

# The Prevention of Arbitrary Displacement: A Grounded Theory Approach

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## ABSTRACT

In 2020 alone, 40.5 million people were newly displaced by conflict and disaster, many of them being arbitrarily displaced. In reality this number is even higher as it does not include displacement by large-development projects or displacement of those that were already displaced. Preventing arbitrary displacement remains difficult as there is no coherent understanding of, or cohesion on, what prevention really means in the context of arbitrary displacement. This article, based upon the thesis of the same author, uses Van der Have's four phases of prevention as a theoretical framework and utilises grounded theory method, conducting desk research complemented by in-depth interviews. This research represents the first attempt to develop a comprehensive synthesis of the practical and theoretical meaning of the prevention of arbitrary displacement for governments by looking at what specific obligations governments have and what measures they can use to prevent arbitrary displacement. The results showed that, although arbitrary displacement receives little attention, it is the only form of forced displacement that is considered a gross human rights violation. Furthermore, while a prevention-centred approach to arbitrary displacement might not be popular amongst governments as it could lead to criticism on their due diligence, it is essential if we want to hold governments accountable for human rights violations. This research proved that many measures can be taken to exercise due diligence and ultimately be prepared for any risk that might lead to arbitrary displacement. Additionally, this study developed a model that can be used by other researchers as a starting point for a preventative-approach to arbitrary displacement. Finally, future research could build upon this study to determine the indicators of foreseeability and conduct case studies on what exercising due diligence entails for specific countries.

**KEYWORDS:** arbitrary displacement, prevention, internal displacement, internally displaced persons, human rights, grounded theory

## 1. INTRODUCTION

A former OHCHR human rights officer in Chihuahua State, Mexico said, “people were at their homes, and armed men would come and say you have two hours to pack up your stuff and leave and they would just go away with what they could carry” (interviewee E). These people were arbitrarily displaced so that cartels could produce drugs on the lands of those displaced.

Internal displacement (ID) has affected millions of people. According to the Internal Displacement Monitoring Centre (IDMC, 2021), in 2020 alone 40.5 million people were newly displaced by conflict and disaster, not including displacement by large-development projects or further displacement of those that were already displaced.

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ID is considered a severe threat to the livelihoods of those displaced (Deng, 1998). IDPs often cope with traumatic experiences and live in dire situations (Deng, 1998). Moreover, ID can be caused by various phenomenon ranging from ethnic cleansing to large development projects (Kälin, 2014), meaning that ID has not only a set of interrelated effects but is also complex in its origins.

This research focusses on preventing a specific violation related to ID, i.e., arbitrary displacement (AD). Preventing arbitrary displacement (AD) remains difficult as there is no coherent understanding of or cohesion on what prevention really means in the context of AD (Cecilia Jimenez-Damary, personal communication, November 12, 2020). Literature is scattered across many international organisations, research institutions, and practitioners. Mostly, prevention is referred to in the broader context of displacement, and only little attention is paid to the prevention of AD (GPC, 2020a; IDMC, 2015; Kälin, 2014). Moreover, when AD is mentioned, it receives little attention meaning that the theoretical and practical definition of the prevention of AD remains vague (e.g., see BBPID, 2005). This hinders the international human rights community from developing a coordinated approach to prevent AD.

What further hinders progress on preventing AD is the notion that it is predominantly an “internal affair” (Kälin, 2006, p. 6). Thus, there is a consensus among the international human rights community that the best course of action is the enactment of national and regional laws and policies, rather than a global declaration (GPC, 2010; Kälin, 2006; UNGA, 2015).

Henceforth, the GPC developed an up-to-date account of the national laws and policies regarding ID.<sup>2</sup> The overview draws a telling picture of the enormous work that still must be done to adequately embed the protection of IDPs in national laws and policies. Although some important steps have been taken, we are still far from what the UNGPID set out to achieve.

This study is the first attempt to develop a comprehensive synthesis of the practical and theoretical meaning of the prevention of AD for governments by looking at what specific obligations governments have and what measures they can use to prevent AD. Ultimately, this research contributes to an improved strategy to prevent AD. The article starts with the operationalisation of the prevention of AD.

## 2. LITERATURE REVIEW

### 2.1. Arbitrary displacement

The term arbitrary displacement is closely related to *forced displacement*. Forced displacement is often used as a synonym to AD, while it is actually its overarching concept, including arbitrary and non-arbitrary forms of displacement. As stated by Andreu-Guzmán, “for forced displacement to be considered a crime at all, it has to be arbitrary displacement” (2012, p. 2). Meaning that non-arbitrary forms of forced displacement are permitted, and arbitrary forms are prohibited under international human rights law (IHRL) and international humanitarian law (IHL).

According to the UNGPID, Principle 6, “every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence” (Deng, 1998, p. 6). AD is then operationalised as can be seen in Figure 1.

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<sup>2</sup> See the following link for an overview: <https://www.globalprotectioncluster.org/global-database-on-idp-laws-and-policies/>

Lastly, Principle 6 closes off by stating that the duration of the displacement should never last longer than is necessary (Deng, 1998). The Kampala Convention (KC) (African Union, 2009), in Article 4(4), is more extensive in some regards by explicitly stating that displacement as a method of warfare, caused by generalised violence, and displacement as a result of harmful practises are forms of AD and by including “[...] any act, event, factor, or phenomenon of comparable gravity” as a form of AD (African Union, 2009, p. 13). However, the convention does not explicitly state that the displacement should not take longer than necessary. Furthermore, the Rome Statute recognises AD as a gross human rights violation (GHRV) under Article 7(1d) (Kuwali, 2014; UNGA, 1998).

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

Figure 1: Arbitrary displacement.

Source: Deng (1998, p. 6).

Although the KC and the UNGPID have a lot in common, they differ on one crucial aspect. Article 2(b) and 15(2) of the KC states that the convention “establish[es] a legal framework” (African Union, 2009, p. 8). The UNGPID, however, is not legally binding, making it harder to hold parties accountable for their actions. Moreover, the UNGPID can be considered customary law as it is based on various legal documents, e.g., the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (see OHCHR, n.d.).

Next to explaining what AD is, it is useful to indicate what it is not (Mair, 2008). As can be distilled from the operationalisation of AD, some instances allow people to be displaced. These are situations in zones of armed conflict where “[...] the security of the civilians involved or imperative military reasons” necessitate displacement; situations where displacement due to development projects is “[...] justified by compelling and overriding public interests”, and; in the event of a disaster where “[...] the safety and health of those affected requires their evacuation” (Deng, 1998, p. 6).

As the close observer has noticed, protection against AD is framed as a *right*. Framing something as a right strengthens the demand for rights-based solutions; it appeals to governments’ obligation to try to ensure the enjoyment of that right; and it affirms that protection is available to every individual under its jurisdiction (GPC, 2010).

### Beyond principle six

The right not to be arbitrarily displaced entails two standards, i.e., (a) some forms of displacement are allowed and some not, explained above, and (b) displacement must adhere to ‘due process’ requirements which can be deduced from the UNGPID and KC (Adeola, 2016). According to Adeola (2016), due process demands six elements listed in Figure 2.

From Adeola (2016) it can be deduced that all due process requirements should be ensured prior to the displacement, while being transferred, and on arrival at the resettlement location. Moreover, the risks the government can *foresee* should be avoided or mitigated, as long as it does not put a disproportionate strain on governmental resources and while taking into account the difficulty of policing a modern state (see *Osman v. United Kingdom*, 1998). Notwithstanding, a due process requirement

Figure 2: Due process requirements.

- (1) Feasible alternatives must be considered;
- (2) Strategies for minimising displacements must be explored;
- (3) Adequate resettlement must be implemented;
- (4) Displaced persons must be sufficiently informed;
- (5) Displacement must not be carried out in violation of human rights law, and;
- (6) Adequate safeguards must exist.

Source: Adeola (2016, p. 97).

is always a violation of human rights. However, a violation is only an AD when it adheres to the scope described above. Furthermore, taking note that people can be displaced several times, AD or legitimate displacement can be followed by (further) AD.

