

# The Prevention of Arbitrary Displacement and the Protection of the Human Rights of Those Displaced by Armed Conflict

Delivered at the Tenth Princess Maha Chakri Sirindhorn Lecture  
on International Humanitarian Law  
on 30 August 2023 Bangkok, Thailand  
by

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Your Royal Highness,  
Excellencies,  
Ladies and Gentlemen,

I have the honour to address your Royal Highness and the esteemed audience and present to you a Lecture on “The prevention of arbitrary displacement and the rights of internally displaced persons under International Human Rights and Humanitarian Law”. This is a matter of great importance in the world today, as we see a growing number of human lives direly affected by armed conflict and violence in many parts of the world, sparing no continent and affecting millions of people. The normality of human lives is affected by violations of their rights at individual and collective levels, and these violations continue to threaten stability, peace and security in many regions of the world.

In the course of armed conflict and violence, forced displacement is an occurrence that is more often than not the norm. Over the years, there is an increasing gravity and intensity of situations where people are forced to leave their homes, and seek safety away from threats to their lives, safety and dignity. Vulnerable peoples are often in the midst of the flight - women, children, the elderly, people with disabilities, among others. Others are even specifically targeted and therefore have to run for their lives - people with different political opinions, human rights and environmental defenders, community organisers, among others. More often than not, they are civilians, and not combatants.



Your Royal Highness, respected audience - over three decades ago, I was first exposed to this incredible suffering when, as a young lawyer, I led a team of paralegals to the north of my country, where air and land attacks operations were being undertaken. We trekked for three days and nights over rice fields, rivers and valleys, until we found around 50 people - men, women and children - sheltering and finding refuge in a cave. While we stayed with them for a couple of days, taking their affidavits, they narrated to us how they had to abandon their fields, livestock, their humble houses and their peace of mind so that they can escape the operations. We took their affidavits the same time that we could hear from far away the guns of the military operations. When asked, they refused to come with us to better safety, because they felt they should go

back when the fighting stops. Unfortunately, when we came back three months after, with more assistance goods, they were still there. These persons were the first I encountered whom we then called “internal refugees”. They are now called “internally displaced persons”.

Forced displacement because of armed conflict and violence begins in the territories of States - and people forced to leave their homes but remain inside their countries are called “internally displaced persons”, or IDPs. In many cases, they cross borders in order to seek safety, either as asylum seekers, refugees or even migrants. Wherever they may be, they continue to have rights under human rights and humanitarian law.

The worrying trend in the number of internally displaced persons worldwide is manifested first of all by the continuous increase over years of the numbers of people living in internal displacement because of armed conflict and violence. At the end of 2022, this reached an alarming count of 62.5 million people displaced by armed conflict and violence, which is the highest number ever recorded. Moreover, amid the increasingly complex nature of armed conflicts and generalized 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 have also been 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 internally displaced by armed conflict and violence remain in what we call “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 and growth development negatively impacted. These children live in fear for their lives, mostly in areas where their families do not come from, away from communities. In all of my missions as a UN Special Rapporteur on the human rights of internally displaced persons, I made sure to always meet children. In Iraq, when I asked an 8-year old girl, displaced and orphaned by the war against ISIS on what she wants to be when she grows up, she answered me: I do not have any dreams, because I have no future.

The situation is particularly harder for peoples who have close attachment to their lands, especially indigenous peoples who are forcibly detached from their ancestral domains and whose cultures rely intimately with their natural habitats. Lastly, the need for timely action is evidenced by the ever-rising of number of children, women and men internally displaced and other affected communities of victims of gender-based violence and other human rights abuses occurring in the context of armed conflict and violence.

## Who are IDPs?

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

The Guiding Principles on Internal Displacement, endorsed by the United Nations in 1998, 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).

The definition provides distinct nuances of the following:

- First, the non-voluntariness of mobility on the part of those displaced, that is, they had no choice but to leave, if they want to save their lives and their security;
- Second, the probable causes, which includes armed conflict and violence; and
- Third, a territorial application - IDPs remain within the territory in which they have been displaced.

