there had been 38 million new cases of internal displacement, with 14.4 million related to conflict and violence and 23.7 million due to disasters (IDMC 2021a), showing an increase in the impact of climate-related disasters on internal displacement numbers, after the 7 million recorded in 2020 (IDMC 2021b). The effects of climate change are significant and impacts will continue to influence the pattern of internal displacement unless urgent action is taken.

The number of refugees — those who cross international borders — increased in recent years. According to the UN refugee agency, the UN High Commissioner for Refugees (UNHCR), there were 26.6 million refugees in mid-2021 (UNHCR 2021a). However, many countries have taken measures to prevent refugees and other migrants from reaching them, leaving displaced persons to seek refuge within their own countries as their only option (Marshall 2018). This clearly shows the strong connection between internal and external displacements as refugees. According to the UN Special Rapporteur on the Human Rights of IDPs, "there is a continuum of displacement, from internal to cross-border and vice-versa, which emphasises the need for a continuum of protection and solutions for all displaced persons" (Jimenez-Damary 2022). In most cases, people who make the decision to seek refuge or migrate across an international border or to another country are those who are affected by conflict, violence or natural disasters in their country. Climate change amplifies natural disasters or hazards such as floods, heatwaves, drought, rising sea levels, salination of soil and freshwater bodies, and changes in seasonal rainfall and temperatures. Under these conditions, situations of conflict and violence are further compounded by disasters and other humanitarian emergencies such as COVID-19 as drivers of internal displacement. These scenarios show that there is a strong correlation between internal displacement and migration. The Special Rapporteur refers to this as "the complete spectrum of mobility — from internal displacement to external displacement — that needs more quality and quantitative analysis". Regrettably, not much scholarly attention and research has been devoted to examining the correlation between internal displacement and refugee situations (Jimenez-Damary 2022).

To date, more people live in internal displacement worldwide than ever before, partly because of the failure of authorities to respect and

fulfil their obligations under international law. The changing nature of armed conflict and violence makes it harder to ensure compliance with International Humanitarian Law (IHL) and International Human Rights Law (IHRL), which guarantee the protection of civilians, including IDPs. The rising number of IDPs points to the prevalent and protracted nature of displacement, which puts a huge burden on states to prevent arbitrary displacement, ensure the protection of IDPs and facilitate durable solutions to the IDP situation (Jimenez-Damary 2022).

The main legal framework at the international level is supplied by the UN Guiding Principles on Internal Displacement presented by the Representative of the UN Secretary-General on Internally Displaced Persons, Francis Deng, to the UN Commissioner on Human Rights in 1998. The Guiding Principles define internally displaced persons as "persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internally recognized state border" (UNHCR 1998, Introduction para 2).

The Guiding Principles are still widely recognised as an international standard when dealing with IDPs, and they acknowledge the unique vulnerabilities of IDPs by putting in place measures to reinforce their rights as enshrined in the IHL and IHRL. They provide a clear framework of how states can prevent and prepare for displacement, protect people during evacuation and throughout displacement, and facilitate durable solutions in the context of internal displacement, whether due to armed conflict and violence or due to natural disasters and climate change (Scott and Salamanca 2021). The Guiding Principles' definition of IDPs is also much broader and more inclusive than the refugee definition. It recognises the coercive or involuntary nature of displacements, accounts for displacements due to natural or environmental disasters, and recognises displacements within national borders. This is in contrast to the 1951 UN Refugee Convention that mainly accounts for displacement due to persecution, violence, or conflict, and only within international borders, making it too narrow and exclusive (UNHCR 2011).

The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (African Union 2009) attempted to fill the gaps in the UN Refugee Convention. It introduces some nuances on IDP protection from an African perspective.[2]

2 The Kampala Convention was adopted in 2009, entered into force in 2012, and as at the end of 2021 had been acceded to by thirty-one of the fifty-five AU member states (African Union 2020).

For example, it accounts for women's health, the mental health of IDPs, the needs of host communities, and the importance of social, economic and environmental impact assessments of any planned development project, compelling states to act accordingly. Importantly, the Kampala Convention holds states liable for their obligation to protect and assist IDPs.

Nonetheless, the Kampala Convention still faces some setbacks, including weak implementation, impunity, and on-going human rights violations, as well as unfavourable political systems that make it impossible to realise the Convention fully. Similarly, looking back over the twenty-five years since the adoption of the Guiding Principles, their application has almost exclusively focused on conflict- and violence-related displacement as opposed to climate-induced-disaster displacements. Moreover, there isn't any UN treaty on IDPs. The 1951 UN Refugee Convention, as read with the 1967 Protocol, is only applicable to cross-border refugees. The fact that the Guiding Principle has not been negotiated and agreed by states into a binding treaty renders it not legally binding. The implication is that it is hard for states to recognise the unique vulnerability of IDPs and to provide them with the requisite additional protection or assistance. Even in the absence of a treaty, the UN refugee agency, UNHCR, is the UN lead agency in relation to the protection of IDPs (UNHCR 2021b).

Of course, the human rights and international humanitarian law stipulated in various treaties at the UN and regional levels is applicable to everyone, including IDPs. Principle 5 of the UN Guiding Principles on internal displacement stipulates: "All authorities and international actors shall respect and ensure the respect of 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." However, the reality is different, and more specific measures are called for to ensure the protection of IDPs, especially the most vulnerable and marginalised IDPs who have been displaced due to conflict, violence and natural disasters.

There exist a number of other relevant international instruments, besides the Guiding Principles and the Kampala Convention: namely, the United Nations Framework Convention on Climate Change (UNFCCC 1992), the Kyoto Protocol 1995, the Bali Principles of Climate Justice 2002, and the Paris Agreement 2015. These instruments provide specific measures to address climate-related disasters and impacts. However, despite the existence of these international instruments and frameworks, they in reality have little to no application in most countries. Yet the importance of these principles, especially on "climate justice",[3] cannot be overemphasised if the adverse and negative impacts of climate-induced displacements and

3 Climate justice addresses the inequitable outcomes for different people and places associated with vulnerability due to climate-related impacts. It addresses climate change as an ethical and political issue, rather than one that is purely environmental or physical in nature. Link (last visited 22 September 2022)

harm on less privileged and marginalised populations are to be mitigated and avoided without any discrimination (Bali Principles of Climate Justice 2002). A climate justice lens should consider the existing vulnerabilities, resources and capabilities of those most affected by disasters. Particularly in the case of the Guiding Principles, it is important that the principles are integrated into national laws and policies for greater impact and effectiveness, accompanied by detailed standards and guidelines, including on disaster risk reduction, climate change and adaptation, and sustainable development (Scott and Salamanca 2021).

The Global Classroom 2022 attempted to do just that, by examining the extent to which the different countries under review integrate or adopt the Guiding Principles in their national laws or to what extent the Principles have been domesticated and applied in the different countries. The papers do this by examining specific cases of IDP response, or lack thereof, in different countries around the world against the existing legal provisions of the country.

3. Causes of internal displacement

Despite a growing body of literature on internal displacement, it is largely overlooked by the international community (Nguya 2019). The causes of internal displacement are a combination of conflict and violence, in addition to the compounding impacts of climatic disasters on people's lives and livelihoods, and other structural conditions, including political and economic. In particular, climate change contributes to exacerbating natural disasters such as floods, heatwaves, drought, rising sea levels, cyclones, typhoons, changes in seasonal rainfall patterns and temperatures, by increasing the frequency and intensity of these phenomena, which are among the drivers of internal displacement. It also directly and indirectly contributes by compounding the exposure and vulnerability of the affected population (IPCC 2014). Often, these climatic conditions intersect with situations of conflict and violence to compound the challenges of internal displacement.

Moreover, studies show that the historical and immediate drivers of fragility — socioeconomic and political marginalisation; unequal development, poor governance and corruption; and power inequalities in control over, access to and use of resources such as land or water — are what create vulnerability to climate variability and change, and to other natural hazards (McCullough et al. 2019; Opitz-Stapleton et al. 2019; Peters et al. 2020; Mayhew et al. 2020; Mayhew et al. 2022; IPCC 2022; Von Uexkull and Buhaug 2021; Benjaminsen et al. 2012; UNDRR 2015, 2019, 2022). There exists evidence that "disasters are manifestations of unresolved development problems, and are thus outcome-based indicators of a skewed, unsustainable development paradigm based on unlimited growth, inequality and overconsumption … Exposure and vulnerability as well as hazard itself (through climate change and environmental degradation) are socially constructed …" (UNDRR 2015, 33).

Even though most countries and regions of the world are affected by climate extremes, developing or poor countries and regions are more affected than others. The combination of climate change, conflict and violence with other forms of fragility threatens to expose millions of the poor in the developing world to drought, floods and extreme heat by 2030 — leaving them more impoverished than before (Scott and Salamanca 2021). To illustrate, Somalia is one of the poorest countries in Sub-Saharan Africa, with 70 percent of the population living in poverty. The country is one of the African countries most vulnerable to climate change, yet it also experiences on-going tensions resulting in violence and conflict over scarce natural resources. The combined effects of climate change and conflict worsen an already disastrous situation (ICRC 2021). More than three decades of armed conflict have weakened Somalia's state institutions and response mechanisms. The situation is further made worse by recurrent shocks such as floods and drought which have become more frequent and intense in recent years.[4] Somalia is a perfect example of how countries in the Global South who do not contribute much to the greenhouse gas emissions are bearing the brunt, while richer nations who contribute more of the emissions are the least affected by it.

The link between climate change and conflict are intricate. Climate change and related activities such as overexploitation of natural resources may intensify instability and conflict, triggering internal displacement. Similarly, climate change may also increase the intensity of natural disasters such as floods, landslides, which may lead to new and secondary internal displacement in areas that have already been affected by conflict and violence, heightening the vulnerability of internally displaced people and the host communities (IDMC 2021c). Disasters can also interact with pre-existing deep-seated social-structural conditions and systemic discrimination related to social class, types of housing, human settlements, location, remoteness, water management and economic activity, among others. There are also differential impacts along lines of gender, race, class, age, sexual and ethnic minorities, disability, immigration status and other intersections (Scott and Salamanca 2021). In Brazil (see the contribution from Latin America and the Caribbean to this edition), ***favelas*** suffer more from landslides in heavy rains because of the weak and poor construction. Thus, the combination of climate crisis and shocks with conflict, violence and pre-existing social conditions affects IDPs ability to cope and recover, driving internal displacement, food insecurity, and a host of other effects such as malnutrition and disease outbreak. Due to their peculiar economic, social, political and geographic conditions, IDPs are not homogenous, and they will be differently affected by displacement, requiring differing responses as opposed to a "one size fits all" approach.

4 The frequency of climate-related crises in Somalia is increasing. More than thirty climate-related hazards, including droughts and floods, have hit the country since 1990 – a threefold increase on similar events which occurred between 1970 and 1990. Link (last visited 10 August 2022)

4. Challenges of internal displacement

Internal displacement, whether due to disasters or conflict and violence, massively disrupts people's lives and livelihoods. Even though internal displacement can present new opportunities, it often times undermines IDPs' wellbeing. They are uprooted from their homes, assets, livelihoods and networks, compromising their ability to make ends meet (IDMC 2021b). They are unable to earn a living or fend for their households, requiring humanitarian assistance (see the GC Caucasus paper in this edition). These challenges affect IDP welfare and wellbeing. In most cases, displaced women, girls, and other minority groups such as LGBTQIA+, ethnic minorities and indigenous communities, bear the brunt. They are exposed to a greater risk of abuse and deprivation of their rights.

The unequal structural conditions and systemic discrimination of many societies put women, girls and other minority groups in a position of disadvantage, further entrenching their vulnerabilities in times of displacement. These people are not only physically dislocated, but also socially, in terms of their belonging. Displacement disrupts and transforms familial and kin-based networks, and customary gender and generational relations and roles (Baines and Gauvin 2014). Thus, it is important to consider the ways in which families and communities (especially minority groups such as LGBTQIA+, girls and women, ethnic minorities and indigenous communities) are ruptured during displacement, and the effects it has on the conventional relations expected of men and women. It can result in severe mental and physical health problems as well as social and economic consequences for IDPs, their families and communities, including shame, stigma, ostracism, fear and the loss of livelihoods.

What is most interesting is to understand the ways in which internal displacement intersects with existing inequalities to heighten the vulnerability of those who already live at the edges of society. The GC Arab World paper in this edition explores how internally displaced girls in Yemen and Iraq are forced into early marriages by their families to get some resources for their survival, while women face increased risks of gender-based violence or have to take on additional gendered roles to provide for their households in the absence of their husbands or male heads of household. Under these situations, girls and women are prone to resort to prostitution and transactional sex. They also suffer the risks of sexual, physical and other forms of violence and abuse such as rape, honour killings and sexually transmitted infections (STIs). Even minor activities such as collecting water and firewood or going to the latrine in the IDP camps could put them in harm's way. Additionally, their hope of an education or career of their own choice is erased by their living conditions of deprivation and lack. All these factors expose them to severe mental trauma and possible suicide (Johansen 2019).

Similar experiences are encountered by LGBTQIA+ and other minority groups, such as women, children, indigenous people, low caste, and ethnic minorities, who may be pushed off their land, their only source of sustenance. In the GC Asia Pacific paper in this edition, the authors show how the practice of caste-based occupation and restrictions placed on vulnerable groups such as low caste groups and women in India further worsen their plight in displacement, especially due to a lack of opportunities for sustaining themselves. In the GC Latin America paper, it is observed that displaced LGBTQIA+ could not share a generalised shelter for IDPs due to the threat of violence. This implies that their unique circumstance and pre-existing vulnerability were not addressed by the available response, further heightening their vulnerability.

All of these examples speak to the importance of intersection in addressing IDP needs in a way that is grounded in clear understanding of the power structures of their society. It is important to appreciate how these power structures impinge on the capacity, capabilities and needs of different groups of people, instead of applying a simplistic and generalised approach that does not address the unique needs of the different groups of internally displaced (Scott and Salamanca 2021). There ought to be relevant and sufficient data on the plight of all IDPs to inform responses that meet their unique needs and circumstances.

A second important way to understand the challenge of displacement is related to generating accurate demographic characteristics of the internally displaced population to ensure that programmes and policies can adequately address their specific needs and risks. Without this, it is impossible to ensure targeted responses to the specific risks and needs of the different demographic groups who are internally displaced. As evident in the GC Asia Pacific and South East Europe papers in this volume, the lack of adequate data and information on IDPs in Bangladesh and Kosovo rendered it impossible for programmes and policies to respond to the specific needs of IDPs. In particular, without sufficient data and information on internal displacement and its effect, countries are not able to adopt relevant policies and laws, especially those related to climate-induced displacement, or to incorporate the Guiding Principles into national laws.

Thirdly, the nature and complexity of crises that lead, for example, to disaster-related displacement make studying internal displacement challenging (South Sudan Humanitarian Fund 2020). There is a paucity of data on how many people are affected by climate-related disasters. Specifically, there is a lack of understanding on the long-term impacts of climate-related disasters on affected people, especially for slow onset disasters like drought, changes in seasonal rainfall and temperatures, ocean acidification, and sea level rises:

> The scarcity of data on how long people remain displaced, however, makes it difficult to fully understand the scale and nature of protracted displacement triggered by disasters and climate change impacts. The misconception that most, if not all, IDPs return to their homes soon after disasters may lead to the incorrect assumption that they no longer have needs associated with their displacement. The reality is often more complex, and these initial estimates constitute a first step toward filling a major knowledge gap. (IDMC 2021c)

What is most challenging is the difficulty of linking displacement with these slow onset disasters. Normally, it is hard to draw a relationship between this type of disaster and an individual decision to leave or move from a home, since such disasters happen slowly and over time. This is in contrast to sudden onset disasters such as floods or cyclones, where the impact is clear and it is easy to link to displacement. Yet it is increasingly clear that climate change and associated events are pushing more people into poverty, causing both short- and long-term displacements. For example, many people from Sub-Saharan Africa are trying to get into Europe due to the combination of violence and conflict with the slow onset disasters in the region which have left many people vulnerable. They are forced to seek alternative ways to make a living outside their countries as refugees. Thus, it is important to understand how people who are uprooted by violence, conflict and disasters live and make a living for themselves and their households in the long term, especially in the absence of, or with limited, humanitarian assistance.

Yet the fact that there are significantly more IDPs than refugees worldwide has had little effect on the attention given to the plight of IDPs, notwithstanding the commitments made by donors over the years (IDMC 2017). Importantly, there is a shifting dynamic in urban populations resulting from conflicts and disasters (see the GC South East Europe paper in this volume), which makes paying attention to IDPs crucial and timely. A UNHCR 2006 report projected that, by 2026, more than half of the Sub-Saharan African population would be living in urban areas (Pavanello and Pantuliano 2010) and 51 percent of the worldwide IDP population would be resettled in urban spaces (IDMC 2017, 28). It is particularly crucial to understand the changing dynamics in urban areas which result from the massive population movements caused by internal displacement (Nguya 2019). A key consideration of internal displacement in urban settings is that avenues should be created to address the plight of internally displaced persons at different levels — policies and programmes.

Lastly, the COVID-19 pandemic has also heightened the plight of IDPs, creating a new risk to their lives and livelihoods. The mitigation measures to combat COVID-19, such as the closure of markets and the restrictions on the movements of goods that were implemented by many countries, increased the prices of essential commodities while rendering some essential goods and supplies unavailable. The COVID-19 health response

also stretched existing health services, disrupting access to routine health care especially in countries that traditionally struggle to provide good health care services to their populations, including IDPs. Most humanitarian interventions were either halted or diverted to the pandemic response (South Sudan Humanitarian Fund 2020). More importantly, a shift in donor funding priorities affected the interventions targeted at IDPs, with limited funds and support to meet their specific needs and interests. Moreover, intensified violence and armed conflict as well as climatic disasters increased the cost of providing humanitarian assistance to IDPs. Road access to IDPs has been cut off, constraining humanitarian access while increasing the cost of delivering assistance. Often, humanitarian actors resort to expensive air transport. The different challenges of internal displacement constitute the main focus of the Global Classroom 2022, as outlined here.

5. The 2022 Global Classroom papers

The Global Classroom 2022 theme of internal displacement drives the GC regional network focus on a range of interrelated themes that address internal displacement in different contexts around the world.

The GC Europe paper outlines the situation of IDPs within the European context, highlighting critical issues to be addressed by a possible European Union IDP policy. The paper examines the IDP challenge from climate justice and mental health perspectives, and assesses the potential contribution of these fields in a future European convention or policy on internal displacement resulting both from armed conflict and climate change. Importantly, the paper argues for the inclusion of mental health, and of protecting vulnerable IDP populations such as women and the LGBTQIA+ community, in the IDP legal provisions. The GC Africa paper, on the other hand, focuses on the extent to which climate justice and other human rights principles are applied and reflected in legal and policy matters related to internal displacement in the countries of Zimbabwe, South Africa, South Sudan and Liberia. The findings show that climate justice principles and other human rights policies are not adequately addressed in the legal regimes of those countries, where there is a preference for promoting sustainable development and climate change mitigation as opposed to climate justice initiatives. The paper concludes that the ratification of international instruments on climate justice is not sufficient without the domestication and implementation of climate justice principles in the relevant countries.

The GC Asia Pacific paper examines the patterns of internal displacement and the impact on the well-being of those most affected by climate change and natural disasters in Bangladesh, India and the Pacific Islands. The paper also examines the existing policy frameworks on internal displacement in each country to identify their relevance and any gaps in addressing climate change and natural disaster-induced displacement. Meanwhile, the GC

South East Europe paper also provides important insight into the context of IDP return, resettlement and reintegration in the post-conflict period, with the case of the former Yugoslavia; Serbia, Bosnia and Herzegovina, and Kosovo. The paper examines the existing legal and policy frameworks of the countries in the case study to understand the extent to which they address the social, economic and political situation of IDPs. The findings show that return, resettlement and reintegration of IDPs is not linear but rather more complex, with people moving in and out of different phases of displacement depending on the prevailing social, economic or political conditions in their country. From another perspective, the GC Caucasus paper examines the context of IDPs in the on-going conflict in Ukraine following the Russian invasion in February 2022. It investigates state and non-state actors' responsibility in emergency response to IDPs. The findings show that while the state plays a vital role in the provision of humanitarian assistance in displacement, it is unable to fulfil its obligations in the context of the on-going armed conflict. Despite their limitations, non-state actors fill some gaps by providing critical humanitarian assistance required by the IDPs in Ukraine.

The GC paper from Latin America and the Caribbean explores the aspect of climate-induced displacement in the cases of Honduras, Bahamas, Peru and Brazil, examining how the unique circumstances of IDPs such as LGBTQIA+, indigenous people and other marginalised groups are legally and practically addressed in the IDP response, especially at the local level. The paper argues that any response needs to pay attention to the needs and circumstances of these groups, while also recognising the historical and political contexts that continue to aggravate the current and future crises affecting the region. Lastly, the GC Arab World paper looks at the legal and policy frameworks and the responses to the context of IDPs in Iraq and Yemen, with a specific focus on women and children, in relation to their security, health, education, livelihoods, needs and interrelated factors affecting their lives during displacement. The paper acknowledges the importance of sufficient resources, stable administration, humanitarian corridors and government commitments to fulfilling their mandate — beyond legal and policy provisions.

It is evident from the different GC papers that IDP rights are not fully established under IHL and IHRL as those of refugees, despite IDPs facing similar vulnerabilities that require the same measure of protection that refugees are accorded. Legal and policy frameworks are essential to the protection of people displaced by climate change and other natural disasters, as well as by armed conflict and violence. However, the legal and policy regimes cannot work in isolation — they should be aligned with the circumstances and needs of IDPs.

Further, the papers demonstrate the extent to which IDPs are not homogeneous, but different in terms of their age, gender, disability, ethnicity, class, etc. These differences determine how people experience

internal displacement, as well as shaping their vulnerabilities, capabilities and resources, requiring an intersectional lens to mitigate and adapt relevant programmes, policies and laws to the IDPs' plight.

Lastly, it is evident from the different papers that climate-induced internal displacement is on the rise, yet little focus and attention is paid to it — especially to slow-onset disasters such as drought, rising temperatures, and sea level rises. These climatic changes are increasing in intensity and frequency, and the situation is expected to get worse over the coming years. The changes are further aggravated by pre-existing political, historical and structural conditions in most countries. However, the underlying joint drivers of internal displacement — fragility and climate vulnerability — need to be addressed simultaneously through a climate justice lens in order to address both armed conflict and climate risk. Focusing on the hazard (climate change or armed conflict) will not address the underlying drivers, manage associated risks, or build the resilience of IDPs. A climate justice approach will, without any discrimination, mitigate and avert the internal displacement challenges and impacts facing the most vulnerable populations.

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Zoi Aliozi, Stav Dor, Anne Sophie Gscheidlen, Chiara Passuello and Adam Drnovsky. "An examination of the protection of the rights of internally displaced persons in Europe: From the Kampala Convention and the UN Guiding Principles on Internal Displacement to a European convention." (2022) 6 *Global Campus Human Rights Journal* 15-40
http://doi.org/10.25330/2506

An examination of the protection of the rights of internally displaced persons in Europe: From the Kampala Convention and the UN Guiding Principles on Internal Displacement to a European convention.

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Abstract: *At a time when violence and climate change are causing the displacement of millions of individuals globally, this article argues that the protection of the human rights of internally displaced persons (IDPs) should be put at the top of the European agenda. In light of Russia's invasion of Ukraine, it is more important than ever that Europe creates its own legal protection framework. This article addresses the two major drivers of internal displacement, climate and conflict, and their impact on the rights of IDPs. It examines the existing framework of IDP protection in humanitarian law, the UN Guiding Principles on Internal Displacement, the African Union's Kampala Convention, and the existing case law of the European Court of Human Rights (ECtHR) pertaining to IDPs' rights. Through a human rights lens this article analyses both the merits and gaps of existing frameworks from which a European convention must learn. Using climate justice, intersectionality and*

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psychological approaches, inter alia, it elaborates on various shortcomings identified in the areas of climate-induced displacement, mental health and the protection of vulnerable groups of IDPs, on which a European framework on IDP protection must expand. The goal of this article is to examine the above-mentioned issues not only in the context of current challenges but also in relation to future developments, since we will see further increases in internal displacement due to both armed conflict and climate change.

Key words: *internal displacement; IDPs; climate justice; Europe; human rights*

1. Introduction

Russia's invasion of Ukraine has so far caused the displacement of over seven million individuals within the borders of Ukraine alone (IOM 2022a). Similar trends of internal displacement can be observed around the globe where armed conflicts are happening. Additionally, climate change induced displacement has drastically grown over recent decades and climate change experts agree that it will continue to grow dramatically. The 1951 Convention and Protocol Relating to the Status of Refugees protects those who flock to neighbouring countries, seeking the comforts of safety and a better life.

But what happens to those left behind? Internally Displaced Persons (IDPs) are those individuals who have remained within the borders of their country because of: conflict, human rights violations, or various forms of disasters (OCHA 1998, Introduction (1)). According to the Internal Displacement Monitoring Centre (IDMC), over 330,000 people in Europe and Central Asia were internally displaced in 2021. This number has since drastically increased due to Russia's invasion of Ukraine.

In reality, IDPs are often ignored by the international community, thereby leaving them vulnerable to global exclusion. One example of how this disregard is manifested in Europe can be seen through the lack of a legally binding regional framework. By turning a blind eye to the marginalisation of IDPs, society enables the violation of their human rights. This article argues that these continued injustices must be addressed, and therefore examines the existing legal protection framework concerning IDPs both internationally and in Europe to learn how to incorporate good practice legislation and close gaps in a European convention on the protection of IDPs. IDP protection is defined in terms of state obligations concerning the prevention of internal displacement, the mitigation of the effects of internal displacement on those affected and their host communities, and long-term solutions for IDPs. This article pays particular attention to some of the most neglected consequences and vulnerabilities caused by internal displacement.

Firstly, the sources of displacement will be mapped out, followed by an analysis of the existing framework for IDP protection on the regional and international level. The article then presents the gaps that exist in said protection, concerning the right to mental health and the protection of vulnerable groups such as women, girls and the LGBTQI+ community. It concludes by arguing in favour of improving the framework for the protection of IDPs by adopting a European Convention on Internal Displacement, and it offers recommendations for what should be included in such a treaty.

2. Sources of displacement

2.1. Climate change and natural disasters

Research shows that one of the major causes of the proliferation of internal displacement is the climate crisis, which is becoming a serious driver of displacement for current and future generations. According to IOM, climate change, natural disasters and environmental degradation are profoundly changing global migration, with their effect on mobility being complex, multicausal and stratified (IOM 2021, 6–8).

According to the principles of climate justice (Aliozi 2021, 4), the primary result of climate change is social injustice, given that climate-related disasters predominantly target already vulnerable people. The countries most affected by climate change tend to be the ones contributing the least to the phenomenon's emergence (Levy and Patz 2015, 311). As in the reasoning behind the Vulnerability Principle (Aliozi 2021, 7–10), in the climate justice field it is the poorest and most marginalised communities in a country, among them women, girls and members of the LGBTQI+ community, who are among the ones suffering the most. They hence require the greatest protection.

Over the years, Europe has undoubtedly emerged as a leader in industrial expansion, which has given little room for consideration of climate issues and has in fact contributed to them. Although the effects of the climate problem are only slowly being felt on the old continent, there was an increase in the frequency of extreme weather events there between 2016 and 2019. Moreover, around 276,000 persons were internally displaced in Europe in 2021 as a result of climatic events, more than twice the number of new cases of climate-induced displacement as had appeared in 2019 (IDMC 2022b). This shows a worrying trend of increasing climate displacement, with flooding being the primary cause. The nations most impacted by these occurrences are geographically disparate, including among others Spain, Italy, France and Germany (Kron, Löw and Kundzewicz 2019, 74–83).

The European Environment Agency (EEA) warns that southern Europe should anticipate warmer summers, more frequent droughts, and a higher incidence of wildfires. Additionally, heavy annual rainfall is expected to

increase across northern Europe. Central Europe is to see decreased summer rainfall, but more frequent and severe weather conditions, such as heavy rain, river flooding, drought, and fire dangers (EEA 2021). In all European regional seas, sea surface temperature, heatwaves and water acidity are anticipated to rise. Additionally, sea-level rise is quickening, and this might endanger cities such as Venice and Thessaloniki, and coastal areas in the Mediterranean basin. This impacts the forty-two million people residing along the lowest 37 percent of the Mediterranean coastline.

Furthermore, heatwaves in Europe endanger people's health by increasing mortality as well as fire frequency and size. Desertification will diminish the amount of land available for agriculture, amplified by water constraints, particularly in southern Europe. Overheating drastically diminishes land and marine habitats, permanently altering the ecology. Water scarcity will affect more than a third of the population of southern Europe if left unaddressed, posing an extreme threat to countries such as Italy, Greece, Malta, Spain and Portugal.

The effects of climate change will presumably become the main cause of internal displacement in Europe. Consequently, the region is compelled to adopt an ad hoc regulatory instrument taking into account the prominence of climate change as a cause of displacement and the resulting needs of those affected.

2.2. Conflict and violence

In addition to climatic concerns, roughly sixty million people worldwide were displaced by war and violence in 2021 (IDMC 2022a, 12). Due to Russia's invasion of Ukraine, Europe is currently experiencing unprecedented levels of internal displacement of millions of people (OCHA 2022). Moreover, in 2021 there were 3.3 million IDPs in Europe due to conflict and violence, with more than half of them in Turkey, Azerbaijan and Ukraine (IDMC 2022a).

Forcible relocation during a war often results from breaches of international humanitarian law or human rights. Attacks on people and civilian property are prevalent in armed conflict, as are famine and reprisals (OHCHR 2022). In Ukraine, thousands of civilian injuries and deaths have been recorded, largely from wide-area explosives. Many civilians have fled following residential bombardments and alleged war crimes (Human Rights Watch 2022). Under these conditions, IDPs require their fundamental human rights and humanitarian aid.

Even when wars end, displacement persists. There are hundreds of thousands of people still registered as IDPs in Cyprus and Bosnia and Herzegovina after conflicts that took place decades ago (IDMC 2009, 2014). These examples demonstrate that finding sustainable solutions is

an arduous undertaking. Additionally, governments favour repatriation of IDPs over their local integration or resettlement. This impedes long-term solutions, such as the enfranchisement of IDPs in their *de facto* place of residence (IDMC 2011, 2). IDPs therefore find themselves marginalised and lacking protection (see chapter 3.3). In addition to preventing the root causes of displacement and safeguarding IDP rights in the short term, a European convention must specify permanent solutions to the protracted displacement caused by conflict and violence.

3. Existing framework for IDP protection

3.1. Legal protection of IDPs at the international level

3.1.1. International human rights and humanitarian law

Owing to the universal nature of international human rights law, every individual regardless of displacement or residence status is entitled to the rights conferred under the ICCPR and ICESCR. IDPs are hence protected by international human rights law on the same basis as every non-displaced individual. Nonetheless, since the international human rights framework applies to everyone equally, it evidently neglects the heightened vulnerabilities and challenges faced by IDPs because of their displacement. For instance, when IDPs wish to resettle to their old home after the reason for their displacement has subsided, they may be confronted with obstacles when it comes to the freedom of choosing one's residence under Article 12(1) ICCPR. Or, in violation of Article 24(2) ICCPR, they may not be able to register their children after birth if their country requires them to do so in their municipality of habitual residence. Some such cases of human rights violations of IDPs, specifically of rights under the European Convention on Human Rights (ECHR), have been reviewed by the ECtHR, and will be analysed in chapter 3.3. Furthermore, some human rights instruments leave room for significant discretion in their implementation, such as the right to mental health under Article 12 of the ICESCR (see chapter 4.2) which does not specify any actions to be taken by states in this regard. However, mental health care is a crucial factor in the well-being of IDPs and their communities. Moreover, while the ICESCR recognises and safeguards the equality of men and women, it does not account for the gender-specific vulnerabilities of internally displaced women and members of the LGBTQI+ community which call for greater state action (see chapter 4.1).

Like human rights, international humanitarian law (IHL) is not primarily concerned with IDP rights (ICRC 2022), but Geneva Convention IV pertains to "non-military individuals" in conflicts generally (ICRC n.d., Rule 5), thus including any civilian IDP affected by armed conflict. It therefore applies to all conflict-induced IDPs in Europe, such as those affected by Russia's war against Ukraine.

Geneva Convention IV's Article 49 protects IDPs against forced displacement unless necessary for the population's security or "imperative military reasons" (Fourth Geneva Convention 1949, Art. 49). In principle, this restricts internal displacement during armed conflict to these two exceptions and non-forcible displacement. The responsible party must nonetheless guarantee appropriate housing, respect for family unity, and "satisfactory conditions of hygiene, health, safety and nutrition" for displaced individuals regardless of the legality or illegality of their displacement (Fourth Geneva Convention 1949, Art. 49).

Geneva Convention IV Articles 38 to 46 moreover codify the rights of non-repatriated people, who according to the International Committee of the Red Cross (ICRC) are "protected persons who have remained or been retained in the territory of a Party to the conflict" (ICRC 1958). This definition resembles the IDP definition. Consequently, IDPs benefit from the protection of these articles. Thereunder they are entitled to humanitarian help, medical care, religious practice, and to travel for their safety (Fourth Geneva Convention 1949 Art. 38). Pregnant women, mothers with small children, and children under the age of fifteen must receive the same preferential treatment as citizens of the respective state (Fourth Geneva Convention 1949 Art. 38), hence acknowledging their exceptional protection needs.

Customary IHL (CIHL) expands the Geneva Conventions and Additional Protocols by catering *inter alia* to the special needs of IDPs (ICRC 2010). For instance, Rule 132 gives displaced people the right to return home voluntarily after the cessation of the causes of their displacement. Rule 133 safeguards their rights vis-à-vis the property they left behind, an issue that has been adjudicated by the ECtHR (ICRC n.d., Rules 132 and 133). CIHL Rule 134 observes that, in addition to conferring upon them the same rights as men, IHL must cater to women's exceptional vulnerabilities in terms of their health, protection and other needs (ICRC n.d., Rule 134) (see chapter 4.1.1.).

In summary, the aforementioned legislative bodies grant IDPs the same protection as non-displaced individuals or refugees. Nevertheless, by failing to detail state obligations concerning IDP issues, human rights instruments leave significant scope for the exercising of discretion. As far as IHL and CIHL are concerned, it is also important to highlight that they do not apply to IDPs displaced by environmental causes. This is where a European legal instrument protecting IDPs regardless of displacement cause must restore the inadequacy of the current legal framework. It would take up existing provisions of human rights, elaborate on the circumstances and hurdles of internal displacement, and extend IHL and CIHL safeguards (such as the protection of the right to property and the right to return) to all IDPs.

3.1.2. The UN Guiding Principles on Internal Displacement

The non-binding provisions of the UN Guiding Principles on Internal Displacement (Guiding Principles) restress existing, binding international human rights and humanitarian law, and fill in some of the gaps in IDP protection (OHCHR 2002). For instance, they define IDPs as individuals displaced within one state for various reasons (OCHA 1998, Introduction para 2). In contrast to the 1951 Refugee Convention's refugee definition, the Guiding Principles acknowledge environmental causes of displacement (Zetter 2011, 20). Since this recognition is not binding, however, a European convention including a comprehensive IDP definition in line with the UN Guiding Principles would be a legal novelty in the region.

Another significant contribution to IDP protection, in Principles 28 to 30, is the right to choose between integration, relocation, or resettlement. They stress that any of these actions may only be undertaken with the affected individual's cooperation and consultation. Furthermore, these Principles underline IDPs' civil and political rights such as the right to political participation under ICCPR Article 25. Stressing these rights vis-à-vis IDPs is essential, since they are likely to face barriers to exercising these rights while living outside their own communities, if for example the state only allows people to vote in their place of habitual residence. Principle 19(2) addresses their entitlement to property, which should be restored upon their return to their communities or adequately compensated, thereby reaffirming CIHL Rule 133.

Another fundamental contribution to human rights and IHL is Principle 4(2)'s acknowledgement of the "unique needs" of internally displaced women. Its recognition of the heightened vulnerability and different needs of displaced women not only reflects Geneva Convention IV Article 38(5) and Additional Protocol I Article 76, but it goes beyond IHL by incorporating "female heads of household" because women may be put in charge of their family and communities due to conflict or displacement. They are therefore to be included in relocation and relief distribution processes under Principles 7(3)(d) and 18(3). Additionally, women must be protected from forms of violence that are more likely to occur in displacement circumstances and disproportionately impact them, such as gender-specific violence and rape, as highlighted by Principle 11(2a), CIHL Rule 93, Geneva Convention IV Article 27 and Additional Protocol I Article 76(1). As for the health needs of women, the Guiding Principles' spotlight on the "access to female health care practitioners and services, such as reproductive health care, as well as appropriate counselling for victims" is a crucial contribution to IDP protection that must inform a European convention (OCHA 1998, Principle 19(2)), as it is neglected by human rights and humanitarian law.

Lastly, Principle 19(1) provides IDPs with the right to psychological and social support. The Additional Protocols only prohibit violence against the mental wellbeing of individuals, but do not provide for a right to psychological treatment. As chapter 4 will argue, however, mental health is crucial for an individual's and society's overall well-being, and for the individual's ability to avail themselves of their other rights. Owing to the heightened mental health needs of displaced persons, a European convention must incorporate their right to mental health and adequate support, even more extensively than the UN Guiding Principles.

3.2. The Kampala Convention

The Kampala Convention, the first regional, legally enforceable treaty codifying IDP rights and protection, not only mimics the Guiding Principles in, for example, prioritising women's health, but also expands them by applying a climate justice lens. For instance, Article V (4) holds that states must safeguard and support IDPs displaced because of climate change or other environmental disasters, while Article IX (2)(j) requires states to avoid environmental damage in IDP areas. If they fail to assist IDPs in these circumstances, they may be held accountable under Article XII (3). Considering the growing number of individuals displaced by environmental factors in Europe, a European convention can learn from the respective provisions in the Kampala Convention and the urgent need to satisfy the requirements of climate justice by offering human rights protection to climate-driven IDPs.

The Kampala Convention also places an obligation on states to support host communities by compelling them to consider the latter's needs and vulnerabilities when formulating internal displacement policies and laws (Kampala Convention 2009, Articles III (2)(c) and V (5)). This is necessary as host communities themselves may have been touched by the incident that displaced the IDPs or may be enduring their own hardships. By keeping this in mind, a European convention may reduce communal disputes.

In short, the Kampala Convention unquestionably makes substantial contributions to the protection of IDPs, as it codifies issues that have not been adequately covered by international human rights and international law. It could therefore be used as a model for future IDP accords such as a European convention for IDPs. Still, the Kampala Convention has its flaws and has lessons to offer as to what works and what does not in a legal framework concerning IDP protection. While it was signed by most African Union countries, and many have adopted its terms (African Union 2022), its execution and practical implementation leaves much to be desired (ICRC 2020). Human rights abuses and other treaty requirements may go unpunished, eroding the legal environment (Kamungi 2010). Consequently, while a legislative framework on IDP protection is a

necessary first step in Europe, it must be followed by actions to realise its full potential, such as extending the jurisdiction of the ECtHR to IDP rights and state obligations in the European IDP convention.

3.3. The European regime of IDP protection

While the ECHR and other provisions apply to IDPs and should offer basic protection to them on an equal basis with non-displaced persons or refugees, Europe still lacks a legally binding treaty that would offer specialised protection to IDPs. This subchapter discusses the existing merits and shortcomings of European IDP-specific soft law that need to be taken into account in relation to a possible European convention on IDPs, similar to the Kampala Convention. For example, the Council of Europe (CoE) Parliamentary Assembly has urged governments to pursue sustainable solutions for IDPs' repatriation, local integration, or integration elsewhere. Referring to the UN Guiding Principles, the Assembly underlined the fact that sustainable solutions are needed to preserve IDP rights under applicable CoE treaties (CoE 2009a).

The Guiding Principles are also relevant to the Recommendation of the Committee of Ministers to IDPs (CoE 2006), which was approved by consensus and hence has substantial political weight (Paraskeva 2017, 13–14). The Recommendation translates the duties of CoE countries under the ECHR into concrete principles. The Preamble reminds CoE states of the prohibition of arbitrary displacement, although it admits that it is implicit. Meanwhile, Article IV (4) of the Kampala Convention forbids arbitrary displacement and provides an extensive but non-exhaustive list of examples thereof, thereby providing guidance as to the interpretation of the term. Article III (1) (a) furthermore creates a clear state obligation to prevent and prohibit arbitrary displacement, which puts states under a precise responsibility to act.

A European convention therefore needs to take note of the African provisions rather than European soft law for preventing arbitrary displacement — for instance, those concerning the accountability of non-state perpetrators of forced displacement (Kampala Convention 2009, Article III (1) (i-h)).

Referring to the UN Guiding Principles, the Recommendation explicitly recognises natural and human-made catastrophes as causes of internal displacement (Principle 1), thereby emphasising the urgency of addressing climate-induced displacement. Moreover, Principles 2 and 3 outlaw discrimination of IDPs, and advocate for affirmative actions to preserve their rights. The Recommendation further reminds states of their obligation to protect IDPs' rights and provide them with humanitarian aid (Principle 4). Additionally, it calls on governments to avoid actions that may infringe IDPs' rights to life, bodily integrity, liberty and security (Principle 5). It

also protects IDPs' rights to family reunion, property ownership, voting, and repatriation or resettlement (Principles 6, 8, 9 and 12). Nevertheless, unlike the Kampala Convention, the Recommendation fails to cover social, economic and cultural rights (Articles IX (2)(b)).

The Principles of the Recommendation are backed by procedural assurances, including measures to provide all documentation and education required for IDPs to exercise their rights (Principles 7, 10 and 11). The Committee of Ministers likewise appeals to states to explore developing new international instruments to address deficiencies in international law regarding IDP protection in Europe (Principle 13), opening the door for potential binding instruments expressly addressing IDP protection in Europe. In this context, the main merits of the soft law instruments lie in the explicit recognition of IDPs as a vulnerable group that needs protection and in the provision of a comprehensive overview of state obligations towards this group.

Yet, as this article will argue, in order to prevent future injustices and ensure that a European Convention for IDPs will succeed, it is of crucial importance to expose problems such as the failure to respect and include: climate justice considerations and requirements alongside social, economic and cultural rights; the physical and mental health of IDPs; and special protection of vulnerable groups (LGBTQI+, women and girls). Lastly, the non-binding nature of these instruments is another shortcoming which arguably can serve as an important justification for creating a comprehensive and legally binding treaty protecting the rights of IDPs in Europe.

In addition to soft law, European IDP protection is founded on human rights norms and the ECHR. All forty-six CoE members are obligated by the ECHR to safeguard IDPs within their authority. Each IDP is entitled to Article 1's protection of all ECHR rights and freedoms and may petition the ECtHR. The ECtHR has adjudicated on a considerable number of instances involving IDPs' rights and made numerous landmark judgements.

A useful example can be found in the "Cyprus instances", where the Court decided on IDPs' right to belongings. In *Loizidou v. Turkey*, the Court determined that displaced Greek Cypriots who were refused access to their homes during Turkey's invasion of Cyprus remained legal owners of their properties but lost all control over and all capacity to utilise and enjoy it. The ECtHR ruled that they were entitled to compensation directly related to the violation of their rights under Article 1 of Protocol 1 (Protection of property) (ECtHR 1996, para 31).

In comparable instances, the Court has also established violations of applicants' right to their home, even though they weren't homeowners, as in *Doğan and Others v. Turkey* (ECtHR 2004, para 139). Article 8 has

also been cited in circumstances of multi-generational IDP families with tight links and interdependencies ingrained in cultural norms disturbed by forced relocation (ECtHR 1997, para 73).

A good number of ECtHR cases concern missing individuals during armed conflicts and persecution, where IDPs are particularly vulnerable. In judgements about enforced disappearances the Court has established infringements of IDPs' right to life (Article 2), to prohibition of torture (Article 3) (ECtHR 2001, paras 157–158), to liberty and security (Article 5) (ECtHR 2014, para 58), and to an effective remedy (Article 13) (ECtHR 2012). These cases concern persons who vanished and were never discovered or were proclaimed or assumed dead under questionable circumstances, particularly in Russia and Turkey.

Several of the foregoing rights have been infringed along with IDPs' freedom of movement (Article 2 of Protocol 4). In *Cyprus v. Turkey*, the Court stated that unrestricted movement is important to fulfil the right to return home and/or the right to property restoration (Article 8 and Article 1 of Protocol 1) (ECtHR 2001, para 283). In this instance, the Court also refers to IDP discrimination. However, Article 14's ban on discrimination may only be applied when other ECHR rights are violated and thus it solely protects the Convention's rights against discrimination.

In *Šekerović and Pašalić* v. *Bosnia and Herzegovina*, the Court found a violation of Article 14 in conjunction with Article 1 of Protocol 1 in the case of a pensioner returning to her place of origin after the war who was discriminated against as a former IDP (ECtHR 2011, paras 36–37). Similar application has been applied by the Court also to discrimination of IDPs based on their sex (ECtHR 2015).

Unlike Article 14, Article 1 of Protocol 12 to the ECHR forbids discrimination for the enjoyment of any domestic right. In *Selygenenko and Others v. Ukraine*, the Court decided that IDPs were discriminatorily barred from participating in municipal elections (ECtHR 2022).

The ECtHR's case law illustrates that, although IDPs in Europe lack a binding treaty addressing their needs, they are not wholly excluded from European human rights protection. Some of their rights are legally enforceable based on general protection provided by the ECHR, which is a clear merit of the European regime of human rights.

Yet the protection of IDP rights in Europe is inadequate and confined to specific rights which have historically been at risk in conflict-affected regions, a reality which fails to acknowledge climate-justice rules. Thus, a more comprehensive protection of IDPs' rights in Europe is warranted, acknowledging that our world is under a climate emergency. Existence of soft law mechanisms demonstrates the European governments'

political commitment to safeguard the rights of IDPs, but the lack of a comprehensive and legally enforceable treaty exposes the shortcomings of IDP protection. This is crucial in the face of the proliferation of wars and climate-change-induced internal displacement in Europe.

In light of these problems, more must be done to address natural disaster-caused relocation, specific protection for vulnerable people, and general protection of human rights. In resolving some gaps, the Kampala Convention and the UN Guiding Principles can serve as architectural blueprints.

Nonetheless, as this article will show, other gaps such as the right to mental health are an opportunity for a European convention on IDP protection to become a pioneer in the international human rights sphere.

4. Gaps in IDP protection

4.1. Vulnerable groups

4.1.1 Women and girls

To have a clearer picture of internal displacement and the factors that differentiate the experience of certain social groups, it is necessary to be able to distinguish between the singular elements within the same phenomenon, to recognise the peculiarities which characterise certain categories of IDP and individual types of experience, and to identify constants within these vulnerable groups. When individuals are displaced, they suffer far more harm than just the loss and destruction of their belongings; their lives and their social fabric are torn apart.

Displacement also perpetuates socioeconomic disadvantages and accelerates inequalities by reinforcing detrimental pre-existing gender stereotypes. In this sense, displacement affects women differently and in a more negative way than it does men, with diverging effects varying at various stages of a crisis (IDMC 2019, 3–4). On a continental scale, the armed conflict between Russia and Ukraine has already had a major impact on the situation of IDPs in Europe: IOM estimates that more than seven million people have been displaced since the beginning of the conflict (IOM 2022b, 3). At least 59 percent of these IDPs are women, which underlines the need for additional safeguards to be put in place to address the heightened vulnerability of women (IOM 2022b, 4).

Firstly, women are less involved in formal employment than men and, once displaced, they are even less so. This may have long-term implications for the development of women and girls, as well as for their families and communities. These consequences are both a human rights and a development issue that the European region must address (IDMC 2020, 12).

Secondly, women in Europe are disproportionately represented among the poorest and oldest members of society, making them more susceptible to negative effects and without the resources to adapt in the event of natural disaster. Women typically have a harder time finding well-paying professions and exit the job market earlier, leaving them with fewer resources for recovery from natural calamities. The burden of care work typically falls on women, so even in this scenario they are responsible for the effects of a climate-related calamity. According to the vulnerability principle, the most fragile people suffer the most from climate events, and this is the case for women in Europe too. Despite this, the European Green Deal, which was introduced simultaneously with the new Gender Equality Strategy, remains gender-blind despite the EU's commitment to climate policies (Allwood 2022, 4).

Moreover, internal displacement increases the danger of gender-based violence for women and girls, by separating them from their communities and in some cases their families who may otherwise protect them. Some studies suggest that relocation increases domestic violence, which may be linked to stress and trauma. Women may be compelled to participate in transactional sex to live, increasing their risk of violence and abuse (Plan International 2018, 15). Insecurity often forces females to remain home rather than attend school, lowering their future earning potential. It is challenging for girls and women to avail themselves of basic services and to engage in community life (Plan International 2018, 15).

When it comes to the phenomenon of internal displacement, the female category does not represent a single block characterised by the same issues affecting all women equally: in the face of this occurrence, an intersectional approach can identify the most disadvantaged categories of women (Crenshaw 1989, 1991). Among them are internally displaced women with disabilities, migrant women, religious minorities, Roma women, women from a disadvantaged socioeconomic class, transgender and queer women, etc., each category requiring specific protection according to their particular vulnerability (Agbonifo 2020, 30–32). It is vital to collect sufficient data on the various groups of IDP women and their living circumstances and needs, so as to design more adequate policies and provide sufficient resources to assist them and their communities.

4.1.2 LGBTQI+ people

Similar to IDP women, members of the LGBTQI+ community are confronted with exceptional vulnerability as the discrimination faced outside of displacement is exacerbated by forcible displacement (IDMC 2019, 5). Internal displacement disrupts social life, which is especially problematic for persons from sexual minorities, who rely largely on the community for support, knowledge, and access to livelihoods or homes. It can push individuals into severe hardship and vulnerability to abuse and violence, on top of losing their home and livelihood (IDMC 2019, 5).

The situation is undoubtedly more stable in Europe than elsewhere, despite the fact that several European countries continue to exhibit a tremendous lack of protection of the LGBTQI+ community. For instance, Italy has yet to adopt a specific law that protects a person from hate crimes perpetrated on the basis of their sexual orientation or gender identity (Schillaci 2022), and in countries such as Poland and Hungary governments are the protagonists of anti-LGBTQI+ propaganda (Reid 2021). Consequently, the protection of the LGBTQI+ community in Europe leaves much to be desired, especially in light of ongoing conflicts and looming climate-induced displacement.

For instance, Russia's war against Ukraine is worsening the vulnerability and marginalisation of LGBTQI+ people in Ukraine. Before the invasion, LGBTQI+ persons faced stigma and were negatively perceived by a large portion of Ukrainian society, despite the fact that sexual diversity is not illegal in the country. As in many other European countries, LGBTQI+ people in Ukraine were experiencing hate speech, discrimination, harassment and abuse due to their actual or perceived sexual orientation, gender identity, gender expression, and/or sex characteristics (SOGIESC) prior to the war. This made the community more prone to rejection and isolation as they avoided making public appearances or participating in related advocacy initiatives (UNHCR 2022).

After the start of the war, LGBTQI+ NGOs in the area built up special shelters for internally displaced queer people to shield them from prejudice, violence and discrimination based on sexual orientation and gender identity. As an example of such discrimination, some transgender women were prevented from leaving Ukraine because they had not yet gone through the legal process of legalising their gender identification, and martial rule mandates all men between the ages of eighteen and sixty to remain in Ukraine to fight. These factors combined to raise the number of IDPs (CoE 2022).

In light of ongoing conflicts in Europe, such as Russia's invasion of Ukraine, and increasingly severe climatic conditions, the unique circumstances in which some social groups live highlight the need for specific ad hoc protection. A separate convention on IDPs including special protection for the most vulnerable groups is therefore urgently needed in Europe.

4.2. The right to mental health

Another aspect to be considered regarding individuals facing internal displacement, whether through natural catastrophe or conflict, relates to their vulnerability to violations of their right to health (Rae 2011, 33).

Most health-related concerns of persons on the move are physical, including infectious or transmittable illnesses, inadequate nourishment, and sexual well-being and safety (Brolan et al. 2017, 2). Article 12 of

the International Covenant on Economic, Social and Cultural Rights (ICESCR) is said to be the most "comprehensive article on the right to health in international human rights law" (ECOSOC 2000), highlighting the obligation of States Parties to protect both the physical and mental health of individuals (ICESCR 1966).

In addition, the Committee on Economic, Social and Cultural Rights (CESCR) has further acknowledged that "health is a fundamental human right indispensable for the exercise of other human rights" (ECOSOC 2000). This reiterates how human rights are "interdependent, indivisible and interrelated" (Vienna Declaration and Programme of Action 1993), emphasising that violating the right to health can interfere with other human rights (OHCHR 2008, 6). Failure to acknowledge the indivisibility of the right to health from other human rights is dangerous in that neglecting the interconnectivity of all human rights is thought to be a major hurdle to their implementation (De Beco 2019, 158).

Regarding the European perspective, the European Social Charter (ESC) is believed to supplement the ECHR as it relates to the right to health (CoE 2009b, 1). More specifically, Article 11 of the ESC imposes a "range of positive obligations designed to secure the effective exercise of that right" throughout Europe (CoE 2009b, 2). As such, states must take "measures that enable and assist individuals and communities to enjoy the right to health" (ECOSOC 2000).

In order to properly and thoroughly explore the right to health of IDPs, it is necessary to recognise that there is "no health without mental health" (WHO 2005, 11). Mental health is vital to the well-being of both individuals and societies (WHO 2005, 11). As such, mental health should be emphasised in current discussions about IDPs and incorporated into existing and future policies, but most importantly should be included in legislation within the European context. This is particularly pressing, as the right to health of IDPs, including the right to mental health, has not been codified in European soft law instruments nor ECtHR case law, thereby neglecting IDPs' heightened health vulnerabilities. Furthermore, a European convention could pioneer the field of binding mental health legislation, both for the sake of the individual in question as well as their community.

4.2.1. Mental health and the individual

To build on the international obligation of states to safeguard mental health, some key drivers of adverse consequences for the mental and overall health of IDPs must be recognised. To begin with, the WHO defines mental health as a "state of well-being in which the individual realises his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to

his or her community" (WHO 2005, 49). In this regard, mental health can be seen as subjective well-being, where an individual's "emotional vitality" and "positive functioning" reflect their psychological, emotional and social well-being (Snyder and Lopez 2002, 48).

Elements linking a person's emotional vitality and positive versus negative functioning should also be considered. First, a connection has been found between mental disorders and other health conditions, thus leading to comorbidity (Prince et al. 2007, 862). This conclusion confirms that health cannot exist in a vacuum wherein mental health is excluded.

To better safeguard IDPs' right to health, variables that correlate with poorer mental health, and therefore reduced general welfare, should be considered. Research has found that such factors often include age, sex and living areas (Porter and Haslam 2005, 608). More specifically, the older the individual is at the time of displacement, the worse the outcome on health was. In general, females indicated "poorer mental health outcomes" than males, as did rural residents when compared with city dwellers (Porter and Haslam 2005, 608). Furthermore, heightened and enduring stress has also been linked with lowered physical health (Sanderson 2013, 102).

In contrast, post-displacement variables that have been found to correlate positively with psychological functioning include proper resettlement conditions and economic prospects (Sanderson 2013, 102). In essence, enhanced mental health was observed in those living in stable, long-term and private accommodations whilst being provided with the right to work, which helped individuals maintain their socioeconomic standing (Sanderson 2013, 102). This stresses the need for a European convention to incorporate practical long-term solutions to ensure at the very least some degree of stability for IDPs.

In addition, there are also individual features that correlate with a beneficial effect on this group. It has been shown that certain personality traits (i.e., "extraversion, openness") and coping abilities (i.e., "mindfulness skills, positive reframing") are linked to enhanced mental health (Bucher et al. 2019, 58). Another important factor in mental well-being is resilience, a defence mechanism that helps people "thrive in the face of adversity" (Davydov et al. 2010, 479). It is vital to be mindful of such data, as efforts to implement policies and legislation with mitigating effects in Europe should target vulnerable groups. Moreover, being aware of environmental and individual characteristics that positively affect the mental health of IDPs might help states to establish programs centred on those features which are deemed beneficial to the individuals' well-being. Here again, exchange between professionals exploring the resilience and psychological hardships of IDPs is crucial in identifying and disseminating good practice, so as to benefit as many affected individuals as possible.

4.2.2. Mental health and society

Having focused on mental health and the individual, it is important to understand that the mental health of people "is integral to shaping the health of communities and populations" (UNHRC 2017, 16). To further explore the social value of addressing individuals' mental health, one must consider the ripple effects on wider communities, or, in other words, the cost to the social fabric of inaction.

According to the WHO, "a lack of positive mental health is a threat to public health, the quality of life and the stability of Europe" (WHO 2005, 49). Unpacking this sentence begins with grasping the meaning behind "ripple effect" and discussing the relationship between an individual's mental health and the welfare of society.

To begin with, health, which (as has already been established) includes mental well-being, is an essential precondition for a sustainable and socially constructive European society (WHO 2005, 49), and is likewise important for communities of IDPs and those hosting them. It has been found that mental health improves social cohesion, or solidarity, whilst enhancing the overall security within any society (WHO 2005, 49). Specifically, optimum environments for mental health can be fostered by enhancing the "sense of belonging" amongst individuals, by embracing diversity, and by providing people with comparable life possibilities (Ratcliffe and Newman 2011, 28). Diminished mental health, on the other hand, especially that which results from exposure to trauma, has consistently been shown to correlate with augmented levels of serious and violent crime in communities (Hahn Fox et al. 2015, 164). Hence, the neglect of IDPs' potential trauma, arising from their upheaval, losses, or experiences of mass atrocity, would imperil the stability of their community as a whole.

Additionally, the social capital of a society may deteriorate when the mental health of people is left neglected or ignored (WHO 2005, 49). For example, it has been established that diminished mental health impacts society via reduced productivity and employment (WHO 2005, 49). Thus, when the mental health of IDPs is ignored, it first and foremost diminishes their ability to avail themselves of their right to work, but it also affects their community at large. These economic and social impacts of poor mental health on society are not only significant, but also enduring (WHO 2005, 49). Analysing the impacts of mental health, both on the well-being of individuals and the welfare of society at large, must also be considered through a human rights lens. The reason for this is that it is not enough to address the ill-health of individuals and its adverse consequences on society solely from a psychosocial perspective. Rather, a comprehensive approach must also include a framework which emphasises the importance of justice, through legally and ethically binding principles (Yamin 2008, 46).

Essentially, a human rights framework complements the psychosocial one by noting that health is a product of "social, and inherently power, relations". Human rights arose as an instrument to enable all people, "without distinction of any kind" (UDHR 1948, Article 1), to live a life of dignity and equality, and this should serve as a compass in highlighting that the right to health must also be considered in those terms. Therefore, maintaining that "health is a matter of human rights" implies that ignoring the mental health of IDPs does not only violate their right to health, but also breaches their other human rights, such as the right to live in dignity (Yamin 2008, 46).

In summary, this research suggests that considering the issue of mental health is a vital starting point in better protecting the right to health of individuals facing displacement in Europe. Only when this occurs can the right to health comprehensively be explored. Future practices with a focus on mental health and psychological assistance can include those that address proper post-displacement conditions within European countries, as well as those providing tangible support programs and services. Lastly, European governments have a duty to collaborate on the respect for, protection of, and fulfilment of the human rights of IDPs, including their right to physical and mental health.

5. Conclusion and recommendations

The deficiencies in IDP protection on the European and international level leave the region's IDPs in peril. In light of the ever-growing numbers of IDPs in the region, the CoE member states must urgently tackle the gaps and reinforce existing human rights law by acknowledging the challenges specific to IDPs.