## 2.2. Prevention

The concept of prevention will be explained in relation to the concept of protection that is often used in tandem with prevention. The difference between protection and prevention can be explained as the difference in being reactive and pro-active, respectively. Prevention is more comprehensive as it seeks to stop something from happening rather than merely protecting oneself against what is bound to happen (Lexico, n.d., *prevention*). Principle five of the UNGPID refers specifically to the obligation of nations and non-governmental actors to “[...] prevent and avoid conditions that might lead to displacement of persons” (Deng, 1998, p. 6). Furthermore, the GPC (2010) draws attention to prevention as an active endeavour. Kriebaum (1997) describes prevention more simply as “[...] basically the identification and the addressing of the underlying causes leading to violations of human rights” (p. 157). Additionally, The IDMC divides between preventing drivers, i.e., underlying structural factors, and triggers which are proximate sudden events that leave people with no choice but to migrate (IDMC, 2015).

The conceptualisation of prevention has not been static and has also received its fair share of critique. The term *prevention* is often used in treaties concerning a specific violation of a particular human right but is not operationalised (e.g., UNGA, 2016). Moreover, Gattini (2014) says that “in truth, there is uncertainty and disagreement on almost every aspect of an obligation to prevent” (p. 13).

## 2.3. The prevention of arbitrary displacement

Zapater (2010) explains that the use of the term *prevention of arbitrary displacement* is more useful to practitioners than merely the *prevention of internal displacement*. He elaborates this argument by explaining that displacement can also constitute a protective strategy (Barrs, 2012a; Barrs, 2012b; Sánchez-Garzoli, 2011; South & Jolliffe, 2015; South, Perhult & Carstensen, 2010; Zapater, 2010). Rather than preventing displacement, displacement can be the best course of action to protect people against other threats (e.g., armed conflict or floods), because displacement is often not the only threat to the livelihood of communities.

The term *prevention of arbitrary displacement* is more useful as it allows for displacement as a protective measure and entails preventative measures specific to AD (Zapater, 2010). Moreover, Zapater (2010) stresses the fact that the term *prevention* has not only survived but is mentioned in almost all law and legislation concerning ID. This confirms that the term has its implications for the assistance to IDPs.

Van der Have (2018), in her research on the prevention of GHRV, recognises that many questions concerning the obligation to prevent remain open, which also are relevant in the context of AD. She states the following questions:

[...] what types of obligations to prevent are there? When are such obligations triggered? What do they require in terms of concrete measures? [...] what trends are relevant for the future development of obligations to prevent GHRV? Without additional clarity on these and related questions, states can all too easily pass the buck and remain bystanders to GHRV. (Van der have, 2018, p. 3)

### 3. THEORETICAL FRAMEWORK

This research takes a holistic approach, examining prevention by dividing it into temporal phases (See Figure 3). This division helped gain insights into the intricacies of the obligation to prevent and has been promoted and used in previous research (see ICISS, 2001; Cuyckens & De Man, 2011; UNHRC, 2016).

According to Van der Have (2018), advantages of using temporal phases are: (a) it paints a clear picture of the responsibility to prevent as (the risk of) AD emerges; (b) it acknowledges that legal foundations differ per phase; and (c) it recognises the prominent role of knowledge for the sense of obligation to prevent AD. However, besides these advantages, the temporal phases do not constitute a legal basis on which governments act because, for instance, legal obligations are not confined to one phase but cut across phases.

- Figure 3: Temporal phases.
- (i) **Long-term prevention: this phase concerns the period where there is no knowledge of a potential violation.** Obligations in this phase are triggered by a treaty and/or other international legislation. These measures constitute as deterrence.
  - (ii) **Short-term prevention: this phase concerns the period where there is a certain degree of knowledge of a risk but the violation has not yet occurred.** Obligations in this phase are triggered by (desirable) awareness that a violation could occur. The obligation concerns a specific violation, i.e., arbitrary displacement.
  - (iii) **Preventing continuation: this phase concerns the period where the violation has started to occur as long as it continues to occur.** Measures concern halting and mitigating the effects of an ongoing violation.
  - (iv) **Preventing recurrence: this phase concerns the period after the violation has ended.** This phase concerns remedial measures and measures that prevent the violation from reoccurring.

Source: Van der Have (2018, pp. 16-18).

Although Van der Have's temporal phases of prevention were developed for the study of GHRVs other than AD, these phases were used as a framework for this study for their clarity, proven utility (see Van der Have, 2018), and breadth.

## 4. METHODOLOGY

### 4.1. Research design

While taking a critical philosophical perspective (Orlikowski & Baroudi, 1991; Urquhart, 2013a) this research utilises grounded theory method (GTM) (see Glaser & Strauss, 1967), i.e., a systematic inductive research method which aims to construct theory that is "grounded in the data" (Charmaz, 2006; Charmaz & Henwood, 2007; Urquhart, 2013b, p. 4).

The aim of GTM aligns well with the research purpose of developing a comprehensive synthesis of existing knowledge on the prevention of AD as GTM entails the transformation of the loose and scattered knowledge on the prevention of AD into a connected whole.

### 4.2. Data collection and analysis

In addition to extensive desk research, this research makes use of semi-structured in-depth interviews (Ritchie, Lewis, Nichols, & Ormston, 2014). The aim of the interviews was to collect additional data to either confirm or contradict the findings from the desk research. Moreover, they helped structure the findings and pointed in directions that needed attention.

In accordance with GTM, theoretical sampling was used (Bryant, et al., 2007; Glaser & Strauss, 1967), enabling the researcher "to build up justification for concepts in the theory by finding more instances of a particular concept" (Urquhart, 2013b, pp. 8-9) and allows the researcher "to follow an emerging storyline suggested by the data" (p. 9).

Figure 4: Variety of data collected.

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

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

\*\*Over 270 sources were consulted.

As part of the desk research, this study predominately synthesised English academic publications, reports, international treaties, local laws, and policies, to build a *grounded* theory, analysing ID in over 30 countries (see Figure 4).<sup>3</sup> The literature was retrieved through academic search engines, specific academic journals (e.g., Forced Migration Review), the Global Database on IDP Law and Policy, and other databases such as Refworld. Additionally, 5 experts were interviewed through Microsoft Teams. These experts were selected based on their (past) work on AD and were interviewed once.<sup>4</sup> The effectiveness of the interview template was tested in a mock interview. Furthermore, after transcribing the interviews, coding was done through a combination of open, selective, and theoretical coding (Glaser, 1998), using MAXQDA software.

The quality of the literature was assessed according to their *signal* and *noise*, i.e., the value of their information and, if applicable, their methodological rigour accordingly (see Edwards, Elwyn, Hood, & Rollnick, 2000). Further, inclusion thresholds were not employed as more thresholds could lead to more bias rather than less (Conn & Rantz, 2003; Cooper, 1998; Glass, 2000; Higgins & Green, 2019).

To guarantee the quality and transparency of this study, memos were written (Glaser, 1978) and peer reviews were conducted throughout the research process (Creswell & Miller, 2000; Johnson, 1997). The aim of these reviews was not to standardise judgement but rather to reach a consensus. Finally, the results were presented and discussed during an online meeting with 15 stakeholders from various organisations and backgrounds (e.g., UNHCR, UNDP, Academia). Feedback was provided and implemented accordingly.

## 5. PHASES OF PREVENTION

Before we go into the practical measures that governments can take it is important to stress some essential concepts. The first being the governance-approach. Although it is primarily responsible for preventing AD, the government does not work in isolation on the issue. On the contrary, governments work in collaboration with international, national, and local civil society, host communities, IDPs, and other governments.

Especially in cases of AD perpetrated by government or government-affiliated actors, it is essential to have actors other than the government itself to fight for the right not to be arbitrarily displaced. Moreover, even if the government is willing to assist IDPs, it most often lacks the knowledge and capacity to do so adequately on its own. Similarly, the interviews suggested that the term AD is also new to many NGO personnel working on ID or related topics.

Therefore, it is important that the prevention of AD takes a governance-approach, meaning “working with stakeholders including non-traditional stakeholders” (interviewee C). According to the Special

<sup>3</sup> Although more countries were examined, this article only includes the most vivid examples from 20 countries listed in Figure 4. Moreover, examples were selected rather than countries, meaning that theoretical sampling was used not to select countries but that a post-analysis found that examples from 30 countries had been examined of which 20 are used as an example in this article. However, this does not imply that AD is limited to these countries.

<sup>4</sup> An overview of the background of the interviewees is given in the appendix.

Rapporteur on the Human Rights of IDPs “[...] at the end of the day, this is where there has to be an all-society approach” (Interview A). An example of such a non-traditional actor that is addressing ID is Public Services International (PSI), a worker’s union that operates, among others, in Nigeria. As a union for public service workers, it is uniquely positioned, representing both government workers and NGO workers that provide public services:

we have been identified as a political and major stakeholder in terms of issues of IDPs by even the federal government agencies that work here, and our opinions are well respected. I could recall last year even during the COVID pandemic [...] we made an outreach to an IDP camp, the government gave us the permission to do so and equally followed us on the mission. (interviewee D)

The other concepts in need of attention are foreseeability and due diligence. Together, these concepts are central to any preventative effort. Whether a government should have acted comes down to *foreseeability*. Court cases concerning a government’s negligence often investigate whether the government *ought* to have foreseen an event (see e.g., *Budayeva & Others v. Russia*, 2008). In the case of South Sudan, although UN officials said they did not foresee the civil war, in the words of a UN advisor “the South Sudanese themselves say that the reason the UN personnel did not see it is ‘because they do not speak to us’. But I had spoken to those persons who were already displaced in Khartoum and other places, and they were clear that war was coming to South Sudan” (interviewee B). This indicates a lack of *due diligence* as the risk could have been identified. The practical reality is that “states are actually not prepared for AD or even displacement and therefore do not have measures in place to deal with it. In most cases, they think that it will be over in a matter of months” (interviewee B). Thus, even if governments foresee displacement, they often do not act with due diligence to prevent AD. However, as the UN Special Rapporteur on the Human Rights of IDPs stated, displacement “is in many cases inevitable, but what is not inevitable is not being prepared” (interviewee A; *Velásquez Rodríguez v. Honduras*, 1988).

This research will use the temporal phases, described earlier, as an organising device to explore what exercising due diligence entails in the context of preventing AD. Henceforth, each phase will discuss what governments are obligated to do under international, regional, and national law and policy; and the types of measures that they can enact, i.e., “course of action taken to achieve” the prevention of AD (Lexico, n.d., *measure*).

### 5.1. Context measures

In the prevention of AD there are always the usual suspects. For example, in cases of conflict, prevention includes peacebuilding, promoting reconciliation, building trust, and security. In cases of disaster, prevention includes disaster risk reduction mechanisms. In all cases, prevention includes, for example, the provision of public services, economic opportunities. According to a Public Services International employee in Nigeria, “education is lacking, there is no access to employment, there is no access to quality public services, people are impoverished, and all these can lead to violence” (interviewee C). However, as Zapater points out in the context of armed conflict, most of these *context measures* simply are:

an integral part of policies and programmes generally designed to prevent, mitigate, and redress the effects of armed conflict on civilian populations, where design and prioritization cannot rest solely on their potential [...] to prevent arbitrary displacement, but more generally on the gravity of the abuses addressed and the needs generated by them. (Zapater, 2010, p. 18)

Thus, rather than going into detail on these context measures, we will now discuss more practical measures that are particularly relevant in the case of AD according to the four phases of Van der Have (2018). We will come back to the context measures discussing the individual phases.

## 5.2. Long-term prevention

Obligations in this phase generate a “deterrence effect” of AD (van der Have, 2018, p. 40), mainly by addressing its root causes. As long-term prevention concerns the phase where there is no knowledge of a potential risk of AD, obligations are triggered by partaking in international customary law and treaties, and specific national legislation and policy.

The main risks of any human rights violation are the low regard for human rights, rule of law, and low governance capacity (van der Have, 2018). Logically, the promotion of the rule of law and respect for human rights are essential obligations of any AD preventative approach. More specifically, obligations concern putting robust legal and administrative structures in place, ensuring that education and training on the topic of displacement are offered to relevant actors, and that the proper monitoring structures and contingency plans are in place (BBPID, 2005). Lastly, governments are obliged to allocate resources to meet the above-mentioned obligations. Each of these measures will be discussed below.

### National legal frameworks

Governments first need to establish a national legal prohibition of AD and the associated obligations, among them the prevention of AD (BBPID, 2005). This affirms the commitment of governments to address issues of ID towards themselves and to the international community. Governments have done so in different ways. Either by laws that address specific phases of displacement, comprehensive national laws on ID, or through a review of existing laws to assess to what extent existing laws cover the rights presented in the UNGPID or, most recently, the KC (BBPID, 2005).

According to the GPC (May, 2020) there are currently fourteen countries with laws specifically on ID, although not all laws explicitly refer to the concept of prevention.<sup>5</sup> For example, in 2012 Kenya passed a law that states in section 6 that “the government shall protect every human being against arbitrary displacement” (Republic of Kenya, 2013, p. 2207) and under section 23 that “no person shall cause, aid or abet arbitrary displacement through acts that amount to genocide, a crime against humanity or a war crime in accordance with international law and shall be punished in accordance with the international Crimes Act, 2008” (pp. 2226-2227). Although the law does not explicitly mention the prevention of AD, this is implicit in the protection against AD and the fact that aiding and abetting can be seen as a failure to take preventative measures to avoid AD (GPC, 2010).

Most recently, El Salvador passed a law that addresses prevention and the criminalisation of AD (Republic of El Salvador, 2020). However, it does not cover displacement caused by disaster or development projects which cripples a holistic approach to the prevention of AD.

In South Sudan, where an ID law is currently awaiting ratification, additional causes of AD were added to fit the local context, i.e., cattle raiding (interviewee B). Such additions are welcomed as they prevent the local context from being neglected.

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

## **Policy**

Next to a national legal framework, complementary policies must be in place that further elaborate how the prevention of AD will be addressed. For members of the KC, this is a legal obligation under Article 2. The policies give life to the legal framework by stipulating what measures can and will be taken to adhere to legislation on AD, it specifies who is responsible, and what roles actors have in preventing AD and towards other actors (BBPID, 2005). It is important that such policies take a whole-of-government approach as prevention involves a wide variety of government actors (interviewee C; interviewee D).

Any comprehensive policy should address all causes of displacement as well as all groups of people. A further essential element of any policy is the involvement of IDPs themselves, their host communities, and those at risk of displacement in drafting, implementing, and evaluating.

Policies will pinpoint a focal point which constitutes the national political and institutional authority with a mandate to address ID specific issues. This authority can either be a newly designated governmental body that focusses specifically on ID, a governmental committee comprised of officials from relevant bodies, or the mandate is given to an existing governmental body (BBPID, 2005). Consequently, this body should be given the resources to facilitate, develop, coordinate, and ensure an effective national response to the issues of AD (BBPID, 2005).

## **Administrative structures**

Administrative structures are the management, operation, and leadership of respective bodies that together form the national system addressing the prevention of AD, including judicial, legislative, and executive bodies.

### *Examples*

In response to an assessment of the national ID approach (APRM, 2009), Nigeria developed a national policy on IDPs (Federal Republic of Nigeria, 2012), however, the policy still needs to pass the National Assembly. Nevertheless, the draft policy gives an insight into what administrative structures can be established. The policy prompts the president to designate a newly established IDP Inter-Agency Coordinating Committee (IACC) as the focal point for coordinating efforts concerning ID. The IACC includes heads of 26 ministries, departments, and agencies defined under section 5.4 of the national policy. These institutions “[...] shall integrate the responsibilities for protection and assistance of internally displaced persons into their core mandates and shall perform such roles as required by the sector arrangements” (Federal Republic of Nigeria, 2012, p. 56). The IACC will meet “from time to time” (Federal Republic of Nigeria, 2012, p. 50) to oversee assistance and protection of IDPs related operations. According to the national policy on IDPs all relevant actors are categorised in 10 sectors. Each sector has one lead agency that coordinates efforts within their specific sector. Lead agencies “[...] have the primary responsibility of ensuring a more coherent and effective response by mobilizing groups of agencies, organizations and CSOs [Civil Society Organisations] to respond in a strategic manner across all key sectors or areas of activity” (Federal Republic of Nigeria, 2012, p. 52) under section 5.3.3. This section continues by explaining the core responsibilities of sector leads.