In general terms, a European convention on the protection of IDPs must include:

1. A definition of internally displaced persons accounting for the various causes of internal displacement.
2. Financial, technical, logistical and other support for the UN Special Rapporteur on the human rights of IDPs, and for other UN entities that help IDPs.
3. A uniform data collection system, especially concerning:
    - climate-induced displacement, to map the issue in the area and notice new trends, and
    - the most vulnerable groups of IDPs, to ensure that the right aid reaches them in the correct quantity.

4. An obligation to prevent internal displacement. The convention may suggest that member states seek advice from the Special Rapporteur, NGOs and other organisations working with IDPs (the intersectionality approach), as well as countries and regions that have dealt with the issue and developed sustainable solutions (e.g., the national legislation in Fiji and Vanuatu, and the Kampala Convention, regarding climate-induced displacement).
5. A platform to exchange good practice on national IDP legislation and practice and to cooperate in building national capacities in addressing internal displacement.
6. The protection of all political, civil, economic, social and cultural rights on the same basis as those of non-displaced individuals, but also taking into account any challenges arising from displacement. In identifying these, the drafters of a European convention must consult with various IDP populations and members of subgroups, such as children, persons with disability, women, members of the LGBTQI+ community, and so on.

Furthermore, as this paper has argued, any future European convention, policies or legislation (as well as their national equivalents) which relate to IDPs ought to focus not only on the human rights framework, but also incorporate relevant frameworks for the European context, such as climate-justice, psychosocial and intersectional perspectives. This requires awareness-raising among the CoE countries as well as training for members of governments and policymakers.

Concerning climate-induced displacement, a European convention must obligate CoE countries to:

1. Include the climate justice perspective into national IDP legislation.
2. Mitigate climate change. Many European countries are among those contributing proportionately most to climate change. If they fulfil their duties for climate action and do their share in combating climate change, this will also have an impact on reducing climate displacement.
3. Assist disproportionately affected regions and communities in building resilient infrastructures and establishing disaster management frameworks.
4. Help rebuild communities affected by environmental

disasters. In the EU and candidate countries the EU Solidarity Fund can be invoked in cases of natural disaster. Creating a similar program for the entire CoE community could be a potential solution for mitigating the effects of climate change disasters.

As far as the heightened vulnerability and special needs of some groups of IDPs such as women and the LGBTQI+ community are concerned, a European convention must:

1. Protect these groups from discrimination and guarantee the investigation of violations.
2. Consult these groups on their needs.
3. Apply a gendered perspective particularly to the right to health by guaranteeing, for instance, medical and psychological care for survivors of gender-based violence.
4. Provide protection from gender-based violence by, for example, advising states to establish shelters for survivors, and training authorities to identify and appropriately respond to such forms of violence.

As regards the right to health, a European convention must show that the right to mental health is intrinsically linked with the right to physical health as well as with the ability of the individual to make use of their other rights. It must draw attention to the fact that violations of the right to mental health of the individual have repercussions for the entire community, including its stability. It is therefore vital that state parties to a European convention agree to:

1. Guarantee the medical and psychological care and rehabilitation of IDPs particularly when they have witnessed atrocities and other traumatic events. This includes allocating sufficient funds to such programs.
2. Involve organisations such as the ICRC when they are unable to provide IDPs with medical care.

Provisions concerning long-term solutions for IDPs must include:

1. An obligation for states to consult IDPs on whether they wish to integrate, resettle or repatriate, and what they require to undertake any of these options.
2. Installing programs to bring together IDPs and their host community to support their integration, even if such integration is only for the short- to mid-term.

3. Listening to host communities regarding their needs when it comes to including IDPs.
4. Fighting discrimination and guaranteeing the human rights of IDPs, so they can become members of their communities.

Europe has the means and know-how to develop an IDP protection framework. The ECHR implicitly protects IDPs. The ECtHR may make binding ECHR decisions and has done so in IDP situations. Along with growing soft law, these elements may be utilised in formulating a comprehensive and binding framework stressing IDP challenges, while national IDP legislation should address the particular conditions of each country.

European countries have to date failed to see and acknowledge the urgent need for regional and national IDP protection, particularly when it comes to defining climate-induced displacement as a fundamental cause. Nevertheless, there are countless advocacy opportunities. With the growing frequency of environmental disasters followed by displacement, the debate will increasingly be drawn to climate-induced displacement and the urgency of codifying policies and measures to protect affected individuals. Moreover, the ongoing displacement in Ukraine has received considerable attention from policymakers, and willingness to cooperate in supporting those affected by Russia's invasion. By harnessing the momentum of the climate emergencies in some European regions and the displacement of Ukrainians, there is not only an urgency but also an opportunity to create a novel convention on IDP protection that engages various and diverse perspectives, from climate justice to psychology, gender issues and human rights.

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http://doi.org/10.25330/2505

Climate displacement and the relevance of climate justice: A trend analysis of South Africa, Zimbabwe, South Sudan and Liberia

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Abstract: *Displacement is a major consequence of climate change being faced by populations in Africa, as shown in the experiences of South Africa, Zimbabwe, Liberia and South Sudan. As a response to the injustices and inequalities experienced by vulnerable communities, the concept of climate justice has featured in academic writings and international policy documents on climate change. However, its reflection and application in domestic legal frameworks to the specific situation of climate-induced internal displacement in Africa are scant in academic engagement. Using a doctrinal approach in engaging with existing writings and instruments on displacement and climate justice, the study interrogates the extent to which the legal framework in South Africa, Zimbabwe, Liberia and South Sudan may apply in achieving climate justice for displaced persons. The study demonstrates that whereas there is a recognition of climate justice as a legal response to climate-induced internal displacement in international law, much remains to be achieved in terms of the reflection and application of the existing legal framework at the domestic level. It then makes specific recommendations on how to strengthen existing instruments to achieve climate justice for displaced persons.*

Keywords: *Africa; climate-induced displacement; climate justice; displaced persons; legal framework*

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1. Introduction

Human-caused climate change remains a major existential threat (IPCC 2021), with businesses playing a central role in causing a large proportion of the CO2 emissions underlying climate change (Bruckner et al. 2014). Maino and Emrullahu (2022) and Boko et al. (2006) affirm that, while adverse effects are global, states in Africa are particularly vulnerable because of their limited capacity to adapt. The African Union's Agenda 2063 considers climate change as a major threat likely to hinder its goal of realising an integrated, prosperous and peaceful Africa (AU 2015). Climate change has numerous adverse effects on populations, but displacement and its associated consequences are particularly significant in present global reality and future projection. The UN General Assembly's Resolution 64/162 (2009) on the protection of displaced persons affirms that one of the key drivers of internal displacement is climate-induced disaster. The World Bank (2018) estimates that 140 million people will be internally displaced by slow-onset climate change impacts by 2050. While highlighting that 51 million people across the globe were internally displaced between January and June 2021, the UN High Commissioner for Refugees notes that climate change is a factor in the vulnerability of displaced persons (UNHCR 2021). More populations in Africa were implicated in the global trajectory of displacement (UNHCR 2021).

Displacement as an adverse consequence of climate change affects the human rights of populations (Jegede 2016a; Jegede 2016b, 58). The general implications of adverse climate change for rights have been recently reiterated in the UN Human Rights Council's Resolution 47/24 of 2021 which acknowledges the adverse effects of climate change, both direct and indirect, on the effective enjoyment of a range of human rights. While the countries and communities with the least resources will shoulder the greatest burden in protecting and caring for the internally displaced, how to ensure justice for such countries and populations in an unequal world where the causation and consequences of climate change are disproportionately spread remains problematic (Jegede 2020, 184).

The general relevance of climate justice in responding to the above conundrum has featured in academic writings (Newell et al. 2021; Gonzalez 2019; Okereke and Coventry 2016), and policy documents (IBA 2014; Adams and Luchsinger 2009). The urgency of deploying the climate justice lens has also been underscored by the UN Special Rapporteur on Extreme Poverty and Human Rights (UNSR Report 2019) who confirms that, globally, people in poverty are more vulnerable to climate related disasters, and the world is increasingly at peril of "climate apartheid", where "the rich pay to escape heat and hunger caused by the escalating climate crisis while the rest of the world suffers" (UNSR Report 2019, paras 12–13). This connotes that climate justice is not only an interstate

concept applicable in the polemics of North versus South responsibility for climate change, but also significant for how a state within its territory addresses the adverse consequences of climate change. It also relates to how states regulate the activities of businesses to reduce emissions and prevent adverse human rights impacts. The principles of climate justice have been generally clarified in the Bali Principles on Climate Justice (Corpwatch 2002), which basically advance justice without discrimination for climate change-induced harms suffered by vulnerable groups as well as groups that are often ignored in the society.

The relevance, reflection and application of climate justice principles to the specific situation of climate-induced internal displacement in Africa as a subject of academic engagement, however, is scanty in literature on international climate change instruments, namely the UN Framework Convention on Climate Change (UNFCCC 1992), Kyoto Protocol (1997), and Paris Agreement (2005). For instance, only the preamble of the Paris Agreement specifically references climate justice. There has also not been a focus on such considerations in the analysis of human rights instruments dealing with internal displacement, namely the UN Guiding Principles on Internal Displacement (UNGPID 1998), and, at the African regional level, the Kampala Convention (2009). Hence, whether these instruments integrate the concept of climate justice relevant in the context of climate-induced displacement in Africa merits consideration. If that can be proven, the extent to which they further reflect and apply in the availability and implementation of legal and policy environments in states in Africa is important but remains largely unexplored. From the outset, it should be mentioned that this study does not cover the concept of "loss and damage", of which the administrative details are only just emerging and not clearly developed in the international climate negotiations.

1.1 **Rationale behind the selection of states**

To be sure, it is impossible to investigate all the fifty-five states of Africa, but there are commonalities across the continent in terms of the disproportionate effects of climate change and internal displacement. Hence, the focus of this paper is on four states; namely, South Africa and Zimbabwe (Southern Africa), South Sudan (East Africa), and Liberia (West Africa). The selection of these states is purposive, based on the writers' interest in them, and the characteristics they possess in relation to climatic occurrences and displacement which, as shall be evident later, enable us to answer the research questions.

Data on South Africa shows significant climatic abnormalities causing unpredictable and extreme weather, resulting in adverse consequences especially felt in the agricultural sector (since much of the agricultural land is rain-fed), and displacement (World Bank 2021). Zimbabwe has not been spared from the effects of climate change as evidenced by

cyclone Idai which hit the country in 2019 causing massive floods in the country's four provinces. The cyclone affected around 270,000 people as per estimates while over 59,000 were displaced and relocated to host communities and temporary camps (World Bank 2019, 69–70). In South Sudan, evidence shows that the major symptoms of climate change are the increased temperatures and precipitation changes (Reliefweb 2019). Research indicates that deforestation, illegal timber exports and charcoal production have exacerbated climate change and displacement in South Sudan (Mosel and Henderson 2015). Literature also shows that South Sudan currently has 4.5 million people who are either refugees or internally displaced persons (Kensiya and Basotia 2021). The causes of these displacements are related to conflict and natural disasters (Kensiya and Basotia 2021). In Liberia, with indicators such as hotter temperatures and the unpredictability of the rainy and dry seasons (World Bank 2021), 31,186 people were affected by flooding in key counties in 2018 (Davies 2018). Sea erosion has led to significant damage and rendered thousands of people displaced in Liberia (UNDP 2017).

1.2 Methodology

With focus on the foregoing states as case studies, we deploy a doctrinal approach in response to the climate-induced internal displacement and climate justice in Africa. The doctrinal legal research approach is also known as the "black letter law". Kharel (2018, 1) defines doctrinal legal research as "research that provides a systematic assessment of legal problems within an adequate methodological framework". It deals with verifying existing knowledge on the legal issues (Kharel 2018, 1). The doctrinal research requires a critical review of materials, such as case law, textbooks, journal articles, government reports, policy documents and law reform documents (Kharel 2018, 2).

In deploying the doctrinal methodology, we reviewed available materials to interrogate the meaning of climate justice in relation to climate-induced internal displacement in Africa. We discussed questions as to whether relevant international instruments (under the UN and AU auspices) to which states in Africa are parties are useful in advancing climate justice for climate-induced displaced persons, and, if so, how climate justice principles are reflected in the legal and policy environment and its application in states in Africa. The paper is structured into five parts. The introduction is part 1 and is followed by part 2 which relates climate justice to the notion of climate-induced displacement. Part 3 discusses the normative bases for climate-induced displacement and climate justice under international law, while part 4 examines the adequacy of domestic legal frameworks in the reviewed states for climate justice for the displaced. Part 5 offers the conclusion and embodies a set of recommendations on how the current approach can be improved.

2. Climate justice and the notion of climate-induced displacement

The UN Development Programme (UNDP 2007, 4) describes climate change as a "human tragedy in the making". It is an injustice in the sense that it places an unequal burden on those who have contributed least to the problem — vulnerable groups, disadvantaged individuals, and the least developed states. Thus, the concept of climate justice has emerged as a response to the injustices and inequalities experienced by the most vulnerable communities being harmed through a problem that is not of their making (Adams and Luchsinger 2009). The International Bar Association (IBA 2014, 2) defines climate justice as a concept that recognises that climate change will disproportionately affect people who have less ability to prevent, adapt or otherwise respond to increasingly extreme weather events, rising sea levels, and new resource restraints. The concept is both legal and political; the latter in the sense that it developed as a movement out of the unfair causes of climate change and the wilful irresponsibility of the polluters, and so demands the involvement of all the stakeholders (Bond 2012). It seeks the equitable treatment of all people and the absence of discrimination in the development of policies and programmes addressing climate change, as well as in the institutions that contribute to climate change and perpetuate prejudice (Schlosberg and Collins 2014).

The notion of climate justice encourages policy makers to take on a more anthropocentric approach towards issues of climate change, by considering its human rights implications. According to the Mary Robinson Foundation (2012, 2), "climate justice links human rights and development to achieve a human-centred approach" and requires equity in climate finance and promotes vulnerable groups' participation in decision making. Additionally, it acknowledges that particular populations are disproportionately impacted by climate change (Porter et al. 2020), and that many victims of climate change have a disproportionately small share of the blame for the emissions that caused the problem in the first place (Bond 2012). For example, the United States is responsible for more than a quarter of all carbon emissions to date, while Africa's emissions are under 3% (Mary Robinson Foundation 2012). The United Kingdom also has a huge historical footprint, though responsible for only 1% of present-day emissions (Mary Robinson Foundation 2012). It accounted for over half of all global carbon emissions up until 1882 (Mary Robinson Foundation 2012). Achieving climate justice, therefore, requires rich nations to acknowledge their historical culpability for creating this crisis and to take steps to make amends for example by supporting adaptation and mitigation in developing countries (Mary Robinson Foundation 2012).

Climate justice connects with internal displacement, as the negative impacts of climate change on individuals inside their own nations often results in internal displacement (de Sherbinin et al. 2011, 456–57). It is

also relevant to the attempts by states to address internal displacement. Although displacement may link to factors other than climate change, such as armed conflict and violence, emerging factors such as climate-induced displacement and climate-based intervention projects are an important figure of internal displacement. Extreme events associated with climate change have caused people to leave their homes in search of better living conditions, while sustainable development projects implemented in a bid to mitigate the effects of climate change have also led to internal displacement (African Growth Initiative 2022; Jegede 2016b). These projects include the Clean Development Mechanisms (CDMs), developed under the UNFCCC, and the UN Reduction of Emissions from Deforestation and Forest Degradation programme (UN REDD+), which have resulted in displacement and restricted access to land in developing countries mainly in the global South, including Africa (Jegede 2016b; Adeola and Viljoen 2018).

In South Africa, unpredictable weather conditions resulting from climate change have occasioned the forced migration of subsistence farmers and small-scale commercial farmers in pursuit of better economic prospects (World Bank 2021.). In April 2022, 459 people were killed in the floods which occurred in KwaZulu Natal (Cocks 2022). An estimated forty-eight people remained missing in the aftermath of the disaster, which displaced an estimated total of about 40,000 people (Mbatha 2022). An equally devastating consequence resulted from the Eastern Cape floods (Ghosh et al. 2022). In Liberia, floods rendered at least 4,000 people homeless in Margibi county in 2016 (Christian Aid Ministries 2016), and in 2018 about 31,186 people were affected by flooding in Montserrado and Margibi counties, with at least 187 homes damaged (Davies 2018). In Zimbabwe, two tropical cyclones and a storm occurring between 2019 and 2021 resulted in complete destruction of an estimated 11,502 homes and partial destruction of 37,134 homes (IOM 2021). As of 2022, over 41,000 people remain internally displaced by climate disasters, being sheltered in camps and host communities where health and protection risks such as exploitation, social exclusion, mistreatment, gender-based violence and in some cases child marriages are rife (Mambondiyani 2021). In South Sudan, drought and a compounded three years of flooding along the Sobat Corridor from Malakal town to the Ethiopian border has resulted in the internal displacement of a record 1.6 million people, who have fled their homes to live in abandoned buildings or sleep on the ground out in the open (UNICEF 2022).

The relevance of climate justice is in its focus on equity, participation, access to resources and justice, and the human rights implications of climate change on the disadvantaged. It embodies principles that can be used in shaping necessary attention to populations that suffer the adverse consequences of climate change. It should be reflected in procedural and

formal justice, in legislation and regulations that are critical for those seeking restitution or responding to the consequences of climate change (Porter et al. 2020). Hence, the notion of climate justice can only be as strong as the extent to which it is allowed under international law.

3. Climate-induced displacement and climate justice under international law

This section discusses the extent to which the concept of climate justice has been recognised as a legal response to climate-induced internal displacement. There is no single instrument encapsulating climate justice. Therefore, to fulfil the objectives of this section, we consider the key global and regional instruments aimed at addressing the impacts of climate change.

The linkage of climate change to internal displacement is evident in many instruments aimed at addressing climate change. Internal displacement was first addressed at COP16 under the Cancun Adaptation Framework in 2010 (Cancun AF, art 14f). The Cancun AF urges all parties to the UNFCCC inter alia to undertake adaptation action, taking into account their common but differentiated responsibility (CBDR), including "measures to enhance understanding, coordination and cooperation related to national, regional and international climate change-induced displacement, migration and planned relocation" (Brookings Institution 2014, 9). This sentiment is emphasised in the Paris Agreement 2015, which commits to "avert, minimize and address displacement related to the adverse impacts of climate change" (Warner 2017, 1–5). Evidence of the link can also be found in the Sendai Framework for Disaster Risk Reduction (SFDRR) 2015–2030 (UNDRR 2015) and the 2030 Agenda for Sustainable Development (UN 2015, 8). Of the seven targets in the SFDRR, Target (B) is particularly relevant for disaster displacement as it provides the goal of substantially reducing the number of people affected by disasters globally by 2030, which includes people displaced by disasters (UNDRR 2015).

It is also arguable that the UNFCCC and the Kyoto Protocol implicitly embedded the concept of climate justice by recognising the CBDR principle to mitigate North-South inequality (Saraswat and Kumar 2016). The UNFCCC also recognises both intergenerational and intra-generational equity. Besides the reference to climate justice in the preamble of the Paris Agreement (2015), a common element within each of these instruments is the incorporation of language connecting climate change and displacement. The instruments also reference human rights, signifying that a rights-based approach is essential to ensuring climate justice for vulnerable populations.

The importance of human rights in the construct of climate justice is evident in both the UNFCCC and the human rights system. For example, the Inter-Agency Standing Committee (IASC)'s Operational Guidelines

on the Protection of Persons in Situations of Natural Disasters, which applies a human-rights-based approach to situations of natural disasters, provide directions to support the efforts to "prevent, respond to and support recovery after disasters" (UNHCR 2011). Along the same line, the Peninsula Principles (2013), albeit not widely adopted, provide that the plight of climate-displaced persons should be addressed in accordance with the principle of human rights obligations and good practice (Cullen 2020). The Bali Principles of Climate Justice (Corpwatch 2002) state that communities must play a leading role in addressing climate change; the Principles also emphasise the right to self-determination of indigenous and local communities.

There are several human rights instruments that are of importance to climate displacement and climate justice. Although the notion of climate justice is not expressly mentioned, the UNGPID and the Convention on the Protection and Assistance of Internally Displaced Persons (Kampala Convention 2009) are noteworthy. The UNGPID relate to displacement but have no binding effect. The Kampala Convention is thus the only binding treaty which places a premium on the importance of addressing internal displacement (Jegede 2016b; Kälin 2001). Article 1 of the Kampala Convention defines internal displacement as the "involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognised state borders". This definition captures climate-induced displacement in its ambit and affords the affected persons the legal protections captured in the Convention. In particular, article 5(4) of the Convention places an obligation on states to protect and assist internally displaced persons who have been displaced because of natural and human-made disasters, and these include climate change. Along with the provisions dealing with obligations of international organisations (art 6), humane treatment, non-discrimination, equality and equal protection of law (art 3(1)(d)), prevention of gender violence (art 9(1)(d)), access to information (art 10(2)), and participation of displaced persons in finding sustainable solutions (art 11(2)), the provisions of article 5(4) are an inherent reflection of the principles of climate justice that may apply in providing protection and assistance to climate-displaced persons.

The necessity of access to information and public participation is further reinforced in article 4(1)(h) of the UNFCCC (1992) which calls for the promotion of socio-economic and legal information relating to the climate system, and article 6(a)(ii) generally dealing with public participation. Article 7(7) of the Paris Agreement (2015) highlights the fact that adaptation action can be bolstered through the exchange of information, good practices, experiences and lessons learned to guide climate services and support decision-making. In relation to public participation, the Bali Principles (Corpwatch 2002) emphasise the rights of indigenous communities to own and manage natural resources, to represent themselves, and to participate effectively at all decision-making

levels (paras 5, 6 and 21). This involves consulting and considering the opinions of the population about to be affected or displaced by a climate-based development-induced project. It is a principle strongly rooted in Article 21 of the Universal Declaration on Human Rights (1948) and recognised in the UN Declaration on the Rights of Indigenous Peoples (2007). Article 7(3)(c) of the UNGPID requires that states must seek free, prior, and informed consent of persons likely to be displaced (para 88). It is extremely important that groups likely to be affected by climate-based development-induced programs are significantly represented at the consultations.

The Bali climate justice principles (Corpwatch 2002) equally provide for accountability, and victims of climate change and associated injustices have a right to seek redress. This is crucial in trying to mitigate the effects of climate change (Dunlap and Brulle 2015). It is also important in addressing displacement and its consequences for human rights. Climate change, along with other factors, contributes to displacement, which in turn has an impact on human rights including freedom of movement, the right to enjoy a life with dignity, environment, self-determination, water and sanitation, adequate housing and a range of cultural rights (Jimenez-Damary 2020, para 21; Jegede 2020). Hence, states are required to take positive action to prevent and mitigate the impact of climate change and related displacement on the enjoyment of human rights (Resolution 64/162 2009; HRC Resolution 10/4 2009). This obligation encapsulates responsibility for early warning, preparedness, mitigation, adaptation and effective provision of humanitarian assistance and protection (Kent 2014). It remains to be established to what extent climate justice principles, as reflected in the international legal environment, have been incorporated and implemented in the domestic legal and policy environment in African states.

4. Adequacy of states' legal responses on climate justice for the displaced

This section discusses the extent to which climate justice principles are reflected in the legal and policy environments and their applications in South Africa, Zimbabwe, Liberia and South Sudan. It shows that despite there being glimpses of hope, much remains to be achieved in terms of the accommodation of the legal environment with the principles of climate justice for internally displaced persons in the states.

4.1 Ratification of relevant international instruments

In fulfilling its international obligations on climate change, South Africa ratified the UNFCCC on 29 August 1997 and was listed as a party under Non-annex I on 27 November 1997 (UNTC n.d.). The Kyoto Protocol was acceded to in July 2002 (UNFCCC n.d.(1)) and the Paris Agreement

was ratified on 01 November 2016 (UNFCCC n.d.(2)). However, South Africa has not ratified the Kampala Convention. This exempts South Africa from the legal consequences of the one singular instrument that is relevant to the incorporation of climate justice principles in addressing climate-induced displacement in South Africa.

Zimbabwe ratified the UNFCCC (UNTC n.d.) and the Paris Agreement in 2017 (UNFCCC n.d.(2)). In July 2013, Zimbabwe ratified the Kampala Convention (AU n.d.). Liberia ratified the UNFCCC in 2002 (UNTC n.d.) and acceded to the Kyoto Protocol in the same year (UNFCCC n.d.(1)). It ratified the Paris Agreement in 2018 (UNFCCC n.d.(2)), and the Kampala Convention on 23 February 2014 (AU n.d.).

South Sudan is the world's youngest and least developed country (Government of South Sudan 2018). The country became a party to the UNFCCC in 2014 (UNTC n.d.). In 2016, the country ratified the Paris Agreement (UNFCCC n.d. (2)), which is binding pursuant to article 9 of the South Sudan Constitution, which states that any treaty signed by the country is an integral part of the Constitution. In 2018, South Sudan ratified the Kampala Convention, which is the key to upholding the human rights of internally displaced persons (IDPs) by creating an enabling legal environment for their assistance and protection (AU n.d.).

By ratifying these international instruments, the states assume duties to advance climate justice for climate-displaced persons, as ratification of these instruments creates binding legal obligations for state parties. Further, according to the terms of article 27 of the Vienna Convention on the Law of Treaties (VCLT 1969), states may not use their internal law to excuse noncompliance with the provisions of international treaties. This means that through ratification of treaties relating to climate justice, states are expected to formulate domestic legislation and measures that are compatible with the principles of climate justice for internally displaced persons as set out in these instruments. Ratification also imposes on states the duty to implement legally binding obligations to facilitate the protection and fulfilment of the principles of climate justice for internally displaced persons.

4.2 Domestic legislation and policy direction

States are specifically required to develop an institutional and legal architecture that provides protections from climate-related displacement, and to integrate human rights into existing climate-policy frameworks for action (Mary Robinson Foundation 2016). As mentioned earlier, equity, participation, access to resources and justice, and the human rights implications of climate change on the disadvantaged are critical components of climate justice for the displaced. The extent to which climate justice is covered and applicable to the displaced is the focus of this subsection.

4.2.1 South Africa

The implementation of global and regional climate justice principles in the South African context is lacking in many regards. As part of its implementation of the UNFCCC, South Africa has submitted three communications under the auspices of the UNFCCC where it stated its commitments towards climate change mitigation (DEA 2018). The focus of its outlined projects in this endeavour is largely on the environmental and economic aspects of climate change, neglecting the climate justice implications of it. There is no mention of displacement resulting from climate change, a development that signifies that neither climate displacement nor climate justice has received significant attention in key documents on climate change.

The Constitution of the Republic of South Africa (1996) makes no specific pronouncement on climate change or displacement. However, section 24 of the Constitution states that "everyone has the right to an environment that is not harmful to their health or wellbeing; and to have the environment protected, for the benefit of present and future generations." The framing of this provision portrays the protection and preservation of the environment as a human right, thus taking a human-centred focus on the environment as the climate justice approach would require. The Constitution further reflects the climate justice approach in that it provides for principles such as non-discrimination (section 9), access to justice (section 34), and public interest litigation (section 38(d)). The reference in section 24 to future and present generations connotes an intergenerational equity concept which is core to climate justice. However, these provisions have not been concretely engaged in official policy and strategic documents on climate change with any view to addressing the plight of climate-induced displacees. In particular, the policy environment in South Africa has not clearly responded to the issues of equity, participation, access to resources and justice, or the human rights implications of climate change on the disadvantaged.

A similar concern exists in relation to other domestic acts passed in South Africa which indirectly apply to climate change, i.e., the Hazardous Substances Act (1989), National Water Act (1998), Protected Areas Act (2003), Mineral and Petroleum Resources Development Act (2002), National Environmental Management Act (1998), National Environmental Management: Air Quality Act (2004), National Environmental Management: Biodiversity Act (2004), or National Environmental Management: Waste Act (2008). These laws address the environmental causes of climate change. How these instruments interact with international standards on climate justice for the displaced is, however, not clear. In relation to the extreme events which some parts of South Africa recently experienced, the utility of these documents in addressing inequality, gender and suffering of

populations affected by the crisis has not been tested. Considerations such as participation or equity, or other vulnerable statuses such as old age, youth and gender which are core components of climate justice, did not clearly guide the interventions of the government. The National Climate Change Adaptation Strategy (2019) aims at reducing the occurrence of climate change through interventions addressing its root causes, but offers no guidance on displacement arising from extreme climate occurrences. It does not create any special funds to cope with the needs of populations displaced by climate change.

Though it is not yet the law, the proposed Climate Change Bill (2018) is a sign of hope for climate justice in South Africa. It embodies principles including a multi-generationalist approach to the climate system, international equity in the apportionment of responsibility for climate change, and the realisation of justice and environmental sustainability in the economic pursuit of developmental goals (section 3). However, its lack of explicit reference to climate justice leaves those affected by displacement due to climate change without clear and actionable legal protection under the Bill. It is not clear whether such populations will be able to hold public and private entities accountable for actions or inactions in relation to adaptation and mitigation measures underlying displacement. Yet ensuring accountability for the plight of the displaced is a key element of climate justice. Contrary to the notion of climate justice, the Bill also fails to apportion equitable responsibility to those typically responsible for the causes of climate change (namely multinational corporations), or to invest responsibly in climate change interventions. The Bill deals with climate change from a national level, failing to adequately acknowledge the need for regional and international collaboration as climate justice principles would require. Despite the inadequacy of domestic legislation in encompassing climate justice principles, there seems to be some hope in the judicial precedents set by South African courts. Given the critical role that multinational corporations play in environmental degradation, the pronouncement of the Supreme Court of Appeal in *Company Secretary of Arcelormittal South Africa v Vaal Environmental Justice Alliance* (2015) is profound. The decision clarifies that both states and corporations are accountable under the Constitution, a development which indicates that it may not be impossible to hold corporations accountable for climate wrongs.

4.2.2 Zimbabwe

Currently in Zimbabwe, practice has shown that implementation of the global and regional framework on climate change remains a grave concern (Brazier 2015). In fulfilment of its obligations under the UNFCCC the government of Zimbabwe has to date submitted three communications detailing the steps it has taken to fulfil its obligations under this treaty (Government of Zimbabwe 2016). However, these communications do

not fully address the issues and impacts of climate-induced displacement on the lives of the displaced persons, or the relevant response mechanisms that are required. The focus is rather on mitigation in five sectors; namely, energy, industrial processes, agriculture, land-use change and forestry, and waste (Government of Zimbabwe 2016). Zimbabwe has not yet endorsed the implementation of the Kampala Convention, as required of signatory states, nor officially designated an authority responsible for IDP issues, as required by the convention (Government of Zimbabwe 2016). As a result, the provisions of the Kampala Convention have not been domesticated which means that implementation of the same remains at a standstill.

The Government of Zimbabwe acknowledged the existence of internal displacement in the Global Political Agreement (2008). Zimbabwe has passed several laws with provisions on environmental management. These include the Constitution of Zimbabwe (2013), the Management Act (2002), and the Forest Act (1949). These pieces of legislation contain provisions that are relevant to climate change and environment, but silent on climate-related displacement and climate justice. Section 73(1) of the Constitution of Zimbabwe (2013) provides everyone with the right to an environment that does not harm them, and the right to have their environment protected for the present generation and the generations yet to come.

Some traces of climate justice principles can be found in legislation made pursuant to the Constitution. Section 4 of the Environmental Management Act (EMA2002) makes provision for environmental rights and principles of environmental management. Section 4(2) (c) of the EMA provides for the participation of all interested and affected parties in environmental management. This is in line with the Bali Principles of Climate Justice (Corpwatch 2002) which emphasise the rights of indigenous communities to represent themselves and to have effective participation at all decision-making levels. However, the protection of internally displaced persons is outside the scope of the EMA and it is not certain that its principles can apply to caring for the injustices and inequalities experienced by the most vulnerable communities who are being harmed through a problem that is not of their making. The Forest Act of Zimbabwe (1949) which regulates the use of forests is a colonial law and does not address current thinking in relation to the significance of forests as a climate-change intervention. It seeks to establish a commission for the administration, control and management of State Forest and for the protection of private forests, trees and forest produce. The Act does not make explicit provisions for redressing the plight of forest-dependent communities who are displaced by climate change or by its response measures, a requirement which is critical to the implementation of climate justice. Forests are carbon reservoirs and conserving them for the purpose of increasing sinks and reducing emissions may often lead to the displacement of vulnerable populations (Agrawal and Redford 2009).

The EMA (2002) makes provision for holding persons who emit substances which cause substantial air pollution accountable, by prescribing that they will be liable for imprisonment. Arguably, this applies to multilateral companies and public and private entities. Third parties affected by pollution are entitled under the EMA to reparation, restoration, restitution or compensation, as may be determined by the courts upon application by such third parties (EMA 2002). In addition to the absence of any reference to "climate change" and "climate justice", it is difficult to stretch the EMA's provisions to address displacement linked to climate-related emissions resulting from the activities of companies. Without a clear provision allowing for such a possibility, access to justice (which is a core component of climate justice) is limited for climate-induced displacees in Zimbabwe.

Zimbabwe does not have a law specific to climate change. The drawback of this is that no legislation thoroughly considers the intricacies of climate-change effects or the principles of climate justice as an intervention. Rather, for climate justice to be served, protection of the climate must be read into the existing laws which may not always be done successfully (Matsvaire, Zamasiya and Moyo 2020). This may create challenges for persons displaced by climate-related incidents, since the available laws do not offer recourse to climate justice in the context of climate-induced displacements. The main climate-change policy in Zimbabwe is the National Climate Policy of November 2017, which has as one of its goals "reducing vulnerability to climate variability and climate-related disasters by strengthening adaptive capacity". The policy is, however, silent on the protection of persons who have been internally displaced by climate change in Zimbabwe. This gap leaves the vulnerable groups without any protection during climate-related displacements, as the policy framework does not proffer strategies for promoting climate justice. In 2014, Zimbabwe adopted the National Climate Change Response Strategy. Through the strategy, it acknowledges that climate change may have different impacts on different groups and commits to addressing the needs of these different groups which include children, youths, women, men, and people with disabilities. By acknowledging that different groups are affected differently by climate change, the strategy to some extent incorporates the principles of climate change. Contrary to what is expected for climate justice, however, it is uncertain what approaches and remedies should apply in the context of climate-induced displacements.

4.2.3 Liberia

Through the ratification of international instruments, Liberia has obligations to ensure climate justice in response to climate-related displacements. The Second National Communication to the UNFCCC was submitted in 2021 and contained an inventory of emissions sources and greenhouse gas

removals, and further described steps to reduce emissions (Environmental Protection Agency 2021). The communication was, however, silent on climate justice in response to internal displacement, hence the question as to whether the country has taken any steps in implementation of the same. Liberia's response to climate change is reflected in its legal frameworks and other actions; but, without a clear focus on climate justice, the path remains murky in responding to the plight of displaced persons, and of the many others who have been affected or are soon to be affected by climate shocks.

Key legal and policy frameworks are in place to tackle climate change in Liberia. However, the extent to which they promote climate justice in responding to climate-related displacement remains to be seen. The Constitution of the Republic of Liberia (1986) recognises the right to life, liberty and property; it is however silent on environmental rights and climate change. This means that there is no legal basis, at least no textual one, to link rights with the environment, let alone with climate change. Liberia must resort to other laws for such protection. Liberia has in place an Environmental Protection and Management Law (EPML 2002), which provides a legal framework for the protection of the environment, for its management, and for sustainable development. Section 3 of the EPML espouses several principles that are key to addressing climate change: the polluter-pays principle, the principle of intergenerational equity, the principle of sustainable development, and the principle of public participation. Further, the National Forestry Reform Law of 2006 provides for community involvement with conservation and forest management for commercial purposes. The Community Rights Law of 2009 also gives more rights to communities over forest resources. The foregoing legislation is, however, silent on internal displacements and provisions of climate justice in response to this challenge. Despite ratifying the international instruments that promote climate justice principles in responding to internal displacements, those instruments have not been domesticated in Liberia. With the ratification of these international instruments, one would expect a legal response recognising the widespread challenge of internal displacement and adopting the requisite national instruments as a way of implementing the country's international obligations in climate change response. One would expect that the legal environment would enforce climate justice principles by recognising the rights and needs of societal groups with high levels of vulnerability and exposure, and by demanding the equitable distribution of finance and the promotion of the participation of climate displacees in decision making. However, this is not yet the case in Liberia.

Liberia has adopted several policies to address climate change. In 2018 the country adopted its National Policy and Response Strategy on Climate Change (IISD 2018). The Policy is silent on issues of climate-

induced displacement, as its areas of focus for mitigation are forestry and wildlife, agriculture, energy, mining, industry, transport, tourism, and waste management. While these areas are important, the implications of these sectors for displacement are not evident in the policy. Nor does the policy include the necessary remedies for displacees who may have claims in relation to the activities in those sectors which occasion displacement. The National Disaster Risk Management Policy (2012) and the National Drought Plan (UNCCD 2019) have been promulgated, and the Land Degradation Neutrality Technical Working Group established. However, the policies also have no clear provision for the vulnerability of populations likely to be affected by extreme climate-change events and actions. Even more concerning is that these policies do not consider the potential role of multinational corporations. Yet they are the biggest contributors to deforestation and to the creation of massive amounts of industrial waste (Climate Change Alliance Plus Initiative n.d.). These developments fail to meet expectations of equity, human rights implications, participation, access to resources, or justice for persons affected by displacement, which together constitute the notion of climate justice.

4.2.4 South Sudan

South Sudan's Initial National Communication (INC) to the UNFCCC Conference of Parties (COP) submitted in 2018 does not explicitly discuss climate justice for climate-induced displaced persons. The report analyses the main findings on the likely impact of climate change for the country, and how vulnerable its various economic sectors may be to such impacts, before presenting possible adaptation measures (Government of South Sudan 2018). After acceding to the Kampala Convention, South Sudan is developing a Bill that seeks to domesticate its principles, as required of signatory states to facilitate implementation of the same (Government of South Sudan 2018). However, there is evidence of a low level of implementation of the international and regional legal framework which undermines a climate justice approach to internal displacement within the states.

The Constitution of the Republic of South Sudan (2011), as amended in section 41, provides for environmental rights. It provides that every person or community has the right to a clean and healthy environment and an obligation to protect the environment. It further establishes the right to have the environment protected through appropriate legislative action and other measures. Section 59 of the South Sudan Petroleum Act (2012) provides that for any operating company to be granted a licence, environmental and social impact assessments are to be carried out first to make sure that the activity does not damage the environment. Section 59(4) of the Act further states that the assessment must include consultation of the public, including local communities, on the actual and potential impact of petroleum activities. This is a positive provision in the sense that participation is a key feature of the principle of climate justice.

Section 61 of the South Sudan Petroleum Act (2012) makes provision for liability for pollution damage. It provides that the licensee or contractor is liable for pollution damage and shall create a pollution damage fund for clean-up and rehabilitation of the site in which the pollution damage is found. The classification of licensees or contractors can be read to include multilateral companies including public and private entities. Section 62(3) allows for legal action on compensation for pollution damage, but provides that companies that have infringed the legislation can only be sued in the states where their actions have led to the environmental pollution. This is problematic in the sense that most of the states in the Republic of South Sudan are affected by conflict and climate change, and as a result judiciaries in some of these states are not operative. It is not feasible to require citizens of these states to sue corporations in their respective states, where courts are not functioning, and to regard this as justice. This development suggests that access to resources and remedies, a key component of climate justice, is limited.

South Sudan has in place a draft policy, the South Sudan Vision 2040, which calls for sustainable use of the environment to avoid climate change. The country has an Environment Protection Bill (2015) which is, however, still not in force. The Bill discusses issues related to environmental impact assessment in mitigating the adverse effects of climate change. The foregoing instruments seem promising for addressing activities underlying climate change, but not necessarily for addressing its consequences. Gaps remain in relation to the protection of climate displacees, and the possibility of informing interventions with climate justice principles — in particular, the human rights implications of climate-induced displacement and access to justice, which are critical components of the notion of climate justice.

In all, the foregoing shows that there are some useful aspects in the legal framework of states to ensure climate justice for displaced persons. States such as South Africa and Zimbabwe have considerable provisions regarding elements of climate justice such as participation and access to justice which are yet to be fully and strategically engaged in addressing the issue of climate-induced displacement. None of the states have climate-change-specific legislation which accommodates the principles of climate justice. There is also uncertainty regarding the accountability of non-state actors such as corporations for activities which may underlie displacement of persons in the reviewed states. This reality indicates that there remain inherent weaknesses which may undermine the realisation of climate justice for displaced populations in the reviewed states.

5. Conclusion

Climate change is a real threat to both lives and livelihoods, especially for African states. Global and regional instruments on the matter propose the adoption of a climate-justice-centred approach to climate change.

However, upon scrutiny of the recognition and application of climate justice principles in the legal framework of South Africa, Zimbabwe, Liberia and South Sudan, it is demonstrated that this approach is not yet adequately embraced. In their intervention in climate change matters, these states maintain an approach which promotes sustainable development and climate change mitigation, often to the exclusion of climate justice. An outlook which prioritises the economy and the environment over human rights is still entrenched. South Africa and South Sudan are at least in the process of enacting domestic legislation which directly deals with climate change, but even these bills are lacking in a justice-centred approach. The case of South Africa is especially concerning since it is among only a few states which to date have still not ratified the Kampala Convention. This needs to be addressed, as the Convention offers a binding basis for compelling a state to move towards a more climate-justice-centred approach.

However, the ratification of international instruments on climate justice alone is not enough. There is a need for African states to prioritise the implementation of climate justice principles given the urgency of the matter. For instance, even in their climate change mitigation measures, states must address the broader systemic issues which compound displacement, such as underlying poverty and inequality related to climate-induced displacement. They must also look inwardly to tackle emissions by ensuring businesses align their operations with the aims of achieving warming levels below 1.5°C and of attaining net-zero greenhouse gas emissions by 2050, as anticipated by the Paris Agreement (2015). Policies should be crafted to encourage businesses to prioritise investments associated with low- to zero-carbon emissions. In the short term, companies must be required to conduct environmental and climate impact assessments, exercise human rights due diligence, and report on greenhouse gas emissions and climate change impacts. Also, national policy commitments, such as those made through Nationally Determined Contributions under the UNFCCC, should cover the role of business with respect to climate change.

Legal interventions alone will not suffice in the climate justice agenda, thus there is need for other non-legal measures to be applied. For instance, many African states still rely on non-renewable energy sources at a national level with very little commitment to switch to renewable energy sources despite their abundance on the continent. Many businesses still engage in industry practices which are not climate friendly. There needs to be a commitment from the business sector to unequivocally adopt environmental awareness and climate friendliness as the default. Existing mechanisms for enforcing compliance by multinational corporations with climate justice principles are weak. Those need to be strengthened and refined to ensure that they are actually effective, rather than just mere fines which corporations can afford to pay anyway and which do not

serve as any kind of deterrent to them at all. In order for the legal and policy frameworks for climate-change response to promote climate justice, they should: provide for the mobilisation of capabilities for financial and other resources; improve climate awareness in programming; promote participation; and amplify the voices of climate-displaced people in all intervention actions. In addition to the foregoing general recommendations, country-specific recommendations are provided as follows:

5.1 Country-specific recommendations for South Africa

- The Kampala Convention must be ratified and domesticated as a matter of urgency.
- The Proposed Climate Change Bill (2018) must be amended to better reflect climate justice principles such as intergenerational equity and the principle of accountability. CSOs should use international tools such as the Kampala Convention as the binding basis on which to lobby the state to play a more active role in climate justice.
- CSOs should intensify their involvement in public interest litigation where environmental rights are concerned.
- Since it is the trend that those most adversely affected by climate injustice live in remote areas away from the cities and are too often unable to access justice mechanisms such as courts and tribunals, CSOs and the government should assist in reaching this demographic by advocating for their interests.
- Sensitisation of the public to the existence of international climate justice and human rights instruments is necessary. This should be spearheaded by the government and CSOs.
- There must be improved and more effective risk management interventions in high-risk areas. Government investment in the technology required to ensure that early warning systems are accessed by vulnerable persons in remote areas must be prioritised.
- The language of the current displacement situation must shift from its currently diplomatic nature (for example, where displacement is referred to as "relocation") to one which better encapsulates the truth of the matter.
- A national plan of action must be crafted to stipulate the state's response strategy to the growing number of climate refugees entering the country from other, mainly Southern African, states.
- Allocation of budgetary resources to address climate-induced displacement.

5.2 Country-specific recommendations for Zimbabwe

- The country needs to expand the discourse of climate change beyond environmental issues to adequately address issues of climate-induced displacement. This can be done by setting up

the necessary mechanisms for the realisation of climate justice for internally displaced persons as set out in international and regional legal frameworks.

- A climate change law compatible with Zimbabwe's international obligations, as set out in the legal instruments that the country has ratified such as the UNFCCC, Paris Agreement and Kampala Convention, must be established. The law must be based on the principles of climate justice that have been articulated, and must endeavour to deliver justice to persons affected by the effects of climate change.
- The climate change law must make provision for holding multilateral companies accountable for their role in climate change so that they largely shoulder the burden of protecting and caring for persons affected by internal displacement induced by climate change.
- To ensure that the law is translated into practical action, the National Climate Policy must be updated to be in line with recent developments in international climate law.
- The country must promote participatory climate justice by ensuring the participation of all persons who are likely to be affected by climate-induced displacement.
- Considering the scarcity of research on climate-induced internal displacement in Zimbabwe, evidence-based research into the issue must be conducted.
- The mandate of the Environmental Management Agency must be widened to extend beyond mere environmental issues to climate issues, with the primary aim being its overseeing of the implementation of the climate law and the updated climate policy.
- Budgetary resources must be allocated to addressing climate-induced displacement.

5.3 Country-specific recommendations for Liberia

- Liberia should mainstream climate justice principles in its policies and laws relating to climate change. This can be done by revising laws and policies on climate change and disaster risk management to recognise the rights and needs of those with high levels of vulnerability.
- Resources should be directed to initiatives that prevent or lessen the effects of climate change on vulnerable populations. Low-lying coastal communities threatened by rising sea levels and sea erosion must be protected through initiatives aimed at protecting the coastline.
- Participation of vulnerable groups must be prioritised in all matters affecting them. Efforts to revise existing legislation and policies, allocation of resources for their protection and welfare, and initiatives aimed at addressing their plight must place the

vulnerable and affected at the centre, involving them in all discussions and processes.

5.4 Country-specific recommendations for South Sudan

- Generally speaking, the country does not currently have legislation on climate change or environmental rights, therefore there is a need for the Republic of South Sudan to adopt legislation on climate change and on environmental protection with specific reference to climate justice.
- Climate-related law in South Sudan must be linked to conflict. Half of the population displacement in South Sudan is related to conflict.
- South Sudan should ratify all necessary international instruments relating to climate change and human rights including the ICCPR and ICESCR. The ratification of the ICESCR and ICCPR would ensure protection and realisation of the aforesaid rights hence giving effect to the concept of climate justice as an answer for climate-induced displacement.
- South Sudan should incorporate the Kampala Convention as domestic law.
- The Petroleum Act should be amended to allow citizens to sue corporations in national courts located in states other than those where an alleged non-compliance with its provisions has taken place.
- Budgetary resources must be allocated to addressing climate-induced displacement.

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Isaac McNeill, Asma Al Amin, Giwoong Son and Swasti Karmacharya. "A lack of legal frameworks for internally displaced persons impacted by climate change and natural disasters: Analysis of regulatory challenges in Bangladesh, India and the Pacific Islands." (2022) 6 *Global Campus Human Rights Journal* 67-88
http://doi.org/10.25330/2504

A lack of legal frameworks for internally displaced persons impacted by climate change and natural disasters: Analysis of regulatory challenges in Bangladesh, India and the Pacific Islands

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Abstract: *The issue of internal displacement of persons (IDPs) due to climate change (CC) and natural disasters (ND) is an area of global concern. With the increasing impacts of CC and ND (henceforth written as CC-ND), forced displacement and relocation are the only cogent solutions, but at huge physical, economic, and psychological costs, causing imbalances in well-being. However, despite the recognition and efforts directed towards addressing climate change and tackling its impacts, the pathways to safe relocation and, possibly, avoiding displacement are still restricted by barriers for a majority of vulnerable populations who are directly exposed to and affected by the harsh impacts of CC, ND, and displacement. This study uses a comparative case study approach to critically examine the patterns of internal displacement due to the compounding impacts of CC-ND in Bangladesh, India and the Pacific Islands, and also examines the impact on the well-being of IDPs. Furthermore, the study also attempts to critically examine the legal frameworks of each of these case studies to identify their relevance and note any gaps in addressing the issue of CC-ND induced internal displacement. Finally, it attempts to make policy recommendations to better respond to this issue.*

Keywords: *climate change; natural disasters; internally displaced persons; climate change and natural disaster induced internal displacement; well-being*

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1. Introduction

The United Nations Guiding Principles on Internal Displacement were developed in recognition of the absence of a regulatory framework and mechanisms to address and tackle the increasing challenges of internal displacement and the needs of those involuntarily uprooted from their homes. The principles define IDPs as "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border." The framework hence serves the purpose of recognising the rights of the internally displaced, assuring them of full protection and assistance in all phases of displacement, and providing safe pathways for return, resettlement and reintegration (OHCHR 1998).

The United Nations High Commissioner for Refugees (UNHCR) Strategic Directions (2017–2021) highlight climate induced displacement as one of the key drivers of forced displacement apart from conflict. The compounding impacts of poverty, diminishing livelihoods, increasing globalisation, speedy urbanisation, climate change, natural disasters and the slow onset of environmental degradation are expected to displace a huge population of people across the globe (UNHCR 2017). Hence, identifying and understanding the close relationship between these phenomena is just as important as identifying their exacerbating impacts on issues of internal displacement.

In 2020, disasters such as typhoons, floods, earthquakes, and volcanic eruptions in East Asia and the Pacific region resulted in the internal displacement of almost 12.1 million. In the same year, about five million were internally displaced due to Cyclone Amphan in India, Bangladesh and Myanmar in South and Southeast Asia. Similarly, about 94% of the total population of ND induced displacement in East Asia and the Pacific has been due to extreme natural events fuelled by abnormal climates — such as La Niña, which is considered to be a direct impact of CC (IDMC 2021).

The increase in the intensity, frequency and unpredictability of ND such as floods and typhoons is thought to be the direct impact of CC, which is further worsened by anthropogenic harms such as increasing greenhouse effects, aerosols, changes in land cover, and deforestation. The impacts of CC are also exacerbating problems for the vast majority of the population, putting them at high risk of being internally displaced. Additional challenges in developing effective mitigation and response strategies, such as an early warning system and viable protection mechanisms for IDPs, are thus of growing concern (IDMC 2021).

The regions of Bangladesh, India and the Pacific Islands have been selected as the case studies for this paper from the Asia Pacific region based on the following shared characteristics. First, these countries contribute very little to the global average per capita CO2 emissions as compared to countries of the global north. In 2018, the global average per capita CO2 emissions were 4.49 metric tons, for which Bangladesh, India and the Pacific Islands recorded 0.51, 1.80, and 1.54 respectively. The average per capita emissions of all three together was less than half of the global average, with the United States of America (USA) alone emitting 15.24 metric tonnes per capita (World Bank 2018).

Second, all of the regions share similar geography of both coastal and inland territories, increasing their vulnerability to changing climatic conditions such as sea-level rise, flood, storm surge, soil erosion and tropical cyclones. Finally, all of the regions are developing countries with high engagement and dependency on agriculture and fisheries. Thus, the livelihoods of the population are largely affected by CC-ND with very little to no mechanisms in place to effectively address the needs of IDPs, or combat and adapt to these changes.

Hence, the study attempts to analyse the legal frameworks related to CC-ND induced internal displacement in regions of Bangladesh, India and the Pacific Islands. This study identifies the preemptive and proactive steps that governments need to take in addressing the issues faced by CC-ND induced IDPs, as well as the short- and long-term impacts of displacements on highly vulnerable groups.

2. Research objectives and research questions

Research Objectives

The overarching objective of the study is to critically examine existing regulatory frameworks regarding the protection of internally displaced persons due to climate change and natural disasters, and make policy recommendations for Bangladesh, India and the Pacific Islands.

The specific research objectives are outlined as follows:

- To examine the impact of climate change and natural disasters on the well-being of internally displaced persons.
- To evaluate the existing laws and policies of Bangladesh, India and the Pacific Islands relating to the protection of internally displaced persons due to climate change and natural disasters.

Research Questions

- How has climate change and natural disaster displacement affected the well-being of internally displaced persons in Bangladesh, India and the Pacific Islands?
- How can the policies of Bangladesh, India and the Pacific Islands improve the conditions and effectively address the needs of the persons internally displaced by climate change and natural disasters?

3. Methodology

Qualitative in nature, this study's research design involves secondary research of existing literature available on each case study. The study derives data from various sources such as academic research papers, reports produced by the national government, the United Nations (UN), and non-governmental organisations (NGOs).

The study employs a comparative case study approach to examine and analyse the impacts of CC-ND on the well-being of IDPs in Bangladesh, India and the Pacific Islands. A comparative case study approach allows the examination of a particular 'phenomenon of interest' (Bartlett and Vavrus 2017), sharing similar characteristics in order to derive conclusions based on the identified similarities and differences (Oliver 2004).

The study thus aims to use this method to understand the relationship between the phenomenon of CC-ND and its impacts on IDPs belonging to different geographical and cultural contexts. Apart from the examination of the phenomenon and comparisons of the various contexts, this methodology is also helpful in critically evaluating the effectiveness of existing regulatory frameworks and proposing specific policy recommendations (Lotf et al. 2020) that address the issue as well as the needs of CC-ND induced IDPs.

4. Theoretical framework

The Intergovernmental Panel on Climate Change (IPCC) indicates that the impending impacts and projected risks of CC are appearing at a much faster rate and are expected to get severe sooner than anticipated. The report additionally highlights the observed impacts of CC on the small islands of the Pacific region with the rise in sea level, heavy rainfalls, tropical cyclones and storms, and in regions of South Asia with the surge in surface temperature and uneven observations of precipitations (IPCC 2022).

The effects of CC transcend the changes in the immediate environment, extending further into the intricacies of human rights as well. As in the case of any violation and/or unfulfillment of human rights, the detrimental effects of CC are unequivocally felt most by those whose fundamental human rights are either already in a state of violation or whose protection is inadequate (Aliozi 2020).

It is imperative to address the issue of CC as more than an issue pertaining to the environment and understand it as an "ethical, legal and political issue" (Aliozi 2021). The ethical issues posed by climate change may be viewed through a theory of justice and in conjunction with other issues such as poverty or development (Caney 2021). The interconnectedness between CC, resource ownership, economic growth and poverty reduction may be observed alongside the dependency of people on food, water, health and land.

As an overarching framework, climate justice thus helps in navigating through the different dimensions of justice and sheds light on the inadequacy and inapplicability of human rights approaches to grasp the rights violations and injustices caused directly and/or indirectly due to CC. The latter is more significant given that most human rights laws do not explicitly address or incorporate issues relating to the protection of the environment, apart from stating the obvious such as the rights to life, health, and a safe environment (Aliozi 2020).

Climate justice provides a lens to clearly see the inequitable impacts of CC and the challenges in providing justice to the vulnerable, and aids in critically analysing existing regulatory frameworks that fail to address the burning issue of CC. In the policy brief, Aliozi (2021) stresses the need to examine climate justice alongside "equality, human rights, collective rights, and intergenerational justice". The importance of this revolves around understanding arguments situated for example around climate justice and distributive justice. This helps to better address the notion of "skewed vulnerabilities", providing explanations for why certain vulnerable people and the countries least responsible for causing CC are exposed and bear the immediate, gradual and harsher effects of anthropogenic CC, with very limited access and/or ownership of resources to cope with its impacts (Gardiner 2011).

5. Conceptual framework

In an attempt to examine the key concept of CC-ND induced displaced persons, the current study examines other related concepts to establish understandings and analysis that identify their similarities and differences within the scope of the study. Whilst attempting to examine the causal relationship between CC-ND, it is crucial to specify conceptual definitions as well. The United Nations Framework Convention on Climate Change

(UNFCCC) defines CC as "a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods" (UNFCCC 1992). ND, on the other hand, is referred to as a sudden and unexpected natural event that occurs within a short warning time, causing direct and indirect losses during or after the onset of the event (Virendra 2014).

The United Nations Guiding Principles on Internal Displacement defines IDPs as "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised State border" (OHCHR 1998).

Although the definition in the UN Guiding Principles provides no explicit mentions of CC or ND induced displacements, for the purpose of this study, CC induced IDPs can be defined as persons or groups of persons who have been forced to leave their places of habitual residence as a result of both the immediate and gradual impact of climate change. In the case of ND induced displacements, displacement is caused due to the occurrence of natural disasters and the need to avoid the after-effects of natural disasters. However, despite the differences in the causal factors of displacements in the two definitions, two common elements remain central to the definition of IDP. First, the movement is forced and involuntary and second, movement takes place within national borders.

The study also aims to examine the impact of CC-ND on the well-being of the IDPs in Bangladesh, India and the Pacific Islands. CC-ND directly or indirectly affects the well-being of the internally displaced. The ineffectiveness of protection mechanisms could potentially increase vulnerability and impede people's ability to be resilient, which are key components in assessing an individual's well-being (Virendra 2014). The compounding impact of CC-ND can thus result in the decline of the well-being of the displaced due to the irreparable damage, and loss of not just their livelihoods but also of social and emotional support.

6. Literature review

6.1. Case study: *Bangladesh*

Bangladesh is one of the many countries in South Asia at high risk of rising sea levels, storm surges and inundations, and as a consequence, at heightened risk of displacement. UNICEF points out that Bangladesh's flat topography, dense population and weak infrastructure makes it uniquely vulnerable to the impacts of climate change (UNICEF 2019, 7).

In particular, the coastal areas of Bangladesh are the most affected by CC, resulting in thousands of people getting internally displaced every year (Chowdhury et al. 2020). The number of displaced people is rising at an alarming rate in the country due to CC-related push factors, such as sea-level rise, cyclones, flash floods, riverbank erosion and salinity intrusion (Hasnat et al. 2016). Moreover, it is projected that a mean sea level rise of three metres will inundate about 69 percent of the exposed areas of the country (Alam et al. 2018).

The high vulnerability of the country to CC has resulted in an increasing pattern of CC induced internal displacement. According to a study by the Comprehensive Disaster Management Programme, by 2050, one in every seven people in Bangladesh will be displaced as a result of CC, with the majority of displacement occurring within Bangladesh, and not across borders (CDMP II 2014). According to the 2021 *Internal Displacement Index Report*, disasters were the key drivers of displacement in Bangladesh in 2020, resulting in a total of 4.4 million new displacements. While Cyclone Amphan in late May resulted in 2.5 million displacements, monsoon floods which inundated a quarter of the country by late July, displaced about 1.9 million people in areas of Chittagong, Sylhet, Dhaka, Rangpur and Mymensingh (IDMC 2021a, 49).

The fundamental rights of IDPs to livelihood, adequate housing, equal access to education and development have been severely affected as a result of CC-ND induced displacement. Acknowledging the prevalence of CC-ND induced displacement in Bangladesh, the Internal Displacement Monitoring Centre (IDMC) notes that the impacts of displacement have resulted in the deterioration of people's normal livelihoods, heightened food insecurity, disrupted children's education, and increased the risk of health problems such as waterborne and infectious diseases (IDMC 2021b).