A later mission of the UN Special Rapporteur on the Human Rights of IDPs to Nigeria in 2017 concluded that government institutions are responsive, however limited by their capacity and resources. More elaborate frameworks are needed “to create much-needed clarity regarding the roles and responsibilities of different bodies and agencies and to ensure coordination, as well as establishing and

guaranteeing budgets for humanitarian and development initiatives” (UNHRC, 2017, p. 7). Passing the national policy on IDPs would be a first step in that direction.

### Monitoring structures

To *foresee* a risk, governments must have active monitoring structures that monitor and investigate ID and the risk thereof. Any attempt to address AD cannot do so without the necessary information about the risk of ID or the conditions of displacement.

First, data should be collected regarding the risk of displacement. Pre-emptive data collection could enable governments to develop early warning systems (EWSs) for those communities most prone to experience displacement. An EWS represents “the set of capacities needed to generate and disseminate timely and meaningful warning information” (UNISDR, 2009, p. 12), enabling those at risk or responsible to take the necessary actions in time to avoid or mitigate the risk. These systems are often tailored to a specific hazard, although there are multi-hazard systems in existence (UNISDR, 2009).

Moreover, data collection should not be limited to the period up to the decision of displacement. Data collection should be an integral part of all phases of displacement; to assess whether displacement is necessary, and if so, to where and how they should be displaced (IDMC, 2017; Caterina & Rodríguez, 2020). Furthermore, data collection is crucial to monitor whether the due process obligations are met, and that displacement does not take longer than necessary.

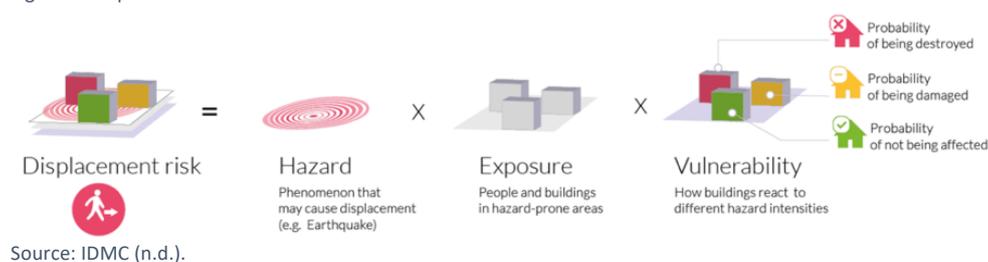
### Examples

The need to put in place monitoring structures is often included in IDP law. For instance, Mexico’s *Law for the Prevention of and Response to Internal Displacement in the State of Guerrero* (Free and Sovereign State of Guerrero, 2012), under Article 23(3), assigns the *State Program for the Prevention and Attention of ID* with the task to “design and implement mechanisms for documentation, diagnosis and monitor systematic information on the phenomenon of internal displacement” (Free and Sovereign State of Guerrero, 2012, unofficial translation, p. 23). This came after the realisation that there is “no official registry that really indicates accurate official statistics or figures on the affected people in a situation of internal displacement” (Free and Sovereign State of Guerrero, 2012, unofficial translation, p. 8). Moreover, people who are not yet displaced but are at risk thereof seem to be neglected.

Similarly, El Salvador’s *Special Law for the Comprehensive Care and Protection of People in Conditions of Internal Forced Displacement* stipulates that detailed information on the demographics of IDPs should be collected (Republic of El Salvador, 2020). Furthermore, Article 7 also lists actors that “will establish an early warning system in order to identify in a timely manner the places, causes and situations that generate forced displacement” (Republic of El Salvador, 2020, unofficial translation, p. 6).

Only in the field of disasters are operational EWSs, specifically considering ID, identifiable. The Sendai Framework for Disaster Risk Reduction’ (SFDRR) guiding principles specifically state, under Article 33(b), that it is important to “invest in, develop, maintain and strengthen people-centred multi-hazard, multisectoral forecasting and early warning systems [...]” (UNODRR, 2015, p. 21). For example, the Global Displacement Risk Model, developed by the IDMC (n.d.), is being used to identify which communities are at risk of displacement and by what form of sudden-onset disaster by forecasting based on the model displaced in figure 5.

Figure 5: Displacement risk model.



According to the Global Protection Cluster, pre-emptive data collection not only increases disaster preparedness, reducing time and complexity involved in displacing communities, but also decreases the risk of AD (GPC, 2020a). However, such data collection is not at all easy. According to Guadagno (2016), displacement data “is not traditionally included in disaster-related data collection efforts, and that what records exist of [...] displaced persons’ presence at national and local levels may be incomplete, difficult to keep up-to-date, and sensitive” (p. 37).

### Contingency plans

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

### Examples

To start, ID related issues can be integrated into national policies such as national disaster management plans. Afghanistan integrated IDP issues into its *National Disaster Management plan* (Islamic Republic of Afghanistan, 2010), specifically referring to integrating disaster risk reduction efforts with IDP needs.

Similarly, Kenya integrated IDP issues into its *National Emergency Response Plan & Standard Operating Procedures* (Republic of Kenya, 2014). It states, as one of its five operational objectives, that in the event of a major disaster or protracted emergency the government shall “avail shelter and planned settlements as well as non-food items to displaced populations following disaster” (Republic of Kenya, 2014, p. 6).

Next to the necessity to integrate IDP needs and issues into national sector specific policies, it is equally important to incorporate protocols into operational (field) manuals and similar organisational policies. For instance, Kenya Power and Lighting Company integrated IDP issues into its *Resettlement Policy Framework for Kenya Power Projects* (Republic of Kenya, 2012). The framework’s objective is:

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

The framework further goes into specifics by explaining what the above objective entails and provides, among others, an outline for funding arrangements for resettlement, an action plan for resettlement, monitoring indicators, a breakdown of costs, forms that can be used to hear and register complaints and claims by PAP (Project Affected People) (Republic of Kenya, 2012).

Although the above-mentioned framework is not exhaustive and does not explicitly refer to AD, it does address at least some of the operational necessities to avoid AD, particularly the due process requirements.

### Training and education

Training and education involve awareness-raising efforts, capacity building, and accountability building efforts to ensure that the relevant bodies and actors are aware of their obligations and the measures they can take to address AD. Next to governmental and non-governmental bodies, the education of IDPs or those at risk of displacement themselves is of utmost important. According to the BBPID education and training should target the elements shown in Figure 6.

#### Examples

The obligation to develop measures that trains and educates the target groups mentioned above should be engrained in national policy. For instance, the *Afghan National Policy on Internally Displaced Persons* emphasises “the need [...] to help raise awareness of their [IDPs] rights in Afghanistan” as one of its main principles (Islamic Republic of Afghanistan, 2013, p. 17). The policy proceeds into more detail by stating that one of the preparedness measures for disasters is “organizing education and awareness raising activities” (Islamic Republic of Afghanistan, 2013, p. 31). Furthermore, the Ministry of Interior and the Afghanistan Independent Human Rights Commission will provide the Afghani national and local police training “on the special protection needs of IDPs through amendment of the training curriculum” (Islamic Republic of Afghanistan, 2013, p. 38).

Figure 6: Education and training elements.

- Government policy-makers at the national level;
- Government officials at the regional and local levels, who are in more direct contact with the displaced and are responsible for implementing government policy and programs in the field;
- Military and police, who are expected to play a key role in ensuring IDPs’ protection;
- IDP camp administrators as well as officials responsible for humanitarian assistance and the protection of human rights;
- Commissioners and staff of national human rights institutions;
- Parliamentarians, as they play a leading role in the development of legislation;
- Governments should also welcome training on the rights of IDPs for civil society, and;
- Most importantly, for IDPs themselves, who of course are entitled to know their rights.

Source: BBPID (2005, p. 15).