Unfortunately, due to a lack of information about CC-ND induced IDPs, weak monitoring institutions, low inclusion of stakeholders, insufficient incentives, and lack of international financial assistance, Bangladesh has not been able to make significant progress in adopting CC related policies within existing policy frameworks (Khan 2019, 107). Moreover, the lack of academic research to guide policymakers in providing legal assistance through a human rights-based approach for CC-ND induced IDPs is also evident.

Further, human rights protections for CC-ND induced IDPs get minimal attention from relevant policymakers and other stakeholders in Bangladesh due to various social and legal barriers. Within the social spheres of the country, CC-ND induced IDPs are found to be the most marginalised, with no empirical evidence on the quality of their well-being (Khan 2019, 109). At the same time, the vulnerabilities of CC-ND induced IDPs is also diverse as it includes but is not limited to women, children, elderly

and persons with disabilities. Research has found that of the vulnerable groups, children are the most affected by CC induced displacements (UNICEF 2016, 9) as their well-being is severely threatened and they are at heightened risks for child marriage or child labour (UNICEF 2019, 29). In particular, girls who move to big cities due to CC are at risk of being forced into sexual exploitation as they do not have alternative ways to make a living. In addition, families who have migrated to urban slums due to CC, lack adequate basic services to provide for children's needs, which could negatively impact children's well-being (UNICEF 2016, 32).

In terms of the legal context, the increased focus of the government on development-related issues than on human rights-related issues has resulted in inadequate laws protecting the rights of

CC-ND induced IDPs. Such a lack thus inevitably increases their vulnerabilities, further ignoring their needs and concerns.

6.2. Case study: *India*

The pattern of internal displacement in India is affected by both the slow and sudden onset of ND. In 2020, Cyclone Amphan hit the Indian states of West Bengal and Odisha, displacing 2.4 million people (IDMC 2021a, 53). At the same time, damage in the coastal areas of India due to rising sea levels was also severe (Black et al. 2021). A figure indicated that about 3,829 kilometres out of the total coastline of 7,517 kilometres eroded due to sea-level rise (Rajawat et al. 2014, 125). With about 170 million people residing in the coastal regions, this phenomenon is projected to increase the number of IDPs in the near future, with the impact also likely to be equally or more catastrophic (Panda 2020).

In the context of India, three specific causes can be identified that increase vulnerability and reduce resilience to CC-ND induced IDPs. First, there is the inherent challenge that the differences in the geographical characteristics of the country pose to CC-ND induced IDPs, as CC dramatically affects the geography and vice versa (Dangermond and Artz 2010). Undoubtedly, geographical characteristics are some of the most significant compounding factors for vulnerability to CC (IPCC 2022, 20). Hence, examining the geographic characteristics is essential in reducing the vulnerabilities of marginalised groups and responding to hazards and risks. With the country exposed to the Indian Ocean on East, West, and South sides, the damage caused by changes in marine ecosystems and rising sea levels due to CC is significant. Furthermore, the West Himalayas, located in the northwest region packed with riverine and valleys of the country, is also experiencing the impacts of CC with an increase in the magnitude and unpredictability of ND such as floods and drought (IPCC 2022). The vast section of the region's population who reside in riverine lands and valleys are thus exposed to heightened risks of displacement.

The second factor is the industrial structure of India. Enhancing resilience regarding livelihood is a critical measure for helping IDPs return to their previous level of well-being. Unfortunately, India's industrial structure, which accounts for about 54 percent of the country's total workforce engaged in primary industries such as agriculture is highly vulnerable to ND and CC. Agriculture is one of the industries most severely affected by CC (IPCC 2022, 37). Studies show the impact of CC extending beyond the agricultural sector to workers' means of livelihood as well (Panda 2017, 615). The far-reaching impacts of CC-ND on the marine ecosystems and farmlands reduce the productivity of farmlands and fisheries, resulting in the increased vulnerability of those in the industry of losing their livelihoods (Alakkat 2011). Therefore, it can be clearly anticipated that the susceptibility of losing the means of livelihood due to ND is exceptionally high, with the impacts of CC also contributing to the loss.

The final factor is the social structure of India which is deeply rooted in categorising individuals and communities based on their caste and class background. The structural inequalities embedded in the principles of patriarchy and the caste system create additional barriers for marginalised groups to recover from the adversities of CC-ND (Sujakhu et al. 2019). Particularly for women, this social structure can doubly reinforce the result of the aforementioned geographical characteristics and the vulnerability of their livelihood. For instance, girls are almost always the first one's to be exposed to the aftermath of school dropout syndrome, as also substantiated by research indicating the increased dropout rate for girls during and after disasters (Yadav and Lal 2018, 5). Additionally, the practice of caste-based occupation and restrictions placed on vulnerable groups such as low caste groups and women further exacerbates the problem, as on top of being displaced, they cannot seek new working opportunities to sustain themselves (Krishnan 2022). This impedes their efforts to maintain their well-being and increase their resilience during and/or after displacement.

6.3. Case study: *The Pacific Islands*

Pacific Island Countries (PICs) contribute the least to global greenhouse gas emissions, yet vulnerabilities for these island countries and islanders continue to worsen from exposure to the deleterious effects of CC. The significant increase in temperature, rising sea levels, strong wave currents, tropical cyclones, and other CC related risks (Nand and Bardsley 2020) have inevitably impacted PICs and exacerbated vulnerabilities to CC. The harsh impacts of CC induced risks have become the single largest cause of the slow onset of displacement on the slowly disappearing Pacific Islands (Perkiss and Moerman 2018), with estimates of 665,000 to 1.7 million getting forcibly displaced by 2050 (Ferris et al. 2011). The impacts of CC are already materialising directly and indirectly and the risk it poses for PICs is only anticipated to get worse in the near future.

If in yesteryear Pacific islanders were subjected to forced relocation and displacement due to colonialism, today the same is caused by CC-ND (Tabe 2019). In 2014 the village of Vunidogoloa in Vanua Levu was the first village to relocate to Fiji due to sea-level rise, rampant flooding, coastal erosion and tidal surges (Charan et al. 2017). Although relocation could be the only cogent solution to increasing adversity for the islanders, the impact and choice of human mobility transcend the notion of movement and relocation. Displacement for Pacific communities could mean severance from their ancestral lands, and cultural and spiritual wellbeing (Boege 2010). The subjective understandings within the local discourses regarding CC and displacement reflect the intricate relationship between cultural factors, the motives for moving, and the perceived outcomes. Findings from a study conducted in Kiribati, Tuvalu and Nauru suggested a great sense of attachment of the islanders to their ancestral lands and emphasised the threat that such severance could have to their lands and culture (Oakes 2019).

While forced displacement due to CC and ND threatens the cultural identities of the islanders, the impacts on mental health are also of increasing concern, especially for populations already marginalised. In a study with Tuvaluans it was found that the compounded impact of existing difficulties, CC and its unforeseeable impacts was a serious determinant of distress, heightening people's chances of experiencing anxiety, tiredness, sadness and depressive symptoms (Gibson et al. 2019), causing additional impairments in daily activities (Gibson et al. 2020). Although an unexplored and unrecognised area in research and law (Price 2019), these findings indicate the increasing risk to the mental health and wellbeing of the vulnerable populations in small island developing states (SIDS), urging decision makers to take into serious consideration the mental health issues caused by CC (Kelman et al. 2021).

Emerging literature on CC related issues in PICs also shed light on the changing narratives of the islanders towards CC, with increasing emphasis on the need for the global community to expedite efforts to reduce global greenhouse gas emissions and on the different roles required in resisting CC (Kirsch 2020). A 2018 study found that involving women in improving climate adaptation policies in the Pacific was an integral step in not only recognising the significance of gender participation but also in evaluating the differences in vulnerabilities and addressing the needs of women (Mcleod et al. 2018), with women recognised as recovery enablers in the aftermath of Cyclone Pam in Vanuatu for their dynamic roles as capital mobilisers, leaders, innovators and entrepreneurs (Clissold et al. 2020). Yet improvement in women's vulnerabilities and wellbeing continues to be excluded from policies and practices, leaving them to be passive victims to acute and gradual disasters as well as to inequitable systems of governance.

7. Legal frameworks of case studies & policy recommendations

7.1. Bangladesh: *Domestic legal framework*

Bangladesh has signed, ratified, and acceded to most of the international conventions, treaties, and protocols related to the protection of environmental rights. Yet, the supreme law of the land fails to guarantee environmental rights as fundamental rights for its people. In the absence of the recognition of environmental rights, it is difficult to protect and promote the rights of CC-ND induced IDPs within the current legal framework of Bangladesh. Khan (2019) noted that human rights protection for CC-ND induced IDPs is uncertain in Bangladesh. Since ensuring the fundamental rights of citizens is already an inherent challenge due to the lack of state resources and capacity, guaranteeing the rights of CC-ND induced IDPs requiring special attention is even more uncertain. The government has made significant advances in disaster risk reductions, specifically in reducing mortality rates but the link between disaster risk reduction and CC, and the large-scale impacts of CC induced ND is yet to be fully established (UNICEF 2019, 35). As a result, CC-ND induced IDPs lack sufficient political and media attention.

Article 18 (A) of the Constitution of the People's Republic of Bangladesh includes the protection and improvement of the environment and biodiversity, however, the issues of CC-ND induced IDPs remain unrecognised and unaddressed (Bangladesh Constitution 1972). It is thus of prime importance to legally recognise, enhance and effectively implement the rights of CC-ND induced IDPs.

For instance, Article 28 (4) ensures that the State can make special provisions in favour of women and children, and/or for the advancement of any disadvantaged section of the population. This can also be interpreted as obliging the State to make special provisions for the advancement and protection of CC-ND induced IDPs.

Similarly, Articles 31 and 32 of the Constitution mention the right to life and the right to a healthy environment. Additionally, Article 31 ensures every citizen has the right to protection from action detrimental to life, liberty, body, reputation or property, except by the law. This then translates into the recognition of CC-ND induced IDPs as citizens of the state whose rights are fundamentally protected by the State.

Policy recommendations

- *Establish a strong database and documentation in Bangladesh regarding the number of CC-ND induced IDPs (Rana and Ilina 2021, 2). This will assist in the process of in-depth assessment and analysis of the changing trends and*

impacts of internal displacement. These databases could disaggregate data by gender, age, location, and cause of internal displacement, which would help in approximating the population of CC-ND induced IDPs. Specifically, a clear database on women, children and farmers of the coastal areas who are forced to displace is necessary as they are the most vulnerable to displacement.

- *The government should routinely conduct monitoring and evaluation of the social and economic impacts of CC-ND induced IDPs. More specifically, monitoring should focus on short and long-term impacts to determine durable solutions to the problems of IDPs. Investigations into damage and loss of infrastructure should be required to develop effective relocation strategies and inform the planning of urban policies.*
- *In the absence of a governing agency or legislation mandating the full protection and assistance of CC-ND induced IDPs, the government should draft specific laws for the protection and promotion of the rights of CC-ND induced IDPs and make necessary amendments to existing ones to ensure that a strong human rights protection mechanism is put into effect for this population (Khan 2019, 111). New policies must be climate risk screened, where the voices, perspectives and needs of women and children are included in new CC adaptation initiatives for improving the well-being of these IDPs.*
- *The government should integrate mechanisms for safeguarding the well-being of CC-ND induced IDPs into national sustainable policies and plans. These mechanisms could also focus on ensuring capacity building for alternative livelihood opportunities for CC-ND induced IDPs, ensuring the effective participation and inclusion of at-risk populations in the decision-making process to better address the changing circumstances, and provide better support systems to increase their knowledge and skills to combat and adapt to the impacts of CC.*

7.2. India: Domestic legal framework

Neither the national laws nor specific policies in India directly address internal displacement, IDPs and CC as a subject of law or policy within its domestic legal system and policy implementation. Even in the presence of laws relating to the environment such as The Oriental Gas Company Act (1857), The Indian Forest Act (1927) and The Motor Vehicles Act (1939), the enactment of which dates back to colonial years, reformations and/or formulation of new national laws specifically on CC have not been made. However, the National Action Plan on Climate Change (2008) (NAPCC) and the Disaster Management Act (2005) can be examined to identify policies relevant to CC-ND induced IDPs.

The NAPCC sets out extensive plans and response systems to reduce the adverse effects of CC, with its eight national missions thoroughly responding to the causes and impact of CC. They include solar energy, efficient energy, sustainable habitats, water, sustaining the Himalayan ecosystem, Green India, sustainable agriculture, and strategic knowledge for climate change (Pandve 2009, 17). Apart from addressing the mitigation of the negative impacts of CC, the NAPCC also includes measures like the National Disaster Management programme and a high-resolution storm surge model for coastal regions that aim to improve the well-being of CC-ND induced IDPs (NAPCC 2008). However, the NAPCC at large does not focus on the issue of CC-ND induced IDPs and has limitations concerning its counteractive measures for responding to the impacts of CC. One such limitation is the lack of specificity in the implementation measures of the policies, which could detract from evaluations of the effectiveness of policies (Rattani 2018, 32). For example, the missions on sustainable agriculture, water and the sustainable Himalayan ecosystem do not include measurable targets.

The Disaster Management Act has a more holistic approach to managing disaster situations with the inclusion of scientific, engineering, social and financial processes (Das 2012, 41). The Act places responsibility on the national and state authorities to support and guarantee the provision of shelter, food, drinking water, healthcare and services (in accordance with the standards laid down by the national and state authorities) to people who have been affected by natural or man-made disasters. Additionally, the Act urges the authorities to establish minimum guidelines for relief for disaster victims and seeks input on relief action and risk management from the National Disaster Force and the National Institute of Disaster Management (Disaster Management Act 2005).

Policy recommendations

- *The focus of the existing national policies must be more direct and inclusive in addressing the needs of CC-ND induced IDPs, especially by increasing the participation of the affected groups to reflect a bottom-up approach. Moreover, these policies must also emphasise preventive methods, including but not limited to protection systems such as early alarm systems and CC-ND resilience building in regions at high risk of CC-ND, such as arid and coastal areas across India.*

- *The policies should develop specific intervention plans to address the multitude of factors that weaken the restorative mechanisms and focus on solutions to decrease the vulnerability and increase the resilience of the IDPs. These policies should also be designed to target specific vulnerable groups such as children, women and people belonging to low caste groups, to reduce and/or negate impacts of any other forms of inequalities in maintaining well-being.*

- *The government must develop a practical assistance and welfare system that will be able to secure the livelihoods of CC-ND induced IDPs. For instance, improving agricultural productivity through technical cooperation and government investment in agricultural technology could be one way to reduce farmers' vulnerability and enhance their resilience. Another effective mechanism to minimise the loss of physical and economic assets could be establishing pathways to seek sufficient social assistance from the government.*

- *Any policies relating to CC-ND induced internal displacement should be based on the fundamental principles of non-discrimination, equity, and accessibility to justice.*

7.3. Pacific Islands: Domestic legal framework

The Climate Change Act 2021 of Fiji and the 2018 Vanuatu National Policy on Climate Change and Disaster-Induced Displacement are the only available legal policies relevant to CC-ND induced internal displacement amongst PICs. The policies for both Fiji and Vanuatu elaborately address the issues of CC, and CC-ND induced displacement as relevant to the specificities of the country. However, apart from these two, other island countries lack significant legislation that identifies and addresses CC-ND induced IDPs as a priority.

Clause 2 (Part 1) of the Climate Change Act 2021, defines climate displacement as "the displacement of people as a result of the direct or indirect impacts of climate change, including sudden and slow-onset climatic events and processes occurring either alone or in combination with other economic, social and political factors" (Climate Change Act 2021). The definition provided in the 2018 Vanuatu National Policy on Climate Change and Disaster-Induced Displacement includes "people displaced by natural hazards" together with people displaced by development and infrastructure (Vanuatu National Disaster Management Office 2018). The lack of precise identification and definition of IDPs due to CC-ND in the Vanuatu National Policy could thus be a fundamental barrier in recognising and responding to the specific needs and rights of IDPs due to CC-ND.

Acting as national instruments in their respective jurisdictions, both the Fijian Climate Change Act and the Vanuatu National Policy address the issue and allocate responsibilities to relevant actors to ensure the effective implementation of the stated policies. In the case of the former, Part 12 of the Act, "Climate Displacement and Relocation", clearly specifies the principles and necessary procedures that needs to be undertaken to effectively develop and address relocation and assistance standards to protect at-risk and vulnerable communities from the adverse impacts of CC. According to the Act it is the responsibility of the Fijian Taskforce on Relocation and Displacement to effectively prepare and implement the Fijian Planned Relocation Guidelines to

facilitate "pro-active processes" to address the risks posed by CC-ND induced displacement. In the case of the Vanuatu National Policy, the responsibility is placed on the Ministry of Climate Change Adaptation, Meteorology, Geo-Hazards, Energy, Environment and Disaster Management to implement the policy. The policy identifies four "systems level" and eight "sectoral-level" strategic areas for addressing displacement and generating durable solutions. However, these intervention plans are not addressed specifically towards CC-ND induced displacement.

Additionally, both the frameworks have brief mentions of well-being, but in the context of the Climate Change Act it is referred to in light of intergenerational equity. While for the Vanuatu National Policy ensuring the psycho-social well-being of displaced people is one of the sectoral-level strategic areas. However, despite the impacts of climate change already occurring in the region, and more so in low-lying communities and on coral atolls, challenges of recognising and protecting the rights, livelihoods and well-being of the vulnerable communities through the law is still highly prevalent (Price 2019).

Policy recommendations

- *The inclusion of CC-ND induced IDPs in the national laws, policies and development plans should be of fundamental priority to expedite actions to address and respond to the increasing issue, in developing durable recommendations, accelerating implementation measures, and in emboldening climate litigation to increase the political will and accountability of national and international communities for CC-ND induced IDPs in the PICs.*

- *The development of relevant frameworks and strategies should be done in close consultation with the vulnerable and affected groups (including but not limited to women, men, children, youth, community leaders, and people living in poverty) by civil society organisations, climate activists, front line workers, policy makers and experts, to reflect on the existing and emerging needs, concerns and challenges of the IDPs due to CC-ND.*

- *The PICs and the Pacific Islands Forum, in their independent and combined efforts, should recognise and address the exacerbated threat on vulnerable groups (such as women and children), and develop targeted provisions for the assistance, protection and mitigation of the risks of CC-ND induced internal displacement.*

- *PICs should continually work with the international community to ensure that the developed States from the global north are fulfilling their commitments to provide long-term financial support to enhance mitigation and adaptation strategies, to address the injustices posed by anthropogenic CC, to demand increased transparency in the use of natural resources and policy implementation, and to address the immediate and future needs of IDPs due to CC-ND in the Pacific region.*

8. Comparative analysis: Legal and situational

The overall analysis of the three case studies - Bangladesh, India and the Pacific Islands, has established that despite contributing the least to CC when compared to the global north, the susceptibility of these countries to the occurrences of CC-ND has increased at an alarming rate. The case studies also show that each of the three countries have experienced high vulnerability to CC and ND, with significant rates of sea-level rise, floodings and tropical cyclones, suggesting a clear need for coastal management policies to address this.

Apart from identifying and examining areas of similarities and differences in the patterns of CC-ND induced IDPs, the study also attempted to examine whether the existing legal frameworks of each of the case studies identify and thoroughly define and address CC-ND induced IDPs as well as their evolving needs. The comparative analysis of the existing legal frameworks of the three case studies found that despite the seriousness of the issue, Bangladesh and India failed to adequately define and address the issue of CC-ND induced IDPs. For the Pacific Islands, out of the 15 PICs only Fiji and Vanuatu defined and addressed the issue of IDPs due to CC-ND in their national laws and policies. This reflects a glaring gap in the regulatory frameworks of the three case studies, which undoubtedly is an area of increasing concern.

The anlysis suggests that the capacities of the legal frameworks are extremely limited thereby failing to address and respond to the issue of CC-ND induced IDPs, noting that all of the case studies are at the very forefront of the climate crisis. Due to the lack of specific and targeted frameworks to respond to the problems associated with CC-ND induced IDPs, measures to protect and improve their well-being are still largely undeveloped.

However, certain aspects of the legal frameworks of the three case studies were found to have some relevance and applicability to addressing the issue of CC-ND induced IDPs. The Constitution of Bangladesh (in Articles 18, 32 and 31) places responsibility on the government to protect and improve the environment and biodiversity and ensure the right to a healthy environment, and emphasises on the role of the State in protecting the citizens from any action that is detrimental to life, liberty, body, reputation or property (which can also be translated to the protection of CC-ND induced IDPs. The Disaster Management Act and the NAPCC of India, although not directly addressing the issue of internal displacement (or more specifically of CC-ND induced IDPs), have policies that respond to CC-ND and also discuss the minimisation of and recovery from the damages caused by ND.

For Fiji, the *Climate Change Act* legally recognises CC induced displacement by clearly explicating the impacts of CC on displacement and specifying provisions to negate the impacts of CC induced displacement and relocation. Finally, for Vanuatu, the National Policy on Climate Change and Disaster-Induced Displacement specifies policy measures to directly combat the issue of CC-ND induced IDPs.

9. Conclusion and way forward

The preamble of the 1992 United Nations Framework Convention on Climate Change (UNFCCC) commences with acknowledging the change in the Earth's climate and that the "adverse effects are a common concern of humankind." Alongside the UNFCCC, the preamble of the 2009 African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) emphasises eradicating the root causes of internal displacement, "as well as addressing displacement caused by natural disasters", and shares the commitment to "provide durable solutions to situations of internally displaced persons by establishing an appropriate legal framework for their protection and assistance." (African Union 2009).

Almost three decades after the UNFCCC, Secretary General António Guterres made an alarming remark to the UN General Assembly on his priorities for 2022, reemphasising the deteriorating climatic conditions of our planet and the exacerbated outcomes.

"*In 2020, climate shocks forced 30 million people to flee their homes — three times more than those displaced by war and violence … Small island nations, least developed countries, and poor and vulnerable people everywhere, are one shock away from doomsday … All major-emitting developed and developing economies must do much more, much faster, to change the math and reduce the suffering — taking into account common but differentiated responsibilities … Developing countries cannot wait any longer.*" (United Nations 2022).

One of the significant commonalities between the regions of Bangladesh, India and the Pacific Islands is that they are among the regions most affected by the worsening climatic conditions and onsets of ND. With the majority of the people being dependent on agriculture and fisheries for sustenance, the impacts of CC-ND are felt directly on these very sources. The frequency and the magnitude of the calamities are increasing at a rapid pace, resulting in many also getting displaced and relocating to a new place altogether. However, the challenges of displacement extend further than human mobility, and into the uncertainties of resettlement and reintegration.

The global south bears the brunt of climate injustice with minimum to no preparedness, with its impact also resulting in increased internal displacement of vulnerable populations. Recognising the unparalleled damage and loss of climate change and the responsibilities of the developed parties to provide enhanced support and assistance to developing countries, the 27th Conference of the Parties to the United Nations Framework Convention on Climate Change (COP27) concluded with a landmark decision to operationalise a 'loss and damage fund' through the Sharm el-Sheikh Implementation Plan (UNFCCC 2022).

The compounded impact of displacement due to CC-ND is most likely to reverberate into the lives of vulnerable individuals and communities, affecting not only their means of livelihood but also indefinitely increasing

poverty and inequalities. One of the key arguments of climate justice is the inequitable impacts of CC on the most vulnerable groups, who are the least responsible yet the most disadvantaged in terms of accessing and owning the resources for adapting to the changes. In the absence of a comprehensive regulatory framework that legally recognises CC-ND induced IDPs and addresses the seriousness of the issue, the challenges of seeking limited support and assistance seem very arduous for the displaced.

However, with the monumental decision by the United Nations General Assembly on 28 July, 2022, recognising "clean, healthy and sustainable environment" as a universal human right, the challenges of protecting the IDPs due to CC-ND, of expediting governmental actions to quickly adapt to and mitigate the environmental changes, and of prioritising "human-induced environmental degradation and climate change" could be mitigated, since governments are obligated to promote, protect and achieve this right at all cost. This historic resolution paves the way for a strong movement towards enhanced accountability, strategic litigation and protection — but most importantly for guaranteeing justice.

Therefore, it is crucial now more than ever for the governments of each of the studied nations to take proactive and progressive measures to protect the most vulnerable individuals and communities, who are on the brink of getting displaced from their homes. It is even more vital for the States to take legal measures that are aligned with the changing circumstances and needs of the people who are most affected by CC-ND, and to ensure that the 'disproportionate impacts' of the phenomenon are well under control.

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http://doi.org/10.25330/2503

The socio-economic status of internally displaced people in South East Europe: The cases of Serbia, Bosnia and Herzegovina, and Kosovo[1]

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Abstract: *The aim of this paper is to shed light on the 30-year problem of internally displaced persons (IDPs) in the former Yugoslavia, specifically in Serbia, Bosnia and Herzegovina, and Kosovo. While the number of IDPs is in decline, the problem and its consequences are felt by many. In this paper we will present the social, political and economic context of IDPs in these three case studies by analysing the existing legal framework and policies. In particular, we will focus on violations of the fundamental human right to an adequate standard of living, the complex dilemma of choosing between return and integration, and socio-economic discrimination against IDPs.*

Key words: *internally displaced persons; Serbia; Bosnia and Herzegovina; Kosovo; post-conflict societies*

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1 References to Kosovo shall be understood within the context of the United Nations Security Council Resolution 1244 (1999) and the International Court of Justice Advisory Opinion on the Kosovo Declaration of Independence.

1. Introduction

The Yugoslav Wars (1991-2001) – the series of ethnic armed conflicts that began after the secession of Slovenia and ended up with the dissolution of Yugoslavia into independent states – left an enduring mark on the region with the consequences still felt. The conflicts, accompanied with the political and social transformation of the socialist political system, produced a unique combination of issues making local societies at the same time post-conflict and post-socialist. The wars created a huge flow of internally displaced persons in Croatia, Bosnia and Herzegovina (BiH) and Serbia. Although "the public gaze of the media has long since moved on elsewhere and donors have shifted their resources" (Kett 2005, 199), the problems of refugees and internally displaced people in the former Yugoslavia remain an important issue for many who still feel the effects of the wars.

We use the internationally recognized term IDPs for people who were displaced from their homes during the wars in the former Yugoslavia, but we use it in the broadest possible term in order to include "floaters" — people of minority ethnicity living in their pre-war municipality but prevented from returning to their pre-war homes — and "domicile displaced persons" — those of the dominant ethnic group living in different property but still in their pre-war municipality (Philpott 2005). The International Committee of the Red Cross (ICRC) also states that "as regards Serbia and Montenegro, all citizens of this country whose homes were in Kosovo, regardless of their nationality or religious affiliation, are considered to be IDPs" (ICRC 2002).

According to the International Displacement Monitoring Center (IDMC), in 2019 there were 98,574 internally displaced people in BiH due to conflict and 905 because of various natural disasters, while in Kosovo there were 16,000 internally displaced people, and in Serbia the number of IDPs was the highest, at 201,047 people (Commissariat for Refugees and Migration Republic of Serbia, n.d.(b)). The UNHCR 2019 fact sheet on Kosovo states that out of 16,204 displaced people within Kosovo, 412 were living in temporary collective shelters (UNHCR 2021b). In Serbia in 2021, there were five collective centres in which 186 people lived (Commissariat for Refugees and Migration Republic of Serbia 2022). In BiH, 8000 people who lost their homes during the wars in the 1990s are still in collective centres (UNHCR 2021a). Collective centres were shelters made during or immediately after the war for short-term accommodation, but which have remained permanent until today. By the end of this year, the government of BiH planned to close all temporary accommodations for displaced people within the country. IDPs require special assistance that requires coordinated action between higher levels of the state's organisations and social work centres. In

BiH and Serbia, those organisations are the Commission for Displaced Persons and Refugees in the former and the Commissariat for Refugees and Migration in the latter.

There are also obstacles for the people who had the opportunity to return to their previous homes. Some houses are not completely restored and there is a lack of infrastructure including electricity. In addition, there are obstacles in claiming previously acquired rights including pension and tenancy rights. The former Yugoslavia had two main types of property rights: private and socially owned (Philpott 2005). Socially owned properties were mostly urban apartments in state owned buildings, while rural houses were privately owned. The transition from occupancy rights to private property had just started at the beginning of the 1990s and many people did not buy out their apartments before the war. In the immediate post-war period wartime allocations of property were mostly unchanged, but rather consolidated (Philpott 2005). New property laws enacted after the war in BiH allowed property right holders or their legal successors to apply for the restitution of property. However, access to property was not always the main obstacle to return. There are problems of reintegration in their communities, security concerns, and lack of education and employment opportunities (Philpott 2005). As Kett explained, "the decision whether to return to their homes is complex, with local and international political pressures adding to their uncertainties and insecurities" (Kett 2005, 199).

We explore the difficulties faced by internally displaced persons in the former Yugoslavia. Continued political and economic transformation of the countries in the region has affected housing rights, employment, social rights and provisions. Understanding these processes is an important part of the understanding of the complex web of problems faced by internally displaced persons in the former Yugoslavia. A multidimensional approach with focus on the views and experiences of internally displaced persons should help our understanding of their current predicaments and foster our knowledge of post-conflict management in general. An important contribution of the paper is to promote a better understanding of the protracted nature of conflict-induced displacement. In particular, the assumption that drives most post-conflict recovery is that as soon as conflict ends, normality returns. Often, the belief is that people are able to move forward in an upward trajectory in the aftermath of conflict. However, the reality is far more complex. It offers crucial lessons for post-conflict interventions that support the return, resettlement, and reintegration of IDPs, either in their post-conflict communities or in new areas of their choice.

2. Kosovo

The United Nations High Commissioner for Refugees (UNHCR) started operating in Kosovo[1] in 1992 in order to support refugees and displaced people. According to the UNHCR's biannual fact sheet, there were 16,100 IDPs in Kosovo as at February 2021 (UNHCR 2021). According to the Internal Displacement Monitoring Centre (IDMC), the number of people becoming internally displaced has been increasing globally over the last decade. However, the statistics portray a different trend in Kosovo, where the number of people internally displaced–mostly due to conflict – is slowly yet gradually decreasing. Over the last decade, the number of IDPs in Kosovo has dropped from almost 18,000 to 16,000.

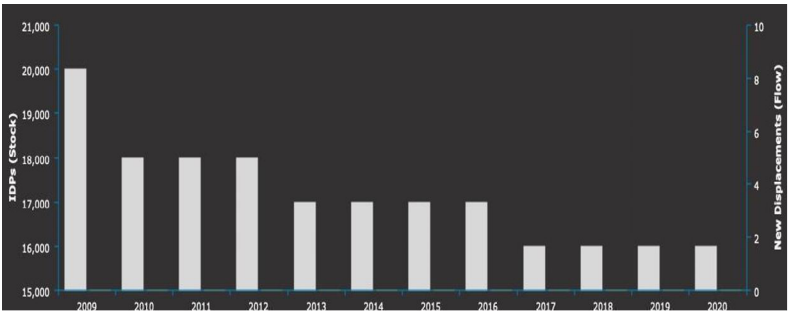

Figure 1: IDPs in Kosovo IDMC data | Source: IDMC

IDPs face diverse issues and obstacles including property rights violation, access to courts, access to public services, lack of employment opportunities and systemic discrimination (Matijević 2013, 2014). The violation of their socio-economic rights, such as the right to adequate housing and education, prevents IDPs from returning to their countries of origin. According to data presented by the IDMC and the Norwegian Refugee Council (NRC) in 2012, around 60 percent of IDPs in Kosovo belong to ethnic, national, language and religious minority communities, mainly Serbian-speaking Christian Orthodox ethnic Serbs (IDMC and NRC 2012). As a result, IDPs often fall prey to intersectional discrimination due to their displacement status and the minorities to which they belong, such as displaced Roma citizens (Matijević 2013).

According to a 2016 study, IDPs in Kosovo portray lower access to education and home ownership in comparison to the average Kosovo rate; live in difficult conditions like makeshift shelters, informal settlements or collective centres; reside in accommodations which are not connected to

the sewerage system; cannot access running water; have difficulty entering health facilities; rely on social benefits; are jobless or make less than the general population if employed; while only few have managed to regain access to their properties (Danish Refugee Council et al. 2018).

2.1 History background

The 1998-99 Kosovo war between the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Kosovo Liberation Army triggered one of the most massive forced displacement tragedies in contemporary Europe, affecting as many as 1.5 million people. The NATO aerial bombing campaign against the Federal Republic of Yugoslavia, which was not approved by the UN Security Council and was organised in the name of combating humanitarian catastrophe and mass refugee flows, resulted in further large-scale displacement (Davies and Glanville 2010, 113–17). The forced displacement of people reappeared in 2004, when 4,200 people gained IDP status following a conflict (re)escalation (IDMC and NRC 2012). Since the war, a focal point of Kosovo's and UNHCR's policy has been the unconditional return of refugees and IDPs into and within Kosovo, dismissing any other considerations or alternative solutions (Danish Refugee Council et al. 2018).

UN Security Council Resolution 1244 (1999) highlights the importance of IDPs' safe return and states that the UNHCR is in charge of ensuring that all refugees and displaced people return to Kosovo (UN Security Council 1999). Article 156 [Refugees and Internally Displaced Persons] of Kosovo's constitution focuses on the safe return of IDPs and refugees (Constitution of the Republic of Kosovo 2008, 60).

The Ministry for Community and Return (MCR) in Kosovo is in charge of stabilising communities and the sustainable return of all displaced citizens. The MCR twice adopted a four-year "Strategy for Communities and Returns", in 2009-2013 and 2014-2018, focusing on the sustainable return of IDPs, conducting surveys and drafting a policy on durable solutions (Danish Refugee Council et al. 2018). The program of the Kosovo government for 2021–25 announces the drafting of a new law for IDPs and assistance to those wishing to return to their homes, especially "displaced persons living in collective centres, private homes and the return of Albanians to North Mitrovica" (Republic of Kosovo 2021, 24–25).

IDPs remain a vulnerable group in Kosovo and their displacement negatively interferes with their effective socialisation with citizens of different ethnic groups (Matijević 2013). Matijević argues that the

vulnerability and special needs of IDPs should be reflected within the Kosovar legal framework. Instead, they are blatantly ignored: when it comes to property rights, for example; or in Kosovo's Anti-Discrimination Law, which makes no reference to IDPs whatsoever (Matijević 2013, 2014).

2.2 Conflicting data

Existing data on IDPs tend to vary. In this subchapter two different reports are contrasted in order to illustrate the incompatible results that data showcase in regard to IDPs in Kosovo. In 2012, the IDMC presented a report titled "Kosovo: Durable solutions still elusive 13 years after conflict", which included the mapping of about 17,850 displaced people by region within Kosovo based on UNHCR data (IDMC and NRC 2012). Almost 80 percent of the IDPs in Kosovo are based in the segregated region of Mitrovicë/a. Most IDPs live in regions where the majority of the population is of the same ethnic group.

In November 2016, a breakthrough data collection survey on IDPs in Kosovo was jointly conducted by international, Kosovar and Serbian parties (Danish Refugee Council et al. 2018). According to their findings, there were 22,900 IDPs in Kosovo in 2016: namely, 16,383 Serbs, 5,879 Albanians and 638 Roma/ Ashkali/ Egyptians. These data differ from the report presented by the IDMC and the NRC in 2012. The national database of IDPs in Kosovo that the IDMC uses is supported by the MCR and updated both by the UNHCR and third partners (IDMC 2020). The 2012 report estimates a total of 17,850 IDPs, while the 2016 one argues in favour of 22,900.

Taking into consideration that the last time Kosovars were massively displaced was during the re-escalation conflict in 2004, the possibility of a rise of displaced people from 2012 to 2016 is a fallacy. To this effect, we would argue that this numeric discrepancy has resulted from different institutions on the field closely collaborating to compile data in innovative ways. However, reports conducted after 2016 by the UNHCR and IDMC did not use the numbers agreed on in the 2016 report. The most commonly used data are the ones presented by IDMC. As a result, the accuracy of the data presented in both cases remains open to debate.

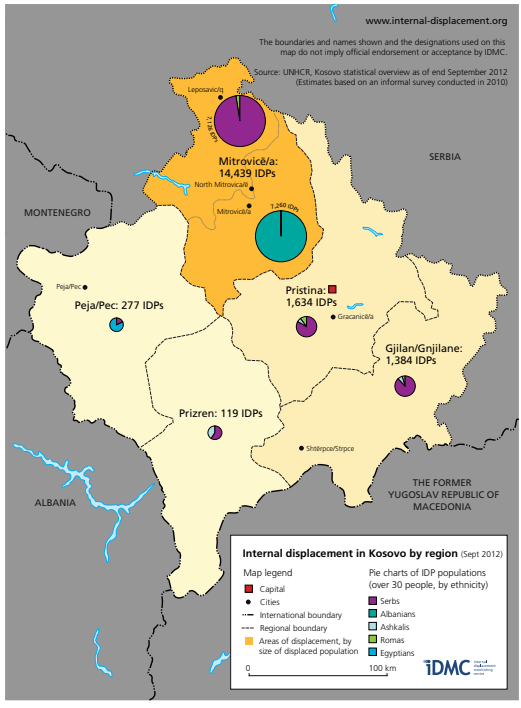

Figure 2: IDPs in Kosovo | Source: IDMC

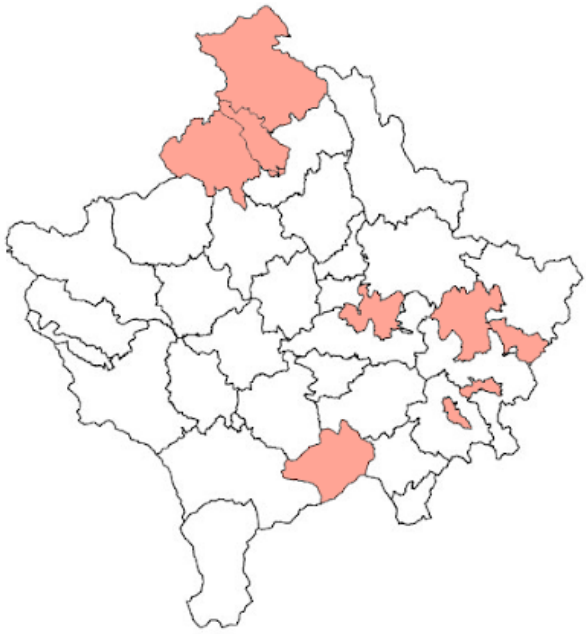

Figure 3: Majority-Serb population in colour | Source: The Dialogue

Another logical explanation for the differing data is connected to politics, especially relations between Pristina and Belgrade relations which have been strained over Kosovo's independence. Keeping in mind that the 2016 survey's contributors included institutions from both Kosovo and Serbia, the (political) question of who was eligible to be recognised as an IDP in Kosovo was revisited. This agreement regarding the number of IDPs was reported as an accomplishment (Danish Refugee Council et al. 2018, 4). Interestingly enough, UNHCR, which was a contributor to this report, does not use the data from the report, and publicly states that "there is no accurate number of Internally Displaced Persons (IDPs) in Kosovo" (UNHCR n.d.).

Conflicting Data on Kosovo IDPs	Serb	Albanian	Roma/ Ashkali/ Egyptians	Total
IDMC, NRC - 2012	10,000	7,200	650	17,850
DRC, KAS, MCR, CRM and UNHCR - 2016	16,383	5,879	638	22,900

Figure 4: Conflicting data on IDPs in Kosovo from the two surveys

2.3 Integration versus return

Today, the Serb-majority areas are inhabited predominantly by an ethnic Serbian majority and are heavily influenced and controlled by Serbia, which seeks to enhance its leverage on the Serb-majority municipalities across Kosovo (Balkans Policy Research Group 2017). Ethnic Serb IDPs in Kosovo are currently based mostly in majority-Serb municipalities and most of them are not interested in moving back to their place of origin (Danish Refugee Council et al. 2018). The underlying factor that affects the return and reintegration of the conflict-affected communities in Kosovo relates to the deep-seated ethnic divide between ethnic Albanians and Serbians. This ethnic difference makes it almost impossible for durable solutions to exist in order to address IDP issues in the region.

Regarding the plight of those unsure whether to stay or move, it was found that 62 percent of Albanians, 5 percent of Roma/ Ashkali/ Egyptians, 1.4 percent of Serbs who reside in private accommodation and 1.5 percent of Serbs living in collective centres would prefer to relocate to their place of origin; 22 percent of Albanians, 80 percent of Roma/ Ashkali/ Egyptians, 93 percent of Serbs in private accommodation and 83 percent of Serbs in collective centres favour local integration within the place of their displacement (Danish Refugee Council et al. 2018). "Within the

place of their displacement" refers to the broader geographical region and not necessarily their current accommodation facility. For example, most Serb IDPs live in Serb-dominated regions, and those Serbs (93 percent of those in private accommodation and 83 percent in collective centres) who favour integration in the place of their displacement are not referring to their household, but to living in the same (Serb-dominated) region.

According to the Danish Refugee Council survey, the main barrier IDPs within Kosovo face concerning the dilemma of returning to the place of origin or integrating in the place of displacement is housing (in) security. Regardless of the IDPs' decision to either relocate or integrate, accommodation safety is highly prioritised. Other reasons concern their overall safety in the area of residence, their freedom of movement and their language skills – for instance, the knowledge of Albanian by Serbian IDPs (Danish Refugee Council et al. 2018). Lastly, most IDPs have been living away from their place of origin for more than 20 years, which means that numerous people have been born and raised in displacement. As a result, relocating for families with children and young people in their household is considerably harder because the place of displacement constitutes their children's home, where the latter have developed their social networks (Danish Refugee Council et al. 2018).

Matijević argues that the significant barriers which IDPs in Kosovo face (property rights, security fears, lack of a sustainable return framework, access to judicial and public services, unemployment, and systemic discrimination) prevent them from taking sustainable and informed decisions on whether to return to their place of origin or integrate into the place of displacement (2013). Here, we would also stress the importance of ethnic segregation as a social, political and economic component which discourages the relocation of displaced citizens. As long as certain municipalities in Kosovo remain ethnically, linguistically and religiously divided, IDPs are encouraged to stick within their respective communities. This viewpoint also explains why the number of IDPs in Kosovo is slowly decreasing (UNHCR 2017a).

2.4 Property rights

Kosovo's reconstructed cadastral system lacks a remarkable number of records, which were displaced in Belgrade when Serbian forces left Kosovo at the end of the 1998-99 conflict (Haxhiaj and Rudic 2019). A crucial element of the EU-facilitated "Brussels dialogue" was the Agreement on Cadastral Records signed in 2011, under which Serbia would return cadasters to Kosovo (Bashota and Hoti 2021). This agreement will allow

Kosovo to establish a trustworthy official cadastral system, which can protect citizens' legitimate property claims and eventually resolve ongoing legal property disputes. For this action to occur, Serbia was first required to scan copies of all original pre-1999 cadastral books which would then be compared to Kosovo's reconstructed cadaster system by a technical agency monitored by Kosovar, Serbian and EU representatives. However, only minimal progress has been achieved so far and recent Kosovar reports accuse Serbia of blocking the cadastral registries agreement (Bashota and Hoti 2021). The slow progress in the dialogue between Pristina and Belgrade is attributed by a group of experts on Kosovo-Serbia relations both to the fear that comparing properties within Kosovo would challenge its current cadastral system and to Serbia's scepticism that Serb representatives would be included in the process (The Dialogue n.d.).

The agreement required Kosovo to introduce a legal framework with the aim of synchronising the comparison of cadastral records, which resulted in the Draft Law on the Kosovo Property Comparison and Verification Agency. The Draft Law aims to serve justice in conflict-related property cases: whenever a mismatch occurs between cadastral records and property claims, the Agency has to rule which one of them is accurate. In such cases, the person named in the record or their heirs should be notified either physically at their registered property or via an announcement in an official publication of the Agency's Secretariat (Matijević 2015).

Matijević argues that the process of identifying and communicating with the interested parties indirectly excludes IDPs, as they often rent properties and become internal nomads due to financial reasons, which essentially means they have no registered property. Properties belonging to IDPs are either illegally occupied or remain empty due to their displacement. Also, IDPs cannot afford to keep track of the Agency's official publication, nor are they aware that they should do so. This was the basis of the EU's advice for Kosovo in its 2013 Progress Report, which urged it to further expand its strategies in order to effectively notify IDPs about the expropriation of their properties (DG NEAR 2013).

IDPs have special needs regarding the safeguarding of their property rights in their place of displacement. Post-conflict immovable property repossession remains an unresolved issue in Kosovo, while the properties of IDPs are to a large extent illegally occupied. Therefore, the IDPs cannot exercise their property rights, and the weak justice system and their physical absence further exacerbate illegal occupation of their immovable properties in the place of origin (Matijević 2014). However, some progress has been made in regard to the property rights of IDPs. In 2020, Kosovo

official institutions performed eighteen evictions and demolished one illegal structure which was constructed on land which was property of a displaced person (DG NEAR 2021). Lastly, the lack of accommodation stability prevents IDPs from returning to their residence, and many rent low-quality accommodation in their place of displacement, which perpetuates intergenerational poverty and social exclusion (Matijević 2014).

3. Serbia

In the case of Serbia, the largest proportion of internally displaced people are refugees from Kosovo, known as "Kosovo and Metohija" by Serbian authorities. Kosovo is not recognized as a country by the Republic of Serbia, which treats the region as a part of their country. The latest data show that the number of IDPs in Serbia, excluding the territories of Kosovo and Metohija, was 209,021 at the end of 2005 but currently stands at 201,047 people (Commissariat for Refugees and Migration Republic of Serbia n.d.(b)). Most IDPs are now living in Raška, Šumadija, Toplica, Nišava, Pčinja and Podunavlje districts, while a minority of IDPs are living in collective centres. Most of the collective centres, four of them, are located in the territory of Kosovo and Metohija, while there is one outside these territories, where sixty-nine people are living. Several mechanisms have been established to cope with this problem. One of them is the "Local Action Plans" (LAP), which have been implemented since December 2008 "to address the issues of refugees, internally displaced people (IDPs) and returnees under the readmission agreement"(Commissariat for Refugees and Migration Republic of Serbia n.d.(c)). These plans have been developed and adopted in 135 municipalities or cities, of which twelve are in the territory of Kosovo and Metohija. Also, since 2008, IDPs have been beneficiaries of the Instrument for Pre-Accession Assistance (IPA) programs, which aim at resolving the housing problems that are one of the biggest obstacles that IDPs are facing. Moreover, it is worth mentioning that the latest national strategy of Serbia regarding IDPs is the National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons for the Period 2015-2020 (Government of the Republic of Serbia 2015). This National Strategy especially puts emphasis on addressing housing needs and improving the economic prospects of the IDPs, also with the help of local action plans.

3.1 Legal framework

As to a legal framework that specifically targets IDPs in Serbia — there is none. Consequently the status that they hold is the same as the status of Serbian nationals. Their rights are not protected by any special regulations.

However, there is one document that is not legally binding, but is of great importance for the IDPs and their status. That is the National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons for the Period 2015-2020. But, as we can see, the duration of this strategy ended two years ago, and in the meantime no new strategy has been made. The former strategy contained proposed measures whose goal was to improve the status of IDPs. There are several other strategies which do not pertain to the specific target group of IDPs, but are connected to it. The Strategy of Social Inclusion of Roma for the Period from 2016 to 2025 (Government of the Republic of Serbia 2016) concerns the Roma population, which is an extremely vulnerable group of IDPs due to the poor status that Roma people have in society; and the Migration Management Strategy of the Republic of Serbia deals with migrations. However, even though the previous strategy is not in force anymore, it is important to note that it did not include an action plan to define funding for the implementation of the strategy, therefore its implementation and future programs were from the start questionable (Trifković and Ćurčić 2018).

The institutional framework regarding IDPs is defined by the Law on Asylum and Temporary Protection from 2018 and the Law on Migration Management from 2012. These laws are tightly connected to the work of the Commissariat for Refugees and Migration (CRM): a key institution for matters concerning the IDPs, this is a separate organisation within the public system. At the head of it is a commissioner, a deputy and two assistants (Commissariat for Refugees and Migration of the Republic of Serbia n.d.(a)). The work of the CRM consists of: registration and reception of refugees; recognition and cessation of refugee status; provision of accommodation and assistance to refugees and ensuring balanced and timely assistance; taking measures for the return of refugees; meeting the housing needs; keeping records of their responsibilities and the establishment of databases; and international cooperation.

3.2 Social status

The social status of the IDPs is in general worse than that of the rest of the population. Reasons for this are multiple. They represent a vulnerable group which is often the target of prejudice and discrimination. IDPs tend to be perceived as over-privileged, financed by the state and living off welfare and state subsidies, due to some of the refugees and IDPs from Kosovo taking advantage of their misfortune. This results in poor living conditions for a significant number of IDPs, who can feel outcast and unwanted.

IDPs are generally poorer than the majority. Data for Serbia from 2010 obtained from UNHCR show that 45.2 percent of IDPs were classified as poor, while the share classified as poor in the whole population was 9.2 percent (Allen 2016).

Several studies about the status of IDPs in Serbia have been undertaken. They show that this population is vulnerable, having worse social status than the rest of the population. IDPs have a 22.1 percent higher unemployment rate, and are more likely to be working illegally, or at part-time or seasonal jobs, while their wages are low or even below the minimum wage (Vladisavljević 2011). The state, to cope with the financial issues this vulnerable population is suffering, is offering IDPs welfare, which is not solving this problem in the long-term.

According to the data collected by the UNDP, IDPs in Serbia are also one of the most discriminated-against groups in the country, next to Roma, women, elderly people and persons with disabilities (CeSID et al. 2012). One of the main reasons behind their discrimination is related to the fact that they are from Kosovo, as a not insignificant number of people see them as parasites who live on state subsidies. There is a widespread belief in Serbia that people who come from Kosovo receive extra benefits because of their origin and because of their status as IDPs. Of these IDPs, those that are also Roma are suffering from double discrimination. Studies and analyses showed that the problems which IDPs are facing have still not been solved, primarily when it comes to obtaining economic and social rights, with housing being one of the biggest issues (Trifković and Ćurčić 2018).

The unfavourable status of IDPs manifests itself in their assessment of their own health. The trauma that displacements cause to IDPs can over time have impacts on their health, but also on their ability to rebuild their lives, keeping them in a circle of poverty. Thirteen years ago, a study found that almost 25 percent of those interviewed described their health condition as poor or extremely poor and more than 35 percent need to take medications on a daily basis, which also includes 10 percent of IDPs that do not have health insurance (Grupa 484 2009), which is in close correlation with the fact that approximately 12 percent of them do not have any sort of documentation (UNHCR et al. 2011), and therefore they do not have access to medical care. We could not find data about the rest of the population for that year, but if we take the available data from the National Health Insurance Fund of the Republic of Serbia for 2017, which says that there were 6,901,482 citizens with health insurance, and compare it to the census from 2011 according to which Serbia had a population of 7,186,862, excluding Kosovo and Metohija, we can see that there was around 1 percent of citizens that did not have health insurance.

3.3 Housing

One of the biggest issues that IDPs are dealing with is housing. Although today only a fraction of the IDPs live in the one remaining collective centre (the "Salvatore" collective centre in Bujanovac, where 52 residents live according to the Commissariat for Refugees), housing remains an issue. Most IDPs either rent their homes (about 30 percent, which is a much higher rate than in the general population), or they live with their relatives (UNHCR et al. 2011). This is one problem that truly needs a solution, since the right to adequate housing is one of the basic human rights. Solving this would also help to solve other problems that are affecting the process of integration. Strategic Goal 4, item 6 (page 31) of the National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons for the Period 2015-2020 also recognizes this: "Addressing housing needs is one of the most important issues to improve the living conditions of IDPs."(Government of the Republic of Serbia 2015.)

The Commissariat for Refugees and Migration states that there are 16,644 internally displaced households in Serbia with 68,514 persons living in them. Roma IDP households are also very vulnerable, with 1,435 of them being in need, that is 10,188 people. Moreover, the data collected by the Commissariat for Refugees and Migration show that the majority of IDPs, 85 percent, live either with their relatives, friends or in rented apartments. Additionally, 5.11 percent of the total households in need live in structures that are not intended for housing. All of the residents that live in the only collective centre in Serbia are Roma, where they are living in inadequate living conditions. And more than 90 percent of Roma IDPs live in terrible living conditions, in households that lack water, sanitation and other utilities (Government of the Republic of Serbia 2015, Strategic Aim 4, item 6). This issue was pointed out in reports made by UN treaty bodies and the Special Rapporteur for the right to adequate housing, and a solution to the problem was called for by the Committee for the Elimination of Racial Discrimination (2018).

Lack of funding is one of the reasons why the housing issue remains, as was last stated in the National Strategy for Resolving the Problems of Refugees and Internally Displaced Persons for the Period 2015-2020. Still, it must be said that there were some housing programmes through which around 4,500 homes were provided for IDPs from Kosovo. However, one of the criteria that prevent people from being granted state housing is the number of family members, which is disadvantageous to small families because larger families have an advantage. Another problem relating to this is that IDPs that live in informal settlements cannot obtain legal addresses, and

without an address they are unable to get an ID card, which is a condition for getting an IDP card, which perpetuates the problems they are facing; this problem is intergenerational (Džuverović and Vidojević 2017, 64).

3.4 Return

The return of IDPs who fled from Kosovo is probably not a realistic solution now. Most of them are reluctant and afraid to return, which is supported by statistics: only 28,111 out of 220,000 persons had returned to Kosovo by the end of 2018 (OSCE 2019). Even those IDPs that returned — both Serbs and non-Serbs, such as Roma, Montenegrins, Bosniaks and other ethnic minorities (non-Albanians) — returned predominantly to northern Kosovo, which is mostly populated by Serbs, and even the numbers of these returnees are very low. One of the key documents, which was supposed to enable the safe return of refugees and IDPs to Kosovo, is the United Nations Security Council Resolution 1244 and its Annex 1 from 1999. However, this resolution was never implemented as it was supposed to have been, which can be seen from the fact that a vast majority of people did not return, as well as from the tensions that still exist in Kosovo.

Even though voluntary return would be the best solution, it is far from reality. Only a small number of IDPs are capable, or even open to the option, of returning. Several factors are contributing to that. The biggest one is the feeling of fear: many of them believe that they would not be safe at their place of origin in Kosovo and that their rights would not be respected there. Moreover, as has been mentioned, a significant number of IDPs lost their homes in Kosovo or they were destroyed (OSCE 2018). They were even prevented from entering the homes in which they used to live before the war (Džuverović and Vidojević 2017, 10). For example, from March 2014 to 2018, a total of only nineteen evictions of illegal occupants were performed by the Kosovo Property Comparison and Verification Agency, and sixteen cases of illegal reoccupation of properties were recorded (OSCE 2019). Access to employment is another obstacle, as well as access to public services and generally low living standards (Human Rights Council 2014). One of the key reasons for non-return is hatred and discrimination based on ethnicity, which causes further problems such as fear of violence, inability to enforce court decisions, property usurpation, lack of access to educational and economic opportunities, not enough public services in the Serbian language, and poor representation of minorities in public institutions and enterprises (United States Department of State 2021).

Social exclusion is another problem that IDPs are facing in Serbia and one of its biggest aspects is social and psychological insecurities. These are

often associated with the want to return, but also the fear of doing so and the consequences they might face if they return to their homes. This is often caused by the treatment IDPs receive from other citizens, but also by the state and local authorities that are preventing mass return (Džuverović and Vidojević 2017, 64). Tensions are still present in Kosovo, and Serbs living in Kosovo are often being discriminated against because of their ethnicity and have difficulties in everyday life.

Having in mind that the reasons for a near-zero rate of return to Kosovo include lack of security, limited freedom of movement, limited access to public services, lack of economic prospects and difficulties in reclaiming their property which is often destroyed (Human Rights Council 2014 and OSCE 2019), it is hard to expect there will be any change. As time goes by and new generations are born outside of Kosovo, it is highly unlikely there will be a greater rate of return. The only kind of return to be expected, and even that in small numbers, is the return of an older population which is sentimentally tied to Kosovo.

4. Bosnia and Herzegovina

When it comes to the issue of the IDP in Bosnia and Herzegovina, it is more common within the state to use the term "displaced person" ("raseljena lica"): de facto, it applies not only to those who are formally registered under entity displaced person legislation, but, in general, to people who were displaced from their pre-war homes (Philpott 2005). For instance, these two sub-categories are taken into account as "displaced persons": 1) representatives of the ethnic minority who were prevented from returning to their pre-war homes, but managed to stay in their pre-war municipality ("floaters"), and 2) "domicile displaced persons" from the ethnic majority who left their homes and remained in the same municipality because their houses were destroyed during the war.

4.1 Background

The IDP status is often seen as more fragile than the refugee's position and may cause insecurities to some of the sub-categories of its holders. For example: in June 1999, a protest of Bosnian-Croat floaters took place in Vareš, a town 45 km from Sarajevo, in which municipality the Croat population was estimated as being the dominant group (40.61 percent) immediately before the war in 1991 (Central Intelligence Agency 2002). People who were against an upcoming meeting between municipal authorities and Bosnian-Croat refugees living in Croatia gathered in front of the municipal hall. The floaters (IDPs) were united by the fear that the refugees would be given a privilege in property restitution, as beneficiaries

of repatriation programs and better economic opportunities abroad. The perception of the protesters was based on the following idea: while those who had crossed the border could enjoy some perks both in the host entity and the country of origin, IDPs had had to face all the privations of war as well as the subsequent conditions on the edge of survival.

During the first years after the end of the Bosnian war, the property restitution laws provided displaced persons with the right to receive alternative accommodation as a form of material compensation for damage caused by the war. However, the December 2001 amendments separated the status of the IDP from the issue of alternative accommodation entitlement and transformed it into a right to emergency accommodation in collective centres (The Law on Displaced-Expelled Persons and Repatriates in the Federation of Bosnia and Herzegovina, FBiH Official Gazette Amendment Nos. 19/00 & 54/01, and the Law on Displaced Persons, Refugees and Returnees in the Republika Srpska, Amendment Nos. 33/99 & 65/01, entered into force on 4 December 2001). As a result, internally displaced persons who had not received accommodation by 2002 were deprived of adequate dwelling and still today do not have access to an adequate standard of living, which violates their fundamental human right to an adequate standard of living as stated in the 1948 UN Universal Declaration of Human Rights, Article 25.1.

The UN refugee agency has estimated that more than 1.3 million people became internally displaced as a result of the Bosnian war and the systematic campaigns of ethnic cleansing which took place throughout it (UNHCR 1999). In 2021, almost twenty-seven years since the end of the war, more than 96,000 people are recognized as holders of an IDP status, and around 8,000 of them still live in collective centres (UNHCR 2021). These collective centres were supposed to be temporary accommodation for families, with the initial intention of relocating them to new housings, but in some cases it turned out to be a long-term and, eventually, even permanent solution.

There are 158 collective centres in the country, and they all face a lack of good hygienic-sanitary conditions and medical assistance. Such environments have become a framework for poverty and crime: people living there are marginalised by society and have to survive on the brink basic needs shortages (Le Quiniou 2020). A new generation is growing up in collective centres, and they have not seen any other life: being born and raised in these conditions, they have no other life pattern and have severely limited access to proper education and job markets. This also negatively affects the future of the state. The issue requires immediate

action from the authorities of BiH in order to heal already existing patterns of intergenerational trauma which only prolong the devastating effects of armed conflict.