As with contingency plans, it is essential that policies are implemented locally and in organisations posing a risk to or working directly on the issues of ID. In Nepal, after a destructive earthquake in 2015, an assessment pointed out a lack of inclusion of people with disabilities in disaster preparedness, response, and recovery efforts (GPC, 2020b). Such lack of inclusion is not in accordance with Principle 4 of the UNGPID (Deng, 1998) and due process requirement 5. In response, the National Federation of the Disabled Nepal set up a training programme that in between 2016 and 2017 trained 17 leaders from organisations of people with disabilities (OPD) on emergency shelter and settlement standards (GPC, 2020b), using the *all under one roof* manual (IFRC, 2015). These 17 leaders then went on to train 270 stakeholders in different regions, including “other OPD members, district and municipal officials, members of local disaster management committees, representatives from the police, army and media, as well as humanitarian actors” (GPC, 2020b, p. 129).

To further disseminate the knowledge and “know how”, the trained individuals together formed a resource pool that, among others, conducted over 150 audits about the inclusiveness of IDP and refugee shelters. Moreover, the resource pool is also offering its expertise beyond the realm of disasters, in the realm of development projects (GPC, 2020b).

### **Funding**

To implement the above-mentioned measures, the necessary resources need to be provided (interviewee A). These resources can be either in-kind or monetary. According to Principle 3(1) of the UNGPID and Article 3(2d) of the KC, the government bears the primary responsibility to “provide, to the extent possible, the necessary funds for protection and assistance without prejudice to receiving international support” (African Union, 2009, p. 11).

### *Example*

For instance, in Colombia where there are laws and policies on displacement specifically caused by conflict, the lack of proper resource allocations cripples the prevention of AD. In 2008, Ibáñez and Velásquez found that although the laws and policies in place had clear principles for local authorities, the lack of operationalisation of what funds need to be provided to address ID specific issues meant that the plans of local authorities have in some cases become “a list of good intentions that do not translate into real budgetary allocations” (Ibáñez, & Velásquez, 2008, p. 37).

Local authorities should not be expected to assist IDPs solely from their regular budgets as they often already have a difficulty providing basic needs to its citizens (Ibáñez, & Velásquez, 2008). Consequently, national governments should create national funds to provide the necessary resources to prevent AD, and to allocate funds to local authorities that deal with or are likely to deal with displacement (Ibáñez, & Velásquez, 2008). Without these national ID specific funds, it begs the question whether local authorities “are tasked with responsibilities that they cannot achieve” (Ibáñez, & Velásquez, 2008, p. 37). Additionally, in the process of allocating funds, Mooney (2005) rightfully notes that funding programmes should not neglect the needs of host communities as these might have similar needs (Duncan, 2005).

Improving on its earlier effort, the Colombian government passed a new law in 2011 that included more elements on funding. For instance, the establishment of a fund for the Special Administrative Unit for the Management of Restitution of Disposed Lands in Article 111 (Republic of Colombia, 2011). Furthermore, Article 113 continues to specify what goes into the fund (Republic of Colombia, 2011). However, these efforts to develop funding mechanisms are still far from being comprehensive as these funds are limited to particular elements of IDP needs and constitute reparations for what has already occurred rather than for the purpose of prevention.

## **5.3. Short-term prevention**

This phase starts when the occurrence of AD is “foreseeable or ought to be foreseeable” (van der Have, 2018, p. 53). In relation to the previous phase, international, regional, and national laws and regulation henceforth oblige governments and other actors to avoid or mitigate the risk of a possible AD. The measures laid out in the laws and legislation in the previous phase are now tested against their effectiveness.

In the phase of short-term prevention, having protocols, developed in the previous phase, at hand is essential. When a risk has been or should have been identified these protocols give step-by-step guidance for the measures that should be taken to prevent displacement all together or to prevent AD

from occurring. Logically, before protocols are activated, a risk needs to be foreseen. However, it remains ambiguous when something is considered foreseeable. This comes down to the level of risk that could be identified.

The European Court on Human Rights (ECtHR), in 1998, ruled that “an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities” (*Osman v. United Kingdom*, 1998, para. 116). Thus, not every risk will oblige governments to take operational measures. Governments should undertake:

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

### Rapid response mechanisms

The ability of governments to identify and respond to risk is built upon the monitoring structures already put in place in the previous phase. If proper monitoring structures are in place, governments should be able to assess which communities are at risk of AD. Particularly, communities that are already displaced are at risk of AD as displacement is often protracted and IDPs often experience multiple displacements (e.g., see UNHRC, 2020a). Henceforth, the relevant government authorities, in collaboration with civil society and local communities, can enact rapid response mechanisms (RRMs). RRM refers to “any initiative that occurs as soon as the threat [...] is identified and that aims to manage, resolve, or prevent” (OECD, 2009, p. 22).

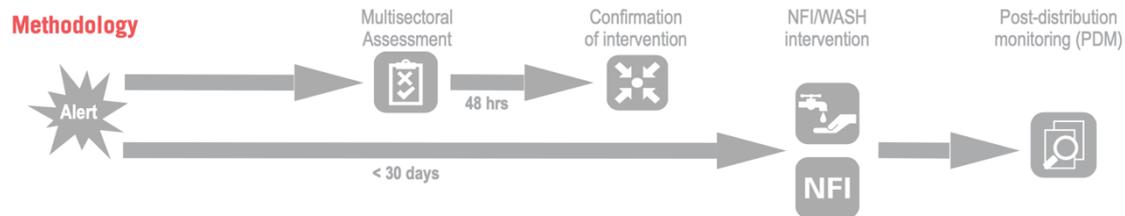
#### Examples

For example, in the Central African Republic a RRM developed by REACH is being used that consists of a collaboration between various organisations, led by UNICEF. The purpose of the RRM is:

to monitor humanitarian action, conduct multisector needs assessments and to implement several types of emergency responses, including distributions of essential non-food items and high emergency biscuits, emergency water, sanitation and hygiene interventions, as well as cash transfer programming. (UNICEF, 2021, Para. 1)

The methodology of the RRM is visualised in Figure 7. The mechanism alerts the involved organisations about the possible occurrence of violence, returning populations, or disaster (UNICEF, 2021). After an alert is received a team makes sure that an assessment of the situation is conducted to determine what various measures should be taken to mitigate or avoid a risk of AD.

Figure 7: Methodology of RRM in the Central African Republic.



Source: UNICEF (2018).

### **Case specific measures**

The specific measures that can be enacted, after AD is considered foreseeable, are physical protection or other operational measures to prevent AD. However, these operational measures are often left open at the national or regional level as each case is different and could have different solutions. Consequently, national policies often only mention that measures should be taken, sometimes what categories of measures should be taken, but not what these measures specifically entail. Working out the specifics of these measures is up to local authorities and complimentary non-governmental organisations.

The obligation to prevent AD in practice is delegated to specific ministries or departments, local authorities and law enforcement. Each one of these is obliged to take all “measures within the scope of their powers which, judged reasonably, might have been expected to avoid” AD (*Osman v. United Kingdom*, 1998, para. 116) and to “allow and facilitate rapid and unimpeded access by humanitarian organizations and personnel” to assist in meeting the needs of IDPs where the government authorities cannot adequately do so on their own, which is often the case (African Union, 2009, p. 10).

#### *Examples*

First, physical protection will be examined. Knowing that “ensuring safety and security is the responsibility of the state and its institutions”, the government should ensure the rule of law and order (CPC, 2010, p. 180). Furthermore, the government should “build the capacity of individuals and communities to protect themselves and recover from crime, violence and abuse” (CPC, 2010, p. 182). Moreover, physical protection can, for instance, be as simple as helping establish a neighbourhood watch. This has proven to mitigating insurgencies by non-state actors in the northeast of Nigeria (Nextier SPD, 2019).

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

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

#### 5.4. Preventing continuation

In this phase the risk has become reality and AD is taking place. A condition for this phase is that the violation has begun but is not yet completed, meaning it “is of a continuing character” (van der Have, 2018, p. 71). AD can cover the entire period from the moment people are arbitrarily displaced until durable solutions have been realised as AD has no simple and swift solution. The obligations in this phase concern halting AD and mitigating its adverse effects. These obligations are part of the obligation to protect people from AD under Article 4 of the KC and Principle 6 of the UNGPID (African Union, 2009; Deng, 1998).

This phase is distinct from the short-term phase as actors have an obligation to intervene in, halt, or offer solutions to AD while it is already ongoing. Again, in this phase, measures are mostly open-ended. Measures to halt AD can be calling upon the actor to halt the violation and engaging in negotiations or talks with the actor. If that does not halt the violation the government can enact physical interventions or operational measures to avoid the continuation of AD. This includes governments correcting AD perpetrated by their own government authorities as well. Furthermore, the approach used by the international community to define when (arbitrary) displacement ends is founded upon “need-based criteria” (Mooney, 2003, p. 39). Meaning that IDPs will remain IDPs as long as their needs are distinct from that of the rest of the population (Mooney, 2003). Also, governments should accept and facilitate humanitarian assistance of the international human rights community and other governments as much as possible as long as it does not endanger the state’s sovereignty (UNHRC, 2020a).

#### Intervention

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

#### *Example*

In situations of displacement based on illegitimate reasons the government must respond quickly to halt the AD. For instance, in a case of a violent ethnic conflict between two communities in Nigeria it took government forces two days to arrive at the scene of the conflict. By the time they arrived many atrocities causing or related to ID had already been committed (Olagunju, 2006).

A different, much larger armed conflict in Nigeria, between government forces and the non-state actor Boko Haram, has already displaced around 2.5 million people between the start of the conflict in 2009 and 2018 (Gwadabe, Salleh, Ahmad & Jamil, 2018). The inability of government forces to keep people being displaced secure from violence exposed IDPs to various violations of IHRL and IHL such as “exploitations, child and gender-based violence, human trafficking, family separation and detention with no consideration of the rule of law” (Gwadabe, Salleh, Ahmad & Jamil, 2018, p. 50). Moreover, governments should also be mindful of their use of counterinsurgencies as they can cause displacement as well and can prevent humanitarian actors from assisting people being displaced due to access restrictions (e.g., see UNHRC, 2018a, section G).

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

### Durable solutions

A situation in which IDPs no longer have needs specific to their displacement is a situation in which a *durable solution* has been realised. The IASC further elaborated what such a durable solution means as can be seen in Figure 8.

According to the IASC framework on durable solutions (2010), a durable solution can be achieved through “[1] sustainable reintegration at the place of origin [...], [2] sustainable local integration in areas where internally displaced persons take refuge [...], [3] sustainable integration in another part of the country” (p. 5). Furthermore, each IDP must have the freedom to choose one of these three options (IASC, 2010) and must be consulted on “any measures undertaken to provide durable solutions” together with the community hosting the IDPs (Badurdeen, 2010, pp. 30-31).

Figure 8: Operationalisation of durable solutions.

**IDPs who have achieved a durable solution will enjoy without discrimination:**

- Long-term safety, security and freedom of movement;
- An adequate standard of living, including at a minimum access to adequate food, water, housing, health care and basic education;
- Access to employment and livelihoods;
- Access to effective mechanisms that restore their housing, land and property or provide them with compensation. (IASC, 2010, p. iv)

**In a number of contexts, it will also be necessary for IDPs to benefit, without discrimination, from the following:**

- Access to and replacement of personal and other documentation;
- Voluntary reunification with family members separated during displacement;
- Participation in public affairs at all levels on an equal basis with the resident population;
- Effective remedies for displacement-related violations, including access to justice, reparations and information about the causes of violations. (IASC, 2010, p. iv)

Source: IASC (2010, p. iv).

### Examples

Displacement itself needs to end to prevent AD from continuing. Moreover, as AD can also be caused by displacement lasting longer than necessary, durable solutions can also contribute to the prevention of AD in the first place. Principle 6(3) of the UNGPID obliges governments to *end* displacement as soon as possible (Deng, 1998). However, ending displacement does not mean the simple return of IDPs to their places of origins. Such a decision can be problematic.

As part of their national plan on ID, the Iraqi government announced to return IDPs to their homes before the end of 2020 (Republic of Iraq, 2008; UNHRC, 2020a). Henceforth, in the second half of 2019, Iraq decided to close down IDP camps and send IDPs either back to their governorates or relocate them to other camps without the consultation of camp authorities or IDPs themselves (UNHRC, 2020a). The governorates where IDPs were returned to were often unsafe and were not prepared to receive them (UNHRC, 2020a). According to the Special Rapporteur on the Human Rights of IDPs, camps can only

be closed “when they [the government] ensure returns that are voluntary, informed, safe, sustainable and dignified” (UNHRC, 2020a, p. 7). Displacement as such has only created further AD.

As the example above also illustrates, there is not one durable solution to the needs of IDPs. Lessons drawn from studies conducted in Sri Lanka, Somalia, and Sudan concluded that “a holistic and integrated approach” to creating durable solutions should be taken to offer IDPs the option of reintegrating at their place of origins, integrating locally, or integrating elsewhere (Badurdeen, 2010, p. 3; IASC, 2010; Lundkvist-Houndoumadi & Ketabchi, 2020).

Furthermore, the case studies conducted by Lundkvist-Houndoumadi and Ketabchi (2020) found that local and national authorities using the IASC durable solutions’ framework loosely tend to focus primarily on one of the three options while neglecting the principles of non-discrimination and the freedom of IDPs to choose between these options.

### 5.5. Preventing recurrence

This phase makes use of remedial measures because AD has already ended. The obligations in this phase are triggered when actors are alerted that AD has occurred or is taking place, and thus overlaps with the previous phase. To combat impunity and promote reconciliation, governments have the obligation to provide victims of AD with the chance to receive justice, reparations, and access to the truth under IHL and IHRL (e.g., see Mayer-Rieckh, 2017; UNGA, 2006). These measures enforce human rights norms, “foster civic trust and contribute to reconciliation and the democratic rule of law” (de Greiff, 2012; Mayer-Rieckh, 2017, p. 432). Moreover, the failure to take remedial measures is an indicator of a high risk that AD will happen again (Council of Europe, 2011). Furthermore, the government is also obligated to enact non-recurrence measures, i.e., *forward-looking* measures (Mayer-Rieckh, 2017; UNESCCHR, 2005; UNHRC, 2018b; interviewee B; interviewee E).<sup>6</sup>

#### Justice

IHRL predominately focusses on holding offenders accountable (van der Have, 2018). This focus is not unexpected due to the following reasons. Holding perpetrators responsible for AD does not only make sure that these actors are punished for their actions, but also that victims are given access to the appropriate reparations by, the right to truth, or non-recurrence measures from the government, i.e., the primary actor responsible for the prevention of AD (Duthie, 2011; UNESCCHR, 2005).

Thus, the access to judicial procedures is the basis of any strategy to remedy the violations and to prevent the recurrence thereof. According to the UNGA, governments have an obligation to implement policies listed in Figure 9 to provide victims of GHRV, that includes AD, with the justice they deserve.

Figure 9: Providing justice.

- (a) Disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law;
- (b) Take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims;
- (c) Provide proper assistance to victims seeking access to justice;
- (d) Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy for gross violations of international human rights law or serious violations of international humanitarian law.

Source: UNGA (2006, p. 6).

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

### *Examples*

Examples of measures that can be taken are found around the world. For example, the dissemination of information about legal remedies for AD. This is not considered an attractive humanitarian objective, but it has been widely proven to have a direct impact on providing durable solutions (INTEROS & ICVA, 2021, March 4).

Take for example, INTEROS: a humanitarian organisation aiming to provide, among others, legal representation throughout legal processes. The provision of their legal services is communicated via its various activities (INTEROS, 2021). In Cameroon and Jordan, they set up a radio programme to talk about legal issues, including awareness raising about the various legal services as well as how to access justice (INTEROS, 2021). In Lebanon, in collaboration with the UNHCR, they were able to offer legal counselling at the UNHCR office. Furthermore, INTEROS opened hotlines in many states for IDPs, host communities, and others to have access to information about legal services and to refer IDPs to the appropriate organisations that could further support their needs (INTEROS, 2021). Also, in Iraq, INTEROS managed a Facebook page, provided in English, Arabic, and Kurdish (2021).

As can be understood from the efforts of INTEROS, many methods can be enacted to disseminate information about legal remedies to IDPs. As the causes and circumstances of IDPs are highly diverse, the most effective communication methods should be determined based on the local context. In Cameroon, the simple “distribution of information leaflets with [a] mapping of actors and services” was considered an effective measure (INTEROS, 2021, p. 21).