An effort to re-house residents of the collective centres was launched in 2013, via the Council of Europe Development Bank (CEB), a Paris-based body originally established to house refugees after World War II. The bank's project for Bosnia, nicknamed CEB II, envisaged spending 104 million euros on new social housing that would replace 121 of the 158 collective centres still in use (Marković 2022). More than half those funds, or 60 million euros, were raised by CEB member states – mostly European Union countries – and offered via the bank as an interest-free loan. The remainder was meant to be raised by local authorities in Bosnia. However, the project is running at least five years behind schedule. So far, only eight of the 121 collective centres have been closed.

The core reason for the majority of social and economic issues in BiH lies in the complicated political system built upon the Dayton Agreement, which has divided BiH into two entities of roughly equal size – the Republika Srpska (RS), where Serbs are the majority, and the Federation of Bosnia and Herzegovina (FBiH), made up mainly of Bosniaks and Croats. In 2000, District Brčko was also formed as a single administrative unit of self-government under the sovereignty of BiH. Entities form an intermediate level of administration between the central government and local government. In that sense, the issue of internally displaced persons will be analysed separately in the contexts of the Federation of Bosnia and Herzegovina and Republika Srpska as two of the biggest administrative units.

4.2 Legal framework of BiH

Both the two entities and the district have the authority to organise all three branches of power and to adopt their own laws, which must in turn be in accordance with the state constitution. The same is applied to any law regarding IDPs, thus it is necessary to briefly present the overarching legal norms which must shape the approach of the local legal frameworks. At the state level, the first legal standard is defined through Annex VII of the Dayton Peace Agreement, which is an agreement on the return of refugees and displaced persons (1995). By 2003, the state had adopted the official "Strategy of Bosnia and Herzegovina for the implementation of the Annex VII of the Dayton peace agreement" (UNHCR 2017b), which was further revised in 2010.

"The revised strategy identifies needs of the IDPs and the returnees which should serve as a starting point for all actors involved to create mechanisms of support and evaluation" (UNHCR 2017b). Since Annex VII is an agreement on the return of refugees and IDPs, and is the first post-war document on the issue, it needs to be present in the strategy focus on basic human rights and adequate standard of living. At the same time, the Report of the Representative of the Secretary-General on the human rights of internally displaced persons, from 2005, points out the lack of data on the gender of the returnees, preventing any possible gender analysis of the process of return (Kälin 2005).

At the state level, BiH also adopted the "Law on Refugees from BiH and Displaced Persons in BiH" (2005), which defines IDPs and returnees through articles 4 and 8 and further states that all human rights apply equally to both the IDPs and the returnees, while they also have the rights which are prescribed within local legal frameworks (Ministry for Human Rights and Refugees 2005).

4.3 Federation of Bosnia and Herzegovina

The Federation of Bosnia and Herzegovina, created in 1994 as a result of the Washington Agreement which ended the Croat–Bosniak War within the Bosnian War, comprises 51 percent of BiH's area and consists of 10 autonomous cantons with their own governments and legislatures. Bosniaks are the major ethnic group (more than 70 percent), while Croats are the second largest one (approximately 22 percent).

According to the Strategic Plan developed for 2019-2021, the main strategic goal of the Federal Ministry of Displaced Persons and Refugees was to ensure reconstruction of housing units for the needs of IDPs, closure of collective centres and alternative accommodation for returnees, and construction of social housing and housing for younger returnees' families (Federalno ministarstvo raseljenih osoba i izbjeglica 2019). About 350,000 housing units have been renovated in BiH, 250,000 of them in the Federation of Bosnia and Herzegovina.

The work is in progress, but it does not display much urgency in solving the issue. The lack of the right to adequate housing leads to an extremely high level of poverty among the IDPs: 83.1 percent of the IDPs based in FBiH have an average monthly income of less than 200 BAM (the Bosnian Convertible Mark) per family member, while 59.1 percent of them live on less than 100 BAM per month (UNHCR 2017b). These numbers lie far below the average net monthly wage of Bosnian citizens which was estimated at 1,059 BAM in February 2022 (Agency for Statistics of Bosnia and Herzegovina 2022).

4.4. Republika Srpska

Republika Srpska is the second most populous entity, with 1,228,423 people at the 2013 census, and its own judiciary, executive and legislative bodies and legal framework which would be further analysed in the context of IDPs (Al Jazeera 2016)

When it comes to the IDPs, the first official registration and data collection on IDPs at the state level was conducted in 2000, when 556,214 persons were registered as IDPs. By 2017, the Report on the Revised Strategy stated a significant reduction of IDPs — a total of 96,830 people were registered as IDPs, 61.4 percent of whom were within the territory of RS (Ministry for Human Rights and Refugees 2017).

4.4.1 Legal framework of RS

Within the government of Republika Srpska there is a Secretariat for Internally Displaced and Migrations (formerly known as Ministry for Refugees and Internally Displaced), which is the main legal body dealing with the issue of IDPs. The legal framework of the RS consists of state law and the entity law on displaced persons, returnees and refugees. The law regulates the rights and entitlements of the IDPs in line with the Revised Strategy, focusing on cash benefits, health care, education and temporary accommodation. It further proscribes terms of cessation of the IDP status in the event of a person's return to their pre-war place of residence or voluntarily permanent settlement in another place (Kälin 2005).

4.4.2 Return

Reports from 2017 stated that more than one million people were registered as returnees, of whom 58 percent belonged to the IDP group. Furthermore, almost all of the returnees are defined as minority returnees (UNHCR 2017b). In order to understand the possibility of minority return, it is necessary to briefly present the situation of IDPs within the entities and attitudes of post-war authorities.

Data from the re-registration in 2005 showed that the majority of re-registered persons on the territory of the FBiH were displaced from the ten municipalities of RS. In fact, these ten municipalities were the source of almost half the IDP population in FBiH (Nenadić 2005). This situation is due to the mass war atrocities committed against them, culminating in the Srebrenica genocide in July of 1995. In that sense, RS could be perceived as a unique source of IDPs which in turn requires extra effort in the process of return. However, the situation is rather dire. Post-war local

authorities were in many instances people who took active participation in the war, which made many of the IDPs unwilling to return to places governed by the ones responsible for their displacement. Further, due to mass ethnic cleansing within the territory, there have been drastic changes in the ethnic composition of these municipalities, which also impacted the decision of the IDPs on whether or not to return (Nenadić 2005).

4.4.3 Socio-economic status

Unemployment is a general issue for the IDPs, affecting a majority of cases. Data from 2017 show that more than 70 percent of the total IDP population are unemployed (UNHCR 2017b). In addition to lack of financial support there is also an issue of quality of living conditions, which was not resolved over the past two decades with several thousand registered IDPs still living in so-called collective centres which were supposed to be temporary solutions. There are governmental reports on the annual construction of new permanent housing for IDPs, but the final date for the closure of all collective centres keeps getting postponed. It is also necessary to point out a significant lack of transparency in the activities taken to resolve IDP issues, and the majority of the information on the status of IDPs is obtained through independent news outlet reports, because the majority of the foreign agencies dealing with the issue have been losing interest in it as time passes (Marković 2022).

5. Conclusion

As has been shown through a brief overview of the contexts, the issue of IDPs in the former Yugoslavia is not only a complex one, but also a persistent and continuous one. It has been explained how this issue is interacting with several layers of discrimination, while it further perpetuates additional marginalisation of the people affected by it.

We have observed several similarities between the case studies. The fact is that no country has managed to resolve this issue, even several decades after the wars ended. Further, there is a lack of a broad, coherent approach which would tackle all of the issues which IDPs face, with initiatives usually just focusing on limited cash infusion or slow and unreliable programs of housing. As we have shown, returning is still not an option for the majority of people for various reasons. Looking into specific situations and contexts in the region, there is an implication that the underlying cause for the majority of the issues is absence of political will to resolve them and politicisation of the issue through the nationalistic approaches of authorities in the region.

It is undeniable that the status and the experience of being an IDP is a position of specific vulnerability which should be handled by taking into consideration all of the particular needs, discriminations and characteristics of the people. Resolving the issue of IDPs will not only help the people affected by that status but it will also be the necessary step towards reconciliation and the building of just societies in Serbia, Bosnia and Herzegovina, and Kosovo.

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Kristine Bdoyan, Yevgen Gerasymenko, Volha Khvasevich, Oleksandr Kyselov and Nuno Oliveira. "Emergency response to the war in Ukraine: The role of state and non-state actors in supporting IDPs." (2022) 6 *Global Campus Human Rights Journal* 115-136
http://doi.org/10.25330/2502

Emergency response to the war in Ukraine: The role of state and non-state actors in supporting IDPs

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Abstract: *War has broken out in Europe once again, threatening the peace of nations and their people. The Russian Federation, on 24 February 2022, invaded the territory of Ukraine, starting a full-scale armed conflict that triggered serious repercussions for the civilian population. This study aims to investigate the emergency response to the initial wave of internal displacement through analysis of what humanitarian aid was supplied by state and non-state entities according to the obligations accepted and the situation on the ground. The data was collected by scrutinising reports, articles, regulatory acts and other relevant publications. Interviews with experts and internally displaced persons were conducted to generate insights and validate findings. The investigation highlights the insufficiency and lack of capacity of the Ukrainian state response in providing essential assistance to Internally Displaced Persons (IDPs), and reveals the obstacles to people's movement as they searched for security. Civil society, in its turn, maintained an essential role in the humanitarian response, providing their possible assistance and solutions wherever the state failed. The lack of coordination of the existing means and the lack of empowerment of civil society organisations did not facilitate the necessary emergency, as*

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the most needy were even more vulnerable under conditions where lines of communication were scarce. Tentative recommendations on strengthening the response capacities include adoption of the binding international covenant, detailing emergency provisions in the domestic law, granting power to a focal point for IDP protection, and facilitating administrative arrangements that empower the population and the Civil Society Organisations (CSOs) alike.

Keywords: *Internally Displaced Persons; Humanitarian Relief; Responsibility to Protect; Emergency Response; Conflict; War; Ukraine*

1. Introduction

Starting on 24 February 2022, the Russian invasion produced an unparalleled humanitarian disaster throughout Ukraine. In its early stages, an estimated 11 million people were forced to leave their homes and seek refuge elsewhere. While some civilians were able to move on their own, many others were not due to military action, high levels of hostilities, destruction of infrastructure or insufficient means of evacuation. Therefore, many tried to reach out to civil society requesting assistance in leaving areas that were under siege or imminent threat. Even with the few resources that were available, NGOs and volunteers did their best to assist those in need, even at the cost of putting their own lives at high risk (GPC 2022).

The relevance of ongoing war in one of Europe's largest countries is fundamental, as this is the most prominent example of how civil society, (I)NGOs and the international community respond to unprecedented and extensive humanitarian challenges. It is worth noting that similar patterns can be seen in virtually all post-USSR countries that have faced challenges to their territory, and hence their identity, since their inception. Accordingly, these circumstances of extreme emergency will exemplify how government unpreparedness can contribute to a humanitarian disaster despite the presence of outside help: help that should have been of a voluntary character, rather than vital. This final notion applies to all countries that have lately been involved in war circumstances.

Following the Second World War, security concerns and the necessity to devise strategies for tackling millions of displaced people precipitated a radical shift, that is to say, the establishment of the international and global refugee regime, at the heart of which was the Convention Relating to the Status of Refugees (1951) and its Protocol (1967).

The situations that have occurred in the recent decade have highlighted the necessity for yet another paradigm change in order to successfully avoid and respond to the plethora of internal conflicts and also the new forms of threats deriving from the reality of globalised society.

Displacements have been identified as one of the most significant humanitarian issues at present. Despite the fact that the number of IDPs is drastically increasing nowadays, their misery remains mostly unknown and ignored. IDPs are forced to withdraw from their residences due to armed offences and human rights violations. However, the fact that they remain in their country has serious implications for the level of protection available to them. These people are not just the poorest, but, at the same time, the most vulnerable group of people as they confront personal (namely, physical safety) issues, and a lack of access to health, food, water, and many other services (Krasno 2004, 55–58).

This research aims, in particular, to touch on the challenges in the lives of displaced persons, and to give an objective assessment of the initial relief efforts and capacities to provide such by the state of Ukraine, as well as of the response of the civil society, in the first months of the emergency. After establishing a benchmark for minimal protection standards, this paper will review the pre-war protection mechanism, and outline the background of the displacement as a starting point. Finally, the actions of the state and non-state actors, or absence thereof, will be evaluated, to reach conclusions on their preparedness and their capacity to identify and respond to the needs of IDPs.

1.1. Methodology

In order to carry out this study, data was collected from publicly available legal repositories, reports of humanitarian organisations, media outlets, and news archives of public agencies. To fulfil the aims and formulate the recommendations, the following aspects were examined:

1. the international and regional standards in regard to internal displacement, as well as the corresponding legal basis and state regulation mechanism in Ukraine;
2. the practical response of the state to the situation of emergency, as well as the reaction of civil society in the two months after the outbreak of war;
3. the most urgent needs of IDPs as seen or perceived at the time by different actors.

Six interviews were conducted with persons involved in the humanitarian response and/or having the capacity to provide an assessment of such; all of them, naturally, had a personal experience of displacement at some point. Brief background descriptions of the respondents are presented in the appendix. All interlocutors were informed about the aims of the research and the purpose of their involvement, and were assured of the confidentiality of their testimonies. Due to limited time and resources, a convenience sampling method was utilised, yet with regard for the

maximum available variation. Interviews became a valuable basis for cross-referencing the perceptions of IDPs in the field, and for enriching the data with the empirical perspectives of the practitioners and witnesses.

2. General overview of the IDP protection system and its implementation in Ukraine

2.1. General protection standards review

The United Nations Guiding Principles on Internal Displacement (Guiding Principles), the foundational document in the field of IDP protection, is not binding per se. Instead, its authority is based on the existing provisions of international human rights and humanitarian law, which it essentially restated in a way to better articulate the needs of the displaced (Kälin 2005, 33). In addition, the progressive hardening of IDP law can be seen in the wide recognition of the concerns raised in the Guiding Principles and their incorporation into domestic Ukrainian legislation and binding regional treaties (Cantor 2018, 217; Orchard 2010, 303).

At the regional level, the European Convention on Human Rights (ECHR) and its protocols are believed to be "a highly effective tool for the protection of IDPs in Europe", while "the obligations undertaken by the Council of Europe member States […] go beyond the level of commitments reflected in the UN Guiding Principles."[1] Nonetheless, the Council of Europe Committee of Ministers also recommends that member states follow the Guiding Principles, as well as other relevant international instruments of human rights or humanitarian law to shape their response mechanisms[2].

The Government of Ukraine, besides being a party to ECHR and one of the addressees of the aforementioned Recommendation, also explicitly declared its support by endorsing the Guiding Principles at the 2005 World Summit, and re-affirmed them in consensus decisions adopted by the Organisation for Security and Cooperation in Europe (OSCE).

As well as recognition, another important matter concerns the implications that IDP rights have at the ground level, as understanding of the particular steps and priorities could vary significantly, lack implementation mechanisms, or address only some of the relevant issues (Ferris 2011, 270–85; Kälin 2019, 1). Keeping in mind the crucial role of (I)NGOs and UN structures in the promotion of the Guiding Principles (Orchard 2010, 281),

1 Explanatory Memorandum to the Recommendation (2006)6, CM(2006)36-add.
2 Recommendation of the Committee of Ministers to member states on internally displaced persons Rec(2006)6.

it is worth examining the publications prepared with their participation. The Framework for National Responsibility (Brookings-Bern Project 2005) clarifies the scope of expectations in crafting effective response systems and sets measurable benchmarks for addressing the displacement. The Manual for Legislators and Policymakers (Brookings-Bern Project 2008) suggests a list of the minimum essential elements of state regulation for addressing internal displacement. The Handbook for the Protection of Internally Displaced Persons (GPC 2010) compiles the experiences of different humanitarian actors across the world for better understanding of the IDP protection goals and their operationalisation on the ground.

Some of the essential steps would be recognising IDP rights (including the right to decent shelter), ensuring their ability to escape to safety, designating a responsible focal point, collecting and maintaining statistics on their needs, allocating funding or seeking and accepting support from the international community, establishing procedures for identification and prioritisation, removing legal obstacles, and following best practice (Brookings-Bern Project 2008, 132; GPC 2010, 10; Kälin 2014a, 3; Kälin 2014b, 620). However challenging it could be to accommodate people's needs in the event of a large-scale displacement, at least minimum requirements have to be fulfilled (GPC 2010, 239).

For the purpose of this study, the elements of delivering a minimally effective emergency response were grouped into a benchmark against which the state's preparedness and success will be evaluated. The criteria were summarised as freedom of movement and escape, availability of shelter and social support, identification and needs assessment, coordination of response (including information exchange), and seeking and enabling help when failing.

2.2 IDP protection system in Ukraine before 24 February 2022

Ukraine's existing IDP protection mechanism was aimed at dealing with the aftermath of the military conflict in the east of the country and Russia's annexation of Crimea. The IDP Law[3] was adopted in 2014 in response to a massive wave of displacement, primarily from the conflict-torn areas of Donetska and Luhanska oblasts (provinces). The Law, inter alia, (1) set the definition of IDP, (2) detailed the registration procedure, (3) entrusted local authorities with housing provision, and (4) underlined that any permanent or temporary accommodation has to have appropriate conditions.

3 Law of Ukraine #1706 - VII (2014) "On Ensuring the Rights and Freedoms of Internally Displaced Persons".

Registration and statistics

IDP registration was regulated by Cabinet of Ministers of Ukraine (CMU) Resolution #509/2014 and required a proof of ties to one of the settlements in the conflict zones listed in CMU Resolutions #1503-r/2014 and #1085-r/2014. The IDP certificate, issued upon successful registration, became essential for access to public services (UN Ukraine 2019, 2). Hence, contrary to international standards, the IDP certificate in Ukraine created a legal status for IDPs with repercussions for IDPs' enjoyment of their rights under national legislation.

The Ministry of Social Policy (MoSP) stored all IDP records in the Unified Information Database (UIDB), however the data on their needs and concerns was absent. Moreover, conditioning any social payments for residents of non-government controlled areas (NGCAs) upon their registration as IDPs in government-controlled areas (GCAs) may have led to a discrepancy between the number of people who were actually displaced and the total number of those registered as such (CoE 2019, 40).

Shelter and social support

Targeted assistance, time-limited but extendable, became the main tool of social support to address IDPs' housing needs. Enacted by CMU Resolution #505/2014, it envisioned monthly payments of about 15 USD[4] per person (more for children and the disabled) for the initial period of six months. Other policies, more explicitly focused on housing, included state sponsored mortgages and loans, albeit with a limited budget and a number of conditions. The state also encouraged the construction of temporary housing stock by local authorities, co-financing projects and facilitating access to international aid. Given that, even after seven years, only a tiny fraction of the already-present IDPs had received meaningful support from the state-backed programmes (Kyselov 2021, 65), state capacity to provide shelter in case of emergency is rather questionable.

Coordination

Despite the creation of the dedicated ministry, there was no single body for IDP-related issues. Instead, two different agencies were tasked with different responsibilities: MoSP was in charge of the assignment and distribution of the targeted monthly assistance, while the Ministry of Temporary Occupied Territories and Internally Displaced Persons (MTOT) was formally expected to coordinate the overall response to displacement. The latter continuously struggled to fulfil its functions from the date of its very establishment (Kyselov 2021, 64).

4 Here and below, the amounts are calculated based on the exchange rate actual in spring of 2022.

Civil society input

Although the government is considered to be a major actor in the system of protection of IDPs, civil society positioned its strength in dealing with the consequences of military actions, mostly by working on the needs and protection of war-affected populations such as IDPs, veterans and other vulnerable groups. However, assessment of the effectiveness of the response of civil society in the circumstances of a crisis reveals the main limitations, which mostly related to the capacities of organisations and individuals, their lack of cooperation with authorities, and the level of citizens' involvement (Boulègue and Lutsevych 2020, 13–17).

2.3. Contextualising the new wave of displacement and the emergency response

The rapid advancement of the Russian troops from multiple directions centred attention on organising defence. The process of evacuation and accommodation of citizens was hardly under any kind of control. Destroyed roads and bridges, indiscriminate shelling, lack of fuel, power outages and communication problems only added to the difficulties. As early as the first week of the conflict around one million persons had already been displaced, and another twelve million were stranded and at risk, lacking will, resources, information or safe passage (Protection Cluster 2022a, 1). Accounts from one of the major hubs, Lviv, indicate that over fifty thousand were arriving in the city daily at that time (Shelter Cluster Ukraine 2022b, 1–4). Projections prepared by the Shelter Cluster expected over two million IDPs to be in need of shelter and non-food items (NFIs) (Shelter Cluster Ukraine 2022a, 1–3). By mid-March there were already close to 6.5 million IDPs in the country (Protection Cluster 2022c, 1). Family separation, exposure to shelling and restrictions on freedom of movement were named among major protection risks. Humanitarian actors were pointing to the prevalence of some particularly vulnerable groups in the IDP flows, such as children, women at risk, persons with disabilities, and the elderly (Protection Cluster 2022a, 1; 2022b, 1).

The IDP protection system was better prepared for the influx than in 2014, yet it was still hardly sufficient. "IDP" continued to be seen as a status to be granted, rather than a fact-based situation. However, unlike before, there was greater openness and eagerness to cooperate from the state authorities' side, possibly due to the connections established in 2014 and the change of the government in 2019 that elevated many activists into power (Interlocutor C 2022).

Another assessment pointed to the crucial factor of rootedness in the community, that enabled CSOs to receive and disseminate information, facilitate evacuations and distribute necessary supplies. "Having activists throughout the country, we were able to promptly set up a warehouse [in the safer zone]; we knew about the self-help chats in almost every city. The same goes for the trade unions: by being in touch with their membership, they were able to stay informed about local needs and present a concrete list of those" (Interlocutor B 2022). In this capacity, mass-membership organisations were able to act as information brokers, matching those seeking help with those eager to provide such using their accumulated social capital.

On the other hand, the situation revealed the deficiencies of the professional NGOs, which had struggled to re-organise their work, relocate offices, hire and train staff, and, most important, establish contacts in the new locations. "Not everywhere were they glad to see us; sometimes we were treated with suspicion, particularly in Lvivska oblast. Some wanted memorandums, others were promising but not delivering information" (Interlocutor A 2022). Coordination among different actors was also often lacking, leading to duplication. "When we moved to this oblast we started visiting Collective Centres and gathering information, recording data in the Cluster database; now another NGO comes to the region and starts doing the same. Is this really a wise way to spend resources?" (Interlocutor A 2022).

Zeroing in on the non-state actors' support and protection efforts, it is also possible to examine it at three different levels:

1. INGOs and funds acting in collaboration with national, regional or local NGOs or government.

International Organisation for Migration (IOM), in cooperation with state and local NGOs, launched a program of rehabilitation of damaged buildings of schools, dormitories, hotels and other state property in order to ensure temporary shelter for 1 million IDPs (IOM 2022). The East Europe Foundation collaborated with an established network of more than 500 local NGOs to coordinate relief efforts (East Europe Foundation 2022). Similar schemes were established under UNHCR (2022), UNICEF (2022), ICRC (2022) and other major international actors. Needs assessments were usually delegated to the local offices and their contractors, who conducted field visits to the transition, reception and temporary accommodation centres, border cross points and public offices. The general strategy of INGOs was to provide support to IDPs either directly or in partnership

with the local organisations responsible for implementation. Collaboration with local NGOs and civil society was conducted by delegating them legal and social counselling, distribution and project implementation (UNICEF 2022, UNHCR 2022, ICRC 2022, IOM 2022). The strategy helped to maximise the number of beneficiaries reached and effectively reinforce and complement the national support system. However, in the circumstances of emergency, INGOs were not able to provide a rapid infusion of available resources in the first days and weeks of the war (Stoddard et al. 2022).

2. *National, regional or local regional NGOs acting individually*.

There is a phenomenon of extremely low involvement of national, regional and local civil society organisations acting under their own names in response to the current IDP crisis, which is not a new tendency for Ukraine. The roots of this are in the low capacity and sustainability of NGOs, their weaknesses in management and citizen outreach, and their reliance on volunteering instead of professional paid labour (Kuts and Palyvoda 2006, 83). Even though citizens of Ukraine express quite a high level of trust in non-governmental civil society organisations, the level of their engagement tends to be low. This established the existing tendency towards individual actions in the community, and avoidance of membership or enrolment in the organisations. This in turn gives the government additional challenges and responsibilities in coordinating the resources of civil society to respond to emergency situations facing IDPs in the most effective way (Democratic Initiatives Foundation 2021). "I was active within the local NGO from time to time, but I wouldn't say that my war-related actions or volunteering were done on behalf of the NGO. Sometimes I used the NGO's connections or cooperation with our team. But I would say that my actions were more like individual initiatives." (Interlocutor F 2022).

3. *Actions and initiatives from individual citizens and activists.*

From the first days of war, Ukrainian society showed enormous solidarity and the great capacity of human capital, as well as of collaboration and acting collectively. "The solidarity in the society was enormous from the first minute of war. It was a phenomenon I have never experienced in my life before" (Interlocutor E 2022). From the scope of the civil society actions in the circumstances of the war, individual initiatives became the main and the strongest pillar of the first emergency response for ensuring security and support for IDPs. As means of coordination of the support of IDPs, a network of Telegram channels and Facebook groups and chats was established. Additionally, word of mouth became a tool of providing

support and searching for people. "Usually people from different regions, situations, background and age contacted me to ask what help I could provide. I don't actually know how exactly they got the information. Someone communicated my initiative to others. I didn't have to promote it at all, even though there were a lot of activists in every region" (Interlocutor D 2022). The rise and strength of these phenomena might be grounded in the empathy-based altruistic behaviour that is a consequence of traumatic events (De Waal 2008), and in the strong trust-based horizontal networks that typically characterise civil society in Ukraine (Kuts and Palyvoda 2006, 83). Moreover, the concept that violence has affected a part of the population produces strong inner motivations to support and host displaced people and refugees (Hartman and Morse 2020). It may also explain the additional human capital formed from IDPs supporting evacuations from conflict-affected areas, the provision of shelter for displaced people, and involvement in collective actions and volunteering. "The school where we lived after evacuation was at the same time the volunteering centre. Voluntarism helped a lot to cope mentally with the situation of war and evacuation. It was not 'obligatory' to volunteer, everyone could just use the school as a shelter. But every day almost all the inhabitants tried to do as much as possible as volunteers" (Interlocutor E 2022). Within the volunteering movement a strong tendency was observed that those who most suffered from the war helped and contributed the most too (Interlocutor F 2022).

3. Challenges to the protection of IDPs in cases of conflict-induced emergency

3.1. Right of free movement and escape

The United Nations (UN) and the International Committee of the Red Cross (ICRC) attempted to convince both sides of the conflict to reach an agreement on the need to establish humanitarian corridors, in order to reduce the suffering of civilians and comply with international humanitarian law. These corridors are a means of bringing essential goods such as food, water and other supplies when cities are under siege. In cases of humanitarian disasters where the international law of war is violated, for example through large-scale bombings of civilian targets, humanitarian corridors provide relief (Global Protection Cluster 2022).

The Adviser to the Head of the Office of the Ukrainian President Volodymyr Zelensky, Mykhailo Podoliak, reported on 3 March 2022 that negotiations had been held with representatives of Ukraine and Russia, where the sides had agreed on the establishment of humanitarian corridors. This agreement

came out of the second round of ceasefire talks that took place in Belarus. On the 5th and 6th of March, evacuations from the cities of Mariupol and Volnovakha were agreed for limited periods of time. However, these initiatives failed: Mariupol city council accused Russian troops of continuing to bombard the city; the Russian side, on the other hand, claimed that the corridors set up near Mariupol and Volnovakha had not been used and it was "nationalists" who prevented civilians from escaping, while Russian troops also came under fire during the cease-fire (Blair and Prentice 2022).

As can be observed from the experts' interviews in the appendix, there were effectively no evacuation plans in place: what was done ad hoc was either completely unregulated or steered manually. Neither a proper information system nor a technical base and supplies were prepared. "Highways were jammed on the exit but completely free on the other side; why not open those lanes in the reverse direction?" (Interlocutor C 2022). He continues: "Until 1 March, bridges were blown up without any notice. It was not until people arrived there that they learned about that, facing a choice either to look for a way around without any certainty that another bridge is intact, or get back."

Free trains supplied by Ukrzaliznytsia, a national railroad operator, became the main tool of facilitating evacuation at the country-wide scale. In smaller towns, buses were procured by the local authorities to drive people to the nearest railroad hub (Interlocutor A 2022). Initially, the information was not always properly disseminated: "We were able to receive up-to-date information regarding evacuation trains through the transport union" (Interlocutor B 2022). Given the power outages and telecommunication failures, it was highly doubtful that details on evacuation available on the internet were readily accessible for those in the direst need. Also, despite evacuation being conducted free of charge, ticket sales did not stop, at least for some period, misleading some people; and those who purchased tickets neither got any boarding preference, nor a reimbursement (Interlocutor C 2022). At the peak of the clashes trains were overcrowded, up to four times over their capacity (Interlocutor B 2022); boarding priorities became more common, but at times led to family separations. The most vulnerable were often left behind: when social workers stopped coming, they could not reach train stations themselves, but neither could they live on their own in the standard collective centres, so the only choice was to desperately look for volunteer help or, if unlucky, stay home and hope to survive (Interlocutor A 2022).

3.2. Shelter and social support

Access to social protection is essential for IDPs in order to be able to enjoy an adequate standard of living while displaced. As early as 25 February 2022, a provision was made to ensure the continuation of pensions and social payments during martial law; two weeks later it was decided that in the event that local departments were unable to perform their duties processing of such payments would be done by the central office (MoSP 2022a). From 2 March, any remaining value on E-Pydtrymka cards (the state-funded bonuses for COVID-19 vaccination) could be used for any purpose (Fedorov 2022a). The announcement made on 8 March clarified that all social payments would be extended automatically for the duration of martial law and one month beyond that (MoSP 2022b).

From 8 March, those who lost jobs due to the war could apply for a one-time payment of about USD 220 (Fedorov 2022b). By the end of the month over four million such applications had been received (Ministry of Digital Transformation 2022a). Two weeks later, the government launched a program of temporary monthly support for IDP hosts in the amount of about USD 15 per person per month, certainly a step in the right direction, albeit not enough to cover the utilities of a typical apartment. On 22 March the old CMU#505/2014 on IDP assistance was discontinued. Instead, IDPs became eligible for an increased amount of monthly targeted support forliving costs varying between USD 70–100.[5]

By the end of March, UNHCR in cooperation with Ukrainian authorities had rolled out a program of cash-assistance: about USD 70 per month for three months, with the expected number of its beneficiaries projected as some 360,000 IDPs (MTOT 2022a). Initially one of the primary components of NGO activities (later grouped around CASH Cluster, coordinating structure for cash assistance), it was however not without its issues, as UNHCR's "Progress" software quickly became overwhelmed and started failing or lagging (Interlocutor A 2022). On the next step, efforts were joined with the central government so that IDPs already registered did not have to repeat the procedure.

Displacement flows were mainly directed to the central and western parts of the country, with Dnipro, Vinnitsia and Lviv quickly becoming the largest recipients of IDPs per capita (Shelter Cluster Ukraine 2022a, 1–3). At the beginning, many IDPs were accommodated in make-shift facilities deployed at schools, gyms, dormitories, kindergartens, even churches, often supported

5 CMU Resolution #332/2022.

by volunteer groups which had emerged locally. Typically, such centres were overcrowded and lacking in essential NFIs, including bed frames, mattresses and blankets. Another concern was the lack of separation by gender or dedicated places for families, limiting the ability to ensure privacy and increasing protection risks (Shelter Cluster Ukraine 2022c). The majority of IDPs, admittedly, stayed in private accommodation (Protection Cluster 2022c, 4).

While voluntary help and improvised solutions may be a temporary response, it is ultimately only the state that has the necessary tools for a systemic approach. The main problem was insufficient capacity to house millions of displaced people; the state did not have even a nearly adequate stock of social housing and, therefore, had no tools to respond to this mass-scale displacement. "Many political developments in Ukraine over the years have been anti-social in their nature, aiming at cutting costs and privatisation; and then comes today" (Interlocutor B 2022).

With state support, the special platform "Pryhystok" was launched, facilitating the offering and seeking of accommodation. Yet the choice there was limited, and many options were primarily for females and children. For instance, in Lvivska oblast, they did not want to host men, demanding a registration record from the military commissariat which could take about a week to get; and sometimes housing was offered to Ukrainian speakers only (Interlocutor A 2022).

High demand drove rental prices to extortionate levels, as can be seen in examples from a smaller provincial capital in the Western Ukraine: "A house with two rooms and a bathroom for 700 USD; one with traditional oven and facilities on the street for 100–130 USD; rooms in a shared apartment for 200 USD" (Interlocutor A 2022). Even where the houses were rented out with the social aim of providing shelter for IDPs from the territories most affected by war, rental prices in most cases still stayed exorbitant (Interlocutor D 2022).

3.3. Coordination, needs assessment and information exchange

One week after the war had begun, the President of Ukraine established the Coordination Office for Humanitarian and Social Issues. From 14–22 March, with the cooperation of the government agencies and private sector, a web-platform for coordination of humanitarian response, Spivdiia, was launched (Minregion 2022a). Overall, it seems that the main means of coordination initially chosen by the authorities was information brokerage, such as reviving the information online-platform "Dopomoha poruch" on 25 February to collect information about urgent needs and available capacities (Dzerkalo Tyzhnia 2022), a chatbot for appropriate assistance

actor referral on 28 February (Ministry of Digital Transformation 2022b), updating and upgrading a chatbot for IDPs on 8 March (Minregion 2022b), setting up a hotline for donors on 9 March (MoSP 2022c), launching the HelpUkraine portal with necessary information for support (CMU 2022a), and launching the E-dopomoha portal for matching needs with capacities for assistance (MoSP 2022d).

The state railway company Ukrzaliznytsia launched a comprehensive support project called "Tam, de vas chekaiut", supplying evacuation, shelter and volunteers' assistance, which was implemented together with the Ministry of Digital Transformation and the Office of the President with the aim of coordinating the efforts of state and non-state actors (Ukrinform 2022). However, the website of the project was hardly user-friendly. It mainly presented, in the form of statistical infographics, the amount of places available in each region, and provided telephone numbers for the contact centres.

Started as a volunteering project, the above-mentioned Prykhystok platform was an example of cooperation between state and non-state actors taking the initiative to a new level. At the time of writing this paper, the platform was offering around 31,390 places for IDPs. Support for those hosting IDPs, in the form of a subsidy towards utilities costs, required registration on the platform. This decision contributed to the process of creating a centralised database for coordination of efforts to help people find shelter. However, the subsidy amount of about 50 cents per day was extremely low if the goal was to motivate householders to provide accommodation for IDPs in the long term.

3.4. Seeking and enabling help

When the paralysis of power became imminent, a decision was quickly taken to delegate a number of responsibilities. Regional administrations were almost immediately re-organised into military ones, with increased powers (MTOT 2022b). Chairs of the territorial defences were enabled to create lists of humanitarian goods that would be smoothly let in through customs (CMU 2022b). Further on, import procedures were progressively eased[6] (Minfin 2022; Minveteraniv 2022). It could hardly be said that the government ever shied away from accepting (inter)national assistance: clarification for donors from abroad had already been published by 28 February (MTOT 2022c), appeals were made (MTOT 2022d), and bank accounts opened (MTOT 2022e). Facilitated by MTOT, the Help Ukraine Center logistic hub was created by major Ukrainian business in mid-March (MTOT 2022f).

6 Cabinet of Ministers of Ukraine, Resolution #224/2022.

3.5. Identification

At least until 13 March, persons fleeing the war were not formally able to get registered as IDPs due to the bureaucratic process being oriented towards the "old IDPs". Receiving communities took on the burden of keeping their own records instead, typically in analogue form. Nonetheless, there were attempts at coordinating this, as statistics on beneficiaries were sent to "raion" (district) and oblast levels (Interlocutor A 2022). On the ground the process was perceived as very chaotic and unclear: "They were sent to the registration centre for IDPs where their data was written down on the paper without any indication of which agency was in charge of it" (Interlocutor B 2022); "When my wife went to register she just received a hand-filled form with a stamp, not an established certificate" (Interlocutor C 2022).

Eventually, the restrictions were lifted and possibilities extended, including the enablement of administrative service centres and executive committees to conduct registrations, and even featuring electronic applications via the Diia app. Departments of social protection did not require any major changes as they were already working with the Segment VPO database and could start servicing new IDPs practically immediately. Other actors had to have their functionality in Sotsialna Hromada software system updated first. The process was not particularly smooth as the software frequently lagged, possibly due to the high load. But as the process became more formalised, confirmation of their displacement was required from the petitioners. "I used to work in Kyiv while formally registered in my hometown, so I am not counted as an IDP, and all my friends from Khmelnytskyi are in a similar situation" (Interlocutor B 2022). Hypothetically speaking, proof of residence could be replaced by a lease agreement or employment records. However, the high degree of informality when concluding contracts in Ukraine became an obstruction.

As at 30 March, surprisingly, only some 130,000 had been registered as IDPs, possibly due to psychological reasons (MoSP 2022e), or due to low awareness and other difficulties mentioned by the experts interviewed. Two weeks later more than a million IDPs had been accounted for, which is still less than IOM's estimates (Interlocutor A 2022).

4. Conclusions / recommendations

Severe emergency situations such as armed conflicts cause huge displacement crises which require strong, organised and rapid responses; such responses are crucial for minimising damages and stabilising the situation.

Traditionally viewed as an actor for the protection of citizens and of the public interest, in emergency circumstances the state plays the major role in the stabilisation process by coordinating and mobilising available resources, including those of international, local and regional NGOs, as well as of individual representatives of civil society.

Following the results of this research, it can be concluded that the Ukrainian state was not prepared to provide the urgent immediate actions required by the displacement crisis caused by the war. The main burden fell on the local authorities and CSO volunteers. There was a need for systemic and scaled solutions, for which the government did not seem ready even after two months had passed. At the same time, the governmental support and protection of the wave of IDPs did have a progressive character, with attempts to coordinate the available resources.

The first response to the IDP crisis caused by the war was provided by the society in the form of phenomenally rapid mobilisation and self-coordination, which targeted evacuation, shelter provision and other humanitarian needs. However, in the long run, the response of society did not develop in scale and character, losing effectiveness without support at the institutional level.

The civil society response was based on individual actions and initiatives, established and coordinated horizontally. This tendency reveals the availability of a pool of human resources that should not be underestimated in an emergency situation. At the same time, the lack of a well-established system of coordination specific to the first response shows potential for improvement.

Due to the capacity and individual nature of the non-state actors' reaction to the IDP crisis, the solutions for providing shelter and basic needs that were offered by private business and the civil society sector were mostly temporary, imposing the obligation of ensuring long-term provision on the state.

Particularly in the first days of war and in the regions most affected by war, a lack of access to information about evacuation, shelter and other

social needs was observed, especially within the most vulnerable sectors of the population. Similarly, within the scope of displacement there was a gap in means and protocols of special assistance for the protection and support of the most vulnerable groups, such as elderly people and people with restricted opportunities.

The emergency situation of the current war in Ukraine, with its huge and rapid wave of displacement and connected social and humanitarian problems, and the response of the state and non-state actors, provide a valuable practical case model which reveals the challenges and opportunities for protection and support of IDPs under similar conditions.

To overcome the inconsistencies and to produce timely, adequate and comprehensive responses to emergency challenges, it could be proposed to develop and sign a binding instrument (convention) at the UN level, relating the protection of IDPs with the direct obligations of the states for their emergency responses. The results of this research prove that these emergency response measures should include the obligation and responsibility of the state to ensure implementation and enforcement of the movement-related rights of IDPs, including the right to seek safety in another part of the country and to be protected against forced return to, or resettlement in, any place where their life, safety, liberty and/or health would be at risk.

Another provision to be introduced into the UN treaty is the obligation of states to put all administrative efforts into organising the evacuation of civilians from areas of military action where their lives are in danger, and organising humanitarian corridors for that purpose with the necessary ceasefires. States should be obliged by this international instrument to introduce special emergency rules into the national legislation to protect IDP rights. Inter alia, these rules should account for: proper allocation of resources for the protection of IDPs' basic rights, including evacuation, accommodation, water, food, and health protection; clear mechanisms for the coordination of the public administration efforts, with the empowerment of one of the coordination authorities of the central executive body; and proper administrative rules for cooperation and coordination of efforts of state and civil society relating to the protection of IDPs.

At the state level, it is recommended that the Government of Ukraine should abolish administrative obstacles which limiting the possibility of IDPs reaching safe areas. To ensure proper administration and proper allocation of resources for protecting the rights of IDPS, the state should empower one of the Ministries, preferably MTOT, to coordinate IDP

protection. Using institutional support to strengthen the capacities of CSOs, as being the most flexible and informed actors, should also be considered.

Appendix: Interviews

Interlocutor A: coordinator at major human rights NGO; IDP.

Interlocutor B: social activist and trade union consultant; IDP at time of interview.

Interlocutor C: human rights lawyer; IDP at time of interview.

Interlocutor D: social activist; organiser of shelter for IDPs near Lviv.

Interlocutor E: activist; IDP; volunteer in school/humanitarian centre in Ternopil.

Interlocutor F: activist.

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http://doi.org/10.25330/2501

The enigma of internally displaced persons in Latin America and the Caribbean: An inquiry into natural disasters and climate-change-related displacements in The Bahamas, Honduras, Peru and Brazil

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Abstract: *This article seeks to approach internal displacement induced by climate-change-related disasters in Latin America and the Caribbean (LAC) through four local analyses. The general objective of the work is to cover how the four selected countries Honduras, The Bahamas, Peru and Brazil deal with this type of internal displacement legally and pragmatically, in order to understand whether or not it is a significant issue to local governments. Specifically, the article aims to expose how different groups of people experience internal displacement in each of the settings, and to show whether public policies consider those individualisations. Finally, this is qualitative research developed as a bibliographic study through descriptive and documental techniques.*

Keywords: *climate change; internal displacement; natural disasters*

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1. Introduction

When people think about forced migration they usually think of refugees, since refugee rights are internationally recognised and they face overlapping vulnerabilities. However, people displaced within their home countries — that is, internally displaced persons (IDPs) — receive much less attention, especially those forced to evade their homes due to floods, hurricanes, landslides, or to the construction of so-called development projects such as dams or highways. Though they face challenges similar to those confronting refugees, the public policies and programs designed to meet their needs are extremely scarce (Observatório de Migrações Forçadas, n.d.). In this article, displacement refers to the involuntary movement of people, which occurs when the ability to remain is physically removed. It diverges from migration for that exact reason: migrants relocate voluntarily, but IDPs do not have any degree of "choice" (Muggah 2015, 223).

In Latin America and the Caribbean (LAC), internal displacement (ID) has been an issue for many decades. Throughout its historical origins, domestic armed conflicts were determinant, mainly from the final years of the 1970s to the 1990s in countries such as Honduras and Peru. From the final years of the 1980s to the beginning of the twenty-first century, armed conflict was waged in Colombia between armed forces, ***guerrillas*** and paramilitary groups, and its consequences still endure for the millions of people who had to leave their land — as a result of that conflict, Colombia was in 1995 the first country to adopt a policy on ID. More recently, violence caused by gangs and drug cartels has been prevalent in other states such as Mexico, where guerrilla groups, criminals and paramilitary conglomerates have been a significant factor in expelling local populations (Sánchez-Mojica 2020).

Throughout the region some regular features of IDPs can be traced. Among them there is the fact that ID has predominately affected, both in quantitative and qualitative terms, indigenous people and members of ethnic minorities. Age, gender and disability factors also have a very important determining role in how ID affects each and every person differently. These factors must be analysed through an intersectional point of view, since there could be a lot of overlapping vulnerabilities within the same group of people.

In recent years, displacements resulting from sudden and slow-onset disasters triggered by natural hazards, including the adverse effects of climate change, have been added to the global and regional agenda with increasing relevance. The estimated total number of IDPs in the LAC region was 5.8 million in 2021, according to the Internal Displacement Monitoring Centre (IDMC 2022).

Between 2008 and 2020, more than 26.2 million IDPs were reported in the context of more than 1,600 disasters related to slow-onset and sudden-onset risks and climate change in the region (IDMC 2021b). The most frequent were related to storms (10.4 million), floods (9.3 million) and earthquakes (6 million). Historically, storms, cyclones and hurricanes have affected Mexico, Central America (CA) and the Caribbean to a greater extent; storms and floods have done so in the Amazon region; and droughts have impacted more frequently the desert Andean zone shared by Peru, Bolivia, Argentina and Chile (Kaenzig and Piguet 2014; Abeldaño Zuñiga and Fanta Garrido 2020).

The increase in the intensity and frequency of environmental disasters is one of the immediate and visible effects of climate change. In 2020 alone, more than 4.8 million people were reported displaced due to such causes (IDMC 2021b). Rigaud et al. (2018) point out that by 2050 the population affected by climate change and forced to leave their homes in LAC could reach a total of seventeen million people. This type of displacement has been characterised in recent years by occurring over short distances, towards urban centres (Cantor 2016; Kaenzing and Piguet 2014), and with a short average time (Yamamoto et al. 2017).

In relation to IDPs and natural disasters, the latest Organization of American States (OAS) General Assembly Resolution regarding IDPs, no. 2850, has explicitly stated that its aim is "to urge the member states to respond promptly and effectively to the needs of internally displaced persons in the event of natural disasters, including needs related to risk prevention, reduction, and mitigation, through domestic efforts, international cooperation, and, to the extent possible, dialogue with the internally displaced persons and the communities affected by ID" (OAS. AG/RES. 2850 2004, 189).

The Inter-American Commission on Human Rights (IACHR) must be mentioned when it comes to the ID regional agenda, since its decisions and its interpretation of international Human Rights (HR) treaties are considered a guideline as to how the member states themselves must apply them in their justice systems. Due to the conventionality control mechanism, all national judges of the states that have ratified the American Convention of Human Rights (ACHR) must follow the Court's interpretations when applying the instrument, and, since the judges as had to address the issue of forced population displacement on countless occasions, those statements constitute agendas, similar to the resolutions of the General Assembly.[1]

1 The IACHR has had to address the issue of forced population displacement on countless occasions: e.g., Mapiripán Massacre v. Colombia (2005); Chitay Nech et al. v. Guatemala (2010); Massacres of El Mozote and nearby places v. El Salvador (2012) and Pacheco Tineo family v. Plurinational State of Bolivia (2013).

1.1 The climate crisis and IDPs in LAC

In the LAC context, local countries have developed a robust normative framework for facilitating cross-border environmental mobility, but measures to ensure the protection of rights for people moving within national borders, however, remain less advanced (Francis 2021). On this point, it is important to mention that local regulations are related to international legal categories which have developed at different levels, but this process does not necessarily occur in a coherent and coordinated way (Van Velsen 2010). Hence, the first objective of this article is to start with four study cases — Honduras, Bahamas, Peru and Brazil — and describe how these categories have been introduced at the state level in the LAC context. In other words, the first objective of this article is to reconstruct and analyse what the main national laws and policies of these four countries were when circumscribing ID in the context of natural disasters and climate change, and what type of data have been collected for the development of responses.

Through the study of the four chosen countries and their specific cases, we will be able to see how the impact of natural disasters has been increasing in recent years, and how it affects each place differently. The Bahamas, Honduras, Peru and Brazil do not have similar geographical structures, but they have nevertheless faced somewhat comparable challenges with the advance of climate change as their situations have been worsening in recent years, leading to the cases presented later on. Hence, these critical episodes have put on our agenda the need to discuss the issue, as well as the need to have prevention and response plans for those types of emergencies, since they have been increasing over time.

This study does not claim to be comprehensive or comparative, but it does seek to show certain heterogeneous trends across LAC. For this reason, in the selection of cases, we considered the representation of diverse geographies, socio-economic contexts, affected populations, causes, and ways in which states have historically dealt with ID. The methodology used in this article is qualitative and will be based on analysis of judgments of the Inter-American Court of Human Rights, reports of regional and national organisations, newspaper clippings, and regional research.

The description of the countries' processes will show conflicting tendencies in the legal and policy framework which provide evidence that ID triggered by climate change still has not been developed as a major issue for LAC in spite of being a recurring phenomenon throughout the continent. In a complementary way, the second objective of this article is to analyse, from the four study cases, the value of an intersectionality approach (Crenshaw 1991, 1242) for properly dealing with contexts of ID due to natural disasters and climate change. Finally, the study cases will enable us to describe the way that structural inequalities are experienced and how they affect IDPs in divergent ways.

2. Honduras

2.1 Honduras: Characteristics and protection framework

Honduras is a Central America country with coastlines on the Caribbean Sea to the north and the Pacific Ocean to the south. Over the years, it has with increasing frequency faced different natural disasters such as storms, hurricanes, floods, earthquakes, landslides and others. In fact, it is well known that the CA region is exposed to an environment with intense activity, but climate change has exacerbated the situation, causing more violent storms and hurricanes. In 2020, "1.5 million people were displaced in Central America as a consequence of disasters, including Hurricanes Eta and Iota" (IFCR 2021b).

The hurricanes and tropical storms cause flooding, land displacement, crop failures and considerable rises in sea and river levels, resulting in unfortunate loss of life as well as the destruction of homes, factories and businesses, destroying the livelihoods of many people.

Nevertheless, in analyses of the structural causes of internal migration in the region, emphasis is usually placed on the study of factors such as insecurity, corruption, inequality, etc., but very little mention is made of climate change (Lynch 2019). What are the reasons for this? It may lie in the fact that the historical drivers of internal population displacement were centred on the violence in the region, such as armed conflict and the presence of drug cartels and gangs.

It is important to review some frameworks for rights protection and cooperation project initiatives at the regional and domestic level. For example, the CA Integration System (SICA) gathers together seven countries in the region, such as Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama. In the framework of SICA, the issue of climate change and risk management is on the agenda: this issue has been addressed by the creation of the Coordination Centre for the Prevention of Natural Disasters in CA (CEPREDENAC), which manages climate disaster prevention and risk reduction projects in the region. Nevertheless, the development of work on IDPs in the context of climate crises is not as extensive as that on refugees and climate migrants.

In Honduras, there is a Permanent Contingency Commission under the Secretariat of State in the Offices of Risk Management and National Contingencies, with the important purposes of coordinating and elaborating prevention projects and developing emergency plans. Within the legal framework, it is important to mention the Law on National Contingencies (1993). In its first article, the law stipulates that it will regulate contingency situations in the territory which are caused by the alteration of natural phenomena and which are adjudged to be emergencies and disasters.

2.2 Hurricanes Eta and Iota

In this report we have selected the cases of the hurricanes Eta and Iota not only because of their devastating consequences, but also because they took place in the context of a pandemic, which aggravated the impact on the already battered population. First, it is necessary to provide a context for the situation. In November 2020, Hurricane Eta (Category 4) hit the east coasts of CA, affecting several countries in the region and causing strong tropical storms in Honduras which resulted in landslides and flooding of rivers. A few days later, another Category 4 hurricane called Iota hit Honduras, causing further damage on top of that already inflicted by Eta.[2]

The population affected by the hurricanes was already experiencing significant ID from non-climatic factors, one of them being violence. A report issued in 2019 by the Inter-Institutional Commission for the Protection of Persons Displaced by Violence, prior to the passage of Eta and Iota, reveals that "seventy-seven percent of displaced households (2004–2018) were victims of acts of violence, while one fifth of the households were displaced as a self-protection measure, in fear of a situation of generalised violence. In 45 percent of cases, the acts of violence were also accompanied by fear of elevated levels of violence in the community" (CIPPDV 2019, 38).

2.3 Main characteristics of displacement

The torrential rains and strong winds caused by the passage of Eta and Iota produced the same number of displaced persons (DPs) in one year as had been displaced in the previous twelve (ECLAC and BID 2021, 31). The added factors of structural poverty and the COVID-19 context have forced many people who have not been able to return home to join the so-called ***caravanas de migrantes***, or migrant caravans. Another point to consider is that the destruction of crops has increased the food insecurity which already prevailed in the region (IFRC 2021b).

This combination of structural violence and the climate crisis affects women, children and elderly people particularly hard in their lives and social environment**s.** Many women, girls and adolescents who were not able to return to their homes after the passage of the two storms went to shelters, where cases of sexual abuse were reported, especially while they were attending to their personal hygiene. This adds to the long list of rights violations suffered by internally displaced women in times of natural disaster. To calculate population distribution, report by the Economic

2 Many testimonies indicate that the storms are getting stronger due to climate change. "Nunca había visto una tormenta así" said one victim, which means "I have never seen a storm like this before" (Ernest 2021).

Commission of Latin America and the Caribbean (ECLAC) addresses the impact of both hurricanes (ECLAC and BID 2021). The research shows that 51.3 percent of the Honduran population is female and 45 percent of the general population lives in rural areas (ECLAC and BID 2021, 40). Concerning the Indigenous population, the same report refers to the 2013 census: "In the last Honduran census, 717,618 people identified themselves as belonging to a native people; only 23 percent of those people lived in urban areas of Honduras" (ECLAC and BID 2021, 40).

3. The Bahamas

3.1. The Bahamas: Characteristics and protection framework

The Bahamas takes up 97 percent of the land area of the Lucayan Archipelago, which is situated in the Atlantic Ocean near to the Caribbean Sea and consists of more than 700 islands, cays and islets. In 2021, the population of The Bahamas was estimated at 377,000 (IFRC 2021a), or approximately 88 percent of the archipelago's population. As an archipelagic nation of small, low-elevation islands, Bahamas is one of the most vulnerable countries in the world to the impacts of climate change (McGranahan et al. 2007).

As one of the Caribbean countries, Bahamas faces a hurricane season every year from June to September. These natural hazards are common in the region, and there is accumulated learning from previous storms, local knowledge and a vast number of practices that have evolved over the years. Before 2019, however, those hurricanes mainly damaged infrastructure and private property, but it was not common for them to provoke large-scale displacements. Despite a long history of natural disasters including earthquakes and tsunamis as well as the tropical storms and hurricanes, the latter have been increasing in frequency and ferocity, becoming more dangerous (IFRC 2021a). This culminated in 2019, when The Bahamas had to face its most destructive natural disaster: Hurricane Dorian.

At a regional level, The Bahamas is a member state of the Caribbean Community (CARICOM), which includes twenty countries in the region. Most of the countries are island states, with the exception of Belize, Guyana and Suriname. They are all developing countries, small-sized, which face challenges of natural disasters. The pillars of integration of CARICOM are economic integration, foreign policy coordination, human and social development, and security.[3]

3 In December 2017, eighteen Caribbean countries met in The Bahamas with the CARICOM Implementation Agency for Crime and Security (IMPACS) and the International Organization for Migration (IOM), for the Caribbean Migration Consultation.

In order to respond to the natural disasters that occur in this area and generate severe damages at a material level and, particularly, in people's lives, The Bahamas has implemented a legal framework for repair of infrastructure after natural disasters, contained in the Disaster Management Regulations for the Electronic Communications Sector in The Bahamas (2020). The Public Utilities Regulation and Competition Authority (URCA) is responsible for the governance of this regulation. This initiative was driven by the destruction caused by Hurricane Dorian in 2019, which required many months of infrastructure reconstruction that impacted at an economic and social level.[4] The aim of the Regulations is to make the networks sufficiently resistant, speed up the restoration of services and reduce the time without service in these events, since telecommunications play a fundamental role in this type of situation.

Communication and information technologies play an important role before, during and after these events in allowing people to access information. Before the event, they make it possible to detect alerts and provide directions to define the steps to be taken to keep the population safe. During the event, they are important for informing the population of what is happening. For example, if conditions worsen, the population can communicate with official agencies and be informed of new directions or provisions intended to keep them safe. After the event, the technologies are essential for any rescue that needs to be done and for organising help. Additionally, this regulation foreshadows the creation of a multi-stakeholder industry group to be called the Electronic Communications Sector Disaster Management Stakeholder Group, whose objective will be to assist the URCA in regulating the Critical Electronic Communications Infrastructure to reduce the emergency mortality, the number of people affected by disaster, the direct economic loss, and the damage to critical infrastructure that can lead to a disruption of basic services, and to increase the availability of early warning systems and the access to information (URCA 2020).

The Bahamas is vulnerable to climate change, and the risks are notorious. The frequency of hurricanes, rising sea levels and floods are some of the hazards (IFRC 2021a). Food and water insecurity, forced displacement and risks to human health can, among others, be some of the consequences that people face and which directly impact their livelihoods. At a social level, the physical injuries and mental health challenges that can appear after a traumatic event need to be addressed. These are examples of how challenging and variable the effects of climate change have been, and how much damage can be caused to populations which are not prepared for these types of situations.

4 The regulations came into effect in the first half of 2021.

3.2 Hurricane Dorian

In 2019 the number of IDPs reached a record 9,840 persons displaced, even more than the accumulated total from the previous four years.[5] Hurricane Dorian was the strongest hurricane ever recorded to hit the north-western Bahamas, causing catastrophic damage from 1 to 3 September 2019. This Category 5 hurricane hit furiously and left devastation and destruction in its path. The main areas affected were the Abaco Islands and Grand Bahama (OCHA 2019).

Tropical Storm Dorian started on its path in late August 2019, then evolved into a Category 5 hurricane and made landfall on The Bahamas on 1 September. The devastation of the country was caused by a combination of factors: the hurricane, its strong winds, and a high storm surge that caused a "wall of water" up to seven meters high (IDMC 2020b).

A new writing project called "I Survived Dorian" was born in the aftermath of the hurricane. This aims to raise awareness of the challenges of climate change, and includes testimonies of the impact that the hurricane had on the population, and how horrifying it was.[6]

Most of the infrastructure and private property on Abaco Island and Grand Bahama were heavily damaged, and people did not have access to shelter, water, food, communication or electricity.

3.3 Main characteristics of displacement

The main characteristic of this ID event is that it occurred between islands. The climate disaster had a direct impact on Abaco and on Grand Bahama, where the international airport was destroyed. The local government was displaced, which limited its availability to start the clean-up and rebuilding effort. Both national and local governments were unable to confront the situation in the places that the hurricane happened, which meant that a combination of public and private transport was required for the evacuations and they were delayed for three days. Collective shelters recorded an influx of 1,957 IDPs.

5 According to the Global ID Database, in the weather-related hazard category, the total number of IDPs related to strong storms in Bahamas between 2015 and 2018 had been 8,137 (2015: 2842, 2016: 3500, 2017: 1565, 2018: 230); in 2020 the figure was 250 IDPs.

6 "I had both of my children in my arms and I cannot swim." "I do not think there was ANYTHING that could have prepared us for Dorian. We felt like we were in a tsunami. It was like a horror film." "It took almost a year for my son to talk and speak again after Hurricane Dorian." "I would love to move back home, but there is a housing issue there right now. I guess the pandemic took precedent with building initiatives." "My biggest fear up to this day is that if we have another catastrophe like this, our country is not ready!" (CCARR Centre 2021).

The first stage of ID was the movement of people from the two hardest-hit islands to the island of New Providence, where Nassau, the capital of The Bahamas, is located. At least 5,500 IDPs were seeking transport to go to New Providence. When IDPs arrived there, they mainly stayed in collective shelters, rental properties and with host families. Those of them who had better access to communication tried to find help through other networks such as families or friends. Those who did not have these possibilities stayed in the shelters.[7]

Although this situation generated great damage at a general level for IDPs, involving mobilisation in search of shelter, transportation, security, water and food, it is essential to explain that it had a different impact on different population groups. The hurricane made visible the conditions of inequality among the population in terms of economic difficulties, whether or not they had family or social networks, access to information and communication technologies, among others. One of the main differences in the impact of the hurricane was between those who had local networks and economic means, because they returned to their place of origin or integrated into networks more quickly, and they did not need public assistance (IDMC 2020b).

There were some sections of the Bahamian population, such as Haitians and the LGBTQIA+ community, who needed other solutions and for whom the recovery was more difficult. The Care International (CARE) 2019 report states that for the LGBTQIA+ community, the displacement caused by the event required help from NGOs, as this situation increased the vulnerability in which they found themselves. As an example, they did not want to stay in the shelters because of threats of violence. The report (CARE 2019) analyses another kind of vulnerability, shown in the dynamics of the Haitian population in The Bahamas. Migration from Haiti to The Bahamas began in 1950 and has historically been incorporated in a subordinated position in The Bahamas, but Hurricane Dorian increased the pre-existing inequalities.

Haitians began to migrate to The Bahamas due to the political situation in their country of origin and the attractiveness of The Bahamas for work in tourism, but their working conditions had the characteristics of low-skilled, low-paid and temporary work.

7 Not all groups of people, structures and communities are equally affected when a natural hazard such as Hurricane Dorian appears. "Pre-existing social and cultural norms and expectations placed on women and girls, including their roles and responsibilities in the home and in the community; their decision-making power in relation to men and boys; their engagement in paid work; level of education and other issues, can lead to women and girls being disproportionately impacted by disasters" (CARE 2019:1).

In 2020 the Haitian population in The Bahamas was 80,000 people. Many of them resided in informal settlements on New Providence and in the Marsh Harbour district on Abaco. Those settlements were destroyed by the storm, resulting in massive displacement. With no local networks, limited contacts, and nowhere to return to, the displaced Haitians spent more time than other IDPs in the shelters. Many of them went into hiding because of document controls, coupled with threats of deportation (CARE 2019).

4. Peru

4.1 Peru: Characteristics and protection framework

Peru is located in the western part of Latin America (LA). It has a total area of 1,285,000 km^2, making it one of the twenty largest countries in the world. Peru's economy is distributed between agricultural and export activities. The distribution between the two activities is quite uneven: 30 percent of the population works in agriculture, but this activity accounts for only 8 percent of Peru's GDP.

ID was for a long time a major problem in Peru due to the armed conflicts in the 1980s. However, the first regulations only appeared in 2004, with Law No. 28223 on ID. Although this law makes no special mention of displacement due to natural disasters, its Regulations (2005) specifically include this circumstance. Subsequently in 2011, Law No. 29664 created the National Disaster Risk Management System in order to provide an institutional structure for this topic. One year later, in 2012, the Law on Population Resettlement, for non-mitigable high-risk areas, was approved. This normative instrument aims to organise the relocation of populations residing in areas where there is a possibility that they or their livelihoods are at risk. It establishes a procedure initiated by municipal governments, with the intervention of technical agencies and the participation of affected communities.

Peru was the first country in the region to adopt domestic legislation on climate change: in April 2018, the Framework Law on Climate Change was approved, which includes the principles and international commitments assumed in the Paris Agreement, and establishes an institutional method for the design and implementation of policies aimed at meeting these objectives.

These normative instruments, combined with regulatory provisions on sustainable development, risk reduction, environmental impact mitigation and other issues, make Peru one of the countries with the most advanced legislation on climate change displacement. However, at present the elements of this legal framework are not sufficiently coordinated with one another, and its implementation and financing represent a permanent challenge for the Government (Bergman et al. 2021; IDMC 2017).

4.2 Main characteristics of displacement

ID in Peru has been a particularly worrying phenomenon in the recent past, due to the internal armed conflicts that ravaged the country in the 1980s and 1990s. That tragic episode in history resulted in the deaths of around 70,000 people and the forced displacement of 600,000 people, according to the Truth and Reconciliation Commission (2003). This conjuncture constituted a painful process of uprooting and impoverishment, led to the concentration of the population in urban centres, and caused a delay in the possibilities of sustainable development that had a long-lasting impact. Indigenous peasant populations represented a disproportionate 70 percent of the displaced people. They were forced to relocate to very different contexts and suffered discrimination and economic issues. Those who returned had problems related to distribution of land and absence of governmental policies (OIM 2015, 58–64).

For many years, displacement studies were exclusively related to this tragic episode of Peru's history, but we must pay attention to other factors if we want to describe the phenomenon in its entirety. Massive ID has also occurred in Peru as a result of natural disasters of a geological or climatological nature, and currently this is the main and most alarming reason. According to the IDMC, the country saw approximately 656,000 disaster displacements between 2008 and 2019 out of a population of thirty-one million. Most of these were caused by climatic phenomena, especially floods. The years 2012 and 2017 in particular registered soaring incidences of climate disaster linked to the phenomena known as *El Niño* and *La Niña*, which produce alternating cycles of extreme drought and unusual rainfall.

Across Peru's arid coast, glaciated highlands and tropical rainforest, people are exposed and vulnerable to a variety of sudden- and slow-onset hazards, which threaten livelihoods and drive displacement (Blocher et al. 2021). Currently, half of the national territory is exposed to recurrent hazards, and a third of the population lives in exposed areas.

Its complex geography and extreme climates have led the inhabitants to develop adaptation strategies to cope with this context, but it is necessary to address these phenomena in order to anticipate and minimise possible negative impacts. When adaptive capacity is exceeded, displacement occurs, and there is a risk of large-scale displacement if the necessary precautions are not taken. This is of great concern because it would represent a serious setback in the human development indicators that Peru has managed to improve in recent years.

At this point, it is difficult to determine when human movement constitutes forced displacement and when it is a voluntary migratory movement, which is why the numbers are not so clear. Nonetheless,

according to the IDMC, displacement due to armed conflict has now been surpassed by displacement due to natural disasters. There is a Register of IDPs in Peru that was funded in 2005 under the Ministry of Women and Vulnerable Populations, but to date there is not a single person registered in it as a result of natural disasters, which in practice means that these people are invisible to the system created to guarantee their rights.

4.3 *El Niño*

In 2017, the north coast of Peru was affected by an exceptionally severe episode of *El Niño*, the climatic event which is related to the persistent presence of abnormally warm waters during various months in the Pacific Ocean region. Over a three-month period, *El Niño* brought particular damage to the departments of Piura, Lambayeque and La Libertad. Its effects were so harmful that, even years later, the region had not completely recovered. In summary, landslides and floods affected over 1.5 million people, caused 162 deaths and damaged hundreds of thousands of homes. Due to the floods, there were 20,000 displaced persons in Piura´s capital alone. The previous appearances of *El Niño* took place in 1982 and 1997. Despite being more aggressive, those two events produced less dramatic effects. The 2017 floods were largely a human-caused disaster, and the infrastructural damages were greater in some sectors during the 2017 event — not because of greater flooding, but because of rapid urbanisation in recent years (Venkateswaran et al. 2017).

The disaster exposed a series of vulnerabilities among the rural communities of the region. In the Piura and La Libertad departments, 25 percent of the people live in extreme poverty (WFP 2017), and women make up the majority of this population. At least 30 percent of them do not have a personal income. Hence the disaster did not operate in a vacuum. Rather, *El Niño* acted on the extreme social inequalities that mainly affect rural women, such as low access to education and healthcare, and lack of control over household resources, among other disadvantages.

Consequences of *El Niño* were visible at different levels. One year after the event, 11,000 people were still living in temporary shelters and lacked access to basic services, such as communal areas, spaces with clear functional division, and precautionary measures to mitigate risks of gender violence. Nearly 3,000 were women, whose particular needs were often left unattended.

One of the most sensitive impacts of the event is related to the lack of a gendered approach to the affected population. In Piura, an estimated 100,000 women aged 15–49 and 134,000 children aged 17 and under have been left in highly vulnerable situations due to the floods (OCHA 2017). Numerous family men who lost their livelihoods were displaced to big urban centres in search of economic resources. Women became the heads of their households, so the burdens of post-flood health challenges and loss of housing have landed on the women's shoulders (Flores Fernández 2019).

5. Brazil

5.1 Brazil: Characteristics and protection framework

Brazil is the fifth largest country in the world and also the fifth most populous one, accounting for roughly one-third of all LA's population. Human mobility within and outside the country greatly affects the region's overall numbers. Nevertheless, the majority of Brazil's population is concentrated along the eastern seaboard, with the states of São Paulo and Rio de Janeiro (RJ) being the most populous ones. Likewise, Brazil has been close to the centre of the world's economy for many years as it has a variety of wealth resources (Burns et al. 2022).

Yet acute social inequality remains a protagonist in Brazil's reality since around 50 percent of the poorest inhabitants actually possess negative wealth, according to Statista (Romero, 2021). Also at the centre of Brazilian society are periodic financial crises, political deadlocks and environmental deterioration. Even so, very little is known about the scale and dynamics of ID in Brazil. The term "IDPs" is not in official usage in the country, since the concept is only expressed through the word ***deslocados***; this translates as ***displaced people***, but it is only applied to people who are forced to leave their homes due to major catastrophes or substantial development projects, especially hydro-electric dams (Muggah 2015, 224).

Despite this issue of inadequate acknowledgment, migration within Brazil has continued to be driven by limited land ownership, low incomes — especially in rural areas — and volatile climatic conditions.

5.2 Main characteristics of displacement

Predominantly, three general scenarios that can lead to ID can be identified in Brazil: political and criminal violence, development and resource-related interventions, and natural disasters. In fact, a combination of these factors is very common in some of Brazil's megacities, but also in large and medium urban areas throughout the country (Muggah 2015, 226).

When it comes specifically to forced displacements, most of those between 2000 and 2017 occurred in the Northeast (27 percent), and in the South and Southeast, with 26 percent each. The North region of the country supplied 19 percent and the Central-West added a low 2 percent (Observatório de Migrações Forçadas, n.d.). However, according to Muggah (2015, 222) the literature on voluntary and forced cross-border migration is sparse, but when it comes to IDPs even less is known. Nonetheless, the key authority when it comes to the issue, IDMC, started monitoring Brazil in 2017, which allows us to have a better grasp on the real extent of the issue.

As at 31 December 2020, the total number of new displacements in Brazil according to the IDMC hit 358,000; by comparison, the total of new displacements in 2016 was estimated to be 14,000. Furthermore, future displacement in the country is expected to hit 202,976 per year for sudden-onset hazards such as earthquakes, tsunamis and floods, the latter being by far the main cause with an estimated total of 201,712 (IDMC, 2021a.).

Meanwhile, attempts to build standards for the protection of IDPs were only for those whose displacement had been caused by development projects. Back in 2013, Brazil's Ministry of Cities approved policies intending to safeguard the rights of residents who are involuntarily removed from their homes. They were proposed on the basis of constitutional provisions about housing and guarantees of dignity for human beings, with the statement that assessments should be undertaken before big development interventions in order to establish alternatives to the displacements, limit the number of displacements, protect environmental conservation areas and ensure adequate housing alternatives; the policies also required a draft resettlement plan for the affected families, including suitable compensation quotas (Muggah 2015, 232). Regardless of that initiative, IDPs remain invisible to the Brazilian Government even in times of extreme disasters.

5.3 Record rainfall

In late 2021, weeks of heavy rain produced serious flooding in the northeastern state of Bahia. The floods led to collapses and landslides, leading the state's governor to declare it "the worst disaster that has ever occurred in the history of Bahia" (Reuters 2021). According to the experts, rainfall in December 2021 in the state capital, Salvador, was six times greater than average (Al Jazeera 2021). This mass of disasters led to countless displacements and deaths; the scale of it was so huge and frightening that even Argentina, a neighbouring country, offered aid to Bahia.

In general, situations such as these expose the federal lack of interest in issues related to natural disasters, despite Brazil being integrally affected. However, this study will here focus on one specific state, that of Rio de Janeiro, in order to have a deeper grasp of the issue, as it would not be plausible to cover the entire country in any detail. Accordingly, Rio de Janeiro's situation has been selected for further analysis due to its characteristics in relation to the intersections of IDPs, and to the impact and relevant currency of climate change. Rio is home to the largest ***favela*** in LA, Rocinha, as well as to several others.[8]

8 Favelas are alternative housing conglomerates, originally built by the poorest members of the population. In Rio de Janeiro, they are usually located on hills and are also referred to as morros (which literally means hills).

When there is a concentration of a large number of people — an estimated 6,775,561 in the city of Rio and 17,463,349 in the state as of 2021 (IBGE 2021) — events that trigger displacement tend to have considerable repercussions. In February and March of 2022 abnormal rains struck Petrópolis, which is known as Rio's "Imperial City", leaving hundreds of people dead. More than two hundred landslides were reported within twenty-four hours in nineteen different points of the city, warnings were issued due to the severe weather, and local authorities provided around twenty-three emergency accommodation centres. On 21 March, the local Secretary of Social Assistance declared that it was working to ensure that the 839 people who had arrived at those emergency points were taken care of, as well as maintaining support for another 289 people being observed due to the February rains (Agência Brasil 2022; Davies 2022). Even during the search and clean-up efforts, repeated downpours restricted the work of emergency teams and volunteers, who had to dig through thick mud with shovels and other hand tools looking for their loved ones in unstable areas. In one single day, the February rainfall exceeded the average for the whole month, triggering landslides and floods (BBC News 2021).

Historically, Rio has been a city divided between those who hold the money, power and family names, and those who offer only their labour capacities. While it was the nation's capital between 1822 and 1960, many urban resettlements were proposed and made by the likes of the Portuguese Royal family, which remained in power even after the nation's independence, and the nobility. That is, the rich constantly set forced resettlements in motion and that is a pattern repeated into the present day through the concept of gentrification; moreover, the racial element also plays a huge part in it, since the ones firstly displaced were recently freed slaves. Thus, the "forced resettlement of squatters and landless groups into planned housing schemes is itself often followed by migration to ***favelas*** and lower-income areas, since these same people are simply unable to meet the rising costs of living near urban centers" (Muggah 2015, 229).

One might conversely imagine that, in relation to climate change or disaster-triggered displacement, economic class would not change how they affect people, since they are phenomena caused by nature. However, as previously stated, pre-existing factors are key to the comprehension of ID in Brazil. As a matter of fact, the areas that suffer the most from heavy rains are precisely the ***favelas*** themselves, due to their lack of construction analyses; this is particularly so in the hills, places which are often subject to landslides. Most wealthy people take comfort in their modern buildings, watching floods come and go. In Rio, that extreme reality shift can be seen between different locations along single streets. A concept that illustrates the dynamics seen in the state really well is environmental racism, which refers to the institutional rules, regulations, policies or decisions that deliberately target certain communities, resulting in them being disproportionately exposed to certain dangers based upon race (Green Action, n.d.).

The same logic is true when applied to ID, because communities of colour and or low-income are disproportionately impacted by it when it comes to the number of persons displaced and also the way displacement affects them. For this reason, it would be expected that at least the local authorities would have public policies (PPs) aimed at that population, but that is not a reality. Even for floods in general, which are the main cause of displacement in Rio and which happen regularly, not much preparation has been done.

In summary, the Operations Center (OC) initiative is very valuable when it comes to emergencies and dealing with the day-to-day issues of a metropolis. However, Rio has even developed partnerships abroad to share its knowledge, but was incapable of doing so for its own neighbours or higher authorities. For instance, if Petrópolis had an OC like Rio's, the extent of deaths and displaced persons would certainly have been smaller than the colossal numbers which transpired because the city's alerts did not work properly to warn its inhabitants of what was coming. IDPs remain invisible in PPs not only in Rio but throughout the country, but they do undoubtedly exist and they deserve to be acknowledged in order to have their human rights guarded.

6. Final considerations

Overall, LAC have a wide variety of factors that influence the forced displacement of populations: civil wars, crimes against humanity, drug trafficking, structural poverty, marginalisation and racism, amongst others. It is difficult to approach LAC without thinking about the historical and political context, factors that generally aggravate any critical crisis that the populations must face.

However, displacement for climatic reasons has yet to be given the relevance that it deserves due to the current crises that are related to it, which will worsen over the years. Although abundant regional and internal legislation related to climate issues has been found, as demonstrated above, the reality in practice is quite different. This is especially because displacement triggered by climatic reasons has not been given a role in that legislation, and this point has been echoed in the testimonies of the people in the focused analysis conducted throughout the present paper.

Furthermore, LAC is diverse in political contexts, social situations and even geographic particularities. Therefore, the treatment of ID and climate change challenges has also been heterogeneous and conflicted. In a similar way, the pre-existing inequalities have been exacerbated. There is however a common denominator: there are groups that face more risk than others; that is, not all IDPs have the same resources or need the same solutions. There is a difference in impact, which reveals the lack of policies that contemplate the particularities of different social groups in each scenario.

Moreover, as stated before, there is a link between climate change and the increase in the ferocity of the most recent hurricanes, floods and landslides as well as of the destruction and devastation they leave behind. The massive displacements which have resulted make it clear that it is necessary to address this issue with a strategy that includes all three phases of climate emergencies: prevention, the ***modus operandi*** of when it is happening, and how to deal with it once it is over.

These situations must involve mobilisation for shelter, security, water and food, and access to information: they are all fundamental in order to know what to do, what is going on, where to go and the availability of resources. Not only that, but particular groups also need specific solutions for their care and recovery: in the case of Honduras, for example, women and children; in The Bahamas, Haitian migrants and the LGBTQIA+ population; in Peru, women from rural settings; and, in Brazil, racialised and low-income communities. To sum up, public policies in all four cases are insufficient, each in their own way, for supplying all the needs of all different groups of IDPs.

Truly, the issue does not receive the amount of governmental attention it should in LAC, based on its extent and gravity in the region. In conclusion, the climate emergency is faster than the adaptation of legislation in LAC. Contingency plans are rarely sufficient to meet the assistance needs of people in countries with other structural problems such as poverty, corruption, gangs and state violence.

A possible solution is to listen to indigenous communities, experts and youth when legislating to protect nature, but that angle is tainted by the high levels of corruption in many countries in the region. In other words, to protect and assist IDPs in LAC, the ***modus operandi*** of politics itself and of public management must change to include a human rights-based approach at their core.

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Iasmin Ait Youssef and Kai Wangle. "Decades of wars in Iraq and Yemen and the protracted displacement crisis: The impact on women and children." (2022) 6 *Global Campus Human Rights Journal* 159-184
http://doi.org/10.25330/2500

Decades of wars in Iraq and Yemen and the protracted displacement crisis: The impact on women and children

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Abstract: *Decades of armed conflict in Iraq and Yemen have forced millions of Iraqis and Yemenis to flee their homes, with most of them becoming displaced within their own countries. When displacement decreases living standards, increases protection needs, reinforces harmful gender stereotypes and perpetuates socioeconomic disadvantages, women and children, who make up 80 percent of the world's Internally Displaced Person (IDP) population, are particularly vulnerable. Unlike refugees, who cross an international border, IDPs do not benefit from special protection under international law, leaving individual states as the most important actors in upholding the rights and meeting protection needs of IDPs. For this reason, both Iraq and Yemen have adopted national policies addressing internal displacement based on the UN Guiding Principles on Internal Displacement, a non-binding set of standards which outline the protections available and establish best practice regarding IDPs. This paper seeks to examine the main impacts of internal displacement on women and children in Iraq and Yemen in four key areas: (1) security, (2) health, (3) education and (4) livelihood; it outlines how poor outcomes in each adversely affect the others and increase the likelihood of displacement becoming chronic. It further seeks to analyse the two countries' respective national policies on internal displacement and the humanitarian response through their impacts in the above areas on the most vulnerable IDP communities, namely women and children. It finds that while the countries' respective IDP policies are a vital first step in addressing the issue, the ensuring of protection needs and rights of IDPs in Iraq and Yemen will require more resources, stable administration, corridors for humanitarian aid and for both countries to hold themselves to their own commitments.*

Key Words: *Yemen; Iraq; internal displacement; women; children; UNGPID; security; health; education; livelihood; vulnerable groups; gender-based violence; protection; humanitarian aid; policy response*

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With thanks to Teddy Atim, Manuela Pegoraro, Jihad Nammour, Karim El-Mufti, Areen Aeideh and Omer al-Sharqi.

1. Introduction

1.1 Background

According to the United Nations Commission on Human Rights' 1998 Guiding Principles on Internal Displacement (UNGPID), IDPs are defined as "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border" (OHCHR, n.d.). Particularly in cases of armed conflict, IDPs suffer a higher rate of mortality than refugees or the general population and are at heightened risk of physical attack, sexual assault or abduction, and often lack fundamental rights (OHCHR, n.d).

The majority of IDPs worldwide are women and children, who disproportionately struggle to exercise their basic rights (OHCHR, n.d.). Additionally, they frequently remain close to or trapped in active conflict zones (UNICEF 2016) where the prospect of getting caught in crossfire or becoming targets, human shields or bargaining chips in the armed conflict looms large (UNSC 2012). The nature of non-international armed conflict also means that states in which IDPs remain often lack the ability or political will to provide basic public services to their citizens in or near active conflict zones, and international organisations face political or logistical difficulties accessing IDPs to provide the monitoring, accountability and humanitarian assistance which would fall under their mandates in the case of refugees or international armed conflicts (Mooney 2016, 177–178).

The UNGPID provide a clear definition of what constitutes an IDP, with this definition encompassing a variety of affected groups. Their vulnerabilities are far-reaching and can extend to multiple generations. IDPs are frequently denied basic rights, and their precarious living conditions often lead to significantly higher rates of physical and mental health issues. Displaced women and children are particularly vulnerable to systemic violence and oppression with little recourse or reliable support structure.

1.2 Context

According to the United Nations (UN), Yemen is experiencing the world's worst humanitarian crisis (UNHCR 2022a) and hosts the fourth largest IDP population (OCHA 2022d, 9), with more than 4.3 million IDPs, of which up to 79 percent are women and children, with 1.6 million dispersed among 2,200 hosting sites across the country (UNHCR 2022c). As reported by the UN High Commissioner for Refugees (UNHCR), humanitarian aid currently only reaches about half of those in need.

A similar situation is unfolding in Iraq, which ranks third in the world in the number of displaced people and sixth in the rate of forced displacement (Kaya 2018), with around 1.2 million IDPs as of July 2021. By March 2022, there were around 93,000 female and 87,000 male IDPs living in the remaining camps, 46 percent of whom were children under 18 (OCHA 2022a, 42). The numbers have decreased since October 2020, when the Iraqi Government decided to gradually close some camps and resettle IDPs in their areas of origin. Following the closure of thousands of camps, 4.9 million IDPs have been forcibly or voluntarily returned (UNICEF 2021b). Many are unwilling or unable to return to their homes and the closure of camps has merely led to secondary displacement elsewhere, joining the approximately one million IDPs residing primarily in informal shelters in or near urban areas (OCHA 2022a, 42).

In Iraq, armed groups continue to conduct sporadic attacks, leading to the persistence of new displacements, albeit on a smaller scale (NRC 2021, 35). Additionally, the impacts of COVID-19 have reduced incomes, created obstacles for humanitarian actors, and disrupted education which has precipitated an increase in cases of gender-based violence (GBV) (UNHCR, n.d.). As for Yemen, war has led to the collapse of the local economy and a decrease in purchasing power, with about 80 percent of the population now living below the poverty line (Oxfam, n.d.). Approximately five million Yemenis are suffering from starvation, with the displaced four times more likely to fall into famine than other Yemenis (UNHCR 2021).

Both countries, like others with Islamic traditions, are still governed by a patriarchal society characterised by vast and rigid gender inequalities that affect all aspects of women's lives. This permeates the legal system of both countries, in which men are considered 'protectors' of and thus the ultimate arbiters of women's lives (el-Zein 2013, 6). Women are deprived of agency and severed from protection mechanisms in precisely the context where they are most needed. This has led to significant repercussions for IDP women who have suffered GBV or been arbitrarily deprived of their basic rights.

The conflict in Yemen has adversely affected the majority of the population, with millions of Yemenis displaced, impoverished, and vulnerable to hunger, disease and exploitation. Despite the progress, there is still a need to improve conditions for IDPs in Iraq, as many live in poor and overcrowded camps or informal settlements with limited access to basic services such as healthcare, education and sanitation. This combination of armed conflict, economic collapse and COVID-19 has taken a heavy toll on civilians in both countries. The devastating humanitarian crises unfolding in Iraq and Yemen are of grave concern, particularly as they relate to the safety and wellbeing of vulnerable populations. Chief among

those are displaced women and children who face poor outcomes in the areas of security, health, education and livelihood. As a result, those most vulnerable have no means of protecting themselves, leaving them exposed to cycles of further violence, neglect and injustice.

1.3 Framework

Unlike refugees, who are guaranteed protection under the 1951 UN Refugee Convention, IDPs have no special status under international law as long as they remain within their country's internationally recognised borders. *IDP* is merely a descriptive term that does not confer any additional legal protection. IDPs are granted protection through international human rights instruments and customary law (which apply to all humans), and domestic law; in cases of armed conflict, they enjoy the same protections as all civilians under IHL.

The most comprehensive instrument in international law regarding IDPs is the UNGPID which compiles existing international human rights law and IHL principles relevant to IDPs and attempts to clarify grey areas and gaps in international legal instruments concerning internal displacement (Hickel 2001, 699–711). While the Principles provide a useful framework, they are not legally binding. For this reason, as well as for the difficulties surrounding the implementation and enforcement of international law, states remain the most important actors in the protection of IDPs, and therefore the UNGPID encourage the incorporation of their provisions into national legislation which both Iraq and Yemen have done to varying degrees.

When displaced persons do not cross international borders and the armed conflicts which lead to their displacement are deemed non-international, international law instruments are weaker and harder to enforce, and organisations dedicated to the protection of displaced persons or civilians in armed conflict face additional obstacles assisting vulnerable groups. The UNHCR does not have a general mandate for providing international protection to IDPs, and its involvement is subject to requests for authorisation from competent UN organs and the consent of the state concerned (UNHCR 2016). Meanwhile, belligerent parties often prevent the ICRC from accessing civilians in non-international armed conflicts by denying the existence of an armed conflict in order to avoid being bound by IHL or conferring legitimacy on their opponents (Mack 2008).

1.4 Methodology

This paper examines the response mechanisms to the issue of internal displacement in Iraq and Yemen through the lenses of the 1998 UNGPID as an instrument of international soft law, domestic legislation, and the policy provisions of both countries. Though armed conflict, insecurity and

climate change have long been drivers of displacement across the Arab World, this research focuses on Iraq and Yemen due to their incorporation of the UNGPID into their domestic legislation. Nevertheless, IDPs in both countries still face many challenges in receiving the necessary support pledged to them in these national policies.

The first to feel the effects of changes in both the security situation and policy are always those who are most vulnerable. Therefore, the scope of this research has been narrowed to IDP women and children, who are more vulnerable to displacement and the adverse effects accompanying it, especially in the Arab World, which is still governed by rigid gender norms. This research aims to underline the precarious conditions they face and to explore the merits and shortcomings of a policy and humanitarian response built around the UNGPID through their impacts on displaced women and children in Iraq and Yemen. This study solely relied on secondary data due to the volume of reports and analysis as well as the time and budget limitations. To understand the plight of these vulnerable populations, this research utilised a wide range of sources, including UN and non-governmental organisations' reports and documents, books, research papers, journal articles, media articles, and web archives. Additionally, while the reasons behind the displacement are manifold, not all the factors have been included in this research. Its focus was limited to the main causes which have a significant and persistent impact on the current situation of many IDPs, such as the ongoing war in Yemen, the conflict and presence of ISIS in Iraq, and the COVID-19 pandemic.

2. Displacement as a consequence of war in Iraq and Yemen

2.1 Harsh realities of war in Iraq and Yemen

In Iraq, the war with Iran in the 1980s, the US invasion of 2003, and intermittent sectarian conflict meant that there were already 2.1 million IDPs in the country before the latest wave of displacement in 2014 (Bauer 2021). As Bauer chronicles, the 2006 bombing of the al-Askari Mosque in Samarra sparked a wave of sectarian violence between the country's Sunni and Shia communities. The government's crackdown on Arab Spring protests in 2011 and subsequent instability further deepened sectarian divisions, which Sunni extremist groups exploited by launching an insurgency and declaring an Islamic Caliphate in 2014. That year alone saw a staggering 2.2 million newly displaced within the country (Anzellini et al. 2021), particularly in the north, as the Iraqi government launched military offensives to regain ISIS-controlled territory that would last until December 2017.

Initially, most of the displaced fled to urban areas, but after the government adopted stricter policies, camps were established in each governorate to which all newly displaced people were directed (Euro-

Med Monitor 2021). Since the defeat of ISIS, returns have outnumbered displacements, with approximately 4.8 million IDPs returning to their homes in the three years since December 2017 (Euro-Med Monitor 2021). The government has been encouraging returns and closing camps, with formal camps remaining only in Kurdistan and Anbar Governorates (Anzellini et al. 2021).

In Yemen, the conflict traces back to the 1960s when an assassination attempt on the monarch of then-independent North Yemen led to an eight-year power struggle between Sunni royalists in the south and Shia republicans in the north (Orkaby 2021, 56). Orkaby, in his book *Yemen: What Everyone Needs to Know*, explains that the conflict quickly became a proxy of the Arab Cold War, with Arab Nationalist Egypt backing the republicans and the Saudi Kingdom backing the royalists, and developed into a war of attrition. The eventual stalemate, a pyrrhic republican victory, was codified with a ceasefire, a power-sharing agreement that both sides begrudgingly accepted, and two decades of relative stability (Orkaby 2021, 58). In 1990, North Yemen unified with communist South Yemen, adding a third faction dissatisfied with the distribution of power (Orkaby 2021, 65). A civil war in 1994 saw Northern forces crush a secessionist movement in the South and consolidate power; meanwhile, the northern highlands remained neglected and underdeveloped (Orkaby 2021, 73). Local Shia tribes felt a stronger allegiance to the Zaidi Imams than to the predominantly Sunni government in Sana'a which had a limited presence in the region (Orkaby 2021, 82). This discontent eventually boiled over in 2004 when the government attempted to arrest Imam Hussein al-Houthi, sparking a Shia insurgency that would engulf the country (Orkaby 2021, 84).

Months of Arab Spring protests in 2011 forced the president into exile, creating a political vacuum seized upon by various factions, including the Houthis, Islamic extremist groups and southern secessionists (Orkaby 2021, 86). As the security situation deteriorated and peace talks faltered, the Houthis captured the capital and large swathes of the populous north, taking over the government in 2014, while the internationally recognised government of Abdrabbuh Mansur Hadi fled (Orkaby 2021, 89). In March 2015, a Saudi-led coalition intervened aiming to reinstate the Hadi government, launching a series of airstrikes against Houthi positions, which along with the war raging across much of the country led to the displacement of 2.2 million Yemenis in 2015 (Anzellini et al. 2021). Changing front lines have led to frequent displacement, including secondary displacements, most notably when Marib, previously a destination for IDPs, became the scene of some of the fiercest battles in recent years (Ghazi 2021). A series of devastating floods and droughts as well as the coalition's blockade on Houthi-controlled territory have exacerbated the humanitarian crisis, with 80 percent of the country's 30

million people in need of humanitarian aid (IDMC, n.d.). On 9 April 2022, the two sides agreed to a two-month UN-brokered ceasefire, with President Hadi handing power to a transitional council and agreeing to negotiations with the Houthis (UN News 2022). But the challenges remain vast even if the ceasefire holds.

The end of hostilities allows displaced people to return to their homes. However, many victims of protracted conflicts lack the means to do so and have little to return to, so they require support from both their governments and the international community in order to return, rebuild, and begin to end the cycle of vulnerability and chronic displacement.

2.2 Impact of protracted displacement on women and children

Within IDP communities, women and children are particularly vulnerable to exploitation, abuse, insecurity and neglect (Buscher and Makinson 2006, 15). While displacement leads to a deterioration of living standards and increased protection needs, it also reinforces harmful gender norms which perpetuate socio-economic disadvantages. Women and girls are often the targets of sexual violence, and they have additional reproductive health needs which go unmet (Brookings-LSE 2014, 1). Displaced children are more likely to be recruited into armed groups, to have their childhoods disrupted as they are forced to take on adult responsibilities, and to face greater barriers to accessing education (Mooney and Paul 2010, 5). Women also make up a higher share of IDPs than among non-displaced populations, since increased vulnerability means they have a lower threshold for displacement and men are more likely to stay and take part in hostilities or be killed in battle (Cazabat et al. 2020, 17). To address the challenges of those facing protracted displacement, it is vital to understand the security, health, education and livelihood challenges facing the most vulnerable members of the community.

Women and children often face heightened security risks, because displacement severs them from family and community structures that would otherwise protect them. IDP camps can be hostile environments due to: the presence of armed groups, traffickers and other opportunists; the lack of privacy, and the necessity of fulfilling basic needs in shared spaces; and the temporary nature of homes in camps which afford their inhabitants less physical security. Twenty percent of displaced women and girls in Iraq reported avoiding certain locations due to safety concerns (REACH 2021), which leads to decreased community engagement and lower rates of school attendance.

Women and children are more likely to experience declines in health when displaced. The causes include inadequate health and sanitation services and facilities, stigmatisation of sexual and reproductive health, and lack of gender-sensitive education on best health practices. Many IDPs

live in areas with limited access to specialised health services including feminine hygiene products, contraceptives, pre- and post-natal care, and early childhood nutrition and immunisation. Internally displaced women and children experience higher rates of post-traumatic stress, depression and anxiety than their non-displaced compatriots (Cazabat et al. 2020). Children are especially vulnerable to water-borne diseases and malnutrition, both of which have reached acute levels in Yemen and are more prevalent among IDPs (UNHCR 2022b). According to the UNHCR report "Yemen: 2022 Strategy and Action Plan", malnutrition and chronic childhood illness can do irreversible damage to physical and cognitive development (UNHCR 2022b). In Yemen, estimates show that 2.2 million children under 5 years old and 1.3 million pregnant and breastfeeding women will have experienced acute malnutrition in 2022 (DG ECHO n.d.).

Displacement also has life-long consequences when it disrupts education, limiting future opportunities. Lack of education in conjunction with displacement leads to a decline in living standards, with loss of opportunity, property, assets, and social and economic capital; it also creates difficulty in finding new sources of income and livelihoods, by which women are disproportionately affected (Cazabat et al. 2020, 12). IDPs also have higher rates of unemployment, and those who are employed earn less compared to the general population (Cazabat et al. 2020, 13). Discrimination against IDPs, and camps located far from population centres without accessible transportation, create further barriers to employment. While women in both Iraq and Yemen have the legal right to own property and productive assets, social norms denote that single women face additional obstacles securing housing, further hindering returns (OCHA 2007, 10–11). Additional precarity stems from institutions accustomed to male-headed households which may prevent single women from receiving aid access services or obtaining necessary legal documents (Cazabat et al. 2020, 13).

The challenges IDPs face in accessing security, health, education and livelihood all compound each other, with poor outcomes in one area increasing the likelihood of poor outcomes in others along with the probability of displacement becoming chronic (Buscher and Makinson 2006).

3. Vulnerability of displaced women and children in Iraq and Yemen

3.1 GBV against displaced communities in Iraq and Yemen

GBV is a persistent threat to the lives of women and children (USAID/PHCP 2014, 4). Here too, displaced women have been the most severely impacted, as a result of bearing the burdens of protracted conflict in addition to the continued restrictions of conservative patriarchal societies and the control of men in displacement camps.

In Yemen, conflict, displacement and gender inequality are exacerbating the hardships many women and girls face (Al-Shiqaqi 2021). The conflict has weakened their status in society, which has helped to increase the rates of violence and abuse and erode protection mechanisms against GBV (UNFPA n.d.(a)). This has expressed itself in various forms including restrictions on movement for women and girls, arrests of activists, and impunity for abusers (Ghanem 2021). Moreover, war and instability exacerbate systematic GBV, as women head 21 percent of the displaced families, and often must resort to dangerous work (Ghanem 2021) to support their families and provide income.

With ever more women as primary breadwinners, power dynamics have shifted in their favour, which has been met with violence and resistance by men in conservative societies uncomfortable with women in positions of power (CWPAR 2018). Lack of privacy, shelters, and poor access to basic services pose additional risks to the safety of IDP women in Yemen. Many displaced girls also don't enrol in school because their families undervalue girls' education (UNFPA n.d.(b)).

Unsupported IDP women in Iraq may resort to transactional sex to survive and support their family. This puts them at increased risk of physical and sexual assault, honour killings, harassment, STDs, severe mental trauma and suicide (Johansen 2019). Girls and women are disproportionately likely to be exposed to such violence when they are denied basic rights (Rfaat 2021).

Displaced women in Iraq face many restrictions on movement and contact with the outside world, inter alia, which hinder their ability to meet basic needs. Victims of GBV suffer the repercussions of stigma, inability to report, and fear of reprisals, which amplify vulnerability and result in the acceptance of violence and reluctance to seek protection (Anfal 2020).

Underage marriage is widespread among displaced girls in Iraq and Yemen. Child brides are often subject to verbal and physical violence and unable to file complaints or hold aggressors legally accountable due to tacit acceptance of domestic violence and outdated legislation condoning GBV if the victim is married to her assailant (Shafaq News 2021). Despite general prohibitions on violence in their penal codes, both Iraqi (Davis 2016, 52) and Yemeni (Mwatana 2022, 9) legislation also contain provisions which condone and codify impunity for domestic violence.

3.2 Sacrificed generations of children in Iraq and Yemen

Women and children who flee their homes seek to escape violence in the hope of finding a better future, but often the journey they undertake and the protracted displacement many experience jeopardise their physical and psychological well-being and future prospects. Unfortunately, many

of these children's needs frequently go unmet in both the Iraqi (UNICEF 2018) and Yemeni (Oxfam 2022) contexts since governments lack the skills or means, and NGOs fall short of filling the gaps in services. Meanwhile, exceptional circumstances such as natural disasters or COVID-19 amplify the already numerous difficulties which displaced children face trying to establish themselves and access necessary services, education and humanitarian aid. They often find themselves coping with deteriorating living conditions with limited access to clean water and sanitation and inability to follow basic public health measures such as distancing and self-isolation due to overcrowded facilities.

3.2.a The impact of unmet needs on healthcare

Poor access to clean water, bathrooms and showers had a huge impact on displaced Yemeni children in 2021, with MSF reporting a 44 percent increase in the number of patients (of whom 66 percent were children), with 11 percent of cases experiencing severe malnutrition (MSF 2022). Cases of malnutrition in Yemen are rising as a consequence of contaminated food and inadequate access to hygiene (MSF 2022), leading to diarrhoeal diseases which contribute to acute malnutrition in children (Supernant et al. 2020, 6). A similar phenomenon has occurred in Iraq where contaminated water has led to many cases of diarrhoea, vomiting, rashes and scabies (NRC 2018).

3.2.b Access to education

In Iraq, children affected by conflict have lower rates of school attendance, while COVID-19 has made participation of displaced children, particularly those in camps, even more difficult (Oswald 2019, 4). A major issue is the chronic lack of teachers: the student to teacher ratio in Iraq is already high at around 80:1, but in IDP camps it can be as high as 500:1 (Oswald 2019, 4). Displaced children also face difficulties enrolling in school if they have missed more than two years of school, or missed the enrollment period (Oswald 2019, 6). To make matters worse, the restrictions accompanying COVID-19 rendered education practically inaccessible for displaced children as remote education precluded many from participating, and the increased economic precarity of many families has forced sons to work and daughters to marry at the expense of school attendance (SIDA 2022, 2). Since placement in classes is determined solely by age, children who have missed long periods of school or received inadequate education in overcrowded classes struggle to reintegrate and frequently abandon their education even when conditions improve. The same happens in Yemen where "child marriage and child recruitment [are used] as negative coping mechanisms" (SIDA 2022, 2) as conflict compounded by COVID-19 forces displaced families to make impossible decisions. More than two million Yemeni children are out of school (UN News 2021). Additionally, many schools have been damaged by the conflict or transformed into IDP

camps, while others are excluded by the fact that many schools are just for boys or prohibitively far from the children's location (UNICEF 2021a, 9). Currently, there are not enough classrooms available for the more than 530,000 displaced children trying to access education (UNICEF 2021a, 8).

Access to school is fundamental for the well-being of all children and the barriers to access for displaced children are likely to have serious consequences for their physical and mental health, security, educational development, and future livelihoods.

3.2.c Child marriage

Displacement is also associated with an increase in child marriage, as families marry off their girls to alleviate financial pressures, hedge against the risks of sexual violence, or save face. The instances of child marriage among IDP and returnees in Iraq increased in 2018 as protracted displacement depleted families' coffers, with data from other countries in the region showing similar trends (Cazabat et al. 2020). Yemen, with a rate of 32 percent, has the second highest share of girls married before the age of 18 in the MENA region after Sudan, followed by Iraq at 24 percent (UNICEF 2017a). Moreover, nine percent of Yemeni girls are married under the age of 15 to men who are usually decades older (Saleh 2020).

Although Iraq and Yemen are bound by several international treaties and conventions — notably the Universal Declaration of Human Rights (UDHR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child — establishing the minimum age of marriage at 18, both countries consistently fail to meet their obligations under them. In 2009, Yemen's parliament tried to raise the legal age for girls to marry to 17, but the measure failed and to date no domestic law stipulates any minimum age (HRW 2011). In Iraq, although the legal age of marriage is 18, a commonly exploited loophole permits marriage at 15 with the father's consent in 'cases of urgency' (Save the Children 2021).

The consequences these girls face as they transition from girls to child brides are manifold. In particular, their education grinds to a halt, severing them from their peer groups and leaving them socially marginalised. Additionally, early pregnancy leads to higher rates of physical complications and maternal mortality risk.

3.3 Separation of families due to conflict in Iraq and Yemen

In Iraq, more than 95 percent of IDP families separated for more than three months were living in camps (IOM 2020, 19). This occurs primarily when conflict forces women and children to flee while male family members stay behind either to fight, work, or protect property. In the north of the

country, the offensive to retake territory from ISIS led to the separation of 2,624 children in 2017 (UNICEF 2017b) with efforts to reunite them still ongoing. Separated children are often victims of social marginalisation and are at high risk of exploitation and abuse (UN HRC 2020, 10).

The aftermath of ISIS has also perpetuated family separation among women from Iraq's minority groups. Women who were kidnapped into sexual slavery by ISIS fighters face stigma in their home communities still governed by conservative views on purity (UNDP 2022, 40). While Yezidi tribal leaders have decreed that victims should be welcomed back without shame, the same sentiment does not extend to children born of rape by ISIS fighters, leaving mothers to choose between staying in camps to care for their children or returning home without them (UN HRC 2020, 11–12).

Stigma is also faced by women and children with perceived affiliation to ISIS, based on family or tribal ties or even their area of origin (UNDP 2022, 2). They are treated with suspicion and systematically deprived of their human rights on the pretext that they constitute a security threat. For IDP families this often means indefinite *de facto* detention in camps without due process. IDPs with perceived links to ISIS are subject to threats and harassment in both their home and host communities and are returned and punished if they attempt to flee (Nowak 2019, 584–585).

In Yemen, more than 450 children have been unlawfully detained or abducted and 7,270 children have experienced family separation since the beginning of 2015. Unaccompanied or separated children make up 18 percent of children in Yemeni camps. Humanitarian access, lack of civil documents, onerous bureaucratic procedures, security and lack of funds are a few of the major obstacles preventing family reunification (OCHA 2021a, 80).

3.4 The importance of registration for access to basic services

Women also face difficulty obtaining services for which official identification is required if they are not accompanied by a male relative. This patriarchal precondition means Iraqi female heads of households and their children can find themselves deprived of aid and legal rights (UPR Iraq 2019). Another obstacle is the requirement for IDPs to obtain security clearances to renew documents, effectively codifying discrimination against IDPs with perceived affiliation to ISIS; this also has unintended consequences for IDPs lacking documentation for other reasons since security personnel frequently assume the reason is a failed background check and therefore an affiliation with ISIS. Civil documentation is also a prerequisite for children to attend school in Iraq (UN HRC 2020). As investigated by the Special Rapporteur on the Human Rights of IDPs, Cecilia Jimenez-Damary, for children born during ISIS occupation, birth certificates are either not

recognised or were never issued. Moreover, she reported that education is inaccessible for children of missing fathers, or those born out of wedlock or through sexual violence during ISIS occupation (UN HRC 2020).

The same problems are faced by Yemeni women who are separated from their husbands or widowed and therefore unable to register (OCHA 2015). Although ID cards are nominally required to prove their identity, as reported by OCHA, many people in rural Yemen remain unregistered. Moreover, as the OCHA report underlines, in close-knit communities identity is not questioned, and people can go to school or get married without an ID. Displacement breaks these informal ties and IDPs without civil documentation lose access to basic services. Women in polygamous marriages can also fall through the cracks when only one wife can register. This is especially dangerous when wives and their children are displaced in separate camps (OCHA 2015).

4. Response mechanisms to protect displaced women and children

4.1 Political commitment to address displacement: from the UNGPID to the Iraqi and Yemeni policies

In 1998 the UNGPID were adopted as a reference regulatory framework. They protect against arbitrary displacement, protect and assist in cases of displacement, and support return, integration and resettlement (OCHA 2004). The goal was to make these principles attractive to states and encourage their incorporation into their national legislation or public policies. While not legally binding, the international community has begun to see their acceptance as a form of customary law. Following this direction, Iraq and Yemen have adopted national policies to address internal displacement.

In July 2008, Iraq developed The National Policy on Displacement (NPD) with the goal of finding durable solutions to displacement (NPD Iraq 2008, 5), which draws on the UNGPID to codify the rights of and obligations towards IDPs (Sauerbray 2007, 66). To support the NPD, the Inter-Agency Durable Solutions Strategic and Operational Framework was developed, which aims to bring together different actors across the nexus to effectively address protracted displacement, promote durable solutions and encourage adherence to international standards (Iraq Durable Solutions 2021). This will help ensure an effective allocation of resources to address barriers to safe and sustainable returns, integration and resettlement and expedite resolving the displacement of Iraq's 1.2 million IDPs (IOM 2022, 10).

In Yemen, the National Policy for Addressing Internal Displacement (NPAID), co-authored by Yemeni government agencies and the UNHCR, was adopted in 2013. It identifies three main goals: "protecting civilians from involuntary displacement and being prepared to respond to possible displacement; protecting and assisting IDPs during displacement and supporting displacement-affected communities; creating conditions enabling safe, voluntary and durable solutions to internal displacement" (NPAID Yemen 2013, 1–2).

To achieve these goals, firstly, the government shall prevent and monitor situations that could lead to displacement. In cases of inevitable displacement, it shall guarantee the availability of humanitarian assistance (NPAID Yemen 2013, 8–9). The government shall ensure physical safety and security, access to adequate and dignified living conditions, freedom of movement, protection against involuntary returns, right to education, and psychological well-being for all IDPs. The second goal includes the importance of IDPs' livelihoods and family unity and mandates the immediate activation of the Yemeni government to ensure the reunification of separated families, social assistance, civil documentation, protection of property rights, opportunities for political participation, and protection of children from military recruitment (NPAID Yemen 2013, 10). Finally, the third goal seeks to find durable solutions to internal displacement. The policy defines durable solutions as those which allow IDPs to fully exercise their human rights without facing discrimination based on their displacement and which eliminate their displacement-induced protection needs. The policy identifies three possible solutions: return, integration and relocation (NPAID Yemen 2013, 26).

The Yemeni government is responsible for carrying out the NPAID and pledges to do so through all pertinent institutions of national and local government. However, when they are unable due to insufficient resources, outside help is requested (NPAID Yemen 2013, 30).

Adopting specific policies to address the issue of IDPs in Yemen and Iraq is an important step toward acknowledging the phenomenon and the difficulties IDPs face. However, implementation challenges such as a lack of resources, ongoing conflict and contested administration have rendered this insufficient. Despite the extensive frameworks, implementation in Iraq is slow-moving, also because of self-inflicted administrative roadblocks. Lastly, persistent pressure for IDPs to return to their original communities precludes realistic integration prospects, even when the ethno-religious climate there forces them to prolong their displacement or trigger secondary displacement (Anzellini et al. 2021).

As for women and children facing displacement, the UNGPID recognise that women and children have special needs that shall be safeguarded, underlining that IDPs shall be protected particularly against: acts of GBV,

sexual exploitation, and other forms of slavery (OCHA 2004). They also seek to ensure the right to an adequate standard of living for women and girls, as well as access to health care and education (OCHA 2004).

The policies of these countries demonstrate a commitment to the principles and values established by the UNGPID. However, they lack the necessary nuance to adequately tackle the systemic issues that hinder IDP rights. Therefore, to make up for the policies illustrated above, NGOs have intervened with humanitarian aid, if not always effectively.

4.2 Humanitarian response

The humanitarian response in Yemen has become one of the largest and costliest responses in the world in the past decade. In 2020, the humanitarian situation was aggravated by escalating conflict, COVID-19, disease outbreaks, torrential rains and flooding, a desert locust plague, economic collapse, a fuel crisis and reduced humanitarian aid (OCHA 2021b, 5). In response, the UN launched a Humanitarian Response Plan (HRP) targeting 15.6 million people for vital assistance. The 2022 HRP is expected to reach 17.9 million Yemenis (OCHA 2022e), while the 2021 Iraq HRP targeted 1.5 million people. Initial analysis shows that the 2022 Iraq HRP will likely target around 990,000 Iraqis with humanitarian assistance; this number would include all in-camp IDPs, 230,000 acutely vulnerable out-of-camp IDPs, and 580,000 acutely vulnerable returnees (OCHA 2022c). The implementation of the humanitarian plan will consider needs based on age, gender and specific vulnerabilities, prioritising the neediest cases (OCHA 2022b, 24), such as female-headed households facing additional cultural and institutional obstacles (OCHA 2022b, 25).

In 2021, the Protection Cluster of the HRP aimed to mitigate vulnerabilities for the most at-risk populations in Yemen, especially IDP women and children, and to provide services to address protection risks, ensuring attention to specific needs and prioritising the most vulnerable including displaced persons (OCHA 2022d). UNICEF has been working in camps to help displaced children cope with the impacts of conflict and recover their childhoods, by providing them with humanitarian aid and education on landmines and unexploded ordinances, rehabilitating damaged schools, and establishing safe learning spaces in displacement camps. Meanwhile, the IOM is working to strengthen the humanitarian response and put displaced Yemenis on a path to recovery, with a specific focus on women's empowerment (IOM 2021b).

In Iraq, the situation affecting millions of people currently or previously displaced by the 2014–2017 ISIS crisis remains broadly stagnant as compared to 2021. Returns continue to be slow, with the number of displaced Iraqis only decreasing by 35,000 so far this year (OCHA 2022c). Of the country's IDPs, 728,000 have humanitarian needs with more than half acute (OCHA 2022b, 25).

Many IDPs and returnees face significant barriers to finding durable solutions (OCHA 2022c). Since 2021, the Iraqi government together with the international humanitarian system has accelerated efforts to expand engagement and support to end displacement (IOM 2022, 4). The Iraq Crisis Response Plan 2022–2023 names several specific provisions on GBV, women's health support and child protection including: treatment for reproductive, maternal and child health; specialised care and referrals for GBV survivors and other vulnerable individuals (IOM 2022, 7); educating about human trafficking (IOM 2022, 8); assistance to families with suspected affiliations to ISIS to find durable solutions by helping them to return to their areas of origin and reconcile with local communities; and helping IDPs obtain lacking civil documents (IOM 2022, 12).

Despite the decrease in acute need between 2021 and 2022, UNICEF continues to support children and promote durable solutions. It seeks to provide access to nutrition and health care, strengthen child protection mechanisms, give access to risk reduction, prevention, and/or response measures against GBV, and ensure safe and accessible channels for reporting sexual exploitation and abuse by support workers. Finally, the 2022 programme aims to facilitate and increase the number of children attending education (UNICEF 2021b).

While the humanitarian response in Iraq and Yemen has been instrumental in addressing some of the most acute needs faced by IDP women and children, it has been insufficient in relation to the scale of the issue, as well as being focused primarily on symptoms rather than causes, and it continues to face persistent obstacles to the achievement of its stated objectives.

4.3 Limitations of the present response plans

Since the adoption of IDP policies, the implementation has fallen short of expectations. The Report of the Special Rapporteur on the Human Rights of IDPs, Chaloka Beyani, found on his Mission to Iraq in 2016 that the NPD had never been transposed into the national law (UN HRC 2016, 5); the Ministry of Displacement and Migration never implemented it in practice. These shortfalls have direct impacts on the rights of IDPs, particularly concerning the issuing of civil documentation (NPD Iraq 2008, §6.4) which is necessary for accessing humanitarian support in Iraq (UN HRC 2016, 6). Hence, when the relevant ministries fail to meet their responsibilities, it becomes challenging for IDPs to benefit from basic services such as access to formal schools, to health care, and to other primary needs guaranteed to them by the policy.

As in Iraq, Yemen too has not lived up to expectations since the adoption of its NPAID, and it missed the opportunity to improve conditions for its sizable displaced population by applying the policy in practice (Al-Aswadi 2019), with considerable repercussions on the lives of displaced women and children.

Most notable is the shortfall in access to education which the NPAID commits to guaranteeing to all IDP children. It must uphold this commitment and enrol all IDP children without bureaucratic preconditions, providing accelerated learning programmes to IDP children who have lost years of school due to conflict and subsequent displacement, along with additional assistance based on social or economic status when needed (NPAID Yemen 2013, 18–19). However, as discussed above, reports have found a severely inadequate application of this policy with more than two million IDP children still out of school (UN News 2021).

Obstacles to returns include: instability in the areas of origin; limited access to food, medical services, employment, schooling and livelihood opportunities; lack of information about the status of assets left behind during displacement; costs associated with return; and the opportunity costs of abandoning newfound employment or an already-commenced school year (Jimale 2021, 17). Although Yemen's policy is to be implemented at all levels of government, this has generally resulted in the various levels of government ascribing the responsibility to each other. Governorates generally view returns which cross internal borders as the responsibility of any jurisdiction but their own, while government initiatives to promote local integration, whether for lack of will or resources, have been largely absent.

Both countries are proof that policies unaccompanied by a support system composed of the government, state institutions, and national and international organisations do not lead to adequate humanitarian response, and the main consequences of the shortcomings in their implementation are borne by the most vulnerable categories of IDPs.

International organisations and NGOs have also fallen short in their efforts to meet the needs of displaced populations. Humanitarian aid has on several occasions been seized by Houthi fighters and used as a bargaining chip in conflict or diverted to support the belligerents. The delivery of aid is subject to bureaucratic hurdles and to the incapacity of the Yemeni government to guarantee humanitarian corridors to organisations trying to reach people in need. Additionally, the funding has consistently failed to achieve targets, with humanitarian actors in dire need of more financial support from the international community (UNSC 2021).

Poor security, lack of basic infrastructure, the increasing numbers of IDPs, and the accommodation of livestock are among the primary challenges facing the government and aid agencies operating in IDP camps

in northern Yemen (New Humanitarian 2009). Another key challenge is the ongoing conflict and disregard for IHL which constitutes the most serious risk for further exacerbating needs and vulnerabilities. Severe access restrictions, particularly in the northern parts of the country, resulted in nine million people being denied humanitarian assistance in Yemen in 2020, even as the economic and security situation continued to deteriorate (SIDA 2021, 4).

On the other hand, Iraq seems to be recovering: since ISIS's defeat, 80 percent of IDPs have returned to their areas of origin and begun rebuilding. However, the challenge remains vast as schools and hospitals must be rebuilt as most of them were severely damaged or destroyed (OCHA 2022b, 20). The presence of armed actors remains high and access to administration remains difficult (OCHA 2022a, 33). Administrative matters in Iraq constitute the most critical impediment to humanitarian aid access. For instance, local authorities or certain state security groups control the licensing procedures of NGOs. Additionally, humanitarian aid is often arbitrarily delayed at checkpoints (OCHA 2022a, 33).

For both countries, COVID-19 has represented an additional layer of vulnerability. In Iraq, accessing humanitarian support since the COVID-19 outbreak has posed a significant challenge due to the restrictions imposed by the government (OCHA 2022a, 33). Meanwhile, in Yemen, restrictions have had a devastating impact on aid delivery, as has the significant reduction in international aid as humanitarian funding is stretched thin by the COVID-19 crisis (UNSC 2021). This has heightened IDPs' vulnerabilities at the same time as COVID-19 increases their needs, with IDPs disproportionately unable to access medication, treatment and testing for COVID-19 as well as other medical conditions (IOM 2021a).

Finally, the work environment in Yemen remains restricted due to the impact of COVID-19 while the humanitarian response has struggled to meet funding targets and has overwhelmingly focused on the prevention of widespread malnutrition at the expense of other acute needs associated with displacement (OCHA, n.d.).

5. Conclusion

Internal displacement affects many populations worldwide. At the international level, there are no treaties, conventions or declarations specifically concerning the rights of IDPs. However, 1998 saw the adoption of the non-binding UNGPID, upon which some countries such as Iraq and Yemen have built national IDP policies. Unfortunately, these policies have never been adequately implemented and IDPs, particularly women and children, continue to face significant challenges to their security, health, education and livelihoods. As the governments falter in fulfilling their obligations to their displaced citizens, children continue to

face malnutrition, other related health issues, and difficulties in accessing school, while women suffer higher rates of GBV and barriers to accessing health care and other basic needs. Further, this has led to the recruitment of children into armed conflicts, child marriage, and widespread child labour. This situation is a direct consequence of the armed conflicts that have persisted for decades in both countries.

Moreover, the humanitarian response has not always sufficed to meet IDPs' needs. To access humanitarian support, IDPs must register, for which they need to hold a valid ID. The overwhelming majority of IDPs in Iraq and Yemen have been displaced due to conflict or severe weather events that constitute an imminent threat to life. The hasty nature of their flight and the widespread destruction of property prevented many from bringing their documents and thus meeting this basic requirement. Both governments should find another way to register IDPs as persons in need, to make aid available to the whole IDP community.

Governments, international organisations and IDPs themselves envision internal displacement as a temporary relocation only until it is safe to return. Accordingly, IDP camps are set up as a temporary solution, even though displacement is becoming increasingly chronic, with compounded vulnerabilities keeping those affected confined to camps for protracted periods. At times, authorities directly enforce this confinement, as in Iraq, where camps are seen as detention centres for women and children with links to ISIS members who suffer from multiple displacements and severe stigma and have little prospect of escaping their predicaments. The government of Iraq should welcome IDPs as persons with vulnerabilities looking for help and should not deprive them of their freedom and rights. Instead, it should incorporate the NPD into the national law, implement and enforce it. The same should be done by the government of Yemen, where the needs and the shortcomings in policy implementation are even more dire and expected to deteriorate further due to ongoing conflict (OCHA 2022c, 7). This will lead to a further increase in IDPs and compound vulnerabilities, with a primary impact on women and children. The recent shaky ceasefire offers some hope, but combatants and the international community must make sure it lasts to prevent a further deterioration in humanitarian conditions and give the government and organisations providing aid the opportunity to facilitate returns and carry out their missions to protect those who have returned and those who remain displaced.

Iraq and Yemen face legitimate resource constraints, but there are several achievable steps they could take to further their aims regarding durable solutions. Providing up-to-date information on the security situation in the areas of return and availability of services would help IDPs make informed decisions and promote voluntary, safe and dignified returns (Jimale

2021, 20). Local administrations should commit to respecting property rights to guarantee that IDPs can return to their homes and cooperate with donors to distribute aid to those whose property was destroyed or damaged. Furthermore, educational institutions should commit to accepting returning students so that education is not disrupted. For those who wish to settle in the areas to which they fled, governorates should work with NGOs and IGOs to support integration projects and provide the necessary documentation and administrative support. Additionally, whether returning or integrating, the promotion of durable solutions will require that the most basic needs of all households are met, enabling them to focus on income-generating activities and capacity building, increasing resilience and reducing reliance on stopgap humanitarian aid. In order to fill the inevitable gaps and promote security and positive health outcomes, particularly for vulnerable groups like women and children, as well as to ensure access to education and livelihood opportunities, this entails allocating more resources to the implementation of the IDP policy and strengthening cooperation with international organisations and NGOs (Ligneau 2021).