### **Reparations**

Reparations are divided into restitution and compensation. Restitution includes “restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property” (UNGA, 2006, p. 7); and compensation includes the reimbursement of any economic damages. Furthermore, rehabilitation from medical and psychological harm should also be offered in the form of legal and social services (UNGA, 2006). Thus, the reparations should cover damages incurred due to being displaced from a victim’s place of origins and damages incurred during the actual AD (Duthie, 2011).

### *Examples*

In Nigeria, already in 1986, an important court case, i.e., *Military Governor, Lagos State & Ors V. Chief Emeka Odumegwu Ojukwu*, ruled that property should be returned to their rightful owner. This ruling came almost two decades after the hostilities of more than two and a half years of civil war had ended. However, according to Ekpa and Dahlan (2015), although the right to reparations is enforced in international, regional, and national law, properties that were abandoned during the war can still be declared abandoned by the government allowing the property to be sold to someone else without compensating the original owner. Ekpa and Dahlan (2015), conclude that the fact that the KC still needs to be domesticated in Nigeria hampers the provision of reparations.

Similarly, in Peru 2009, IDPs were mostly excluded from the reparations after eight years of armed conflict. From the 5,000 officially registered IDPs “not one of them received reparations benefits” (IDMC, 2009, p. 1). Although the UNGPID (1998) stipulates that displacement is a situation rather than a legal registration, IDPs that were not registered, which is the vast majority, could not apply for the reparations. This limited access to reparations prevented many IDPs from acquiring stable housing (IDMC, 2009).

The IDMC (2009) also notes that the Peruvian government saw the reparations as an allocating of development funds rather than a right. Devictor (2017), stresses that if such a *development-approach* is taken, it should not replace but complement existing efforts, i.e., it should not hinder the fulfilment of the right to reparations.

### **Right to the truth**

According to the Commission on Human Rights of the UNESC:

every people has the inalienable right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led, through massive or systematic violations, to the perpetration of those crimes. (UNESSCHR, 2005, p. 7)

Furthermore, the truth should be provided regardless of the filing of any legal proceedings (UNESSCHR, 2005). To provide the truth, governments can enact measures that are independent of the judiciary to ensure that the independent truth is sought after (UNESSCHR, 2005). Most often these measures take the form of an ad-hoc *commission of enquiry* with a focus on a specific event or area, or a *truth commission* that focusses on IHRL and IHL violations across a period throughout the whole country (United States Institute of Peace, 2011). Additionally, the government must preserve and provide access to government archives that contains information relevant to GHRV (UNESSCHR, 2005).

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

Although truth commissions can provide a “complete picture of displacement and the problems that it involves” (Guematcha, 2020, p. 136), they should be correctly managed and be allowed to operate freely to be effective and to provide reconciliation (see ICTL, 2014).

#### *Examples*

For instance, a truth commission in South Africa did mention widespread occurrences of displacement but did not investigate “the forced removal and displacement of millions of people based on race” (Hayner, 2011, p. 266). Still, if done right, truth commissions can not only provide the truth to victims of AD, but can also “facilitate return and reintegration, both of victims and of perpetrators of crimes” (Duthie, 2011, p. 257). In East Timor, the truth commission enacted a community reconciliation programme that allowed perpetrators of “lesser crimes” (Duthie, 2011, p. 257) to participate in community-based hearings in which community members and perpetrators together determined how the perpetrators could be re-integrated into the community (Duthie, 2011). These processes were further aided by the accompanied truth-telling efforts (Duthie, 2011).

Finally, truth commissions publish reports and give recommendations that should be disseminated among the population and government authorities. In Gambia, a truth commission’s final report was submitted in 2019, but only a white paper including some of the recommendations of the entire report

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

was published online for the Gambian people to see (UNHRC, 2020b). According to the government the report was available for purchase, but the population was not made aware of that fact (UNHRC, 2020b). Moreover, the population should have been given unrestricted access to that report (UNGA, 2006).

### Non-recurrence measures

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

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

Figure 10: Non-recurrence measures.

Thus, measures taken in this area are distinct from previous areas because they are forward looking (Mayer-Rieckh, 2017; *The social and economic rights action center & the center for economic and social rights v. Nigeria*, 2002; UNHRC, 2018b; *Velásquez Rodríguez v. Honduras*, 1998). Most of the measures taken in this area focus on “strengthening accountability, particularly of institutions that are more prone to committing serious human rights violations such as security institutions” (Mayer-Rieckh, 2017, p. 428). Future violations can be prevented by improving or adding onto the existing collection of measures, particularly focussing on the elements in Figure 10.

- (a) Ensuring effective civilian control of military and security forces;
- (b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;
- (c) Strengthening the independence of the judiciary;
- (d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;
- (e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;
- (f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;
- (g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;
- (h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

Source: UNGA (2006, pp. 8-9).

### Examples

In Burundi, after many years of conflict between the Hutu’s and Tutsi’s, one of the elements of the peace agreement was security sector reform (Curtis, 2013). During the conflict the government and security forces were dominated by the Tutsi minority to ensure they remained in control of the Hutu majority population (Curtis, 2013). However, as this ethnic imbalance was seen as one of the reasons for the conflict, the Arusha Peace and Reconciliation Agreement for Burundi (Republic of Burundi, 2000) stipulated in Article 16 that the defence and security forces should correct their ethnic imbalances throughout their apparatus. More specifically, Article 11 (4d) determines that “not more than 50% of the national defence force shall be drawn from any one ethnic group” (Republic of Burundi 2000, p. 38). According to Curtis (2013), the security sector has since reflected “ethnic parity in the national defence forces, the national police and the intelligence services” (p. 87) and has consequently become relatively more peaceful.

## 6. MODELLING ARBITRARY DISPLACEMENT PREVENTION

Synthesising the prevention of AD according to the four phases of prevention has proven useful to create an overview of what prevention entails. It revealed that prevention is not limited to measures governments can take before AD takes place but also concerns measures that need to be taken during and after AD. However, the phases do not exist in isolation from each other. They represent an interconnected whole, including reciprocal causation.

Especially, realising durable solutions overlaps the preventing continuation and recurrence phases. According to a UN advisor, “durable solution should be seen from the lens of prevention, in terms of actually preventing continuing displacement. However, there is also an aspect of the durable solutions whereby if they are achieved, they should also prevent any further displacement” (interviewee B). Furthermore, apart from non-recurrence measures, durable solutions embody all other measures listed in the recurrence phase, i.e., “access to justice, reparations, and information about the causes of violations” (IASC, 2010, p. IV).

Durable solutions are not realised overnight. They are complex processes that can have elements that conflict with each other, for example around seeking justice. As Andreu-Guzmán (2012) pointed out, pursuing criminal justice could pose a disincentive to those who would like to return to their place of origins due to the belief that those wanting to return were complicit in a crime or because the criminal justice system set up is “perceived to be one sided or lack[s] adequate due process” (p. 4). Furthermore, La Rosa (2006) points out that humanitarian organisations are sometimes wary of being associated with judicial bodies trying to prosecute actors as it could lead to a perceived violation of the humanitarian principle of impartiality.

Figure 11: The prevention cycle of arbitrary displacement.