In Iraq, where many IDPs have returned to their homes, as in Yemen, where a hopefully lasting ceasefire would open the door for returnees, the assistance of peacekeepers could be a good strategy to ensure lasting returns that would allow those former IDPs to build equity and resilience in a stable environment, thus decreasing the likelihood of repeated displacement. Lastly, accountability at national and international levels can also lead to proper implementation of national policies and pressure from international actors, which might push both Iraq and Yemen closer to adherence to the UNGPID.

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Global Campus of Human Rights

Volume 6 No 2
2022

Global Campus Human Rights Journal

The *Global Campus Human Rights Journal (GCHRJ)* is a peer-reviewed scholarly journal, published under the auspices of the Global Campus of Human Rights (see https://gchumanrights.org/research/publications/global-campus-human-rights-journal.html) as an open-access on-line journal. It is supported financially by the European Union Commission and appears twice annually.

This journal should be cited as (2022) 6 *Global Campus Human Rights Journal*

ISSN: 2532-1455

Headquarters and contact information:
Global Campus of Human Rights
Monastery of San Nicolò, Riviera San Nicolò, 26 I-30126 Venice Lido, Italy
https://gchumanrights.org

Global Campus Human Rights Journal

Volume 6 No 2 2022

Global Campus of Human Rights
2022

Global Campus Human Rights Journal (2022) Volume 6 No 2

The Global Campus Human Rights Journal (GCHRJ) is a peer-reviewed scholarly journal, published under the auspices of the Global Campus of Human Rights as an open-access on-line journal.

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Layout and typesetting: Nutthamon Nutthanapong

The Global Campus of Human Rights

Headquarters and contact information
Global Campus of Human Rights
(Monastery of San Nicolò, Riviera San Nicolò, 26 I-30126 Venice Lido, Italy)
https://gchumanrights.org

The Global Campus of Human Rights is a unique network of one hundred participating universities around the world, seeking to advance human rights and democracy through regional and global cooperation for education and research. This global network is promoted through seven Regional Programmes:

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Volume 6 No 2

DOI http://doi.org/10.25330/2598

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http://doi.org/10.25330/2596

Editorial

This is the eleventh issue of the Global Campus Human Rights Journal. It consists of eight articles resulting from a special cooperation with the GC Human Rights Preparedness Blog which has provided a valuable platform for innovative and inclusive conversations within the Global Campus network and beyond. In this regard, this blog generally invites contributors to explain the ways in which protecting, respecting and fulfilling human rights is vital in meeting the challenges of pandemics and other emergencies, or to imagine how human rights could be better prepared for such challenges in view of where, how and why human rights have failed or done less well than anticipated.

Seven articles are based on shorter contributions previously published by Global Campus alumni acting as regional correspondents for the aforementioned blog after having been trained by Rosie Cowan, a member of the blog editorial team. The eighth article is written by the lead editor of the blog. All these articles provide insights into different topics from a rights-based approach taking into account that there are lessons to be learned from the past and preparations that can be made for the future.

Maria Koltsova considers that several anti-war movements have been organised in Russia or by Russian emigrants abroad since the start of the Russian invasion of Ukraine. She focuses on the story of the activists from the organisation Feminist Anti-War Resistance (Fem Anti-War Resistance or FAR) and explains the key importance of feminist ideas in opposing the war. She highlights how feminist movements can create structure and spread ideas to prevent further tragedies, while establishing themselves as a pillar of Russia's future civil society.

Khadija Embaby considers two ways in which the politics of energy impacts human rights in the Middle East. First, she focuses on interstate dynamics and how this affects the distribution of energy production costs and benefits, given the new political. Second, she addresses the question of how Western foreign policy towards countries in the Middle East is shaped, given the current energy crisis and increasing dependence on oil in its fossil fuel-based economy. She reflects on these issues by defining energy justice and its relationship to human rights, understanding its implications for US and European foreign policy towards the Middle East and finally how it can be contextualised in regard to specific countries in the region. She highlights the need of the international human rights community to adopt an energy justice framework that acknowledges and considers compensation for harms committed by oil industry giants and

the violent politics of oil.

Johnson Mayamba focuses on the need for Africa to learn lessons from its past and plan for a better future in the field of healthcare. In particular, he underlines the need to increase government funding towards the health sector and to address other still-existing challenges to equitable healthcare. He recommends the building of resilient healthcare systems with more focus on primary healthcare, the adoption of individual and group participation in decision-making processes, as well as the establishment of Universal Health Coverage in order to guarantee the future for most Africans as a equitable, stable, peaceful and prosperous society.

Ana Funa addresses the issue of hydropower plants in the Western Balkans, arguing that activists and scientists across the Balkans have succeeded to some extent in highlighting the negative impact of HPPs, but governments in the region must do more to diversify into alternative renewable energy sources and to protect nature for future generations. In this regard, she analyses numerous studies and reports of relevant international institutions, reviews the numerous activist undertakings to protect the Balkan wild rivers and discusses viable environmentally friendly alternatives to hydropower.

Gema Ocana Noriega examines a series of United Nations reports and other research which contend that inherent economic gender bias and neoliberal financial austerity policies unduly damage women's socio-economic rights. She recommends that human rights principles be combined with comprehensive feminist economic analysis in order to achieve gender equality and afford women more financial security in preparation for future crises. She argues that one useful tool on the way forward could be the development of a gender-sensitive human rights impact assessment of economic reform policies.

Ezequiel Fernandez Bravo examines ongoing challenges of racism and discrimination through the lens of the long troubling history of xenophobic persecution of Haitians by the neighbouring Dominican Republic. He analyses the latter's prejudicial two-tier migration policy toward Haitians; on the one hand, ostensibly excluding them, on the other hand, admitting those it requires for cheap unregulated labour in sectors such as construction and agriculture but denying them and their descendants rights and citizenship. Setting this amid the worldwide context of the relationship between unequal distribution of wealth and a global hierarchy of migration based on race, his article calls on human rights activists inside and outside the Dominican Republic to stand together and renew efforts to dismantle the structural racism upon Haitians.

Chiara Altafin analyses selected litigation efforts relating to children deprived of liberty for migration-related reasons in Europe and Asia where various countries face persisting systemic issues and there are local practitioners working on them. The selective choice of cases draws heavily on the findings of her research for one component of the "Advancing

Child Rights Strategic Litigation" (ACRiSL) project under the auspices of the Global Campus of Human Rights and Rights Livelihood cooperation. She articulates concluding remarks for a children's rights preparedness, reflecting on the importance of stakeholders' approaches towards litigation strategies that are consistent with children's rights and aim to advance children's enjoyment of their rights, in order to contribute effectively to tackle such a harmful practice and bring changes against it.

The Global Campus of Human Rights consists of the Global Campus Europe, South East Europe, Africa, Asia Pacific, Caucasus, Latin America and the Arab World, with the participation of post-graduate students from their respective Master's programmes in Human Rights and Democracy.

Maria Koltsova. "Russian anti-war activists continue feminist tradition of opposing violence" (2022) 6 *Global Campus Human Rights Journal* 185-194
http://doi.org/10.25330/2521

Russian anti-war activists continue feminist tradition of opposing violence

*Maria Koltsova**

Abstract: *Since the start of the Russian invasion of Ukraine, several anti-war movements have been organised in Russia or by Russian emigrants abroad. One of them is Feminist Anti-War Resistance—a horizontal feminist organisation creating online and offline protest actions against the war in Ukraine. The article tells the story of the activists and explains why feminist ideas are so important in opposing the war.*

Keywords: *Ukraine, Russia, Feminist Anti-War Movement, Feminism, Gender*

1. Creation and structure of Feminist Anti-War Resistance

On February 24 2022, Russian president Vladimir Putin announced a "special operation" —war against the sovereign neighbouring state of Ukraine. Days later, the first and one of the biggest pacifist movements in Russia was created — Feminist Anti-War Resistance (Fem Anti-War Resistance or FAR for short). Members stated in its manifesto: "[A]s Russian citizens and feminists, we condemn this war. Feminism as a political force cannot be on the side of a war of aggression and military occupation—. The feminist movement in Russia struggles for vulnerable groups and the development of a just society with equal opportunities and prospects, in which there can be no place for violence and military conflicts" (FAR Instagram 2022).

Now after more than five months of war, FAR has become known as the instigator of major anti-war demonstrations in Russia and other countries. Its manifesto has been translated into 14 languages including Ukrainian, French, Spanish, Udmurt and Tatar, and it has 33,000 followers on Telegram

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and 15,000 on Instagram. Ella Rosman, one of the founders of FAR, says in an interview (The Village 2022): "[W]e organised the fastest anti-war resistance in Russia. When the invasion of Ukraine began, we contacted the feminist activists we knew and decided to start the movement: we discussed strategy, actions and goals."

There are other anti-war activists operating in Russia, such as Vesna, Free Buryatia Foundation, Anti-War Sick Leave, Students Against War, Safe Repost, 8th Anti-War Group, but FAR was one of the first and one of the most organised.

Rosman, one of FAR's 10 co-ordinators, says that number has stayed more or less the same since the start though different individuals take on various roles. Tasks are distributed among members; some write for social media or create performance protests, others organise partnerships with international feminist groups and organisations.

In an interview for independent media website Meduza (Filippova 2022), another FAR member Daria Serenko explained its decentralised horizontal structure; each city has an autonomous branch: "[T]o set up a FAR cell, it is enough just to call yourself FAR and share our ideological views. You send a message to the bot stating you support our manifesto and want to speak for us. Furthermore, each new cell can act independently, we are not an organisation in the usual sense, since this is not safe. We do not want there to be a 'head' and a 'body': if the 'head' is cut off, then the 'body' will also perish. We've learned about some cells just by chance, for example, from the reports of international journalists - we see our symbols in their photos."

FAR undertakes several different types of activity: media and protest demonstrations; legal support for those prosecuted for their anti-war position; aid for Ukrainian refugees and migrants and political prisoners in Russia; and evacuation of activists from Russia. Moreover, 45 psychologists work helping anti-war activists who have experienced violence, burnout or post-traumatic stress disorder (PTSD) (FAR Instagram 2022). As activists say in their Telegram channel, FAR has helped hundreds of Ukrainians and others, many of them women, who have suffered because of the war.

FAR now has cells in more than 50 Russian cities and some abroad—in Armenia, Georgia, Germany, Korea and other countries. The organisation also has departments in more than 30 countries and has hosted international events and performances. Activists write (Filippova 2022): "[W]hile Russia isolates itself from reasonable international politics, we participate in the

network of international solidarity with Ukraine, we report on activists within the Russian Federation, we look for resources to support activists in Russia. We aim to publicise the anti-war movement and to bring the tragedy of Ukraine to the attention of citizens and the authorities."

FAR reported from the Human Rights House Foundation Conference in Geneva on June 23, 2022, by holding a parallel conference entitled "The situation of human rights in the Russian Federation: building links with civil society as human rights violations intensify" (FAR Instagram 2022). FAR coordinator Lilia Vezhevatova spoke about the scale of the anti-war movement in Russia and the support the movement feels the international community can provide to end the war as soon as possible. More than 60 participants attended, including official representatives from Poland, Lithuania and diplomats from other European countries.

2. War as a feminist issue

Feminist activists have a long tradition of opposition to war, violence and totalitarian regimes. During World War One, the feminist anti-war movement was relatively strong in Europe and the United States. In August 1914, in New York, 15,000 women took part in a peaceful demonstration, refusing offers of cooperation with male pacifists. In 1915, in The Hague, two European feminist pacifists, Rosika Schwimmer and Emmeline Pethick-Lawrence, in alliance with the Women's Party for Peace, organised an international women's peace conference. Despite various obstacles from most governments, delegates came from a number of countries. This conference was the first international meeting aimed at the struggle for peace and the development of principles for a peace agreement between warring nations (9oemarta 2022).

One of the most famous examples of female participation in peacekeeping was at the Greenham Common nuclear missile site in the UK, where in 1981 women set up a peaceful camp to demonstrate against the use of nuclear weapons. The protestors kept a permanent presence for several years, regularly blocking the road to the base in an attempt to prevent the entry and exit of convoys carrying missiles.

In 2020, Belarusian women became leaders and symbols of protest against the Lukashenko regime (Berman et al. 2021). Svetlana Tikhanovskaya, who at first simply wanted to stand in for her arrested husband, accidentally became the only presidential candidate from the opposition. Her triumvirate with Maria Kolesnikova and Veronika Tsepkala became a symbol of the demand for a renewal of democracy after 26 years

of Lukashenko's rule. Meanwhile on the streets, women dressed in white carried flowers to demonstrate their peaceful nature as they protested against police violence.

Historically, feminists and anti-military activists have approached war as a feminist issue, tightly linked to traditional male and female gender roles. Goldstein (2001) explains that gender roles outside war are very different in various societies with contrasting approaches to household labour, maternity and childcare. But cultures develop gender roles that equate "masculinity" with toughness under fire and only one percent of combatants globally down through history have been female (Goldstein 2001). Women therefore bear the brunt of all non-fighting duties during war, including childcare and provision of medical aid and food.

Feminist theorists expanded on this argument, contending that the same gender stereotypes and toxic masculinity which drive men to wage war and carry out acts of aggression against other nations fuel both state brutality against citizens and also intimate partner violence.

Russia in particular has a history of cult-like support for the military and admiration of leaders who project a ruthless hyper-masculine image, of which Vladimir Putin is now seen as the epitome. Russian culture is full of toxic masculinity and consequently normalises violence. In an interview with Russian media organisation Holod, psychologist Oleksandra Kvitko, who works with Ukrainian women impacted by sexual violence, called the accused Russian soldiers "the same age as Putin's rule" and linked their brutality to the fact that they see Ukrainians as "second-class citizens" (Nordic 2022).

The country also has a huge domestic violence problem and little legal or practical protection for women who have fled abusive relationships though it is far from alone as violence against women and girls is a global issue. UK feminist scholar Liz Kelly coined the term, "continuum of sexual violence", in the 1980s to describe a broad range of unwanted sexual acts within what could be considered to be "consensual" relationships. She interviewed 60 women of all ages who had been subjected to verbal, physical or sexual abuse from men. Significantly, not all the acts would be viewed as criminal offences in modern legislation and some of the women only realised that what they had been subjected to was a form of abuse some time later. Kelly defines sexual violence as including: "[A]ny physical, visual, verbal or sexual act that is experienced by the woman or girl, at the time or later, as a threat, invasion or assault, that has the effect of hurting her or degrading her and/or takes away her ability to control" (Kelly 1987: 56).

Kelly argues that societal tolerance of gendered stereotypes and lower level gendered aggression increases the normalisation of gendered abuse and violence in general. During times of war, the level of violence increases.

FAR coordinator Lölja Nordic endorses this position: "[T]he war in Ukraine and the war crimes that are happening there now show that everything feminists said turned out to be true, even though people ignored it for years. First, domestic abuse is decriminalised, the state signalling that you can beat your wife and get off with just a fine, then the state justifies police violence: not a single policeman is punished for torturing and beating his fellow citizens. And then we see that the military is torturing and brutally killing Ukrainians in Bucha. These are links in the same chain—the normalisation of violence, which occurs in stages" (Nordic 2022).

In the past 10 years, Russia's feminist movement and ideology has grown and gained strength. There is more and more female representation in Russian politics and business. By the beginning of the war, there were at least 45 grassroots feminist groups with organisational and networking experience, based in Russian cities. Many of them have joined the anti-war movement. Grassroots feminist activists already had connections throughout the regions which is why it was easier to create a movement in such a short period of time.

3. Breaking the information blockade

From the beginning, FAR has had two main goals for its anti-war activities: development of the protest movement and dissemination of information about the war online and offline in various ways. Due to propaganda, most Russian citizens do not have access to independent sources of information so one of the movement's key tasks is to communicate the truth about the war to as many people as possible. FAR founder member Ella Rosman says: "[P]eople don't know about the monstrous things that are happening in Ukraine. Therefore, the first step in involving people in the protest is to convey the meaning of these events, or rather, their meaninglessness and cruelty."

Daria Serenko adds that the goal is to break through the information blockade: "[O]n their side [the state]—a lot of money and a repressive apparatus, on our side—activists, enthusiasm and a desire for grassroots work. We are most focused on campaigning. We say: become agitators against the war" (The Village 2022).

FAR activities have gained the attention of an audience that has never been interested in politics or war. But the biggest obstacle and danger is current Russian legislation which allows the state to imprison anyone who even discusses the war in Ukraine. Since the start of the war, Russia has passed a number of laws which amount to de facto war censorship. In what conditions does FAR operate?

Researchers say that, after a "honeymoon period" from 2008 to 2012 under the presidency of the relatively more liberal Dmitry Medvedev, Russian media freedom drastically decreased. "[T]he promotion of a state ideology built on a mixture of ultra-conservatism and anti-Westernism within the framework of the concept of a besieged fortress provokes an exaggerated reaction to any critical or simply alternative opinion and leads to the cleansing of the internet space from any points that do not fit into this concept vision and expression" (Net Freedoms 2021).

Currently, three main articles in the Russian Criminal Court are used to silence anti-war voices: these articles criminalise the dissemination of what the state terms "fake news" about the Russian army (Article 207.3); discrediting military forces (Article 280.3) and calls for sanctions against Russia (Article 280.4). All three were introduced after the start of the war and are now frequently employed to target opponents of the war.

On March 4, 2022, two weeks after the war began, President Putin signed a clutch of laws that basically introduced censorship by making it illegal to "knowingly spread false information about the activities of the Armed Forces of the Russian Federation" or "discredit the activities of Russian troops". Punishments for violation of these laws range from fines of up to five million rubles or up to 10 years in prison, which can be increased to 15 years if the spread of "fake information" is judged to have had serious consequences.

What about the discrediting of the Russian army? First offences are subject to a fine of 50,000-100,000 rubles for ordinary citizens, 200,000-300,00 rubles for officials (Code of Administrative Offences, Article 20.4.4). Second offences are punishable by up to five years of imprisonment.

Russian officials see as discreditation any mention of world "war" itself. St. Petersburg artist and musician Alexandra Skochilenko—Sasha—has become one of the symbols of protest against the Russian invasion of Ukraine. After replacing price tags in St. Petersburg supermarkets with anti-war slogans, she was arrested and sent to a pre-trial detention centre. This led to Sasha becoming one of two Russians subject to a criminal rather

than an administrative case for this offence. Moreover, the authorities' allegation that she was motivated by "political hostility" means she now faces up to 10 years in prison (RFE/RL 2022).

On July 8, 2022, Moscow deputy Andrey Gorinov was sentenced to seven years in prison for calling the situation in Ukraine "war" instead of a "special military operation" during an open meeting of council deputies in his district (Kirby 2022). He became the first person to be imprisoned under Criminal Code Article 207.3, while 225 people were subject to criminal prosecution because of their anti-war positions by the end of August (OVD-Info project 2022b).

According to human rights defenders' project Net Freedoms, a total of 73 criminal cases about war censorship on "fake news" (Article 207.3) have been initiated since the war started: 12 of the accused identified themselves as journalists while seven said that they were activists and politicians (OVD-Info project 2022a). Under Article 20.3.3 of the Code of Administrative Offences (discrediting the army), during six months of war, 3,807 administrative cases have been initiated (OVD-Info project 2022b).

4. Partisan war information

While spreading information about the war is extremely dangerous for anti-war activists, FAR members are finding innovative ways to target new audiences.

FAR is focusing on different sections of the population, not just young people or those in big cities: for instance, they have tried to reach out to others through "Odnoklassniki" (Classmates), a social media platform traditionally used by the older generation in Russia, who mostly get information from heavily propagandised state TV (Femagainstwar 2022). There are instructions on FAR's Telegram channel on how Russian-based activists can safeguard themselves by creating accounts using foreign phone numbers and pseudonyms but add more photos and pictures to make a page look more authentic.

Another form of partisan activity is the print newspaper "Female Truth" (Zhenskaya Pravda) that mimics a typical Russian regional newspaper. Again, the goal is to reach older audiences and inform them about the war in a softer way while safeguarding activists who distribute the paper. Editor Lilia Vezhevatova notes: "[W]e periodically receive feedback from people who've sprung our newspaper on their grandmother, for example. It's really heartening that Zhenskaya Pravda is providing opportunities to start a dialogue and to give those who would normally get all their

information from official sources a chance to see an alternative point of view" (Merkuriyeva 2022).

PDF-files of the newspaper are published in open access on FAR's social media so that anyone can print it off to distribute amongst relatives, neighbours and others. Several different issues on special topics were published on July 6, 2022; the fifth issue was devoted to the stories of people who had experienced war at different periods in history. In addition to notes and interviews, each issue contains anti-war anecdotes, stories about famous people who speak out against the war in Ukraine, and useful instructions, such as why you need a VPN (the application to open internet resources that are blocked by the government in the country) and how to install it.

On March 8, 2022, FAR spearheaded an international solidarity protest—"Women in Black"—asking all women and queer people to wear black and lay flowers at Second World War monuments while holding a minute's silence in memory of Ukrainians killed in the current conflict. More than 120 cities around the world took part in this action, and several participants were arrested in Russia.

The "Women in Black" idea was initiated by Israeli women in 1988 when they protested against the occupation of Palestine and Israeli army war crimes and has been repeated in honour of victims of other war crimes since.

Anti-war activism is long-term. And as a FAR member admits, there is little optimism that activists can stop attacks by the Russian army right now. However, such movements can create structure and spread ideas to prevent further tragedies, while establishing themselves as a pillar of Russia's future civil society. FAR member Tanya, whose name has been changed for her safety, states in a recent interview (Filippova 2022): "[N]aturally, the anti-war movement cannot stop the war now. But it must keep going for the long haul. Too bad it didn't start sooner. Perhaps if the FAR had been founded in 2014 [during the events in Crimea], people's reaction [to the war] would not be so amorphous now."

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Khadija Embaby. "How energy injustice fuels Middle East conflict and human rights abuses" (2022) 6 *Global Campus Human Rights Journal* 195-202
http://doi.org/10.25330/2520

How energy injustice fuels Middle East conflict and human rights abuses

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Abstract: *The abundance of Middle East oil reserves has shaped global politics for decades. United States foreign policy in particular is driven by the desire for energy security and efforts to safeguard this have inversely fuelled conflict and instability in the Middle East. Oil also plays a major role in European foreign policy, the importance of which has been intensified by the Russia Ukraine war which now threatens the continuity of Russian oil and gas supplies. Moreover, tension and inequalities within and between Middle Eastern oil-importing and oil-exporting countries have greatly contributed to human rights abuses in the region. Now is the time for the international human rights community to adopt an energy justice framework which acknowledges and considers compensation for harms committed by oil industry giants and the violent politics of oil.*

Keywords: *Energy justice; Middle East; Oil; Human Rights; US foreign policy; European foreign policy*

1. Global reach of oil politics

Late last year, one of us had a conversation with a woman who was putting US$70 of gasoline into the tank of her large Sports Utility Vehicle. She explained that she needed the large car because her children would squabble if they had to sit near each other. Moments later she added that it was a pity that her brother had been wounded in Iraq, fighting to get cheaper oil to America. She, like many other consumers and even commentators and analysts in the energy studies field, did not see the ethical connection between her personal demand for oil, and military casualties related to securing that oil in the Middle East (Sovacool and Dworkin 2015).

The concept of energy justice is particularly relevant to the human rights situation in the Middle East right now. Many countries in the region are still living through the aftermath of the Arab Spring with either chaos, authoritarianism or transitional states at the heart of their political scene.

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The Gulf has been gaining much more power and regional dominance over the past decade with skyrocketing inflation in the United States and higher dependence on Gulf oil as a substitute for Russian resources.

With that in mind, the politics of energy impacts human rights in the Middle East in two ways. First, it affects interstate dynamics—which vary between the region's oil-exporting and oil-importing countries—and how this influences the distribution of energy production costs and benefits, given the new political order. The second issue is the question of how Western—particularly US—foreign policy towards countries in the Middle East is shaped, given the current energy crisis and increasing dependence on oil in its fossil fuel-based economy. This article aims to reflect on these two questions by defining energy justice and its relationship to human rights, understanding its implications for US and European foreign policy towards the Middle East and finally how it can be contextualised in regard to specific countries in the region.

2. Human rights

While energy justice is considered a relatively new field for academics, policymakers and non-governmental organisations, it has developed as a by-product of both the environmental and climate justice movements that rose to action between the 1970s and 1990s.

Environmental justice started as a movement in the US in response to the unequal distribution of environmental ills such as pollution and waste facilities which were often borne by people of colour and ethnic minority Americans (Jenkins 2018). Initially, environmental justice aimed to mobilise the public into a fair distribution of environmental hazards and access to all natural resources while ensuring that the affected communities are involved in the decision-making process. It gathered traction when several civil society organisations employed it in their push for political action. Environmental justice then expanded outside the US and started gaining momentum but became too broad, encompassing many subfields like activism, policymaking and advocacy for the various environmental challenges that were specific to each community. The concept was also critiqued for its failure to translate into economic and actual policy decisions (Jenkins 2018). By the 1990s, another movement developed with the sole purpose of addressing climate change implications.

Unlike previous environmental justice campaigns, climate justice set out to tackle the issues globally rather than dealing with a series of local and national concerns. It aimed to identify those responsible for CO2 emissions, who should bear the burden of mitigation and adaptation to reduce it and how to protect vulnerable communities most likely to carry that burden (Lyster 2015). Both environmental and climate justice impact

basic human rights, namely the right to food, health and water and the right to live in your own country. While the former is concerned with protecting the environment in which the people live in, the latter is additionally concerned with protecting low income and indigenous communities from the damage caused by climate change. Nonetheless, critiques of environmental and climate justice often allude to the fact that despite some success at local level over the years, both movements have failed to make significant international impact due to different understandings of what counts as (in)justice and the challenges of application on a global level, even though these are universal problems.

Energy justice cannot work as a substitute for environmental and climate justice: however, it adopts a more focused approach based on the politics of energy production and consumption (Jenkins 2018). Founders and proponents of energy justice aimed to develop the concept in a way that acknowledges the philosophical grounding of (in)justice while simultaneously developing it as an analytical and decision-making tool. For example, by employing energy justice in order to realise universal human rights and combat violation of civil liberties—in extreme cases through death and civil war undertaken in pursuit of energy fuels and technology as well as the contribution of energy production to military conflict (Sovacool and Dworkin 2015). A potential solution using the energy justice framework would be developing "extractive industries transparency initiatives, energy truth commissions and inspection panels, improved social/ environmental impact assessments for energy projects, availability of legal aid to vulnerable groups" (Sovacool and Dworkin 2015).

Practically speaking, energy justice acknowledges three main tenets of justice—distributional, procedural and justice as recognition—in the production and consumption of energy. Distributional justice is concerned with a fair distribution of the benefits and ills of environmental resources as well as ensuring a fair allocation of the associated responsibilities such as the anticipated risk involved in installing certain technologies. Procedural justice manifests as a call for equitable procedures that engage all stakeholders in a non-discriminatory way. It states that all groups should be able to participate in decision-making, and that their decisions should be taken seriously throughout. It also requires participation, impartiality and full information disclosure by government and industry and appropriate and sympathetic engagement mechanisms (Sovacool and Dworkin 2015).

Finally, justice as recognition is: "[M]ore than tolerance, and requires that individuals must be fairly represented, that they must be free from physical threats and that they must be offered complete and equal political rights. It may also appear not only as a failure to recognise, but as a

misrecognising —a distortion of people's views that may appear demeaning or contemptible" (Sovacool and Dworkin 2015).

3. US foreign policy

The relationship between the Middle East and the West has always been characterised by a complex network of not only mutual benefits but also hostilities, war and, in many instances throughout history, proxy wars. Grouping all countries with their different governments, political systems, histories and cultures in this region under the term "Middle East" fails to acknowledge significant nuances between countries within the region as well as variation in their energy source management regulation. However, it is safe to assume that the politics of oil, whether imported or exported, is a crucial element in understanding the dynamics between the West and the Middle East and the many human rights abuses which take place in the latter region. For example, Europe relies heavily on oil from the Middle East, Russia and the US in order to secure its energy supply (Ispi 2022). Given Europe's depleting oil reserves, the foreign policy of the European Union (EU) towards oil-exporting countries is highly influenced by this dynamic. Meanwhile, the US and Russia have used Middle Eastern countries like Iraq and Syria as proxy economic battlefields by investing in energy infrastructure and securing different gas pipelines for their own benefits (Maher and Pieper 2020).

While tension between the West and the Middle East has always been dressed in an ideological gown, for the most part, oil is one of the major underlying causes of many conflicts in the region. This also holds true for inter-regional conflicts in the Middle East such as the framing of the Iraq-Iran war as a Sunni versus Shi'i conflict when in fact it was an invasion of the oil-rich province of Khuzestan (Mills 2021). Ethnic tensions, sectarian divisions, religious wars and colonial history certainly contribute to the never-ending instability and insecurity within the region. However, the geopolitics of securing fossil fuels since the 1973 oil crisis is believed to be a major contributor to the heightened inter and intrastate tensions over the past few decades.

Since the 1973 oil crisis, US obsession with energy security and independence has led its foreign policy towards the Middle East to further destabilise the region (Mundy 2020). By supporting authoritarian regimes, coups and creating different alliances in civil wars, US fears have dragged the region in a violent vicious cycle: America's war on terror inversely created so much unrest in the Middle East that in the first decade of the millennium the region rose from being responsible for 30 percent to 50 percent of global armed conflicts (Mundy 2020). A global terrorism database also reports that the Middle East now accounts for half the terrorist incidents worldwide—a massive increase from 10 percent since 2010 (Mundy 2020).

On the other hand, US attempts to avoid direct military intervention in the region while maintaining its geopolitical hegemony made it outsource the task of "securitizing" the Middle East to local nation states, ironically maintaining a constant state of "insecurity" by supporting neoliberal authoritarian regimes (Mundy 2020).

Single lens analysis of Middle Eastern instability, be it in the form of wars, revolutions or civil conflicts, could be construed as reductive. Yet acknowledging the scale of injustice and human rights abuses resulting from US oil politics using the energy justice framework could potentially improve the human rights situation in the Middle East, especially in war zones. The application of energy justice in this context means acknowledging the violence that comes with US oil politics. This means acknowledging the injustices that occur in the extraction of oil by North Atlantic oil companies from lands in the region and holding these companies accountable, not only for existing but also potential future harms. Moreover, it involves recognising that indigenous communities bear the true cost of securing energy sources and considering compensation for their losses.

4. European foreign policy

Geographical proximity coupled with the interdependence between Europe and the Middle East always informed EU foreign policy towards the region (Colombo and Soler i Lecha 2021). Unlike the US, the EU was neither an ally nor a rival in any of the post Arab-Spring inter and intrastate conflicts in the Middle East. Instead, the EU played the role of partner or donor. Even when the rivalry between Iran and Saudi Arabia became more explicit after 2011 and when Qatar's supportive stance toward the political Islam project differed from its regional counterparts, namely Saudi Arabia and the United Arab Emirates, European foreign policy managed to maintain a fair level of neutrality. In 2016, the EU Global Strategy vowed to pursue balanced engagement in the Gulf through ongoing cooperation with the Gulf Cooperation Council (GCC) and individual Gulf countries (EU 2016). Building on the Iran nuclear deal and its implementation, the EU also aims to gradually engage Iran in areas such as trade, research, environment, energy, anti-trafficking, migration and societal exchanges.

After the outbreak of the Russia-Ukraine war, the need for further cooperation between the Gulf and EU was exacerbated. Given the fact that Europe imported an estimated 46.8 percent of its natural gas from Russia alone by the first quarter in 2021, the continent would be forced to find an immediate alternative if it was to maintain sanctions on oil and natural gas exports from Russia. Both long and short-term European energy strategies include heavy reliance on co-operation between the EU and countries in the Gulf and North Africa (EU 2022). One way of reducing reliance on Russian oil and gas imports is to shift to hydrogen-based renewable energy sources in the medium-term. In the short-term, European energy policy aims to diversify its oil and natural gas sources by importing from other countries such the US, Egypt and Israel.

5. Interstate energy politics

The effect of US foreign policy in respect of oil on human rights in the Middle East is only one aspect of the multifaceted issue of energy politics in the region. Major differences between oil-exporting and oil-importing countries are at the heart of regional dominance as well as domestic energy politics in single states.

Countries of the Gulf Cooperation Council (GCC), which include Saudi Arabia, the United Arab Emirates (UAE), Qatar, Kuwait, Oman and Bahrain, possess approximately 30 percent of the world's proven oil reserves. Oil revenue in these countries has created a rentier economy, where oil revenue is allocated to citizens in return for their loyalty to the ruling monarchies. For years, GCC countries maintained their stability using this model. However, the shift to renewables coupled with an increase in national spending in order to maintain this model is currently pushing the Gulf towards a more sustainable economy. One example is massive UAE investment in green energy technologies in order to ensure an alternative revenue stream.

On a regional level, oil wealth has changed the balance of power between countries in the Middle East itself over the past few decades. For instance, international attention has shifted from Egypt and Iraq to the Gulf, especially Saudi and the UAE. The political stances of these two countries in particular started to gain importance after the Arab Spring. Up until 2022, Saudi Arabia and UAE support for the Egyptian army not only aided the 2013 coup in Egypt but also helped entrench the military's growing economic power by directing massive foreign currency investments into newly established state institutions. Similarly, recent UAE support for Israel totally changed the dynamics of the so-called "Arab-Israeli" conflict, narrowing it from an Arab-wide to a Palestinian-only issue. This, in turn, changed the narrative of constant human rights abuses in Gaza and the West Bank, reframing Israeli occupation as a local matter. Gulf power is also clear in the case of Yemen, where Saudi Arabia's war on the Houthis has displaced 100,000 civilians and put over 2m at risk since 2015 (BBC 2022).

For oil-importing countries like Egypt and Jordan, securing energy sources makes up a large portion of the overall national budget. Unlike wealthy oil-rich countries, oil-importing countries have long subsidised energy prices in order to protect poor households from economic shocks while maintaining public order and controlling dissent. Post-Arab Spring, this strategy served neither governments nor the people. Energy subsidies are not customised for those who need them the most. Instead, big business, especially in the transportation and tourism sectors, benefits most. Moreover, the harsh transition into neoliberal economies over the

past two decades has made it almost impossible to keep subsidising energy sources, especially fossil fuels.

Given the above domestic and regional energy politics in the Middle East, energy justice and human rights overlap in several areas. As with US foreign policy, the GCC, particularly the UAE and Saudi Arabia, has likewise fuelled human rights violations in countries like Yemen, Palestine, and Egypt, either through supporting oppressive regimes or by creating new alliances in the region. Oil wealth in these countries has also managed to keep public dissent in check despite the obvious crackdown on freedom of expression and women's rights.

6. Way forward

The adoption of an energy justice framework by international organisations like the United Nations and the International Criminal Court could contribute to improving the human rights situation in many ways. International recognition of atrocities attributable to the violent oil politics of the region would put pressure on local governments which are either dependent on oil revenues or oil importers themselves. This could pave the way for harmed communities to ask for compensation and retribution. Furthermore, human rights law and international criminal law could develop the legal framework to further define and criminalise both past and potential future injustices committed by oil industry giants.

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Johnson Mayamba. "COVID-19 must accelerate African push for universal healthcare" (2022) 6 *Global Campus Human Rights Journal* 203-214
http://doi.org/10.25330/2519

COVID-19 must accelerate African push for universal healthcare

*Johnson Mayamba**

Abstract: *"The greatest injustice is the lack of access to equitable healthcare" Dr Martin Luther King Jr. In a bid to achieve equitable healthcare in Africa, a total of 46 African states met in Abuja, Nigeria, in 2001. In what came to be known as the Abuja Declaration, each African state pledged to commit 15 percent of public expenditure to health. More than two decades since the Declaration was signed, only two African countries have reached this target, leaving vast swathes of the continent vulnerable to emerging health crises such as Ebola and COVID-19. Poor response and management is exacerbated by unpreparedness due to lack of research and under-developed infrastructure. Limited healthcare funding has also led to other challenges such as exploitation of patients, especially by private health providers, who see public health crises as money-making opportunities. Unfortunately, even those entrusted with managing public funds dedicated to the response and management of these crises have resorted to corruption. Whilst we tentatively celebrate having finally survived COVID-19, Africa needs to learn lessons from its past and plan for a better future. Firstly, by increasing government funding towards the health sector and secondly by addressing other still-existing challenges to equitable healthcare. This article recommends building resilient healthcare systems; adopting individual and group participation in decision-making processes; and ensuring there is Universal Health Coverage. All these must start with political will and good leadership.*

Keywords: *healthcare; universal healthcare coverage; Africa; COVID-19; vaccine distribution; infrastructure*

1. Abuja aspirations still far off

In April 2001, a total of 46 African states met in Abuja, Nigeria, where they rallied each other to mobilise more resources from government coffers to boost support towards the health sector (WHO 2010). They then signed what they called the Abuja Declaration, offering to commit 15 percent of their public expenditure to health (WHO 2010). This was meant to realise universal access to healthcare and also prepare for worst case scenarios such as the COVID-19 pandemic (Abuja Declaration 2001).

Moreover, the African Union's Agenda 2063 (2022) places the objective of realising "healthy and well-nourished citizens" among the first of the seven aspirations towards the attainment of "the Africa we want".

In this case "Universal Health Coverage is achieved in a health system when all residents of a country are able to obtain access to adequate healthcare and financial protection" (Sanogo, Fantaye and Yaya 2019). Achieving this goal requires both adequate healthcare and the financial systems to ensure that all can access it equitably.

However, almost two decades after signing of the Declaration, only a handful of African countries had met that target when the coronavirus pandemic struck (Kaltenborn, Krajewski and Kuhn 2011). As the world slowly limps back to normal after more than two years of the devastating emergency (Allison 2022), one lingering question is whether Africa has learnt anything from this public health crisis. The World Health Organization (WHO 2022) reports that while the COVID-19 death rate has fallen significantly in Africa, this does not take away the fact that access to universal health coverage is still a far-fetched dream on the continent (Ujewe, Werdie and van Staden 2021).

The need for universal healthcare is all the more pressing given that Africa has already lurched from the grip of one deadly virus into another. The Center for Disease Control and Prevention (2019) reports that before COVID-19, West Africa battled Ebola which claimed a total of 11,310 lives in Guinea, Liberia and Sierra Leone 2014-2016, in addition to the 15 deaths that occurred when the outbreak spread outside of these three countries. In 2018, the Democratic Republic of Congo also declared the Ebola virus disease outbreak since the virus was first discovered in 1976 (Wadoum et al. 2019). As of 25 June 2020, 3,470 Ebola cases had been reported, including 3,317 confirmed and 153 probable cases, with 2,287 deaths and overall case fatality ratio at 66 per cent (Wadoum et al. 2019). In 2022, the recurrence of Ebola in Uganda has seen the death toll rise quickly in just days, forcing the Ugandan government to prohibit mass gatherings and limit movement, among other restrictive measures (The East African 2022). So far, two of the six districts in Uganda where Ebola cases have been reported are in a total lockdown (The Independent 2022)—yet another public emergency that could be best handled with accessible, affordable public health services. It is also important to note that AIDS continues to decimate the population of Africa, which has 11 per cent of the global population but 60 percent of the world's people living with HIV (Moszynski 2006). More than 90 percent of the 300-500m cases of malaria in the world each year are in Africa, mainly in children aged under 5 years (Moszynski 2006).

2. Why have Abuja targets not been met?

While COVID-19 brought the world to its knees as no government was prepared for the crisis, Africa's under-resourced public healthcare systems were particularly exposed. So what are some of the major reasons for Africa's failure to meet the Abuja targets and how did the coronavirus pandemic exacerbate the situation?

First, despite better recent economic growth than many other world regions, African governments' spending on health has not automatically increased (Chitonge 2015). While some African countries have made slight upward adjustments to their overall healthcare spending, they are still a minority. By 2018, only two countries—Ethiopia and Rwanda—had hit that 15 per cent target they signed up to in Abuja (Gatome-Munyua and Olalere 2020). On the other hand, between 2001 and 2015, 21 African countries decreased the proportion of government budget allocated to public healthcare (Gatome-Munyua and Olalere 2020). These funds were diverted to other priority areas such as national security.

Amongst various factors behind this, we should be mindful that dependence on development assistance for health has made some African governments reluctant to increase their healthcare budgets (Chang et al 2019). In a 2017 global survey, 20 of the 26 countries relying on donor funding for their health spending were African (Gautier and Ridde 2017). This further complicates the transition from declining donor funding to self-sufficiency in financing the continent's health sector (Chang et al 2019).

Secondly, public awareness about the pandemic was a bare minimum when COVID-19 emerged. Over time, we saw increased campaigns on how best to respond. However, such messages have been pushed to the margins as budget priorities have since shifted from health to other areas. To make matters worse, when COVID-19 testing was introduced, it was very expensive for the ordinary African (Bondo 2021). Unlike developed countries, African nations had very limited access to COVID-19 tests, especially at-home tests, which are still very costly (Cheng and Mutsaka 2022). A case in point, self-tests were available in some pharmacies in Zimbabwe but they cost up to US$15 each, in a country where more than 70 per cent of the population lives in extreme poverty made worse by the pandemic. The situation was no different elsewhere across the African continent (Cheng and Mutsaka 2022).

Thirdly, other issues such as lack of infrastructure remain a serious impediment to healthcare delivery as was evident in the COVID-19 vaccination campaign. Despite improved supplies of coronavirus vaccines on the continent, the transport network in most African states is generally poor, making it difficult to get doses to people in more remote areas (Akuagwuagwu, Bradshaw and Mamo 2022). For example, Sekenani health clinic in rural Kenya did not have COVID-19 vaccines and yet Narok county, where the clinic is located, had nearly 14,000 doses sitting in a fridge in the nearest town, 115 km away (Fick and Mcallister 2021). This is a problem of financing but also a logistical issue, with lack of accessible transport networks impeding the establishment of vaccination centres in isolated regions (Okunogbe 2018).

Fourthly, because of the poor public health facilities, Africa witnessed widespread exploitation, especially by private health providers, who saw it as an opportunity to make a financial killing out of the pandemic. For instance, while many Ugandans do not trust government hospitals due to these inadequacies, those who can afford to do so seek treatment in private hospitals while the wealthy and top government officials choose to go abroad. This was no different during the pandemic except that government officials could not leave the country due to lockdowns (Muhumuza 2021). As time went by, some hospital bills shared on social media by families of COVID-19 patients in intensive care showed "sums of up to US$15,000, a small fortune in a country where annual per capita income is less than US$1,000" (Muhumuza 2021).

Troublingly, there was also little to no transparency regarding management and distribution of COVID-19 funds: it was indeed "time to loot" as much of the money was either embezzled or misappropriated by those charged with administering the funds (Oduor 2021; Nyabola 2021). For example, four top government officials in Uganda were arrested for causing losses in excess of US$528,000 meant for COVID-19 relief food (Athumani, 2020b). In other African countries such as Kenya, Zimbabwe, South Africa, Somalia and Nigeria, those in the corridors of power stand accused of inflating medical supply prices by nearly 1,000 per cent, making relief payments to illegal beneficiaries and rigging lucrative tenders (Ndegwa 2020).

Beyond the challenges of equitable access to Universal Health Coverage, other issues emerged with the response to COVID-19. Governments adopted measures in the form of directives that would later be formalised and used as weapons to violate the human rights of their citizens with impunity. Policymakers rushed to "copy and paste" the processes and

implementation of emergency public health legislation from other parts of the world without proper scrutiny of their financial implications for African countries (Human Rights Watch 2021). This promoted punitive and dictatorial approaches in the way COVID-19 restrictions were implemented that would later affect resources for the health sector (Kurlantzick 2020).

There was also limited research when the pandemic broke out. As of now, Africans have authored only 3 percent of COVID-19 research due to limited financing (BMJ 2021). Furthermore, even when the WHO announced the first six countries chosen to receive the tools needed to produce messenger RNA vaccines in Africa—Egypt, Kenya, Nigeria, Senegal, South Africa and Tunisia—financing such projects still remains a challenge. While some progress has been made in this area, the fruits of such investments are yet to be realised (WHO n.d.).

3. Lessons from best practice

However, in making this scorecard, it is important to note that the right to health is achieved progressively (Torres 2002). "Fifteen per cent of an elephant is not the same as 15 percent of a chicken"—thus different countries operate on different budgets (Wildavsky 1986). Compared to developed countries that spend up to US$4,000 per capita on health (Richardson et al. 2020), African countries' budgets can only stretch as far as US$8 to US$129 (Micah et al. 2021). While there are many reasons for this, the key factors are low GDP and meagre tax collection bases, with each country's differing national priorities vying for a share (Micah et al. 2021). Therefore, it is perhaps more realistic to ask not why they have failed to meet the Abuja Declaration target but rather how much progress each country has made over time and whether such progress has made any significant impact. Are the citizens any healthier? How can it be made better?

The two countries—Ethiopia and Rwanda—which have hit the 15 per cent public health spending target they signed up to in Abuja (Gatome-Munyua and Olalere 2020) have achieved high levels of population coverage through social protection systems that guarantee access to healthcare services. Rwanda achieved this mainly by providing health insurance to the poor in the informal sector through its community-based health insurance, which reduces the financial burden of accessing healthcare (Chemouni 2018). In Ethiopia, the government has made significant investments in the public health sector and increasingly decentralised management of its public health system to the Regional Health Bureau levels that have led to

improvements in health outcomes (Privacy Shield 2022). This has been achieved in both countries because of deliberate political will by those in positions of leadership.

The continent could also learn from the likes of Algeria, Botswana, Lesotho, Kenya, Morocco, Senegal and South Africa, who have increased fiscal space by improving tax collection capacity (OECD 2021). Fiscal space can be defined as "room in a government's budget that allows it to provide resources for a desired purpose without jeopardising the sustainability of its financial position or the stability of the economy" (IMF 2005/2006).

Moreover, Gabon, Ghana and Nigeria have also earmarked allocations to the health sector from government revenue (Barasa et al. 2021). Tanzania and Uganda have implemented reforms to improve resource flows to health facilities and have also improved use of resources. In Uganda, for example, the government has introduced public-private partnership to improve resource mobilisation, coordination and utilisation (Okech 2014). It has also abolished user fees to improve access to health services and efficiency, given autonomy to the National Medical Stores to procure, store and distribute essential medicines and health supplies to public health facilities across the country, and decentralised responsibility for delivering health services to local authorities (Okech 2014). Meanwhile, "decentralisation policy in Tanzania has facilitated the formation of local health governance structures to ensure greater participation of communities in the management of health services" (Kessy 2014).

Governments should make healthcare more available, accessible and affordable. In times of public health emergencies such as pandemics and epidemics, Africa needs cheaper testing kits to enable ordinary people to test frequently (Amukele and Barbhuiya 2022). As governments try to bounce back from COVID-19, they could take South Africa (Pocius 2022) and Uganda's (Athumani 2020a) examples of either cost-sharing with pharmaceutical companies to produce more free testing kits for the masses or lowering costs associated with testing. In these cases, the government supports pharmaceutical companies in research and production of medicines and medical equipment, which reduces the cost of medical fees paid by patients.

Involving individual and group participation in decision-making processes on the pandemic will encourage community engagement in government initiatives and also enable responsive communities (Gilmore et al. 2020). Encouraging public participation in decision-making regarding projects that impact society facilitates fair, equitable, and sustainable outcomes. This in turn allows proper recovery and return to normal.

4. Way forward

Much as the masses are pushing for and celebrating the return to normal, these issues persist and it may take the continent longer to fully recover from the effects of the pandemic. As we have seen, low government spending on healthcare hurts citizens the most and results in high out-of-pocket spending and an inequitable health system that only guarantees access to those who are able to pay.

There have been challenges which we must now confront. The reality is that reaching spending targets is less important than ensuring health systems are adequately resourced and that those resources are used optimally. Increased prioritisation of the health sector and increased health spending are the most feasible approaches to increasing resources for health and thus attain access to universal health coverage.

While Universal Health Coverage is an ambitious Sustainable Development Goal for health services, COVID-19 made us realise that it is the way to go to be better prepared for future pandemics (Ranabhat et al. 2021). As such, there should be a push for this in order to guarantee the future for most Africans as a "stable, equitable, prosperous and peaceful society and economy is only possible when no one is left behind".

Still, with more funding, African governments should also build resilient healthcare systems with more focus on primary healthcare (Gebremeskel et al. 2021). This will enable health actors, institutions and populations to adapt, access and transform their capacities to prepare for and effectively respond to health system shocks and disturbances.

It is true that the right to health is realised progressively but it is high time for our politicians to honour the Abuja Declaration pledge to better prepare the continent for future eventualities (Witter 2021). Even when the target is not met, at least there should be deliberate steps to increase healthcare financing. This will also guarantee health workers decent working conditions and improve healthcare services.

The pandemic exposed Africa's lack of control. Consequently, governments resorted to blame games and pointing fingers instead of taking responsibility and providing solutions. This can be countered in future by being better prepared. In "The End of Epidemics", epidemiologist Jonathan Quick argues that it is up to all of us to hold governments to account: "[O]ne of the most powerful human needs is to feel we have some sense of control over our environment. Control includes the ability to explain why things happen. And pointing fingers at an easy scapegoat, such as the government, can

sometimes provide the answers we need to regain control. More important is to hold those in power to account through social activism" (Quick 2018).

For now, whether Africa should celebrate returning to normal or not depends on how its governments address these challenges and plan for the future—mostly by increasing healthcare financing.

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Visalaakshi Annamalai. "Human rights preparedness and protracted ongoing emergencies" (2022) 6 *Global Campus Human Rights Journal* 215-222
http://doi.org/10.25330/2518

Human rights preparedness and protracted ongoing emergencies

Visalaakshi Annamalai*

Abstract: *The terms "emergency" and "refugee" often conjure up images of short-term crises quickly resolved by one-off aid efforts and people who will be able to return home at some stage in the near future. However, many emergencies around the world continue for decades and those fleeing them struggle to exist in conditions totally unsuited for the long haul. In Asia Pacific alone, Afghanistan, Tibet and Sri Lanka are all suffering ongoing long-term emergencies with tens of thousands of citizens bringing up new generations in exile: many are denied basic human rights such as citizenship, education and the ability to make a living in their host countries, not to mention the steady erosion of their cultures and traditions. With economic crashes and climate change amongst the many reasons people may flee their countries of origin in order to survive, this article recommends that the global community broadens its definition of refugees and imaginatively redesigns its approach to human rights preparedness in face of ever-increasing movement of peoples migrating from varied and complex long-term emergencies.*

Key words: *long-term emergencies; refugees; economic refugees; climate change; Afghanistan; Tibet; Sri Lanka*

1. Introduction

Every emergency is different, bringing with it new challenges and hardships. Emergencies include pandemics, natural disasters, conflict, wars, economic crises and many more. As such situations manifest, humankind has addressed human rights-related issues time and again and we learn lessons from the past to prepare better for the future. What is sometimes overlooked in preparing for emergencies is that they need not always be short-lived. For example, a crisis from a natural disaster ends when the mitigation efforts and reconstruction of infrastructure ends, and the pre-disaster situation is restored. On the other hand, in situations of war and conflict, when there is displacement of peoples and human

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rights violations, the emergency lasts until a status quo is reached and violence ceases. However, we know that war and conflict are not short-term emergencies and tend to have a spiralling impact on any affected population, sometimes ongoing for generations.

Human rights preparedness must play an increasingly bold and reflective role in promoting a rights-based approach to all emergencies, especially emergencies that cause movement and displacement, keeping in mind that emergencies can seem never-ending, and/or their effects lingering. It is also essential to note that the current definition of refugees excludes many displaced persons whose human rights are denied long-term. To explain further, the definition of refugee in the 1951 Convention Relating to the Status of Refugees refers to someone who is unable to or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion (UNHCR 1951, Article 1). This definition is restrictive and narrow with growing forced displacement due to economic crisis and climate change. The Convention principle of ***non-refoulement*** that bars the return of refugees with a well-founded fear of being persecuted to places where their lives, livelihood and freedom will be threatened fails someone who has fled due to climate or economic reasons despite these also being sometimes life and death situations. Even the common understanding of what it means to be a refugee must change to ensure protection reaches all the forcibly displaced. This piece dives deep into how humankind can protect, respect and fulfil human rights in prolonged emergencies and imagines how better we can be prepared to meet such challenges.

2. Prolonged effects of emergencies

Each emergency requires coordinated and cooperative implementation of specifically tailored strategies in order to utilise available resources to meet the urgent needs of those affected. Emergency plans are living documents undergoing constant revision based on changing circumstances. Such plans include research, writing, dissemination, testing, and updating (Alexander 2015). Urgent human rights that must be addressed include the right to food, shelter and physical safety. However, since some emergencies have long-term effects, many human rights such as those to education, livelihood and freedom of movement are restricted. Rapid response support is often unsustainable longer term and sometimes stops at one-time aid. This kind of support is suitable for short-term emergencies such as disasters or public health emergencies where the crisis eases or passes relatively quickly. However, this one-time aid may not satisfy a group of refugees living in camps for several years or those living in conflict zones. In these cases, it is difficult to say when the emergency will end and the

affected population will be able to return to a pre-emergency situation. While human rights preparedness addresses immediate needs, it frequently overlooks long-term needs such as employment or higher education. This is also seldom addressed in international instruments.

Managing migration and displacement of people, for instance, has evolved beyond the purpose for which relevant international instruments were created. For example, the 1951 Refugee Convention provides protection to asylum seekers who satisfy its requirements. Recognition as a refugee becomes a necessity for many who cross borders due to war and persecution to legally claim rights. Migration management at borders where time has tested ways to allow the flow of people who do not count as Convention refugees, is a global challenge. War and persecution are not the only circumstances forcing people to flee their homelands yet they are the only legal reasons to claim asylum in many countries. For example, economic desperation is often ignored and unrecognised, yet sometimes it is also a matter of life and death (Pahnke 2022).

The 1951 Refugee Convention is a creature of its time and circumstances. Perhaps now is the time to make it more inclusive, keeping in mind that in many cases refugee status may not be temporary. Economic drivers, climate-related displacement and movement growing by the year provide all the more reason to do so. Moreover, borders are man-made and ordinary people in desperate circumstances rightly refuse to understand the complexities of borders when their lives are at stake. Is it fair and just that someone with all the resources at their disposal decides what happens to those who have nothing?

We must prepare for prolonged emergencies because the world has witnessed so many in the first two decades of this millennium alone. We can no longer be in denial of what is happening in places like Afghanistan, Sri Lanka, regions with border disputes, and climate emergencies. There have been different causes and consequences of emergencies in the region, and these include war, conflict, natural and man-made disasters and climate change. In Asia and the Pacific alone, the number of displaced and stateless people reached 11.3m at the end of 2021 (UNESCAP 2022). Host countries continue to need support, considering that most hosts in the region are also developing countries themselves struggling to meet their own development goals. In order to understand the need for long-term human rights preparedness, this paper will now examine the reality of emergencies which have lasted for a considerable length of time and are ongoing.

Afghanistan continues to be a country of concern in the Asia Pacific region in terms of human rights and humanitarian issues. The sudden though planned withdrawal of US troops from Afghanistan after nearly 20 years of conflict was followed by the swift Taliban takeover in mid-

August 2021. In the two to three decades of conflict, the country has witnessed high levels of human rights violations with little human rights preparedness. Despite best efforts, abuses were high throughout the period, and even now reports suggest drastic violations and absence of human rights preparedness. Afghanistan was one of the top countries of origin for refugees in the region in 2021 and this has been the case for some time.[1] Beyond what is accounted for, there will be irregular migration and displacement both internally and across borders. The end to this emergency is unknown, keeping the lives and livelihoods of thousands at stake, with aid and assistance out of reach for many.

Meanwhile in Sri Lanka, decades of civil war followed by temporary peace and economic crisis have led to further instability. Prolonged conflict, displacement, loss of lives and unaddressed war grievances have heightened political and economic tensions. Sri Lanka is a small Indian Ocean Island nation of approximately 22m people, which became a republic in 1972. Almost three decades of civil war between the government and the minority Tamil population officially ended in 2009. Notwithstanding the prolonged conflict and political instability, the country began to recover between 2009 and 2019, making some progress in various sectors. Tourism, for example, thrived: in 2018 alone more than 2m tourists visited Sri Lanka. Economic development was at the centre of policy-making during this period, with several major infrastructure projects commissioned. However, despite these efforts, many projects failed to produce expected returns on investment. Political volatility and economic difficulties have sparked widespread protest while the crisis in what we call a democracy has intensified in the post-civil war years due to government mismanagement. With the position of minorities precarious and the prospect of transitional justice for war atrocities still far away, this is one of the worst economic crises the country has seen in almost 75 years of independence. A substantial population is waiting to return to Sri Lanka post-war, but that has not happened. The current economic problems are driving more migration; thus, the emergency has remained ongoing for decades, displacing and impacting thousands of people and with no end in sight.

Myanmar is another country from which many have fled due to prolonged unrest. The southeast Asian state previously known as Burma has a population of 54m and has suffered decades of ethnic strife, only emerging from almost half a century of military rule in 2011. However, on February 21, 2001, the country announced a state of emergency following a military coup against Aung San Suu Kyi's democratically elected government. Adding to the ongoing issues surrounding the Rohingyas, this coup and continued human rights violations have resulted in thousands of people fleeing their homes. Many Burmese refugees live in camps in Thailand, Bangladesh and India, where they have been confined for more

1 Refugees by Country 2022, Link (last visited 8 November 2022).

than three decades. Again, this situation has been ongoing for years with many refugees born and brought up in camps, knowing nothing of the world beyond them. What once started as an emergency continues to date, and insufficient long-term preparedness has resulted in these people being denied their basic human rights as they are fully dependent on outside assistance for survival (Burma Link 2022).

The final example is that of Tibet, where the Chinese invasion and subsequent takeover more than 70 years ago provoked minimal response from the international community. Previously, the mountainous Himalayan country, which shares land borders with China in the north and India, Nepal, Myanmar and Bhutan to the south, was an independent Buddhist nation with very little contact with the rest of the world. In 1950, the year after the founding of the People's Republic of China, the Chinese People's Liberation Army marched into Tibet, setting in motion the forcible occupation, followed by years of turmoil under the 17 Point Agreement for Peaceful Liberation, imposed by China on Tibet. Nine years of resistance culminated in a failed uprising on March 10, 1959. The Chinese brutally suppressed protests, claiming tens of thousands of Tibetan lives. This was also followed by a complete overthrow of the Tibetan Government. Tibet's political and spiritual leader, the 14th Dalai Lama, and almost 100,000 Tibetans were forced to flee into exile where they have remained ever since. The circumstances surrounding the Chinese takeover of Tibet also started as an emergency which in many ways is yet to end with Tibetans across the globe looking forward to an eventual return. While crises may arise suddenly as a result of armed incursions, no one can predict when or even if the after-effects will subside and refugees might have the chance to return home. Tibet teaches us that the process can stretch out over lifetimes, thus emergencies and emergency response need not always be short-lived.

While many of us take freedom of movement and livelihood opportunities for granted, others have no choice but to be confined to certain countries and indeed refugee camps. For some, life in a refugee camp, with no prospect of work or education, is their only reality. Many camps are usually built as temporary short-term solutions to address the immediate need for shelter and are ill-suited to people spending their entire lives there. In addition, while some countries recognise UN Convention refugees, others do not, leaving identities of displaced people in question and making their access to rights in the countries to which they have fled even more difficult.