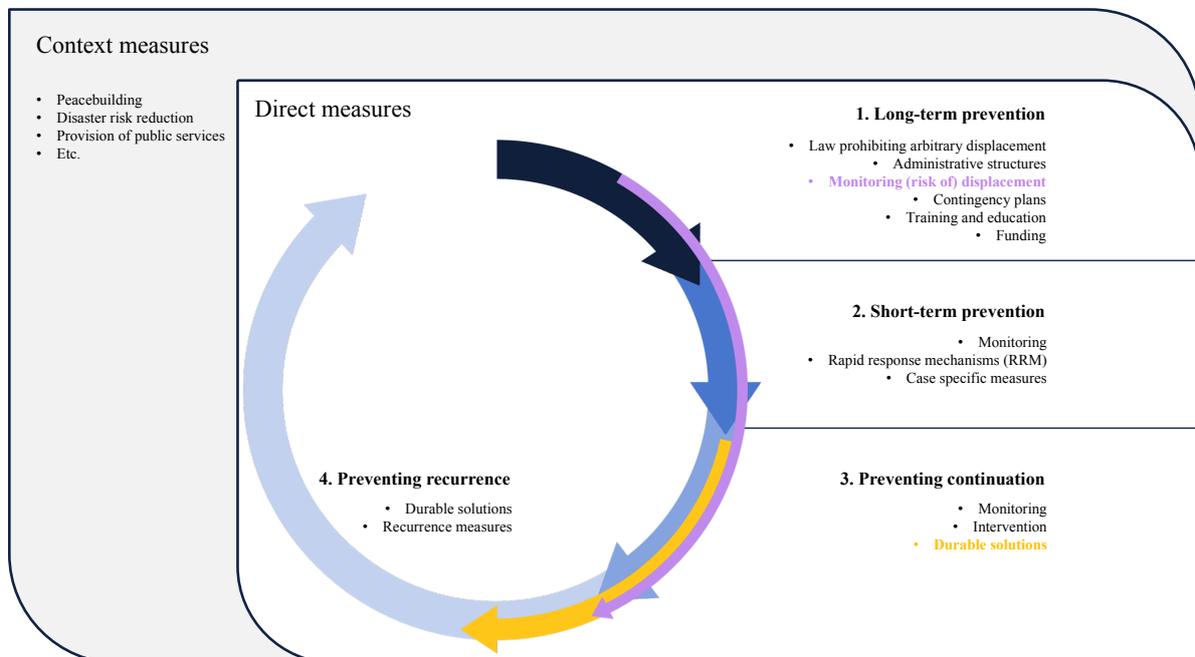


Figure 11 was developed to visualise the synthesis of the prevention of AD. The model indicates the interlinkages between measures and how measures build upon each other. Next to the overlap of durable solutions,<sup>8</sup> explained above, monitoring structures need to be put in place for the government to foresee

<sup>8</sup> The overlap of durable solutions is visualised by the yellow arrow in Figure 11.

displacement in the first place. Moreover, governments must actively monitor the reasons for and conditions of displacement as well as efforts to remedy AD and prevent similar cases from recurring.<sup>9</sup>

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

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

Next to the direct measures, context measures can be identified in the background of figure 11. These measures (e.g., peacebuilding) do contribute to the prevention of arbitrary displacement, but only indirectly by influencing the broader context in which displacement might occur. For instance, if conflict prevention efforts prevail and armed conflict is eradicated, displacement in situations of armed conflict also becomes extremely unlikely. Therefore, these measures should be named and considered when discussing the prevention of AD but are unproductive to explore in-depth from an arbitrary displacement lens (Zapater, 2010). Topics such as conflict prevention or peacebuilding are better analysed from the perspective of ending conflict rather than from one of its effects.

However, it is important to stress that the model in figure 11 does not represent a one size fits all theory on what the important steps are to prevent AD in any situation. On the contrary, this research revealed that many of the preventative measures are context dependent. For example, in cases of AD caused by displacement that lasts longer than necessary many of the measures are obsolete as the IDPs have already been displaced for a long time. A UN advisor stated, “once displacement has become protracted, the measures of prevention [...] would not work unless there is a durable solution, and then the durable solution becomes the basis for ensuring that no further displacement will take place” (interviewee B). Henceforth, the model must not be seen as a standardised theory but as a consensus reached between the literature and experts.

## 6.1. The concept of AD prevention

The concept of AD prevention is a useful concept to policy makers and human rights workers as it is the only form of forced displacement to be considered a crime (Andreu-Guzmán, 2012). However, AD often remains ambiguous and underutilized, it often being confused with terms such as forced displacement. Henceforth, as underlined by the UN Special Rapporteur on the Human Rights of IDPs, more discussion on and attention to AD needs to be fostered to raise awareness of its harmful nature and to raise political will to prevent it (interviewee A).

Moreover, the prevention-centred approach seems to be a fruitful basis upon which to discuss AD issues as its broad scope, as defined in this research, goes beyond ad hoc protection. Conversely, governments see prevention as “a sensitive matter, that if you pressed it, then governments might not cooperate if they think that ultimately they are going to end up before the ICC” (interviewee B). But in that same

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<sup>9</sup> The overlap of monitoring measures is visualised by the purple arrow in Figure 11.

breath the UN advisor said, “I think we have reached a kind of threshold” where it is possible to address these issues with a prevention lens. A prevention-centred approach would be strengthened by delineating what the indicators of foreseeability are for each cause of AD (e.g., earlier occurrences of AD, degree of violence in the vicinity, and vulnerability to natural hazards). A consensus on these indicators, in combination with the framework on what can be done to prevent AD presented above, would settle when a government should act and what actions correspond to exercising due diligence. In the words of van der Have, with clarity on the prevention of AD governments can no longer “pass the buck and remain bystanders” (2018, p. 3).

## 7. GENERAL RECOMMENDATIONS

The recommendations can be categorised as advice to NGO and to governments. First, NGOs have a vital role in monitoring the actions of governments; putting pressure on governments to ensure that human rights are respected, protected, and fulfilled; and assisting governments in meeting the needs of IDPs and protecting those at risk of displacement. NGOs can:

- Put more emphasis on the concept of arbitrary displacement as a tool to hold government and non-governmental actors accountable because the concept is more nuanced than general (forced) displacement and it has a legal bases in international customary law;
- Actively engage with national and local governments to determine the roles and responsibilities of the various organisations in preventing arbitrary displacement. This could save scarce resources and make efforts more effective and efficient. Moreover, by asking governments about how NGOs can assist government authorities to prevent arbitrary displacement, government officials are prompted to consider the due diligence of their own policies.
- Where necessary, ensure that contingency plans take the prevent arbitrary displacement into account.

Governments, bearing the primary responsibility for the prevention of AD, need to be the driving force behind AD prevention. Furthermore, when governments are not able to prevent AD, they need to be inviting to assistance from local, national, and international NGOs, international organisations, and foreign governments. While considering the resources and capacities of governments, they can:

- Domesticate the United Nations Guiding Principles on Internal Displacement or the Kampala Convention. Consequently, criminalising arbitrary displacement;
- Thoroughly review whether the right administrative and monitoring structures are in place, operational, and well-funded;
- Conduct sample tests whether contingency plans of organisations that deal with or can cause displacement take arbitrary displacement prevention into consideration, including government authorities, and;
- Actively seek to improve the structures and measures already in place to prevent similar cases from occurring again.

## 8. LIMITATIONS

The model that was developed (Figure 11) gives a clear overview of what the prevention of AD entails. However, arbitrary displacement is such a broad topic that the model must inevitable be adapted to the local context and the cause(s) of (arbitrary) displacement. Thus, although the model provides a starting point for a preventative approach to AD, further research should investigate the prevention of AD on a country level.

Furthermore, although most examples concern AD caused by armed conflict, AD caused by development projects, disasters or slow-onset climate change was examined as part of this research. Henceforth, the model is applicable across the wide variety of causes.

Concerning the data collection, as the goal of the interviews was to collect additional data to either confirm or contradict the findings from the desk research, the small number of in-depth interviews was sufficient for an initial exploration. This research is and did not aim to be exhaustive. Henceforth, future research could utilise the delineation of the prevention of AD presented above and improve upon it. Furthermore, although this study did analyse some Spanish documents from Mexico, El Salvador, and Colombia, the desk research was predominantly limited to English literature. Finally, as a consequence of selecting examples of AD rather than countries, Asian states were almost absent from the analysis. These should be part of any future study to increase the validity of the model that was created.

## 9. CONCLUSION

Although AD, and the prevention thereof, receive little attention, it is the only form of forced displacement that is considered a GHRV. Furthermore, while a prevention-centred approach to AD might not be popular amongst governments as it could lead to criticism on their due diligence, it is essential if we want to hold governments accountable for human rights violations. Moreover, this article provided evidence that many measures can be taken to exercise due diligence and, ultimately, to be prepared for any risk that might lead to AD. Additionally, this study developed a model that can be used by other researchers as a starting point for a preventative-approach to AD. Finally, future research could determine the indicators of foreseeability and conduct case studies on what exercising due diligence entails for specific countries.

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## 12. APPENDIX

Figure 12: Background of interviewees.

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