Apart from movement and displacement due to war and conflict emergencies, there is also movement due to natural disasters and climate change emergencies. The latter has generally been short-lived; however, this will not remain the case in the future as rising sea levels cause permanent land loss. It is widely assumed that small island countries like Tuvalu, Palau and some islands of Vanuatu will be entirely submerged,

costing these countries billions of US dollars in damages (Brook 2021; Esswein and Zernack 2020). Economic costs are quantifiable: loss of identity, culture and tradition are immeasurable, again threatening a wide range of socio-economic rights that fall within the realm of human rights.

3. Why prepare for long-term emergencies?

As the aforementioned examples reflect, it is clear that emergencies can sometimes take a long time to cease, and therefore sustained human rights preparedness is essential. The right to movement, education and work are as fundamental as the right to life itself and the situation of people in prolonged emergencies attests to the fact that they do not always enjoy these rights.

How long can Tibetan communities outside Tibet hold on to identities, culture, language and way of life as they survive in an asylum state? Several countries offer education and asylum to Tibetans across the world but their identities as Tibetan nationals are in limbo unless they acquire a legal status in another country. Moreover, there are countries where some of these communities do not even have access to many basic rights like education and work. These Tibetans are forced to accept what comes their way while hoping against hope to return to Tibet in better circumstances.

Displaced Sri Lankans and Burmese face a similar uncertain future, and there are many more examples around the world. Extended emergencies happen, and uncertainties can linger for longer than one can imagine. When return seems impossible, resettling communities, preserving culture, language and tradition are easier said than done. Somewhere, the essence is lost: that is the price the world pays for silence, inaction, power politics and lack of preparedness. What is even more difficult is to guarantee human rights to the affected population.

The fact remains that prolonged emergencies are not new and we know that rights of displaced people, especially with precarious identities under law are not protected and guaranteed, more so when the protector state is in peril due to emergency. We as the international community must come to their aid: we are talking about thousands of children who might miss going to school, thousands of people left without employment opportunities, and thousands with no alternative way to earn their living securely. This is why we need long-term human rights preparedness with foresight extending two to three decades or more if the situation demands.

4. The way forward

Forced movement of peoples due to various social and economic drivers is an unavoidable reality where more thought must be given to safe and orderly migration. Work is needed on migration governance in order to

eliminate restrictions, making rights and resources accessible to all. The United Nations is an existing international forum which could call for action. We are seeing development in some areas like the Global Compact for Migration which seeks to establish guidelines for safe, orderly, and humane flow of people throughout the world. Nonetheless, most UN actions such as the Compact have their limitations, largely due to lack of consensus among countries, which could prove a barrier to expanding the definition of refugees under the Convention. However, the fact that some countries are attempting to widen that definition and to address the problem is an indication that the system at large needs substantial fundamental overhaul in order to facilitate bigger changes in global movement. Human rights preparedness must be viewed in terms of emergency preparedness and long-term sustainability in cases of prolonged emergencies. While expanding the definition of refugees is one side of the argument, the world should also move towards thinking about support that is beyond just one-time aid to make the process worthwhile and cost-effective for the host country as well as the displaced population.

Not every country in the world is ready to share the burden of providing education and employment to refugees or asylum seekers in camps. The international community also may not have what it takes to make sure these rights reach every person on the planet. What then is a solution to long-lasting emergencies? We perhaps need to revisit emergency preparedness and radically overhaul response mechanisms and make it more sustainable in order to let communities thrive even when external support is unplugged. Rights may reach the affected population quickly this way rather than wait for political will to support expanding the definition and rights of refugees perhaps? Sheltering and protecting refugees, asylum seekers and those who have fled emergency situations is a duty we owe to each other. However, we cannot claim to be championing human rights while ignoring the living conditions of two to three generations of people in camps and temporary shelters fully dependent on external aid and support. Human rights are far away from reaching this population, given that basic rights to livelihood, education, and movement are restricted. When the world knows that there are long-term emergencies whose impact will last for many years, the international community should acknowledge and support the development of the hosting countries as opposed to merely fostering a survival/dependency model. This reinforces the argument that, given the opportunity, refugees or asylum seekers can use their skills and talents to contribute both economically and culturally to the development of their host countries. For example, in small scale, in countries like India, several organisations offer courses and vocational training to refugees to support their economic self-sufficiency Rodriguez, Kallas and Zijthoff 2019; Dagar 2022). There are similar support mechanisms available to refugees in Japan, Malaysia and South Korea. Despite a slow change in refugee rights dynamics, many remain trapped in camps, their economic potential untapped. While most of Asia and the Pacific have yet to fully

embrace the 1951 Refugee Convention, fast-moving global political, economic and social structures mean it is already losing relevance. It is time to redesign existing frameworks and welcome much needed changes to incorporate the needs of millions of displaced in contexts of prolonged emergencies.

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Ana Funa. "Hydropower plants in the Western Balkans: Protecting or destroying nature?" (2022) 6 *Global Campus Human Rights Journal* 223-234
http://doi.org/10.25330/2517

Hydropower plants in the Western Balkans: Protecting or destroying nature?

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Abstract: *Urgent action is needed to save humanity from the consequences of global warming. The energy sector, especially coal-fired power plants in the Western Balkans, are amongst the worst polluters and contributors to CO2 emissions in Europe, therefore the switch to renewables is essential. Hydropower was seen as an attractive replacement with 3,000 hydropower plants (HPPs) planned between Slovenia and Turkey. However, with most of these earmarked for protected natural areas, the resulting damage to the environment, especially to fragile river ecosystems and dependent biodiversity, is hugely disproportionate to investment, particularly given HPPs' negligible contribution to electricity production and lack of benefits for local communities. Activists and scientists across the Balkans have succeeded to some extent in highlighting the negative impact of HPPs. However, governments in the region must do more to diversify into alternative renewable energy sources and to protect nature for future generations.*

Keywords: *small hydropower plants; Western Balkans; environmental rights; renewable energy*

1. Introduction

Energy production from renewable sources (water, wind and sun) is considered one of the best ways to reduce the effects of global warming, given that electricity production from coal-fired power plants is one of the largest contributors to CO2 emissions in Europe. With the current energy crisis and more visible effects of global warming, the shift to renewable energy is even more crucial. However, renewable energy development has raised questions regarding sufficient protection of environmental rights. This article focuses on the impact of HPPs, especially in the Balkan region which has seen a boom in small hydropower plant (SHPP) construction

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in the past decade. It analyses numerous studies and reports of relevant international institutions, such as the European Commission and the Standing Committee for the Bern Convention on the Conservation of European Wildlife and Natural Habitats. Furthermore, it reviews the numerous activist undertakings to protect the Balkan wild rivers and discusses viable environmentally friendly alternatives to hydropower.

2. Global warming – preventive measures must be taken

Growth and development of the energy industry, burning fossil fuels, cutting down forests and farming livestock are increasingly raising Earth's temperature, adding enormous amounts of greenhouse gases to those already occurring naturally (Europe Commission n.d.). The 2011-2020 decade was the hottest on record, with average global temperatures 1.1°C above pre-industrial levels (before 1750) in 2019. Since a 2°C rise is associated with serious negative impacts on the natural environment and human health and wellbeing, including a much higher risk that dangerous and possibly catastrophic changes in the global environment will occur, the international community has recognised the need to pursue efforts to limit it to 1.5°C (European Commission n.d.).

The European Green Deal has set the target of transforming the European Union (EU) to climate-neutrality by 2050, ensuring an economy with net-zero greenhouse gas emissions. In order to achieve this ambitious goal, the EU aims to reduce net greenhouse gas emissions by at least 55 percent by 2030, compared to 1990 levels (Europe Commission n.d.). As one of the principles for clean energy transition, the European Green Deal envisages developing a power sector based largely on renewable sources (European Commission n.d.).

Greenhouse gas emissions are directly responsible for climate change and global warming and thus extremely harmful to the environment and human health (Pavlovič et al 2022, 2). CO2 produced by human activities is the largest contributor to global warming. By 2020, its concentration in the atmosphere had risen to 48 percent above its pre-industrial level (before 1750) (European Commission n.d.). The energy sector is one of the largest polluters and accounts for more than 75 percent of the EU's greenhouse gas emissions (European Commission n.d.).

Burning coal, oil and gases are amongst the largest contributors to greenhouse gas emissions. Power plants and terminal power plants emitted 24 percent of total gas pollution and 29 percent of CO2 emissions in 2015 (Pavlovič et al 2022, 2). Terminal (coal-fired) power plants in the

Western Balkans are considered some of the biggest polluters in Europe, with emissions 20 times more CO2 and 16 times more particulate matter than the average European power plant (Pavlovič et al 2022, 3).

3. Hydropower - a nature-friendly resource?

For many years, water has been considered a viable renewable energy source. However, construction and functioning of HPPs has brought controversy. The Western Balkans is home to some of the last wild rivers in Europe, full of diverse and protected flora and fauna. Around 3,000 HPPs are currently planned between Slovenia and Turkey (RiverWatch n.d.).

Electricity production from SHPPs in the Western Balkans began in the mid-1990s but increased dramatically when the EU set renewable energy production targets for 2010 and started financing such projects. In 2009-2020, 490 SHPPs were built in Western Balkans countries (EuroNatur and RiverWatch 2022). Moreover, 2018 data shows that as much as 70 percent of EU renewable energy funding has been used for SHPP construction in the region (Pavlovič et al. 2022, 4).

SHPP refers to hydroelectric power plants below 10MW installed capacity. To enable these to function, water is diverted from a river at an intake weir upstream and channelled through a pipe to the powerhouse containing the turbines downstream. The height difference is used to induce kinetic energy in the water which is then transformed into electricity. After passing through the powerhouse, a smaller amount of used water, just enough to ensure the biological minimum, is returned to the section of river in between the powerhouse and intake weir (Vejnovic 2017, 8).

Construction of SHPPs has proven a very invasive process for nature, firstly through interference with the terrain by cutting trees and permanent ground damage where the pipes pass through, and further by endangering water supply for local communities as well as the biodiversity and ecosystems dependent on natural river flow. River flow reduction decreases oxygen levels in the water crucial for river flora and fauna. Insufficient riverbed water levels significantly lower the chances of survival of the ***Salmonidae*** fish family, which swim upstream to spawn, and other dependent species. Moreover, lack of water inhibits the functioning of fish farms which use the natural river flow to supply fish pools with necessary oxygen. The projects envisage construction of fish passes which supposedly mitigate impact of weirs and intakes on fish migration (Vejnovic 2017, 9-10). However, in practice these are not functional, due to the shortage of water needed

for fish to migrate upstream or improper construction[1]. Furthermore, the insufficient control over the functioning of the SHPPs built in the National Park Pelister[2] caused deterioration of amphibian habitats due to lack of providing ecological minimum of water especially in the spring period when it is their main reproductive season (National Park Pelister et al. 2020, 122).

The impact of HPP construction in the Western Balkans and surrounding controversy has been the focus of much research (Balkan Rivers n.d.). A 2015 study found that in the Western Balkan countries, 535 projects were earmarked for strictly protected areas while a further 282 were scheduled to be built inside areas with weaker protection status, all exploiting and endangering nature reserves rich in flora and fauna (Schwarz 2015, 10). In 2017, Bankwatch investigated the effects of EU-financed SHPPs by examining eight sites in the region; two in Albania, one in Croatia and five in North Macedonia, all located in protected or ecologically sensitive areas (Vejnovic 2017). The report concluded that only the Croatian plant had undertaken appropriate biodiversity impact assessment, however, all the plants inspected required increased impact monitoring and restoration measures (Vejnovic 2017).

Furthermore, most HPPs were labelled as small even though they significantly impacted a sizable area of land and had not undergone full environmental impact assessment (EIA). Even in the cases where an EIA is done, it is rarely conducted in accordance with the EU EIA Directive and evaluation of cumulative impact is often missing. According to the report, the countries used an approach allowed by the EU EIA Directive, enabling national authorities to decide whether an EIA is necessary, depending on project classification, even though some of the projects were located within protected areas (for example the Legarica HPP in Albania) (Vejnovic 2017). Challenges obtaining the studies for the HPPs subject to the report were also noted and the research revealed significant violations of national and international financial institutions' standards (Vejnovic 2017). For instance, in Albania, the client redirected water from his project to another SHPP further downstream, resulting in 4.3km of riverbed drying up, but these details were omitted from plans approved by the bank (Vejnovic 2017).

1 For illustration, on the Brajcinska river, North Macedonia (National Park Pelister) intake, close examination shows the fish pass upstream entrance is inadequate, while the upstream exit is blocked, while on the Kriva Kobila river intake (North Macedonia), the fish pass upstream entrance is inappropriate, and the upstream exit is again blocked (Vejnovic, 2017).

2 Four SHPPs have been built in the National park "Pelister", North Macedonia – two on the river Shemnica and two on Brajcinska river. The SHPPs have been built without consultation with the National Park Pelister (National Park Pelister et al. 2020, 43).

In 2021, the State Audit Office of North Macedonia published a report on "Exploitation of Water Resources in Electricity Production for the period of 2012-2021": it disclosed that by the end of 2020, 117 HPPs had been constructed in the state, eight of which are large HPPs, 13 SHPPs which are not subsidised electricity producers and 96 subsidised electricity producers. According to the report, public consultations for 61 percent of SHPPs awarded concessions to produce energy were published prior to adoption of strategic documents which would have ensured higher environmental protection standards. Moreover, environmental protection approval was completed without proper estimation of potential environmental impact, meaning almost certain damage to river ecosystems and natural biodiversity. The report states that the procedures for granting concessions for SHPP construction and water use were also carried out without EIA. Some concessions were awarded based on outdated hydrological data (State Audit Office of North Macedonia 2021a, 5). The State Audit also found that weaknesses in permit issuing procedure and inefficient control by the competent institutions enabled use of water in certain periods without a proper permit (State Audit Office of North Macedonia 2021a, 5).

According to the report, those awarded concessions are guaranteed purchase of the entire production of electricity at preferential tariffs set by law, thus in the period of 2012-2021, they were paid 41m euros more than the market value of the electricity produced, which was just 4 percent of total domestic electricity production in 2020 (State Audit Office of North Macedonia 2021a, 5). SHPP electricity production in other Western Balkan countries is also insignificant and disproportionate to the investment in their construction and permanent damage to nature. In 2021, SHPPs generated 2.5 percent of electricity in Bosnia and Herzegovina (State Electricity Regulatory Commission 2021, 38), 4.1 percent in Montenegro and a mere 0.1 percent in Serbia (Elektroprivreda Srbije n.d.).

SHPP functioning is financed through feed-in tariffs: thus, citizens subsidise state purchase of SHPP-produced electricity through their electricity bills. In the case of North Macedonia, 6 percent of every electricity bill pays for energy produced by subsidised producers (Institute for Communication Studies n.d.). Yet communities do not benefit by getting their electricity from local SHPPs.

The European Commission has also acknowledged concerns about SHPPs in recent reports. The Commission praised Serbia's new ban on building SHPPs in protected areas but felt this should be widened to include procedure on appropriate assessment of the ecological network (European

Commission 2022f). The Commission also noted that the Montenegro government withdrew concessions for several SHPPs, however continued with plans for larger ones. The Commission emphasised and reiterated its findings from the 2021 EU Report that is essential that the development of new renewable energy projects, particularly on hydropower, are carried out in conformity with the EU acquis on concessions, State aid and the environment. and to ensure public participation and consultation and guarantee high quality EIA reports that include cumulative effects on nature and biodiversity (European Commission 2021c and European Commission 2022d).

In its 2021 and 2022 reports on Albania, the Commission stated that SHPPs had significant negative impact on local biodiversity and communities, notably in protected areas where around 20 percent of more than 500 SHPPs are located or planned. It also noted that HPPs have generated much debate, protests and court action, casting doubts on legality of the concession process and on quality and validity of EIAs. The Commission highlighted that no strategic environmental assessments (SEAs) have been conducted despite cumulative effects on river basins. It stressed that hydropower investment should strictly comply with national and international environmental, nature protection and water management standards, involve proper public participation and consultations, and be subject of SEA and EIA reports that include high quality assessments of the cumulative impact on nature and biodiversity. The Commission found that SEAs are lacking despite the high number of existing and planned hydropower installations in all river basins, emphasising that they should be conducted before any licence is granted. Inspection and monitoring of the minimum ecological flow from current HPPs is also lacking. The Commission called on Albania to take immediate measures to review and improve SEAs and EIAs on existing and planned projects, plans and programmes and to continue diversifying electricity production away from hydropower towards solar and wind resources (European Commission 2021a and European Commission 2022b). It further noted that the HPP Skavica is expected to have a large environmental and socio-economic impact on the area and impact the Balkan lynx populations that use this corridor for migration between Albania and North Macedonia. It was called upon the authorities to bring adequate attention to the project design and EIA quality to minimise these impacts, as well as to implement the obligatory planting and restoration of road slopes, having in consideration that no wildlife crossing has been planned and implemented in Albania (European Commission 2022b).

In the case of North Macedonia, the Commission noted that energy law is moderately aligned with the Renewables Energy Directive, and it again stressed that hydropower investment must comply with the relevant environmental EU acquis (European Commission 2022e).

Meanwhile, in its 2021 recommendations, the Standing Committee for the Bern Convention on the Conservation of European Wildlife and Natural Habitats called on the North Macedonia government to suspend and cancel approved concessions and those planned for construction, to ban HPPs in national parks, protected areas and implement the new international standards on HPP prohibition in World Heritage Sites. The Committee also called for due diligence for protected areas, proposed protected areas and corridors between these as well as the prevention of excessive water withdrawal from streams within or impacting upon Mavrovo National Park, other protected areas, World Heritage Sites and Emerald candidate areas (Council of Europe Standing Committee 2021).

4. Protecting nature through activism

Neither leading scientists nor local communities in the Western Balkans have welcomed HPPs. International campaigns, such as Save the Blue Heart of Europe and Vjosa National Park Now, aim to raise awareness of their negative impact, stop construction and protect the last wild rivers in Europe. Many studies and short films document local community action in the region, and in the case of the Vjosa river in Albania, explain the risk of damage to this biodiversity hotspot. A total of 113 endangered fish species inhabit the rivers between Slovenia and Greece – more than in any other region in Europe (Weiss et al 2018), including the Prespa trout endemic to the Balkans.

In all the Western Balkan countries, local people and non-governmental organisations have launched petitions and staged massive protests and blockades which have gained wide support. In Serbia, various demonstrations have been staged over the past three years regarding the Stara Planina Park where, despite its protected status, the authorities granted permission for the construction of 60 SHPPs. More than 40 environmental protection groups participated in these protests. In August 2020, activists even broke through a pipe set up during SHPP construction on the river Rakita (Balkan Rivers 2020). Protests also took place in North Macedonia after the government planned to build dams and HPPs in the National Park Mavrovo, home of the Balkan lynx, one of Europe's most endangered mammals. Recent reports noted that only 10 lynxes were seen in Kosovo, Albania and North Macedonia over a four-month period

(Ranocchiari 2022). Despite this, four SHPPs have been built in the park so far, another four in the National Park Pelister and the state has issued permits for others. The "Brave Women of Kruščica" in Bosnia and Herzegovina defied police intimidation to block a bridge, the only route suitable for transporting heavy machinery to the construction site, for more than 500 days, to prevent a SHPP being built on the river Kruščica, a protected area which provides drinking water for the local communities.

These initiatives have been partially successful. Serbian activists succeeded in stopping construction of 57 HPPs and managed to convince the authorities of the importance of saving the environment. In 2022 the Serbian government initiated a procedure to establish a National Park Stara Planina, giving the region better protection and preserving the wild mountain rivers. Through grassroots activism and using international legal mechanisms by submitting a complaint to the Bern Convention on the Conservation of European Wildlife and Natural Habitats, activists managed to cut off the financial lifeline for the hydropower projects, prevent construction of two dams in the National Park Mavrovo and protect the Balkan lynx's habitat to some degree and campaign leader Colovic Lesoska received the 2019 Goldman Environmental Prize (Goldman Prize n.d.). However, in 2022, the Government of North Macedonia extended the deadline for some HPP permits when construction did not begin on time. The "Brave Women of Kruščica" were awarded the 2019 EuroNatur Award and the 2021 Goldman Environmental Prize (EuroNatur 2019; Goldman Prize n.d.). Moreover, in July 2022, the Parliament of Federation of Bosnia and Herzegovina responded positively to public opinion by adopting legislative changes forbidding SHPP construction on Federation territory (Al Jazeera Balkans 2022). The Vjosa river campaign has also borne fruit when in June 2022 the Albanian government signed a memorandum establishing a Vjosa Wild River National Park which will protect the entire river network from the Greek border to the Adriatic Sea, including its free-flowing tributaries. More is needed to establish the National Park, but this memorandum is the first and crucial step (Balkan Rivers 2022).

The wide support of citizens, NGOs, scientists and relevant international institutions and organisations have significantly influenced state politics regarding further construction of the SHPPs in the Western Balkans.

5. Is there a better alternative?

Despite the aforementioned victories, the impact and irreversible damage to nature caused by existing HPPs is an ongoing concern. Furthermore, many concessions have already been awarded, some without full EIA,

while for others the deadlines have even been extended. Further damage to nature and ecosystems dependent on natural river flows remains a real risk. The European Commission and the Standing Committee for the Bern Convention findings are just another confirmation of the negative impact and the issues relating to Western Balkans HPPs. There is an undoubted need to transform the energy sector by producing electricity from renewable sources. However, preserving nature and fragile ecosystems must also be a priority, especially as the energy sector is being transformed primarily to prevent global warming, thus protecting nature. Less invasive energy sources, for example, wind and sun could be good alternatives. The Western Balkans Investment Framework is financing construction of three photovoltaic power plants. One in Albania is a floating solar photovoltaic power plant at a HPP reservoir, while those in North Macedonia will be installed on an exhausted coal mines site, adjacent to the coal-fired thermal power plant (WBIF 2022). One of the North Macedonian installations has been operational since April 2022 (21Tv 2022). Nevertheless, caution is needed in their implementation. As ground-mounted photovoltaics and concentrating solar-thermal power installations require land, sites need to be selected, designed, and managed to minimise impact to local wildlife, wildlife habitat, and soil and water resources (Office of Energy Efficiency & Renewable Energy n.d.). A serious approach to the issuing and implementation of permits is vital, avoiding any manipulation and controversy that could lead to new damage to nature, as was the case with SHPPs.

With the impact of global warming becoming more visible every year, action to reduce CO2 emissions is vital. The EU goal of climate neutrality by 2050 is a great motivator to shift the energy sector away from fossil fuels toward renewables. However, the huge push for HPP construction in the Western Balkans has been mired in controversy; from irregularities in their financing and environmental assessment planning to their irreversible damage to nature, particularly fragile river ecosystems, endangering native flora, fauna and wildlife, their negligible contribution to electricity production and lack of benefit to local people. Grassroots activism across the whole region has helped protect some of the last wild rivers in Europe, but governments must take decisive action to save the environment by halting construction of new SHPPs and discontinuing use of existing ones. The need for transformation of the energy sector should be met by more environmentally friendly resources, because trying to combat global warming by causing irreversible damage to nature is a contradiction in terms.

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Gema Ocana Noriega. "COVID-19 highlights need for feminist human rights approach to ensure socio-economic gender equality" (2022) 6 *Global Campus Human Rights Journal* 235-244
http://doi.org/10.25330/2516

COVID-19 highlights need for feminist human rights approach to ensure socio-economic gender equality

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Abstract: *Economics and human rights have never been close friends. Human rights advocates have rarely engaged with financial systems. Economists, in turn, seldom consider human rights principles. However, COVID-19 intensified the need for mutual cooperation to safeguard the most disadvantaged, particularly women, who have suffered disproportionate negative socio-economic impact from the pandemic, which accentuated female overrepresentation in frontline health and public sector employment as well as unpaid caring responsibilities. This article examines a series of UN reports and other research which contend that inherent economic gender bias and neoliberal financial austerity policies unduly damage women's socio-economic rights. It recommends that human rights principles be combined with comprehensive feminist economic analysis in order to achieve gender equality and afford women more financial security in preparation for future crises.*

Key-words: *Human rights; economics; feminist economics; gender inequality; austerity; COVID-19*

1. Introduction

As coronavirus spread, media across the globe highlighted the incapacity of healthcare systems, citing privatisation, public budget cuts and other austerity measures as the main reasons for inability to cope with the crisis. The UN Independent Expert on debt and human rights Juan Pablo Bohoslavsky emphasises that the best response to the potential economic and social catastrophe provoked by COVID-19 is to "put finance at the service of human rights and to support the less well-off through bold financial approaches" (Bohoslavsky 2020).

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Although correct, there is a deeper concern behind the UN Independent Expert's words: Economics and human rights have never made good bedfellows. On one hand, financial reforms have rarely taken into account human rights law. On the other, engagement with fiscal affairs and economics have long been uncharted territory for human rights advocates. However, with many governments introducing neoliberal austerity policies, especially after the global 2008 financial crisis, the application of human rights standards to economic policies is becoming more widespread (Rudiger 2016).

2. Neoliberalism and austerity measures

Before analysing the progressive engagement of human rights with economic policies, I shall briefly explain the origin of neoliberalism, its connection with austerity measures and why governments introduced such measures after the 2008 financial crisis.

Neoliberalism entails a paradigm shift away from the political and economic landscape that emerged after World War II; the welfare state: the concept that the state plays a key role in protection and promotion of the economic and social wellbeing of its citizens. This usually includes at least some public provision of basic health services, education and housing, in some cases at low cost or without charge. Most welfare states rely on redistributionist or progressive taxation to fund the benefits and services they provide. Neoliberalism, on the contrary, is based on the belief that self-regulated markets are the best way to govern both the economy and social affairs (Chapman 2016, 10-11).

Most governments in industrialised democratic countries after World War II accepted the state had a responsibility to both promote economic growth and distribute the resulting benefits. The 1970s world economic recession marked the first signs of change in this approach. Many intellectuals, business, and politically conservative stakeholders saw this slump as an opportunity to lessen the welfare state and to argue for its substitution by market-based approaches (Chapman 2016, 79).

Reducing the state's role in all economic and public areas is an essential objective for neoliberalism. This purpose aligns with austerity, which aims to decrease government aid by cutting public expenditure and privatising key economic sectors among other actions. Economic crises usually favour introduction of neoliberal and austerity measures, as they provide convenient scenarios to question the efficacy of welfare states. Neoliberalists often argue that states are inefficient economic managers and welfare entitlements excessive and therefore unaffordable.

As in the 1970s, the global financial crisis that began in 2008 resulted in drastic transformation in many countries. The European Commission, the

International Monetary Fund and the European Central Bank, imposed austerity, cut social protection, and further privatised sectors. Nevertheless, not all such measures were introduced under the mandate of global governance institutions such as these. The structural and discursive power of neoliberalism served as justification for many countries and enabled the economic recession to be 'used by many Western governments as a means of further entrenching the neoliberal model' (Wills and Warwick 2016).

Chapman (2016, 100) states that the decision to respond to the financial crisis by disproportionately cutting social welfare spending was often ideologically motivated, moreover, some countries cut social spending while continuing to subsidise the same banks whose irresponsible policies caused the financial crisis. To exemplify that other approaches were possible, Chapman cites the case of Iceland. Like Spain, Ireland, and Portugal, Iceland suffered a severe banking crisis, but its government and population rejected the terms of an IMF financial rescue package, which required significant social services spending reduction. Instead, the government allowed its banks to collapse and increased investment in social protection and measures to get people back to work. Iceland also retained restrictive policies on alcohol and cigarettes, again contrary to IMF advice. As a result, Iceland did not suffer the extensive adverse impact felt by other countries under similar negative conditions and its economy has gradually recovered (Chapman 2016, 102).

After the 2008 crisis, some human rights bodies and advocates highlighted the negative impact of neoliberal austerity measures, especially in socio-economic disadvantaged populations, and emphasised the need to apply human rights standards to economic policies. In what follows, I focus on a number of recent United Nations (UN) documents that underline the necessity of a human rights-based approach to economic policymaking. This approach will help us respond better to future economic crises while considering the needs of the most vulnerable and marginalised groups.

3. Progressive human rights engagement with economic policies

First, it is important to note that international human rights law is neutral regarding economic and governmental systems or approaches that may be in place in individual states so long as human rights are respected and states are democratic. The International Covenant on Economic, Social and Cultural Rights asserts that, in order to achieve the realisation of the rights protected by the Covenant, states must undertake "all appropriate means, including particularly the adoption of legislative measures". The Committee on Economic, Social and Cultural Rights (CESCR) has explained in General Comment no. 3 that this obligation "neither requires nor precludes any particular form of government or economic system" (CESCR 1990). Thus, "the Covenant's principles cannot accurately be predicted exclusively upon a socialist, capitalist, mixed, centrally planned, laissez-faire or any other particular approach" (CESCR 1990).

However, the 2008 global financial crisis triggered a series of documents and reports from different UN bodies throwing this neutrality into question. They show how adoption and implementation of certain economic measures and/or certain political approaches might clash with realisation of economic, social and cultural rights.

For example, in May 2012, in a letter to the states party to the International Covenant on Economic, Social and Cultural Rights in the context of the economic and financial crisis, the CESCR observes the pressure on many states to embark on austerity programmes, recognising that decisions to adopt such measures are always difficult and complex. However, the Committee warns: "[U]nder the Covenant, all states [party to the Covenant] should avoid at all times taking decisions which might lead to the denial or infringement of economic, social and cultural rights" (CESCR 2012).

Austerity was usually invoked as the solution to governments' failure to effectively regulate the financial sector in the aftermath of the 2008 crisis. However, as UN bodies evidence, not only did such measures not ameliorate the financial situation but they also damaged the most vulnerable populations. A report by the Office of the UN High Commissioner for Human Rights emphasises the fact that many States had responded to the global financial crisis with austerity measures that significantly cut social sector spending: this resulted in the denial or infringement of economic, social and cultural rights, especially for populations that were already marginalised or at risk of marginalisation (OHCHR 2013).

In this regard, the reports of the UN Independent Expert on the effects of foreign debt and human rights provide an interesting corpus of analysis. For example, the 2014 and 2019 reports underline, in accordance with the aforementioned 2013 report, that austerity measures do not contribute to recovery but instead negatively impact economic growth, debt ratios and equality and routinely result in human rights violations (United Nations 2014; United Nations 2019).

The 2018 UN report on the guiding principles for human rights impact assessments for economic reform policies provides more details on the sort of economic measures that can clash with the realisation of human rights (United Nations 2018a). This report, aimed at governments, relevant UN bodies, specialised agencies, funds and programmes and other intergovernmental, asks them to consider human rights guiding principles in the formulation and implementation of economic reform policies. It notes that even if fiscal consolidation measures have varied from one country to another, there is a common group of measures that have negatively impacted enjoyment of human rights. These include, for example, cuts in public expenditure and public sector jobs, regressive tax changes, and the privatisation of public utilities and service providers.

This has affected human rights-sensitive fields, often directly diminishing enjoyment of human rights.

In the same report, the UN Independent Expert on the effects of foreign debt and human rights states that women, persons with disabilities, children in single-parent families, migrants and refugees, and other social groups at risk of marginalisation have often been disproportionately affected. In another report also published in 2018, the UN expert develops a more comprehensive discussion on how austerity impacts human rights from a gender perspective (United Nations 2018c).

4. Women particularly affected by austerity measures

The UN Independent Expert on foreign debt acknowledges in his 2018 report devoted to the impact of economic reforms and austerity measures on women's rights that such measures tend to harm women more than men (United Nations 2018c). According to the expert, the impact is different because the prevailing current economic system is based on various forms of gender discrimination. Unpaid work, mostly done by women, and occupational gender segregation in sectors asymmetrically impacted by economic crises are cited among the main reasons. In some regions, the triple jeopardy of austerity, which sees women suffer simultaneously as public-sector workers, service users and the main recipients of social security protection benefits, has specific implications in terms of care. That in turn aggravates labour market gender discrimination and occupational segregation. Cuts to social care have reduced access to many crucial services. Care sector job losses and public sector pay freezes have also affected women more severely.

Other human rights bodies highlight the detrimental effects of austerity measures on women. For example, the 2016 CESCR report on public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that reducing public services and introducing or increasing user fees in areas such as childcare, preschool education, public utilities and family support services disproportionately impacts women. Thus, these measures are a backward step for gender equality.

The COVID-19 crisis replicated this pattern and many human rights bodies warned about the particular impact of this health crisis on women. For example, the UN Special Rapporteur on poverty and human rights, Professor Olivier De Shutter, in a report on COVID-19, states that women were particularly vulnerable in this emergency (United Nations 2020). Again, the causes are rooted in socio-economic facts: women are more likely to live below the international poverty line and are overrepresented in the informal economy. Moreover, women, already disproportionately burdened with caring for children, ill and/or elderly family members, were

most impacted by school closures as well as reduced access to healthcare facilities for non-COVID-19 patients.

The relationship between women and poverty was well-known before the pandemic. Now, new projections of global poverty by UN Women estimate that, should the unpredictable course of this pandemic continue, at least 388m women and girls (compared to 372m men and boys) will be living in extreme poverty in 2022 but the figure could be as high as 446m (427m for men and boys). The situation varies from region to region and although Europe is in a better economic position compared to other regions of the world, it is still a worrying issue.

For example, in May 2021, the European Parliament commissioned a case-analytical overview to examine the impact of the COVID-19 crisis on a representative sample of five European Union (EU) member states (Italy, France, Germany, Poland and Sweden) in order to inform recovery period policy recommendations and ensure that recent gender equality gains are not overridden by short-term negative effects of the crisis. The report highlights that one area, amongst others, in which women are disproportionately affected ***vis-à-vis*** men is equal access to the economy, finding greater differences in those member states which did not prioritise gender mainstreaming in the years prior to the pandemic nor account for gender differentials in the measures applied to cease its spread. Overall, women in Europe tended to be overrepresented in the pandemic frontline. This translates into higher female unemployment rates and greater likelihood of poverty for women in the EU (European Parliament 2021). In July 2022, the European Parliament adopted a report with a call to Member States to eradicate women's poverty in Europe and to the European Commission to develop a 2030 EU anti-poverty strategy with a focus on women (European Parliament 2022).

5. Feminist human rights preparedness: the way forward

The aforementioned 2018 report of the UN Independent Expert on the effects of foreign debt insists that policy reactions to economic crises have not been gender responsive. A decade after the 2007–2008 recession, millions of people around the world, particularly women, continue to face significant social and economic hardship due to both the crisis itself and government responses in the form of austerity, structural adjustment and fiscal consolidation. Over two-thirds of countries, most of them following the advice of international financial institutions, were contracting their public purses and limiting their fiscal space. While structural adjustment and fiscal consolidation policies can massively diminish human rights of people in vulnerable situations, most austerity policies have not been designed or implemented in a manner that would promote or safeguard human rights, let alone be sensitive to their gendered impacts. The COVID-19 crisis also revealed how women were disproportionately hit

by the social and economic impact of the pandemic and that a feminist human rights preparedness is necessary (Agapiou Josephides 2020).

As mentioned at the beginning of this article, despite last year's developments, the human rights community has no consistent approach to economics. Perhaps one reason for this is that human rights advocates tend to be lawyers, for the most part not so well versed in the language and methods of economic thought as to be able to influence it. Conversely, the human rights framework is often misunderstood, particularly where economic, social and cultural rights are concerned (Dommen 2021). Feminists have articulated a broadly recognised concept of feminist economics that analyses the interrelationship between gender and the economy. A human rights perspective combined with a feminist economic analysis could guide policymakers in devising alternative solutions that are inclusive and advance gender equality and human rights.

This need has also been patent in the field of health. For example, in September 2019, daily UK economic newspaper the Financial Times published an article by G20 Health and Development Partnership chair Alan Donnelly and Professor Ilona Kickbusch, of the Graduate Institute of International and Development Studies, on why the World Health Organisation (WHO) needs a chief economist. A chief economist, they argued, could provide intellectual leadership within the organisation and advise the director-general and member states on how investment could work to the benefit of global health, especially in the poorest countries (Donnelly and Kickbusch 2019). Others contend that the WHO should be more ambitious than the appointment of just one economist, especially in the aftermath of the COVID-19 pandemic and must instead fully embrace and articulate a feminist economic agenda. Part of this assertion is the fact that governments' ability to fund healthcare services is dictated by their revenue and fiscal policy space, in which international financial institutions play a major role. The IMF and the World Bank, runs the argument, continue to prioritise austerity measures and privatisation strategies that undermine governments' ability to provide public services and achieve Universal Health Care. Neither institution has linked its rhetoric on promotion of gender equality to a systematic evaluation of the implications of its austerity policies on gender inequality, health delivery or outcomes (Herten Crabb and Davies 2020).

One useful tool on the way forward could be the development of a gender-sensitive human rights impact assessment of economic reform policies.

A starting point in this direction could be the guiding principles on human rights impact assessment of economic reforms, adopted by the UN Human Rights Council in 2019 (United Nations 2019a) and developed by the UN Independent Expert on the effects of foreign debt (United

Nations 2019b). Based on the existing human rights obligations and responsibilities of states and other actors, the guiding principles underline the importance of systematically assessing the impact of economic reforms on the enjoyment of all human rights before implementing such reforms, as well as during and after their implementation.

Principle 8 establishes that human rights impact assessments should always include a comprehensive gender analysis. Incorporating a clear gender focus can support the realisation of women's human rights in practice through contextualised analysis aimed at identifying and preventing direct and indirect discrimination; addressing structural socioeconomic and sociocultural barriers; redressing current and historical disadvantage; countering stigma, prejudice, stereotyping and violence; transforming social and institutional structures; and facilitating women's political participation and social inclusion. More specifically, principle 8.2 states that: "[E]conomic reforms which encourage, among other things, labour market flexibilisation, reductions in the coverage of social protection benefits and services, cuts to public sector jobs and the privatisation of services tend to have a negative impact on women's enjoyment of human rights. Economic reform should aim to prevent gender discrimination and transform existing inequalities, instead of creating such situations."

This could help prevent, minimise and compensate violations of women's human rights in the context of government-implemented economic policies and reforms, some of which are being promoted by international organisations (Bohoslavsky and Rulli 2020).

In preparation for future health and financial crises, states should consider human rights standards and guiding principles in the formulation and implementation of their economic reform policies. As the UN Independent Expert on debt and human rights says: "[T]he current pandemic is an opportunity to reflect on and reverse the ideology according to which economic growth is the only way forward" (Bohoslavsky 2020).

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Ezequiel Fernandez Bravo. "Dominican Republic border wall: Concrete symbol of centuries-long anti-Haitian ideology" (2022) 6 *Global Campus Human Rights Journal* 245-252
http://doi.org/10.25330/2515

Dominican Republic border wall: Concrete symbol of centuries-long anti-Haitian ideology

Ezequiel Fernandez Bravo[*]

Abstract: *This article examines ongoing challenges of racism and discrimination through the lens of the long troubling history of xenophobic persecution of Haitians by the neighbouring Dominican Republic. It analyses the latter's prejudicial two-tier migration policy toward Haitians; on one hand, ostensibly excluding them, on the other, admitting those it requires for cheap unregulated labour in sectors such as construction and agriculture but denying them and their descendants rights and citizenship. In particular, it focuses on current Dominican President Luis Abinader's mammoth construction of a heavily fortified boundary wall stretching the entire length of the border with Haiti – a powerful emblem of the "othering" of Haitians as dangerous Black pagan usurpers of African origin while fostering the perception of "legitimate" Dominicans as white Catholic Hispanics. Setting this amid the worldwide context of the relationship between unequal distribution of wealth and a global hierarchy of migration based on race, the article calls on human rights activists inside and outside the Dominican Republic to stand together and renew efforts to dismantle the structural racism upon Haitians.*

Keywords: *Haiti; Dominican Republic; border regime; deportation; global apartheid; migrant rights*

1. Border construction latest move in history of racism

The waters of the Massacre River flow through the city of Dajabón, dividing the northwestern part of the island of Hispaniola into two countries: Haiti and the Dominican Republic. There, in 1937, the Dominican dictator Leonidas Trujillo initiated a process of ethnic cleansing known as the "Dominicanisation of the border", murdering 15,000-20,000 Haitians accused of invading the country. What became notorious as the "Parsley Massacre" got its name from the actions of the Dominican officials, who

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asked Haitian migrants to pronounce the Spanish word for parsley – ***perejil***: those unable to pronounce the word as Spanish speakers do because of their French accent were killed. On that same site, 85 years later, in February 2022, president-elect Luis Abinader began construction of a giant beam and concrete structure, underlining his actions last June by calling Haitian migration a "national security problem" and pledging to "control the border" (Rostowska and Adams 2022). Abinader euphemistically refers to the construction as a "perimeter fence" but everyone has been saying for months that what is being built is a border wall.

The first part of this four-metre-high, 20cm-wide barrier stretches 54 km along the northern part of the island and will have 19 watchtowers, due for completion in 2023. The second phase of construction will cover another 110km of the border, which is 390 km in total and divides the island in two from north to south. Abinader has said that it will serve to "control bilateral trade and deal with drug trafficking", but the truth is that this wall is the latest step in a history marked by inequality and violation of the rights of those who have migrated from different parts of Haiti to the Dominican Republic for generations.

The reality of the two countries could not be more different. According to World Bank data (2020) six out of 10 people in Haiti are poor and one in four lives in extreme poverty. Years of political and economic crisis have worsened the situation, the assassination of President Jovenel Moise in 2021 triggering the latest slump. In contrast, the Dominican Republic ranks amongst the region's fastest-growing economies in recent times. There, one in four people are classified as poor but just three in 100 are indigent. For 2022, the Economic Commission for Latin America and the Caribbean (ECLAC 2022) projected 5.3 percent growth for the country, while the average for the Latin American and Caribbean region is estimated at 1.8 per cent.

Today, the Dominican Republic is home to 10.5m inhabitants, 500,000 of whom are Haitians. These immigrants, who constitute 87 percent of the country's foreign population, suffer as a result of policies that make it difficult for them to obtain official documentation and regular jobs. Moreover, criminalisation of this population goes hand in hand with the needs of a job market that requires cheap labour without giving workers rights in sectors such as construction and agriculture, where three in 10 workers are Haitians (Cruz and Hernández 2020). Access to employment is limited and controlled by xenophobia and racism.

2. Dominican immigration policy – exploitation and exclusion

Anti-Haitian racism (Curiel Pichardo 2021) in the Dominican Republic has a long history. We must go back centuries to the French, Spanish and United States' imperial occupations to understand the narrative of forced movement and establishment of a permanent border between Haiti and

the Dominican Republic. Since the 16th century, the eastern part of the island, under Spanish rule, was dependent on the supply of food and raw materials from the French-ruled plantations in the west as France began to dominate the new global economy in the 17th century based on the exploitation of slaves (Dilla Alfonso and Carmona 2010).

Although both countries gained independence in the 19th century, both were under US military occupation in the early years of the 20th century. During the Dominican occupation, 1916-24, the country's sugar industry was developed, using Haitian migrant workers (Dilla Alfonso 2004; Muñiz and Morel 2019). Thus, the Dominican Republic became a key global sugar producer and exporter, with Haiti supplying the labour for Dominican and Cuban plantations. This significantly shaped the border on both sides of the island with impact which has endured until the present day. Two aspects are worth noting: the ease of migration to the Dominican Republic for those of European descent and the ongoing exploitation of Haitian migrant labour (Llavaneras Blanco 2022).

In later years, Leonidas Trujillo was central to the border regime. Established in 1930, his dictatorship has left an indelible mark on the Dominican Republic. Over the course of three decades, he consolidated a staunch anti-Haitian national ideology through policies and milestones like the aforementioned Parsley Massacre, after which the border was hermetically sealed, the social interaction and exchange that had previously existed between communities on both sides destroyed.

This did not mean that the Haitian presence in the Dominican Republic was erased; rather, it was restricted to the sugar mills, the only legal places where Haitians could reside and work. In 1939, the government enacted Immigration Law 95/39, which classified the status of foreigners according to the permit with which they entered the country. This meant that Haitian temporary workers were only admitted into Dominican territory upon request of the agribusiness sector; those entering without documents and permits were committing a crime. Such provisions created a situation of material and legal dependence on their employers; de facto slavery (Muñiz and Morel 2019).

Joaquín Balaguer, Trujillo's successor, who governed the country during three separate periods in office from the 1960s to the 1990s, expanded this policy: in addition to isolating Haitians in the sugar cane plantations, he sought to prevent Haitian descendants from entering the national territory. In the decades following Trujillo, the rulers of the Dominican Republic maintained a strong anti-Haitian stance: on the one hand, positioning the Dominican community, self-perceived as Hispanic, Catholic and white; on the other, its Haitian neighbours, perceived as Black pagans of African descent, the great national enemy (Dilla Alfonso 2019). Yet this racist narrative was accompanied by the need for Haitian labour to maintain the sugar industry (Hintzen 2014). Thus, migration policy became increasingly

contradictory: while the regulations became progressively more restrictive and discriminatory against the Haitian population, at the same time, their recruitment was promoted (Muñiz and Morel 2019).

At the end of the 20th century, the Dominican state tried different approaches toward its Haitian population. During the 1990s, Decree No. 417, on regularisation of Haitian nationals in the Dominican Republic, and Decree No. 233, on repatriation of minors and foreign workers, were issued. In 2004, the institutionalisation of this structural racism took another turn with the enactment of a new migration law, regulated in 2011. This law meant sugar workers were once again considered non-residents and temporary workers. In 2007, the Central Electoral Board initiated an arbitrary process of suspending the birth certificates of Dominicans of Haitian immigrant descent, claiming they were fraudulently obtained documents. The Supreme Court intensified this approach by ruling that Haitians in an irregular situation should be considered "transit passengers", regardless of the number of years they had been in the country, therefore their children would be barred from accessing citizenship by birth (Muñiz and Morel 2019). This ruling led to several lawsuits against the Dominican state by human rights organisations; some even reached the Inter-American Court of Human Rights, such as the case of the *Girls Yean and Bosico v. Dominican Republic*. In this case, the Dominican state refused to issue birth certificates to Dilcia Oliven Yean and Violeta Bosico, who were born in its territory to Haitian parents. Yean and Bosico were denied nationality and classified as illegal immigrants and thus in a socially vulnerable situation. The Court found that the state violated the American Convention on Human Rights.

Three years later, in 2010, the new Constitution again restricted the principle of *ius soli* (citizenship by country of birth) by not considering the children of foreigners in an irregular situation as Dominicans. That same year, an earthquake in Haiti triggered an unprecedented humanitarian crisis, which continues to this day, and led to the exodus of a population that could not be protected by its own state (González Valdez 2021). In 2013, tensions caused by Dominican policies reached boiling point: Through judgement 168/13, the Constitutional Court denationalised more than 200,000 people born in the Dominican Republic of Haitian ancestry who could not prove the regularity of their parents' immigration status (UNHCR 2014). Such drastic action raised numerous alarms, including a report by the Inter-American Commission on Human Rights (IACHR), which visited the island in December 2013 (IACHR 2015). Despite various attempts at political reaction, such as a regularisation plan in 2013 and the 169 naturalisation law in 2014, the effects of this machine of criminalisation and production of irregularity continue today. In the 2019 annual report, the IACHR noted that six years after the enactment, "the obstacles faced by the affected population persist" (IACHR 2019, 799). Finally, deportations multiplied in 2022: the Dominican Republic deported an estimated 60,000 Haitians and people of Haitian ancestry only between August and October.

3. Global apartheid – mobility for the privileged

The current situation described in the Dominican Republic is a far from isolated case if we look through the broader lens of global apartheid (Richmond 1994; Sharma 2005; Spener 2008). This concept describes the unequal distribution of resources and welfare, its relationship to race and nationality, and denotes the existence of a system that celebrates the mobility of capital and certain privileged groups, while the movement of others is increasingly curtailed. These controls give shape to differential legal rules which divide the national space in two: one for "citizens" who are "permanent residents", and another much more restrictive one for those characterised as "illegal", in that they are denied lawful permanence in their country of residence. This discrimination is part of an overall regime in which exclusion and criminalisation of one group is not only accepted but seen as necessary. Control over the mobility of impoverished residents and the labour force of non-white populations to which this notion refers well illustrates the process that has been going on for decades on the eastern side of Hispaniola.

Similarly, the concept of "border regime" (Domenech and Días 2020) helps describe the Dominican Republic-Haiti border as a space of conflict, negotiation and contestation between diverse actors who dispute the political definition of migration and the border. Thus, we can view this demarcation as an active process governing the mobility of both people and capital (De Genova 2002). For Dilla Alfonso (2020), the regime can be characterised as a "protective trench", in which border institutions have aimed over time to reinforce nationalist sentiment and foster a regime hostile to cross-border relations.

Analysing how the political order has been territorialised in the Dominican Republic through its borders, Llavaneras Blanco (2022) employs the concept of "obscene inclusion" coined by De Genova (2013), which refers to the clandestine, discretionary and temporary incorporation into the national order of those migrants who do not conform to the criteria of national regulations. In this case, the incorporation over the decades of Haitians and Dominicans of Haitian descent has occurred through a system of subordination and legal precariousness fostered by the Dominican state. This precariousness also enables exploitation outside a framework of human rights protection.

The Dominican Republic has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW), the Convention relating to the Status of Stateless Persons, nor the Convention on the Reduction of Statelessness, nor has it endorsed the Global Refugee Pact for Safe, Orderly and Regular Migration (2018), nor the Global Compact on Refugees (2018). Hence, in October 2022, Abinader announced that he had allocated six helicopters, 10 reconnaissance and surveillance planes and 21 armoured vehicles to

patrol the wall for "the defence of the country". Identification of the border wall with national security, as Brown (2010) points out when describing a phenomenon present in different parts of the planet, is tied to multiple rhetorics: the construction of a dangerous barbaric other – the binary opposite of civilisation – and the idea of containment of this other within the territorial limits of the country, drawing on the fantasy of impermeability. However, as the same author states, "even the most physically intimidating of these new walls serves to regulate, rather than exclude, legal and illegal migrant labour", producing a zone of indistinction "between the law and the lawlessness that flexible production requires" (Brown 2008, 16-17).

The Dominican wall spectacularises a rhetoric of exclusion, but at the same time it stands as a filter that selects and controls selected individuals (Mezzadra and Neilson 2016). Yet the wall's construction is part of a long process of discretionary and hierarchical inclusion that has developed in tandem with exclusion. There were 250,000 deportations of Haitian nationals 2017-22 (OHCHR 2022), while in 2011 alone more than 44,000 Haitian migrants were deported, including hundreds of pregnant women and mothers who had given birth in the Dominican Republic. In addition to this, in September 2021, a resolution banned foreign women who were more than six months pregnant from entering the country. Both scenarios should be considered together with the systematic violation of Haitians' labour and social security rights: withholding or lack of payment, excessive working hours, absence of vacation and other benefits.

4. Renewed efforts necessary to dismantle structural racism

The report of the United Nations Office of the High Commissioner for Human Rights for the last Universal Periodic Review of the Dominican Republic (UNHCR 2018) highlighted concerns about the "vulnerability of Haitian migrants and the violence and aggressions of which they were victims". Meanwhile, the Human Rights Committee sounded the alarm regarding "the high number of deportations of persons of Haitian origin, as well as reports of massive and arbitrary deportations and expulsions without procedural guarantees, including refoulement at the border". The concern of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights regarding "systematic and persistent racial discrimination against Haitians and people of Haitian descent" was also made explicit. The Committee on Economic, Social and Cultural Rights "urged the Dominican Republic to adopt all necessary legislative and administrative measures to combat all forms of discrimination against these persons". In November 2022, the High Commissioner for Human Rights Volker Turk also spoke out on the matter, calling for a halt to deportations to Haiti, as well as greater efforts by the Dominican government "to prevent xenophobia, discrimination and related intolerance based on national, racial or ethnic origin, or immigration status".

It is worth mentioning initiatives of various organisations in the Dominican Republic which provide legal advice and support to migrants, including those of Haitian descent, as well as information and awareness campaigns and civil society initiatives to develop joint proposals on the issue of migration and nationality (UNHCR 2020). However, the High Commissioner's report also noted "hostility and harassment" towards human rights defenders fighting for the rights of Haitian migrants and Dominicans of Haitian descent and denouncing the exploitation and trafficking of children (UNHCR 2018). Consequently, in order to understand why the wall is being constructed, it is necessary to review and work together to combat the discrimination and structural racism present in the Dominican Republic for people of Haitian nationality or ancestry.

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Chiara Altafin. "Child rights strategic litigation on deprivation of liberty for migration-related reasons: Review of selected cases in Asia and Europe" (2022) *6 Global Campus Human Rights Journal* 253-286
http://doi.org/10.25330/2597

Child rights strategic litigation on deprivation of liberty for migration-related reasons: Review of selected cases in Asia and Europe

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Abstract: *The position of children deprived of liberty for migration-related reasons entails key challenges to children's rights and "child rights strategic litigation" (CRSL) emerges as one way to tackle them while feeding more broadly into national and international advocacy efforts. Litigation practice in this regard has emerged on the issue of deprivation of liberty in the third decade after the coming into force of the United Nations Convention on the Rights of the Child. This article analyses some pertinent litigation efforts undertaken in Asia and Europe. In considering selected case-law (already decided or in the process of litigation) at both national and international/regional levels, it addresses the main issues arising in relation to migration detention and children's rights, how this litigation has been done, the actors involved, the legal standards employed, and eventually the courts' reasoning. Concluding remarks for a children's rights preparedness are articulated, reflecting on the pivotal importance of stakeholders' approaches towards litigation strategies that are consistent with children's rights and aim to advance children's enjoyment of their rights, in order to contribute effectively to tackle such a harmful practice and bring changes against it. It is thus argued that CRSL can be a valuable means to advance access to justice for migrant children.*

Key-words: ***children's rights; strategic litigation; migration-related detention; Asia; Europe.***

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1. Introduction

The detrimental practice of children deprived of liberty for migration-related reasons has been condemned in different parts of the world, as the findings and recommendations of the United Nations Global Study on Children Deprived of Liberty show (UNGSCDL 2019: 430-495). Children are detained for reasons related to their or their parents' migration status, or for other official justifications (including identity verification, health and security screening, facilitated deportation, age assessment procedures) or even for claimed protection purposes, or because of a declared state of emergency (UNGSCDL 2019: 441-445). There is international consensus that such practice violates international law (Smyth 2019). It is emphasised that "deprivation of liberty of an asylum-seeking, refugee, stateless or migrant child, including UASCs is prohibited" (UNWGAD 2018: para 11, citing A/HRC/30/37: para 46; E/CN.4/1999/63/Add.3: para 37; A/HRC/27/48/Add.2: para 130; A/HRC/36/37/Add.2: paras 41-42) (see also CMW/C/GC/4-CRC/CGC/23: paras 5 and 10).

This critical area results in multiple violations of children's rights and requires preparedness for effective ways to tackle such a harmful practice. In particular, the position of children deprived of liberty for migration-related reasons entails challenges to children's rights which can be addressed through "child rights strategic litigation" (CRSL) while feeding more broadly into national and international advocacy efforts. This kind of litigation is defined by distinguished scholars as seeking "to bring about positive legal and/or social change in terms of children's enjoyment of their rights" (Nolan, Skelton and Ozah, 2022a: 5). Importantly, they have identified a number of factors as likely indicative of whether a case qualifies as CRSL: (i) the process that let up to the case; (ii) the way in which the case was developed or shaped by child rights during the duration of the litigation; (iii) the remedy granted; or (iv) the outcome of the case (both legal and extra-legal).

It is worth also referring to scholars' two key questions in identifying cases that are CRSL. The first question relates to the litigants and/or the litigators, who "may include any parties in the case: applicants, plaintiffs, defendants, appellants, petitioners, authors, amici curiae, third-party intervenors", with a list of relevant ones: "a child or group of children; an adult such as a parent, guardian, curator/guardian ad litem who expressly acts on behalf of a child or children with a broader aim than merely meeting the needs of the individual child; a human rights or civil society organisation (often but not always a children's rights organisation) acting on behalf of a child/children, in the child-specific public interest or in the interests of children generally; national human rights institutions (NHRIs), ombudspersons or children's commissioners, children's rights' defenders or human rights public defenders with a child rights related mandate" (Nolan, Skelton and Ozah, 2022a, 21). The second question relates to the objective(s) of

the litigation, which generally "will need to be a broader one than merely resolving a legal, child rights related problem for an individual child. The litigation will need to seek to advance the rights of more than one child and/or to bring about social change that will benefit all children or a category of children. However, even where the main parties in the case may have a more limited or individualised aim (for instance, defending a particular child in the criminal justice system), an amicus or third party intervenor admitted to the case may have a different, more strategic intention" (Nolan, Skelton and Ozah, 2022a, 22).

Litigation practice in this regard has dealt with the issue of deprivation of liberty since the third decade after the coming into force of the UN Convention on the Rights of the Child (CRC) (Nolan and Skelton 2022: 7). This article analyses selected litigation efforts relating to children deprived of liberty for migration-related reasons in two major regions of concern, namely Asia and Europe, where various countries face persisting systemic issues and there are local practitioners working on them. In considering selected case-law (already decided or in the process of litigation) at both national and international/regional levels, the article addresses the main issues arising in relation to migration detention and children's rights, how this litigation has been done, the actors involved, the legal standards employed, and eventually the courts' reasoning. The selective choice of legal cases draws heavily on the findings of the author's research conducted for one component of the ACRiSL (Advancing Child Rights Strategic Litigation) project, a three-year international research collaboration bringing together partners from advocacy and academia, under the auspices of the Global Campus of Human Rights and Rights Livelihood cooperation (ACRiSL 2020-2023).

Concluding remarks for a children's rights preparedness are articulated at the end of the article, meaning that respecting, protecting and fulfilling children's rights remain crucial in facing and overcoming the challenges posed by the practice of deprivation of liberty for migration-related reasons. It is therefore highlighted the need to reflect on the importance of stakeholders' approaches towards litigation strategies that are consistent with children's rights and aim to advance children's enjoyment of their rights, in order to contribute effectively to tackle such a harmful practice and bring changes against it.

2. Malaysia

Key stakeholders in the country include, ***inter alia***, Malaysian Bar Council Legal Aid Centre (Kuala Lumpur)/Collin's Law Chambers and Asylum Access Malaysia. It is worth considering two effective cases litigated at the national level which can be qualified as CRSL.

In particular, *J.b.M.R. v. Public Prosecutor* (High Court in Shah Alam 2017) concerns a Rohingya minor detained and prosecuted for an immigration offence, namely not having any valid documents, under section 6(1)(c) of the Immigration Act 1959/63. He was not registered with the UNHCR at the time of his arrest and subsequent prosecution. Collin's Law Chambers filed at the High Court an application to challenge the legality of the immigration charge against asylum seeking minors and an application to secure his release from prison pending the full disposal of his case. The lawyers claimed that his detention was in violation of the Child Act 2001 and Article 22 CRC. When this application was filed, the applicant was 15 years old and was held in remand since December 11, 2016, for 3 months at Kajang prison, with adult offenders (after the application for his bail was denied by Sepang Magistrate Court). Notably, the National Human Rights Institution (SUHAKAM) held a watching brief in this case.

The most important aspect taken into account by the Court was the applicant's welfare. It also considered that during the 3 months in prison the young applicant mingled with offenders who faced various criminal charges, exposing him to risk of becoming a future criminal. The immigration charge against the child was eventually withdrawn. Importantly, in granting bail to the minor despite a vigorous objection by the prosecutor, the Court held: "Whether the applicant is a citizen or not, a bail order has to be taken into account so that the potential risks faced by the applicant in prison would not adversely affect the applicant's future. Furthermore, the applicant is only a child of 16 years of age" (High Court in Shah Alam 2017, para 14). It imposed a RM 2,000.00 bail with one surety of Malaysian citizen, and additional conditions: (a) the applicant was ordered to be placed at the Chow Kit Foundation Centre, at all times until the trial of the charge against him was concluded; (b) this centre had to manage his transport to and from the Court each time he was required to be present; (c) the centre was also responsible for his welfare and safety for the entire time he was placed there.

The successful outcomes of this case were multiple. First, the High Court granted an alternative to immigration detention (by way of bail pending the resolution of an immigration charge), a landmark decision in Malaysia. The decision by the Prosecution to appeal the bail of an individual charged on immigration grounds — even after the dismissal of the charge rendered the appeal academic — is a testament to the potential precedential value of such an order. Second, a number of key judicial and government stakeholders were sensitised regarding the practice of arresting and detaining asylum-seeking children and on relevant child protection laws. A third outcome was the public awareness raising value of the media attention gained. The counsel for the Rohingya minor petitioned the media at all stages of the case, which was reported across a range of media sources (Yatim 2017; Nazlina 2017; Tong 2017; Anbalagan 2017). He also

mobilised the support of prominent Malaysian NGOs, including the Suara Rakyat Malaysia (SUARAM) who spoke out against the prosecution and detention of asylum-seeking children, which have contributed to greater public awareness regarding the issue (SUARAM 2017; Yen 2017). This organisation emphasised that the Rohingya minor's detention revealed the Malaysian government's failure in fulfilling its obligations to provide appropriate protection and humanitarian assistance to refugee children under Article 22 CRC.

Another relevant case is *R.R.b.M.S. and 6 Ors v. Komandan, Depot Imigresen Belantik, Kedah & 3 Ors* (High Court in Alor Setar 2018) concerning a boat of 56 Rohingya individuals who arrived on Malaysian shores in April 2018. They arrived after a 23-day long journey from Rakhine state, Myanmar. The boat was intercepted by the Malaysian Maritime Law Enforcement Authorities at the waters of the Langkawi Island, Kedah. These individuals (19 men, 17 women and 20 children) were referred and handed over to the Malaysian Immigration Department and were transferred to the Belantik Immigration Detention Centre. Between April and June, the UNHCR unsuccessfully wrote to the authorities requesting access to these individuals for the purposes of screening and interviewing them. On September 10, 2018, a Notice of Motion for *habeas corpus* application was filed by Collin's Law Chambers against the government, at the High Court in Alor Setar, for seven minors (five boys aged 10 to 14, one girl aged 14, and one aged 5) who were among the boat arrivals and were seeking asylum. The counsels could only act for them as only their family members could be located. The application sought an order for the seven children to be brought to court and released; a declaration that their continued detention was illegal and/or in conflict with their rights under Articles 5 and 8 of the Federal Constitution, the Child Act 2001 read together with Article 22 CRC; a further order that they were not re-arrested and/or detained solely on account of their immigration status; in the alternative, an order that they be released from immigration detention and placed at a children's shelter (instead of punitive indefinite immigration detention) until reunification with their families, or for such time and conditions decided by the court. In particular, the litigators claimed that the children's rights to consult and be defended by a lawyer upon their arrest (under Article 5(3) of the Federal Constitution) was violated, as the refusal to allow them to meet their lawyers or family allegedly amounted to an oppression of their rights to know why they were being detained and also denied their rights to challenge the detention. They also claimed that the children's detention was unlawful, irrational, arbitrary and unreasonable. Additionally, the Rohingya children's indefinite detention was claimed to be invalid as they may not be deported due to their statelessness. Notably, the Malaysian Bar Council, Asylum Access, and the National Human Rights Institution (SUHAKAM) held a watching brief in this case, while UNHCR appeared as an observer.

The Court considered the detention order against the seven applicants as valid since they were non-citizens and therefore have no permission to enter and remain in Malaysia, and so Article 5 of the Federal Constitution was not infringed (High Court in Alor Setar 2018, para 10(h)). Nonetheless, the learned Judge Datuk Ghazali Cha accepted the applicants' alternative plea that "they are allowed to be placed at a shelter which can protect and provide the necessary welfare to them" (para 10l), as an alternative to immigration detention for refugee children. The Court also recognised the rights of asylum seeking minors under Article 22 CRC and the Preamble of the Child Act 2001 as a substantive right: "[W]ithout deliberating further, this Court is of the view that the continued detention of the Applicants at the Belantik Immigration Detention Centre is a direct violation of their rights as a child pursuant to the Convention on the Rights of the Child and the Child Act 2001 which guarantees protection and assistance to be given to children in all circumstances without regard to race, colour, gender, language, religion or distinction of any kind" (para 10k). The Court ordered the release of the seven minors who had been held for more than seven months at the Belantik IDC in Kedah and their placement at the Yayasan Chow Kit Shelter in Kuala Lumpur on a bail bond of RM500.00 per each applicant with a Malaysian surety. It then ordered that "the applicants' safety and welfare are also to be ensured at all times they are at the shelter and they should be made available at all times whenever the authorities require them for their further action, including to attend Court to answer to any charge (if any)" (para 10m). Focusing on the enforcement, on November 21, 2018, the counsel contacted the Deputy Public Prosecutor (DPP) advocating for the children's release, and the day after they agreed to petition the court for clarification on its decision of November 18. Clarification was sought in chambers with the following outcome: the DPP conceded that the parties are satisfied with the court's decision and will not appeal against it to the Federal Court; it was also recorded in court that the minors be released directly to the UNHCR on November 22, as part of the Immigration Department's further action.

Therefore, the High Court's landmark decision comprised three positive precedents against child detention: the acknowledgement of Article 22 CRC and the Preamble of the Child Act 2001 as a substantive right towards asylum seeking children from protracted detention; the acknowledgment of a shelter as an alternative to immigration detention of asylum seeking children; and the acknowledgment of immigration authorities' action(s) to release the children to the UNHCR being the mandated institution to protect and assist asylum seeking children from further detention. The case was widely reported in newspapers and online articles (Lim 2018; Bedi 2018).

3. Republic of Korea

Key stakeholders in the country include, inter alia, Duroo Association for Public Interest Lawyers, Dongcheon Foundation, and GongGam Human Rights Law Foundation. It is worth considering a recent case that can be qualified as CRSL. Precisely, Duroo (in cooperation with other three NGOs) has litigated the case 2020 HunGa 1, for which on January 23, 2020, the Suwon District Court requested the Constitutional Court of the Republic of Korea to rule on the constitutionality of Article 63(1) of the national Immigration Act (amended by Act Decree 12421 on March 18, 2014). This is the first time that the detention of migrant children is under consideration at the Constitutional Court level in the country.

The case concerns a 17-year-old asylum-seeker, national from Egypt, who had overstayed in the Republic of Korea after obtaining a 30-day tourist visa and entering the country on July 23, 2018 as an unaccompanied child and was detained for about two months (UNHCR 2020, paras 8-9). The head of the Suwon Immigration Service detained the petitioner in accordance with Article 51(3) of the Immigration Act on October 17, 2018, and issued the deportation order pursuant to Articles 46(1) 3, 46(1) 8, 11(1) 8, and 17(1) as well as the detention order pursuant to Article 63(1) of the Act thereof on October 18, 2018. The plaintiff filed the lawsuit seeking revocation of these orders (Suwon District Court 2019 Ku-Dan6240), applied for the adjudication on the constitutionality of Article 63(1) of the Immigration Act during the above trial (Suwon District Court 2019 Ah 4057), and the Court accepted the application for Article 63(1) and requested the case of adjudication for its constitutionality on January 23, 2020. The plaintiff argued that Article 63(1) remains a legal ground for indefinite detention of migrants in practice as it states that persons under deportation orders who cannot be immediately repatriated can be detained in any detention facility pending when deportation is carried out. It was also argued that the immigration detention of a child must not be used even as last resort.

In June 2022, Manfred Nowak and the author drafted a written opinion which was translated to Korean and submitted to the Court in July, seeking to assist it and inform its consideration and decision about the issues raised in the above case under the Constitution of the Republic of Korea in light of the general principles and standards enshrined in the CRC. They expressed a shared interest in ensuring that the protection of children from deprivation of liberty within the Korean legal system is rigorous in a national context where: (1) the constitutionality of Article 63 of the Immigration Act is being debated at the Constitutional Court level; and (2) the Ministry of Justice announced in November 2021 that it will initiate a series of legislative and policy changes to improve the immigration detention regime, but has been in its position that there

should be a room for detention of migrant children over 14 (aligning with the criminal detention of children). Therefore, they underlined that this case highlights the paramount importance to address the confinement of children for purely migration-related reasons in the country, especially in view of the findings and recommendations of the UNGSCDL, in particular its Chapter 11, which concludes that purely migration-related detention of children violates the CRC, in particular its provisions on the right to personal liberty (Article 37(b)), the best interests of the child (Article 3), the right to life and development (Article 6), the right to the enjoyment of the highest attainable standard of health (Article 24) and the right of refugee children to receive appropriate protection and humanitarian assistance (Article 22). In October 2022, the Court mentioned the aforementioned expert opinion and the CRC in a public hearing of this case. The parties are awaiting its decision. In the meantime, Duroo and other civil society organisations in the country have approached Members of Parliament to discuss the potential adoption of a provision completely prohibiting the immigration detention of children, considering several elements to make amendments to the Immigration Act.

4. Hungary

Due to the general situation in the country, strategic litigation of migration-related cases has mostly been done in the European Union (EU) and Council of Europe (CoE) fora. The Hungarian Helsinki Committee (HHC) is one of the key actors. It litigated several cases before the Court of Justice of the EU (CJEU)) regarding the placement of asylum seekers in the "transit zones" on the border with Serbia. These efforts, combined with persistent advocacy, resulted in the closing down of such zones on May 21, 2020, following the judgement of the CJEU (a week before) in the joined cases C-924/19 PPU and C-925/19 PPU, which ruled that the automatic and indefinite placement of asylum-seekers in such zones at the Hungarian-Serbian border without a formal decision and due process safeguards amounted to arbitrary detention.

Regarding the "transit zones" regime that Hungary used from March 2017 to May 2021 to automatically detain all asylum seekers upon arrival, including unaccompanied children above the age of 14 or any children with families for the whole duration of the asylum procedure, HHC took extensive litigation efforts also before the European Court of Human Rights (ECtHR) to challenge the arbitrariness of detention and to convince it to deliver a decision in which the "transit zones" would be found as places of detention. The HHC submitted more than 70 cases, including children as applicants, to the ECtHR (e.g., *N.A. and Others v. Hungary* 37325/17; *H.M. and Others v. Hungary* 38967/17; *A.S. and Others v. Hungary*, 34883/17; *Ahmed AYAD v. Hungary and 4 other applications* 26819/15; *Masood Hamid v. Hungary* 10940/17; *Azizi v. Hungary* 49231/18; *F.S. and A.S. v. Hungary* 50872/18).

The ECtHR delivered its first judgement regarding the detention of families with children in such zones on March 2, 2021, in *R.R. and Others v. Hungary* 36037/17 concerning an Iranian-Afghan asylum-seeking family with three children held in *Röszke* "transit zone" for almost 4 months. HHC strategically litigated the case, also directly including the children as applicants alongside their parents. In its submission to the Court, UNHCR ***inter alia*** highlighted the CRC principles (under Article 3 in conjunction with Article 22, and Articles 2, 6, 12, 20(2) and (3)) which apply throughout all stages of displacement (UNHCR 2017, para 3.2.3 referring to the CRC-Committee's General Comment n. 6). Reiterating the state obligations under Article 22(1) CRC, relevant EU directives and its own case law, the Court stated that the confinement of minors raises particular issues, since children, whether accompanied or not, are considered extremely vulnerable and have specific needs related in particular to their age and lack of independence, but also to their asylum-seeker status (ECtHR 2021, para 49). It stressed that the obligation to protect children and take adequate measures as part of its positive obligations under Article 3 does not evaporate if children are accompanied by their parents (para 59). In view of the conditions of the containers where they were accommodated, the unsuitability of the facilities for children, the lack of professional psychological assistance, the children's young age, the mother's pregnancy and health situation and the length of their stay in such zone, the Court found that they were subjected to treatment which exceeded the threshold of severity required to engage Article 3 and so violated it (paras 62-65). It finally acknowledged that in the circumstances of the case (with lack of domestic legal provisions fixing the maximum duration of that stay, its excessive duration and considerable delays in the domestic examination of the applicants' asylum claims, as well as the conditions in which the applicants were held) their stay in such zone amounted to *de facto* deprivation of liberty (para 83), thus in contrast with the Grand Chamber's standpoint in *Ilias and Ahmed* (ECtHR 2019, para 249). Furthermore, the Court acknowledged that their detention could not be considered lawful under Article 5(1) (ECtHR 2021, paras 74-92), as there was no strictly defined statutory basis for it in Hungarian legislation (para 89) and the national authorities had not issued a formal decision complete with reasons for detention. It also considered that the applicants did not have an avenue in which the lawfulness of their detention could have been decided on promptly by a court, thereby violating Article 5(4). Nonetheless, the ECtHR did not follow the CJEU's decision and failed to provide a more substantial analysis of the nature of confinement in the "transit zones", focusing rather on the concrete situations and vulnerabilities of the children concerned. It ordered Hungary to remedy the adult applicants with EUR 4.500 each and EUR 6.500 to each of the applicant children in respect of non-pecuniary damage, as well as to all applicants jointly EUR 5.000 in respect of costs and expenses.

In some judgments of 2022, the ECtHR similarly found that placement in a "transit zone" constitutes detention in other cases concerning families with children (*M.B.K. and Others v. Hungary* 73860/17; *A.A.A. and Others v. Hungary* 37327/17; *W.O. and Others* 36896/18; *H.M. and Others v. Hungary* 38967/17). However, it also issued disappointing decisions which did not recognise the placement in such zones as detention because the related period was too short, declaring the cases inadmissible: *A.S. and others v. Hungary* 34883/17 (concerning a family with children, 40 days); *N.A. and others v. Hungary* 37325/17 (concerning a family with children, 27 days).

Focusing on unaccompanied children's detention in Hungarian "transit zones", it is worth referring to a recent CRSL effort tried in relation to *M.H. v. Hungary* 652/18, litigated by the HHC and communicated by the ECtHR on February 7, 2022,[1] concerning the confinement of an unaccompanied child for about 3 months pending the examination of asylum request. In April 2022, Manfred Nowak and the author prepared and submitted a request for leave for the purpose of submitting a third-party intervention (TPI). The applicant invoked Article 5(1) and (4); relying on Article 3, taken alone and in conjunction with Article 13, the applicant further complained about the allegedly inhuman or degrading conditions in which he was held in the "transit zones" and the lack of an effective remedy in this respect. Therefore, the TPI would have sought to assist the Court in considering the issues raised in the application under the cited provisions of the ECHR as interpreted in accordance with the general principles and standards enshrined in the CRC. This would have been done in view of the practice of interpreting ECHR provisions in the light of other international texts and instruments.[2] The proposed intervention would have covered contextual information drawn from the findings and recommendations of the UNGSCDL. It would have primarily elaborated on its recommendations concerning Article 37(b) CRC, which could have informed the Court's consideration and decision about the deprivation of liberty of the unaccompanied child in such zones. Precisely, Recommendation no. 8 indicates that: "Since migration-related detention cannot be considered as a measure of last resort (as required by Article

1 The Court posed the following questions to the parties: (1) Has there been a violation of Article 3 of the Convention on account of the applicants' living conditions and their treatment in the border transit zones, having regard to their particular circumstances (see *R.R. and Others v. Hungary*, 36037/17, §§ 48-52 and 58-65, 2 March 2021)? (2) Did the applicants have at their disposal an effective domestic remedy for their above complaints under Article 3 of the Convention, as required by Article 13 of the Convention? (3) Were the applicants deprived of their liberty in the border transit zones in breach of Article 5 § 1 of the Convention (see *R.R. and Others v. Hungary*, 36037/17, §§ 74-92, 2 March 2021)? (4) Did the applicants have at their disposal an effective procedure by which they could challenge the lawfulness of their detention, as required by Article 5 § 4 of the Convention (see *R.R. and Others v. Hungary*, 36037/17, §§ 97-99, 2 March 2021)?

2 See: *Tyrer v. the United Kingdom* 5856/72 (1978), para 31; *Marckx v. Belgium* 6833/74 (1979), para 41; *Christine Goodwin v. the United Kingdom* [GC] 28957/95 (2002), para 85; *Demir and Baykara v. Turkey* [GC] 34503/97, paras 65-86; *Hassan v. the United Kingdom* [GC] 29750/09, para 102.

37(b) CRC) and is never in the best interests of the child (Article 3 CRC), it is prohibited under international law and should, therefore, be forbidden by domestic law" (UNGSCDL 2019: 491). Regrettably, in June 2022 the President of the Court section decided to refuse their request "as he considers that – in light of the fact that the case is subject of the Court's well-established case-law – the intervention requested is not necessary in 'the interests of the proper administration of justice'." Nevertheless, a TPI would have helped the Court to address better than in *R.R. and Others* the nature of confinement in the "transit zones". The parties are still awaiting the related judgement.

In the 2014-2018 period, HHC also initiated several cases before the ECtHR in relation to the detention of unaccompanied asylum-seeking children whose age was disputed. A few of them were communicated to the government and the observation phase finished (e.g., *M.M. v. Hungary* 326819/15; *S.B. v. Hungary* 15977/17; *Hamid v. Hungary* 10940/17; *Azizi v. Hungary* 49231/18; *F.S. and A.S. v. Hungary* 50872/18). No judgments on the age assessment issue have been delivered yet.

Overall, the Hungarian litigators contacted by the author look forward to getting more favourable decisions by the ECtHR in the pending cases, especially on age assessment in detention as well as detention at the border, which can have positive influence on other countries as well.

5. Bulgaria

Key stakeholders in the country include, *inter alia*, the Center for Legal Aid - Voice in Bulgaria (CLA), the Foundation for Access to Rights (FAR) and the Bulgarian Helsinki Committee (BHC). At the national level, several detention-related cases were litigated by BHC especially after 2015, whereas other organisations such as CLA supported these judicial processes. These joint efforts had resulted in a decrease of arbitrary detention cases, especially of children both accompanied and unaccompanied. However, there seems to be a limited possibility to influence changes of both laws and practices on migration-related detention of children before Bulgarian courts, while regional mechanisms can play a more effective role for CRSL cases.

A leading case that can be qualified as CRSL is *S.F. and Others v. Bulgaria* 8138/16. It was litigated by the *Service d'Aide Juridique aux Exilé-e-s* (SAJE) on behalf of an Iraqi family including three children (aged 16, 11, and one and a half years), who lodged their application to the ECtHR about the conditions in which they had been kept in a border police's detention facility in Vidin for a few days in 2015. On September 20, 2016, the ECtHR gave Bulgaria notice of the complaints concerning these children's detention conditions. Reiterating its settled case-law on the treatment of immigration detainees and the particular vulnerability of children, it

noted that while the time spent by the applicants in detention was shorter (between 32 and 41 hours), the conditions were considerably worse than those in similar cases where a violation was found (ECtHR 2017, paras 83-87). The Court also noted that "a facility in which a one-and-a-half-year-old child is kept in custody, even for a brief period of time, must be suitably equipped for that purpose" (para 88). The combination of these factors affected the children considerably, both physically and psychologically, with particularly nefarious effects on the youngest of them due to his very young age (para 89). By keeping them in such conditions, even for a brief period of time, the Bulgarian authorities subjected them to inhuman and degrading treatment (para 90). It cannot be said that it was practically impossible for them "to ensure minimally decent conditions in the short-term holding facilities in which they decided to place minor migrants immediately after their interception and arrest" (para 91). In view of the absolute character of Article 3 ECHR, an increased influx of migrants cannot be a justification for not fulfilling the related obligations, which requires to guarantee to people deprived of their liberty "conditions compatible with human dignity" (para 92). In respect of non-pecuniary damage, Bulgaria was ordered to pay to each of the child applicants EUR 600 and jointly to all applicants EUR 1.000 in respect of costs and expenses. Notably, the children were directly involved in the litigation and acted as applicants alongside their parents and were remedied separately from their parents for non-pecuniary damage suffered.

Focusing on the enforcement of the judgement, Bulgarian authorities paid the applicants compensation. Regarding general measures, the authorities provided information, *inter alia*, on the legislative framework, the creation of new detention premises and the efforts to renovate existing renovation premises. The action plan was received in December 2018 (DH-DD(2018)1260), whereas the comments of the Department for the Execution of Judgments were sent to the authorities in January 2020 and a revised action plan or report is awaited. The CoE Committee of Ministers requested additional information on the number of existing border police detention facilities in Bulgaria, their location, conditions of detention and any planned or completed repair works, as well as measures adopted or foreseen to secure timely supply of food and drinks and equipment and supplies for very young children.

This case effectively challenged migration-related detention of accompanied children, which has been a reality for hundreds of them in Bulgaria. Detention during the status determination procedure in closed reception facilities is possible under Article 45(f)(1) of the Law on Asylum Seekers and Refugees. Its provisions provide for the possibility to detain asylum seeking children together with their families as a measure of last resort, to maintain family unity and ensure protection and safety, but the UNHCR deemed these provisions as not adequate because they do not specifically refer to the primacy of the

principle of the best interests of the child when ordering detention (AIDA 2019: 66). *S.F. and Others v. Bulgaria* goes beyond the rights of the individual children acting as applicants, and its successful implementation in terms of general measures can benefit children who are in a similar position.

6. Poland

Key stakeholders in the country include, *inter alia*, the Association for Legal Intervention (SIP, *Stowarzyszenie Interwencji Prawnej*) and the Helsinki Foundation for Human Rights (HFHR). They have repetitively challenged migrant children's detention in Poland, which has been systemic for many years despite strong advocacy and litigation. At the national level, a relevant case concerns a 17 years old unaccompanied migrant child whose release from a detention centre after almost 8 months of confinement was ordered by decision no. VII Kz 420/20 of October 30, 2020, by the District Court in Olsztyn (SIP 2020). SIP also litigated several cases for compensation and redress for children's wrongful detention from the state treasury.

A noteworthy CRSL effort by attorney-at-law Małgorzata Jaźwińska from SIP is case II KK 148/22 of cassation appeal before the Polish Supreme Court, against the judgement of the Court of Appeal in Warsaw of September 27, 2021 (II AKa 310/20), regarding the compensation for wrongful placement in a guarded centre for foreigners of a single mother with her six-month-old child for approximately 16.5 months. Initially, their detention was based on the need to confirm the child's identity and collect information for the asylum procedure. However, the family was detained over 4 months after the mother's interview, without collecting other evidence for which their presence was necessary. Moreover, no procedures were undertaken to establish the child's identity, which in fact was based on the mother's declaration and the birth certificate (both available from the first day of detention). Due to the negative asylum decision, their detention was extended during the return procedure, but beyond the 6 months legal limit. Nonetheless, the deportation could not be executed (for legal obstacles) even if the documents were obtained and Russia provided all documentation within the timeframe of the readmission agreement. Additionally, the child's best interests were basically not included and analysed in any detention decisions. In such context, the District Court and the Court of Appeal dismissed the application and did not grant the requested compensation, questioning the possibility to seek it for unjust placement in a guarded centre during the asylum procedure. They also claimed that, since at the time of the detention court's ruling Polish authorities did not have the aforementioned documents from third countries, there was a delay in the period of detention during the return procedure. Furthermore, they did not take into account the child's rights and ruled that these were not violated and the child's best interests were secured as the family was not separated.

In lodging the cassation appeal in December 2021, the litigator invoked *inter alia* Articles 3, 5(1)(f) and 8 ECHR and Article 3(1) CRC. The Court was also requested to make preliminary reference concerning Article 17(1) of Return Directive 2008/115/EC and Articles 8(3) and 23(1) of Directive 2013/33/EU in view of Articles 6, 7 and 24(2) of the Charter of Fundamental Rights of the EU (CFR), in the context of immigration detention of children. In particular, multiple legal issues have been addressed. One is the proper interpretation of Article 15(6)(b) of the Return Directive (and the litigator prepared a request for a preliminary reference): what do "delays" mean; do they need to be the sole reason why deportation cannot be carried out. A second issue (with another request prepared for a preliminary reference) is what do the best interests of the child in immigration detention cases mean, especially in the context of prolonged detention; what factors and how should be analysed. A third issue (with related request for a preliminary reference) concerns the rule of law issue in Poland and the consequences of the ruling by the 2nd instance court that was incorrectly composed as one of the judges was not properly appointed. A fourth issue regards the possibility to seek compensation for wrongful immigration detention in asylum procedures under Article 5(5) ECHR. A fifth issue is the unlawful character of the detention made to collect information on which the asylum application is made if no such evidence is being collected. A sixth issue is the unlawful character of the detention made to identify if no proceedings of the sort are being carried out. Another issue is the unlawful character of the detention in return procedure beyond the 6 months limit under Article 15(5) of the Return Directive.

Notably, an *amicus curiae* brief in support of the appellant was prepared *pro bono* by Dzidek Kedzia, Agata Hauser and Lukasz Szoszkiewicz from the Global Campus of Human Rights network and was submitted to the Court in May 2022. They analysed relevant sources of international law in relation to the deprivation of liberty of migrant children, in particular the ECHR and the CRC, emphasising that Poland is a state-party to both Conventions and it is the duty of public authorities to apply such an interpretation of national law that will allow the implementation of the treaty provisions to the highest degree. Both ECtHR and UN treaty bodies point to the international consensus on the prohibition of depriving children of liberty on the basis of their or their parents' irregular migration status. Taking into account that Poland is bound by these treaties, as well as constitutional provisions (primarily Article 72 establishing the obligation to protect children's rights), the third-party interveners argued the unlawfulness of the decision to place the child in a guarded centre for foreigners, which was contrary to the child's best interests, well-being, health and development. This also in view of Article 88 of the Act of June 13, 2003, which allowed the use of alternative measures for a proportionate balance between the restriction of the right to personal

freedom and movement and the state interest to ensure efficient migration procedures. Moreover, the district and appellate courts did not carefully consider the effect of detention on the child being nervous and restless and having trouble sleeping at night. It is not enough for those courts to merely note that the child applicant and her mother were medically examined, as it does not meet the requirement of the best interests of the child as the primary consideration on which the decision should be based. Such a situation may constitute a violation of the obligations arising from the CRC, according to the CRC-Committee's position that "in order to demonstrate that the right of the child to have his or her best interests assessed and taken into account first, every decision affecting the child or children must be reasoned, reasoned and explained" (CRC-Committee 2021, para 12.4). Overall, the appellate court failed to act with due diligence, by neglecting the obligation to carry out an effective assessment of the applicants' deprivation of liberty in a situation where one of them was a child in favour of any alternative measures (see ECtHR judgement of July 22, 2021 in *M.D. and A.D. v. France* 57035/18, para 103) as well as by not sufficiently taking into account the child's best interests and addressing the allegations raised by the applicants. Finally, given the limited nature of medical consultations, it is difficult to assume that public authorities have proved that long-term detention will not have a negative impact on the child's well-being and psychophysical development, and so the state should take into account liability for damages.

The parties are awaiting the Polish Supreme Court's decision. Significantly, this case aims to increase legal protection of children's rights through interpretation of statutory provisions, and through finding the practice of migration-related detention of children to be unlawful and in violation of their rights under international and regional law. It also aims to advance children's rights beyond the individual child's rights, to correct such a systemic problem that negatively affects children, and to hold duty bearers accountable for violations of children's rights.

However, CRSL efforts have mostly been done at the regional or international level. A leading case before the ECtHR is *Bistieva and Others v. Poland* 75157/14 concerning the disproportionate detention of a Chechen woman and her three children at the ***Kętrzyn*** guarded centre for foreigners in violation of the right to respect for family life under Article 8. In their complaints against the decisions ordering and extending their administrative detention, the applicants referred, *inter alia,* to the fact that Polish authorities failed to evaluate how detention affects the children. Since they issued a decision refusing to expel the youngest child, the applicants also claimed that there was no justification for the child's detention, which was ordered for the purpose of securing the expulsion. Referring to the CRC (ECtHR 2018, para 78) and its previous case law, the Court held that "the child's best interests cannot be confined to keeping

the family together and that the authorities have to take all necessary steps to limit, as far as possible, the detention of families accompanied by children and effectively preserve the right to family life" (para 85). The Court was not assured that the authorities ordered the family's detention as a measure of last resort after exploring possible alternative measures (para 86). It also had serious doubts as to whether they had given sufficient consideration to the best interests of the three children in compliance with obligations stemming from international law legal obligations imposed on the authorities (e.g., CRC or CFR) and from section 401(4) of the 2013 Act. In the Court's view, "the detention of minors called for greater speed and diligence on the part of the authorities" (para 87). Even in the light of the risk that the family might abscond, the authorities had failed to provide sufficient reasons to justify detention for 5 months and 20 days (para 88). Subjecting accompanied children to living conditions typical of a custodial institution was, therefore, disproportionate and in contravention with Article 8. Polish authorities were ordered to pay the applicants jointly EUR 12.000 in respect of non-pecuniary damage, plus any tax chargeable on that amount. This was the first decision by an international court concerning the placing of foreign families with children in guarded centres in Poland, and triggered a thread of decisions in "repetitive" cases (*A.B. and Others v. Poland* 15845/15 and 56300/15, *Bilalova and Others v. Poland* 23685/14, *Nikoghosyan v. Poland* 14743/17, and *R.M. and Others v. Poland* 11247/18). Significantly, in reporting on the execution of this judgement, HFHR recommended Polish authorities to: "educate judges and Border Guard officers on the application of the principle of the best interests of the child and on the ECtHR case law in this area; provide practical guidance on the specific activities that the Border Guard and the courts should carry out as part of an examination of the best interests of the child; make sure that the decisions ordering detention of families in guarded centres contain detailed and case-specific justification relating to the situation of the children concerned; provide ex officio legal aid in all cases concerning detention of families with children in guarded centres" (HFHR 2018: 41). Reportedly "the percentage of decisions imposing an alternative to detention increased from 11% in 2014 to over 23% in 2017" in Poland (FRA 2018, 184).

The subsequent case *Bilalova and Others v. Poland* 23685/14 concerns the detention of a Russian national of Chechen origin and her five children (aged three to nine) in a closed centre for aliens and the national authorities' failure to limit to absolute minimum the time of children's detention pending the outcome of their application for refugee status. In finding a violation of Article 5(1)(f), the Court observed that the place and conditions of detention must be appropriate and that the duration must not exceed a period that is reasonably necessary to achieve the aim pursued (ECtHR 2020, para 75). It noted that the place of detention was contrary to the well-established case law indicating that the confinement

of young children in such facilities should be *in principium* avoided (para 78); only a short placement under suitable conditions could be compatible with the ECHR, provided, however, that the authorities have resorted to this ultimate measure only after having concretely verified that no other measure less infringing on liberty could be taken (para 78). It concluded that there was insufficient evidence to show that domestic authorities had carried out such an assessment, especially as the applicants' father, previously in a similar situation, was placed in an open structure for foreigners (para 77). Moreover, steps had not been taken to limit the duration of their detention. The Court therefore found that children's detention was unlawful. It ordered Poland to remedy child applicants with a sum of EUR 10.700 for non-pecuniary damage. This case tackles a widespread and well-documented issue of Polish courts not taking into consideration the child's best interests in cases concerning migrant children whereas alternatives to detention were rarely sought prior to decisions imposing or extending detention. The case significance for tackling the long-term practice of Polish authorities to detain children for migration-related reasons was reiterated in the TPI by ECRE, AIRE Centre and ICJ, drawing the attention of the Court to Articles 3 and 37 CRC (ECRE 2015).

The aforementioned case *Nikoghosyan v. Poland* 14743/17 concerns the "automatic placement" of an Armenian family with three children in the *Biała Podlaska* guarded centre for aliens for six months without individualised assessment of particular situation and needs, pending their asylum application. The applicants' detention was prescribed by section 89 of the Aliens Act, and the domestic courts ordered and extended the measure. However, the ECtHR reiterated that "the detention of young children in unsuitable conditions may on its own lead to a finding of a violation of Article 5(1), regardless of whether the children were accompanied by an adult or not (ECtHR 2022, para 64). It also highlighted that "various international bodies … are increasingly calling on states to expeditiously and completely cease or eradicate the immigration detention of children" (para 65). Critically, the fact that the father was accompanied by his three minor children was not given any consideration when the courts first decided to place them in detention (para 80). Only at a later stage the Regional Court looked into the material conditions at the closed centre and concluded that the family's well-being was not threatened by their detention because the premises were suited to the children's needs (para 81). For the Court, the examination of this aspect of the applicants' case was not "thorough or individualised" (para 82). Firstly, the domestic courts did not refer to the new fact that, while in detention, the mother had given birth to her fourth child. Secondly, the domestic courts, and later the government, relied on the argument that the children's well-being had necessarily been protected by the fact that the family had been detained together and they had not been separated from their parents. On this point the ECtHR reiterated the principle stated (albeit under Article

8) in the aforementioned paragraph 85 of *Bistieva and Others*. The centre constituted a place of confinement and, from its well-established case-law, it ruled that "as a matter of principle, the confinement of young children in detention establishments should be avoided and that only placement in suitable conditions may be compatible with the Convention, on condition, however, that the authorities establish that they took this measure of last resort only after actually verifying that no other measure less restrictive of liberty could be put in place and that the authorities act with the required expedition" (para 86). In this case the domestic courts, after having verified that the applicants had only EUR 50 and had no address in Poland, simply concluded that the applicants did not qualify for any alternative measure under the law. The ECtHR ruled that, in the circumstances of this case, the detention of both adult and children for almost six months was not a measure of last resort for which no alternative was available, and "the fact that minors were being detained called for greater speed and diligence on the part of the authorities" (para 88). Accordingly, Article 5(1)(f) was violated.

The already cited case *R.M. and Others v. Poland* 11247/18 concerns the placement and maintenance of a mother with her three minor children for a period of about seven months in the ***Kętrzyn*** closed centre for foreigners pending their deportation to Russia. In September 2017, they were handed over to the Polish authorities by their German counterparts under the Dublin III Regulation. They complain that the child applicants' detention had been contrary to Article 3 ECHR, having regard to its duration, their young age, the presence of certain factors that caused anxiety (such as surveillance by uniformed staff, restrictions on freedom of movement and exposure to noise caused by renovation work then in progress in the detention centre) and the psychosomatic symptoms from which one of the children suffered. Citing Article 5(1)(f) and (4), they claim that: (a) their detention was arbitrary and unnecessary; (b) the successive requests by the border police to place and keep them in a detention centre were not communicated to them. Moreover, they claim that their placement and continued detention were contrary to Article 8. Notably, HHC submitted a TPI to assist the Court in the following areas: contracting states' obligations under international law regarding safeguards and best interests of the child in all actions concerning her or him; contracting states' obligations under Articles 3, 5 and 8 ECHR for the reception of asylum-seeking families with children and related breaches when detained, especially children; contracting states' obligations to justify the support of asylum-seekers' detention with objectively justified reasoning that proves the necessity of detention while less coercive measures are not applicable (HHC 2020). The parties are awaiting the Court's decision.

At the international level, in September 2021, Manfred Nowak and Dzidek Kedzia filed a third-party submission to the UN Human Rights Committee in relation to the individual communication no. 3870/2021. The latter is the first to be brought against Poland concerning the wrongful placement of foreigners in a guarded centre, under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). It was submitted in November 2019 by a family from Chechnya, represented by HFHR, and concerns a single father and two underage children who applied for international protection in Poland and were immediately placed in the *Biała Podlaska* centre, where they spent over 10 months. The applicants allege violations of Articles 7, 9 and 24 ICCPR. According to the communication the psychologists had stated that the detention had caused the deterioration of the father's health and had a negative impact on the condition of his children, which required specialistic treatment that was not available in the detention facility. In this case, the Polish courts did not properly assess the children's situation and their best interests; deciding on the prolongation of the detention for the family, the District Court considered only the opinion of the Border Guard authority stating that there were no contradictions for furthering the children's stay in detention despite the fact that their mental condition was deteriorating. The *amicus curiae* brief was prepared *pro bono* and offers an opportunity to enrich the Committee's analysis of the issues raised in the communication in terms of violations of the children's rights under Article 24 ICCPR as interpreted in accordance with the CRC (particularly Articles 3 and 37) and the International Covenant on Economic, Social and Cultural Rights (particularly Article 12). In October 2021, the Committee forwarded the brief to the parties, who submitted written observations in reply and related comments in 2022. The parties are awaiting the Committee's decision.

7. Greece

Key stakeholders in the country include, ***inter alia***, Arsis Association, the Greek Council for Refugees, Equal Rights Beyond Borders, the Hellenic Action for Human Rights, and Refugee Support Aegean. At the national level, the Global Campus of Human Rights supported the initiation of CRSL litigation by lawyers from Arsis,[3] precisely five cases against Greece before national administrative courts: *S.Z. v. Greek Administration* AKY187/2022 and AND189/2022; *A.R.Z. v. Greek Administration* AKY75/2021 and AND81/2021; *H.M. v. Greek Administration* AKY528/2020 and AND268/2020; *M.T. v. Greek Administration* AKY609/2020 and AND13/2021; *M.A. v. Greek Administration* AKY434 and AND177/2022.

3 In the context of the ACRiSL project, a cooperation contract (in force between February and July 2022) was signed between the Global Campus of Human Rights and three Greek lawyers from Arsis Association (Nikolas Psathas, Chrysovalantis – Konstantinos Papathanasiou, and Eutychia Chalkeidou) in order to support and monitor progress in five CRSL cases.

In terms of impact, the CRSL activities undertaken in the first four cases have prevented so far concrete risks of detention of the migrant children concerned; in the first, third and fourth cases the children were previously placed under "protective custody" and then in shelters for unaccompanied children. The fifth case was initiated to protect a child who experienced unlawful migration-related detention with adults for 4 months. The parties in all these cases are awaiting the courts' decisions.

At the regional level, some relevant cases decided by the ECtHR include: *Bubullima v. Greece* 41533/08 (Judgement of 28 October 2010); *Mahmundi and Others v. Greece* 14902/10 (Judgement of 31 July 2012); *Rahimi v. Greece* 8687/08 (Judgement of 5 April 2011); *Mohamad v. Greece* 70586/11 (Judgement of 11 December 2014); *H.A. and Others v. Greece* 19951/16 (Judgement of 28 February 2019). Only some of these qualify, to a certain degree, as CRSL, and their effectiveness is highlighted hereafter.

In *Rahimi*, the Court considered the application of Article 3 ECHR to the reception and detention conditions of an unaccompanied minor seeking asylum, finding a violation based on the dreadful detention circumstances (despite short duration, 2 days) and the applicant's extremely vulnerable situation (his homelessness, 7 days), but also concluding that the Greek authorities' negligence to take appropriate care of a child in migration also amounted to a violation of Article 3 ECHR. Furthermore, it was a landmark decision to apply a procedural approach regarding the CRC in relation to vulnerable unaccompanied minors, attaching decisive importance to the fact that the Greek authorities had not examined whether the detention was in the applicant's best interests (Article 3 CRC) and whether the detention was used as a measure of last resort (Article 37(b) CRC). This approach has paved the way for laying the primary responsibility to protect children's rights on the domestic authorities, thereby confirming the subsidiary nature of the ECHR system. However, it must be noticed that the case was not filed through a conscious decision-making regarding strategic litigation; actually, the ECtHR raised itself that changed the legal basis into Article 3 and turned into a strategic judgement. At the practical level, the impact of Rahimi was that it gave the lawyers the confidence and experience to continue bringing cases. The case started a thread of litigation against the absence of an effective remedy (Article 13) enabling the child applicants to complain about their detention conditions (*Mahmundi and Others v. Greece* 2012), as well as against the lack of judicial review of the lawfulness of their detention pending expulsion (Article 5(4)) (*Bulbullima v. Greece* 2010; *Mahmundi and Others v. Greece* 2012).

In *Mohamad*, the Court's decision dealt with one child's situation but targeted the systemic issue of inhumane treatment at Greek border posts (especially in Feres and Soufli) which has affected migrant unaccompanied minors and has led to violate Article 3 ECHR, even in conjunction to Article

13 ECHR. It also targeted the recurring issue of their status as minors being not taken into account when held at such border posts instead of at an alternative accommodation suited to their needs, which has led to violation of Article 5(1)(f) ECHR.

In *H.A.*, the Court recognised the unlawfulness of the "protective custody" in Greek police stations of nine unaccompanied minors within the meaning of Article 5(1) ECHR as it could only fall under subparagraph (f), also highlighting that Article 118 of Decree 141/1991 had not been intended for unaccompanied minors and potentially led to lengthy periods of detention, and thus stressing the need to ensure them the protection linked to their condition, including their possibility to be identified by lawyers working for NGOs in order to bring, within a reasonable time, an appeal against what they regarded as a detention measure and to speed up their transfer to appropriate facilities, even recognising the practical obstacles in any attempt to challenge their detention before the administrative court due to the lack of official detainee status. Significantly, the case targeted widespread issues faced by unaccompanied minors in the context of asylum procedures in Greece, where their reception and protection has been challenged by the long-standing practice of "protective custody" in police stations and pre-departure detention centres, along with their inability to bring a complaint against the (not-child appropriate) detention conditions, the impossibility to establish contact with lawyers and the practical obstacles to challenge their detention. Following several calls (by different stakeholders in different fora) to Greek authorities, Law 4760/2020 exempts unaccompanied minors from the "protective custody" regime under Article 43 whereby the Public Prosecutor (acting as a temporary guardian) along with the Special Secretary for the Protection of Unaccompanied Minors take necessary measures to refer them in appropriate accommodation facilities.

Other cases, although not CRSL, show the importance of litigation efforts to stop violations of children's rights. In particular, Equal Rights Beyond Borders submitted to the ECtHR requests for interim measures. In *N.A. v. Greece* 55988/19, the Court decided (October 28, 2019) to grant them and obliged Greece to immediately release a 16-year-old Afghan unaccompanied minor kept in "protective custody" under "devastating conditions" in a police station in Athens, in order to accommodate him in suitable conditions until his transfer to be reunified with his sister in the UK. In *A.M. v. Greece* 61303/19, the Court decided (November 27, 2019) to grant interim measures to an Afghan unaccompanied minor imprisoned in the Greek camp Fylakio under "unimaginable conditions" and ordered Greece to treat him as unaccompanied minor until the performance of an age assessment (if deemed necessary and doubts exist as regards his actual age), to transfer him to an accommodation with reception conditions compatible with Article 3 ECHR and his particular status, and to clarify and facilitate

the lodging of his asylum request and family reunification request with his uncle in Germany. Even in *H.M. and R.M. v. Greece* 6184/20, the Court decided (May 14, 2020) to grant interim measures to two unaccompanied minors kept in the camp Fylakio, and ordered Greece to transfer them to an accommodation with reception conditions compatible with Article 3 ECHR and their particular status as unaccompanied minors, as well as to clarify and facilitate the lodging of their asylum requests and family reunification requests with an older brother legally residing in Germany.

The Greek Council for Refugees (GCR) also submitted requests for interim measures, claiming breaches of Articles 3 and/or 5 ECHR to stop violations of unaccompanied children's rights. For instance, in *D.F. and Others v. Greece*, 65267/19, the Court granted (December 24, 2019) interim measures in one day to transfer to age-appropriate facilities five unaccompanied and asylum-seeking children living for many months in substandard conditions in the RIC of Samos and in the surrounding area known as the "jungle". The case illustrated the enormous gaps in protection for unaccompanied children, resulting in their exposure to serious risks. It highlighted that all necessary measures must be taken for juvenile refugees' effective protection, including the immediate implementation of a guardianship system, the increasing number of suitable accommodations, the prohibition of the legalisation of juvenile detention under the national asylum and immigration law, and the immediate termination of such a practice. Also in *T.S. and M.S. v. Greece* 15008/19, the Court granted (March 21, 2019) interim measures to transfer to age-appropriate accommodation facilities some underage unaccompanied girls seeking international protection and placed in "protective custody", under unsuitable and dangerous conditions, within the detention facility for adult women of Attika's General Police Directorate of Foreigners.

A noteworthy case, litigated with the support of GCR that represented some of the affected children before national authorities, is *ICJ and ECRE v. Greece* 173/2018, which was decided by the European Committee of Social Rights (ECSR) on January 26, 2021. Significantly, systematic detention and lack of adequate facilities for children's enjoyment of special care and protection were deemed to be among the most blatant infringements of the rights of migrant children under the European Social Charter, which included their rights to shelter (Article 31.2), to social and economic protection (Article 17.1), to protection against social and moral danger (Article 7.10), to adequate housing (Article 31.1), to protection of health (Article 11.1 and 11.3), and to education (Article 17.2) (ECSR 2021). The ECSR's immediate measures against Greece (to provide age-appropriate shelter, water, food, health care and education, to remove unaccompanied children from detention and from RICs at the borders, to place them in suitable accommodation for their age, and to appoint effective guardians) were not fully implemented. Nonetheless, this decision brought to light that even under the most precarious circumstances (inadequate reception system), children's rights cannot be suspended and immediate access to basic social entitlements must be ensured.

8. Malta

Key stakeholders in the country include, *inter alia*, aditus foundation and Jesuit Refugee Service Malta (JRS). The Global Campus of Human Rights supported the initiation of CRSL litigation by lawyers from aditus in cooperation with JRS respectively before national courts and the ECtHR.[4]

In particular, *A.F. v. Ministry for Home Affairs, Security, Reforms and Equality, the Permanent Secretary, Ministry for Home Affairs, Security, Reforms and Equality, Director of the Detention Services, The Director of the Agency for the Welfare of Asylum Seekers, the Superintendent for Public Health and the State's Advocate* was filed before the First Hall Civil Court (Constitutional Jurisdiction) on July 12, 2022. It originates from the situation of six migrants (from Sierra Leone, Liberia, Ivory Coast) who, after being rescued and taken to Malta in November 2021, were confirmed to be minors during the course of a protracted age assessment procedure. They were subsequently released after the *habeas corpus* application filed by aditus in January 2022, although such application was rejected by the national Court[5] (that confirmed the applicants' detention) and it is not clear which entity ordered their release (Falzon 2022). In May 2022, aditus filed an application before the Civil Court (Voluntary Jurisdiction) requesting authorisation to proceed with the children's human rights application in the absence of the legal guardian's consent. This court issued a positive decision in June 2022. In the meantime, some of the children left the country. Nonetheless, a human rights application was filed for the remaining child (an asylum-seeking child from Liberia) before the aforementioned First Hall Civil Court in July 2022. This was based on violations of Articles 3 and 5 ECHR, Articles 1, 4, 6 and 24 CFR, and Articles 32, 34 and 36 of the Constitution of Malta. Relevant CRC provisions are Articles 3, 8, 16, 20, 22, 24, 27, 30, 31, and 37. The applicant was confirmed a child by the national authorities and was provided with a legal guardian. In November 2022, aditus prepared and filed an application to the Court, requesting proceedings to be conducted in the English language. The litigation is still pending. Depending on the outcome of the judgement, an appeal before Malta's Constitutional Court will be possible for both the applicant and Malta.-

Notably, the children are the applicants before these national procedures. They have been actively involved at all stages of the lawyers' work through participating in all decisions taken on the basis of regular

4 In the context of the ACRiSL project, a cooperation contract (in force between February 2022 and March 2023) was signed between the Global Campus of Human Rights and a lawyer from aditus foundation (Neil Falzon) in order to support and monitor progress in two CRSL cases.

5 The *habeas corpus* application was rejected by the national court since it had been filed against the Commissioner of Police, whilst the Commissioner was not the entity detaining the children.

information provision and updates. With these clients the lawyers needed to undertake a more in-depth and sensitive empowerment process due to their placement under a legal guardianship regime that was (and remains) opposed to their engagement in legal actions against the state.

From a CRSL perspective, three considerations emphasised by the litigators are noteworthy. First, this case aims to advance children's rights beyond the individual child concerned. The process is intended to bring judicial and political attention to Malta's excessive and irregular reliance on administrative detention of children as a tool of migration management. It also underlines the institutional abuse presented by the cumulative effect of various inadequate procedures (vulnerability identification, age assessment, detention decision-making) and the terrible living conditions in which children have been kept in the state detention centres. This is the first case where the Maltese courts are called upon to look at Malta's detention regime and its treatment of unaccompanied children. The lawyers are ensuring that the First Hall Civil Court is given information on the reception system from the moment of disembarkation until eventual release of the child and appointment of a guardian, in order for the Court to appreciate the systemic deficiencies, the administrative negligence and the sheer disregard for legal norms. Second, the case aims to increase legal protection of children's rights. The application highlights the early stages of Malta's detention regime whereby asylum-seekers, including children, are detained on grounds not in conformity with international and regional standards. It seeks to reinforce the principle that detention of minors is never in the best interests of the child, including where medical considerations are being assessed. Third, the application also emphasises the lawyers' concerns in relation to Malta's regime of legal guardianship, where the guardian has clearly acted against the best interests of the minor under their charge.

At the regional level, aditus filed an application A.D. v. Malta 12427/22, to the ECtHR in March 2022. The applicant is a young Ivorian national who attempted to reach Europe through Libya by boat with other asylum seekers in early November 2021. They were rescued by the Armed Forces of Malta after spending 10 days stranded at sea and disembarked in Malta on November 24, 2021, while some people reportedly died (Arena 2021). Despite suffering from ill-health and exhaustion, all the male survivors were directly detained. Upon arrival, the applicant declared that he was a minor. He was detained in inhumane living conditions and under different legal regimes Malta relies on to detain asylum-seekers (COVID-19 quarantine, public health, and reception regulations). He was released in July 2022. On May 24, 2022, the ECtHR communicated the case to the government, with questions for Malta to comment on regarding detention conditions and review mechanisms. The facts at issue span from November 24, 2021, until July 7, 2022, and the ECHR provisions allegedly violated includes

Articles 3, 5(1), 5(4), 13 and 14. Relevant CRC provisions are Articles 3, 8, 16, 20, 22, 24, 27, 30, 31, and 37. In August 2022, aditus received the government's observations on the application, and in October 2022 submitted to the ECtHR their own final observations and request for just satisfaction. The submissions also included *affidavits* made by the applicant and by two other persons detained at the same time. Notably, the applicant child has been actively involved at all stages of the lawyers' work through participating in all decisions taken on the basis of regular information provision and updates. With his consent, his story also featured in a blogpost on the lawyers' work in relation to his detention (Falzon 2022).

In this context, on October 17, 2022, AIRE Centre, Manfred Nowak and the author from the Global Campus of Human Rights, ICJ and ECRE jointly submitted a TPI to the ECtHR (EDAL 2022). They underlined the need for detention under Article 5(1) to comply with the requirements of legality, not be arbitrary and be in accordance with a provision prescribed by law, with consideration of less invasive alternatives to detention as part of an individualised assessment, which takes into account all circumstances of the case and applicant concerned. Moreover, they stressed the need for the child's best interests to be an overriding consideration and thus be assessed in all cases relating to children, including when deprivation of liberty is at stake. Additionally, the presumption of minority should be applied where there is doubt as to the age of the person concerned and corresponding rights. They emphasised the Court's previous findings that children's vulnerability can mean that their deprivation of liberty has been violated in situations where it may not have been for adults. In this context, they highlighted that the CRC-Committee's General Comments (particularly n. 6 paras 61-63; n. 10 para 79; n. 14 paras 75-76; n. 23 para 10) are authoritative and interpretative tools which should also be considered under Article 53 ECHR. Furthermore, they highlighted the need for an effective judicial review of detention under Article 5(4), clearly prescribed by law and accessible in practice, as an essential safeguard against arbitrary detention, including in the context of immigration control. Access to legal aid and advice is important in ensuring the accessibility and effectiveness of judicial review, and the absence of provision for legal assistance in law or in practice should be taken into account in assessing both the arbitrariness of detention and the adequacy of judicial review.

On November 25, 2022, aditus received Malta's final submissions which provided useful information in relation to its asylum regime. All parties are awaiting the ECtHR's decision. In the meantime, advocacy efforts by the lawyers, including public dissemination and bilateral meetings with government stakeholders, have been engaged in so as to raise the profile of detained children. From a CRSL perspective, three considerations emphasised by the litigators are noteworthy. First, similarly to the previous case, *A.D. v. Malta* aims to advance children's rights

beyond the rights of the individual child concerned, bringing judicial and political attention to Malta's reliance on administrative detention as a tool of migration management. It also underlines the aforementioned institutional abuse presented by the cumulative effect of inadequate procedures and the terrible living conditions in the state detention centres. Second, the application aims to strengthen legal protection of children's rights, highlighting Malta's detention regime whereby asylum-seekers, including children, are confined on grounds not in line with international and regional standards. It seeks to reinforce the principle that detention of minors is never in the best interests of the child, including where medical considerations are being assessed. Additionally, the case has the potential of radically changing the remedies that Malta provides for detained persons, including children. The formulation of the ECtHR's questions to Malta shows an interest by the Court in the nature of the Immigration Appeals Board, and whether it conforms to the Convention's requirements for an effective remedy. The lawyers' submissions had underlined the lack of impartiality of this body, highlighting the politicisation of appointments of its members. Third, the application seeks redress through a regional body for a violation of children's rights at the domestic level.

Importantly, the two cases are highlighted in all advocacy meetings aditus and JRS attend on the issues of detention, protection of children, and general migration issues. On May 31, 2022, they also publicly launched a report that presents the voices of children talking about their experiences of Malta's asylum regime; the qualitative study explores various stages of a child's life in Malta and identifies key concerns (Carabott 2022; Agius 2022). With this report they intend to focus on a key advocacy message echoing Malta's own national policy on children: migrant children are firstly children. These lawyers' advocacy attempts to shift narratives from a migration-centric one –inevitably leading to discussions on age assessment, detention, status, procedures, etc.– to a child-centre one, with a more obvious focus on care, security, attention, guidance and support.

9. Concluding remarks for a children's rights preparedness

The litigation efforts explored in previous sections seem to indicate that there can be valuable opportunities to strategically litigate children's rights in relation to migration-related detention before national and regional/international bodies. Nonetheless, it is important to emphasise the need for a children's rights preparedness in addressing the challenges of such a damaging practice. This entails to focus on litigation strategies that are consistent with children's rights and aim to advance children's enjoyment of their rights, in order to contribute effectively to tackle such practice and bring changes against it.

In the above selected cases, the actors driving and supporting CRSL work in this area are law firms, child rights organisations and other civil society organisations working with lawyers on a regular basis. The applicants include the children concerned. The respondents are state actors. The litigation undertaken by these organisations has proved to contribute to challenging such rights-violating practice and opening up to further opportunities, especially when leading to landmark decisions that provide important considerations to be used in further strategic litigation and advocacy. Importantly, as these CRSL activities have been undertaken before national and regional courts and international monitoring bodies, the related long-term impact is likely to be wide-ranging. In the European context, the considered litigators do not generally expect the cases to be solved domestically and rather seem to rely on possible positive outcomes in the EU, CoE or UN fora. All the countries involved in the selected cases, however, are not yet parties to the Optional Protocol to the CRC on a communications procedure.

It must be emphasised that the author's qualitative research conducted for ACRiSL and from which the above selected cases are drawn show a certain diversity linked to the existence of regional human rights monitoring mechanisms, favouring the number of Global North CRSL experiences (in comparison to Global South CRSL experiences) in relation to child migration-related detention. The fact that CRSL is under-practiced in this thematic area in most of the Asian countries concerned does not help the lawyers concerned to work on new cases. Such difficulty seems partly due to practitioners' impossibility to access immigration detention centres in their countries and the consequent unfeasibility to initiate new cases, or to the large xenophobic sentiment existing in their countries, or to the conservative approach of national courts who are not very fond of the possibility of TPI from abroad on how to take up and implement certain policies. Some progressive results have been obtained through strategic advocacy and inter-ministerial agreements. Nonetheless, the same research also shows that all of the European and Asian states on the radar have experienced similar structural challenges impeding the rights of children in migration-related detention (especially in terms of risk of arbitrary detention, lack of protection, and barriers to access basic services)[6].

These considerations make clear the value of creating opportunities for discussion and exchange for legal and advocacy practitioners from different countries and even regions in terms of inspiring positive change in litigators' approaches to CRSL and learning from each other about how

6 For an overview of the challenges that diverse types of cross-border migration pose for children and the support systems provided to them in countries of origin and destination in East, South, and Southeast Asia, see Maruja M.B. Asis and Alan Feranil. 2020. "Not for Adults Only: Toward a Child Lens in Migration Policies in Asia" in 8(1) *Journal on Migration and Human Security*, 68-82. Link

to use innovative ways to tackle similar issues in their respective countries. Thus, besides mapping and highlighting existing pertinent cases, it remains important to build-up and consolidate a non-formal network of practitioners who are either experienced in or willing to engage in CRSL on migration-related detention, by facilitating the sharing of expertise about it with manifold interactions focusing on specific challenges to be solved and/or skills to be acquired for new CRSL efforts that could effectively change the lives of children on the ground.

In this regard, a successful example about positive influence on lawyers' approaches towards CRSL is represented by the workshop organised in May 2021 by the Global Campus of Human Rights for the ACRiSL project, which explored the most appropriate forms of CRSL dealing with migration-related detention. Several participants emphasised how the participation therein had already enriched their knowledge and inspired them to use innovative tactics in their work. By creating a space for lawyers from different continents experiencing similar issues and by inviting international experts to the discussion, the workshop was appreciated by the participants who reacted positively to learning from each other and from experts about original ways to face similar issues in their respective countries. Subsequent interactions with these lawyers have offered further opportunities to reflect on CRSL specific objectives in order to develop their attitudes towards ongoing challenges in the area of migration-related detention and to identify new cases.

The author's activities carried out to support specific CRSL cases in cooperation with selected lawyers have provided opportunities to understand some concrete challenges that practitioners can face in preparing and developing the cases concerned, especially given the often rapidly changing litigation context. Some can stem from factors independent from the efforts undertaken, such as in the case of the ECtHR's refusal of the request to submit a TPI in *M.H. v. Hungary*. Another example regards the pending Greek cases 1 and 5 which have been delayed due to the preliminary cases before other courts which would need to be resolved before there can be further progress. Other challenges can stem from dynamics that are largely outside the control of lawyers, such as in cases of unaccompanied minors who left Malta after having been considered as clients for the purposes of CRSL efforts. Further challenges can end up being additional aspects to tackle in the litigation process, as in one case litigated by Maltese lawyers who unsuccessfully engaged with the minors' legal guardian for legal authorisation to file their human rights application before the national civil court.

Strong arguments have been recently articulated in favour of child rights-consistent practice based on the CRC and the work of the CRC-Committee (Nolan and Skelton 2022, 9-13), also emphasising the real risk

of raising issues of legitimacy, internal coherence and overall contribution to children's rights achievements. They have well identified the most appropriate child rights standards that CRSL practitioners should have in mind to assess such consistency at all stages of litigation. Key attention is given to Articles 12, 13, 17 and 5 CRC, but also Articles 2, 3(1), 6, 16, 19, 36 and 39 (Nolan, Skelton and Ozah 2022, 36-39; Nolan and Skelton 2022a, 13-19). In this regard, they have also articulated key principles that should be borne in mind by CRSL actors when carrying out work around the scoping, planning and design of CRSL (Nolan, Skelton and Ozah 2022b). In this context, the selected litigation efforts addressed in the present article clearly go in the desirable direction but even show a space for more preparedness in terms of making multiple considerations of children's rights that can inform and develop further strategic litigation practice against migration-related detention. In this vein, increasing children's rights literacy across relevant stakeholders in turn can contribute to being prepared and bring much greater results.

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