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 of the country of displacement.

Nevertheless, being an internally displaced person does not take away the right to seek safety outside the country where no safety can be found in the country of origin. Data have shown that some internally displaced persons are motivated, and able, to cross borders to become international migrants, refugees or asylum seekers. In Libya, I met a father of three children, widowed by the war, who bluntly told me that if he finds no solution to his displacement, he will cross the Mediterranean Sea.

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.

Thus, we have people, who were IDPs in their countries, who have fled to neighbouring countries to find safety and security, and where the host country provides conditions to enable different forms of national and international protection to provide for their safety. Such countries accepting these people in distress can also function as transit countries, providing conditions so that the displaced persons can find safety and security in third countries willing to take them in.

Moreover, it is important to stress that protection and assistance to internally displaced persons remain under the direct and primary responsibility of States. The States, through their governments, also have the primary responsibility for the prevention of arbitrary displacement, to protect internally displaced persons 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 UN in 1998. Many of the governments I met were willing to assume their roles.

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.

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.

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.





### The Worrying Trends Call for the Urgent Attention of Governments and the International Community to Prevention

Majority of the discourse on the protection of the rights of displaced persons has been focused on protection and assistance, as these are important humanitarian and legal domains that prevent the loss of life, provide emergency succour especially to vulnerable populations, and enable some respite from the threats of armed conflict and violence. At the same time, preventing arbitrary displacement in line with international standards is an important 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 displacement can lead to fragmentation of social cohesion, and prevention is actually less costly and easier in governance, than responding to displacement once it has occurred.

In addition, the UN Secretary-General's Call to Action emphasized that prevention is a top priority across the United Nations system and that there was 'no better guarantee for prevention than for Member States to meet their human rights responsibilities'. This obviously applies to the implementation of durable solutions to resolve internal displacement, which also supports the Secretary-General's call for new and protracted internal displacement to be reduced by at least 50 per cent by 2030.



### **What Does Prevention of Arbitrary Displacement Mean?**

Very importantly, preventing arbitrary displacement does not mean preventing people from moving. Liberty of movement and freedom to choose one's residence are rights protected under international human rights law, and displacement can have a protective nature and prevent other harm and human rights violations, particularly in situations where people leave their homes or places of habitual residence in search of safety.

Rather, 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. 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.

Your Royal Highness,

Excellencies,

Esteemed Ladies and Gentlemen,

Under international human rights and humanitarian law, there are certain displacement situations which are prohibited by virtue of their automatic nature as arbitrary displacement. These forced displacement situations are prohibited based on the right of every person to be protected against arbitrarily displaced from their homes or residence. Among others, these prohibited displacement situations are

described in the Guiding Principles on Internal Displacement as follows:

- 1) Situations of apartheid, “ethnic cleansing” or similar practices;
- 2) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
- 3) Collective punishment

Moreover, should displacement be necessary where security of civilians or imperative military reasons so demand, they should last no longer than necessary. It must also be stressed that the application of international humanitarian law, by virtue of its protective nature, requires certain principles. These are:

- Principle of distinction - enabling the distinction between the civilian population and combatants and between civilian objects and military objectives, thus protecting civilians from being targeted
- Principle of proportionality - prohibiting attacks against military objectives which are “expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”
- Principle of military necessity - permits military measures which are actually necessary to accomplish a legitimate military purpose and are not otherwise prohibited by international humanitarian law.

Thus, not every conflict-related forced displacement constitutes a violation of international humanitarian law. To constitute a violation of international humanitarian law,

a party to the conflict must have forcibly displaced the civilian population, for example by ordering the population to leave or physically transporting the civilian population out of an area, on non-permissible grounds (i.e. outside the two allowed exceptions). In addition, where a party to the conflict commits violations of international humanitarian law (e.g. attacks directed against the civilian population or civilian objects or indiscriminate attacks), with the intention to coerce the population to leave, that would also amount to forced displacement that is prohibited under international humanitarian law.

### **The Importance of Compliance with International Humanitarian Law and Human Rights Law**

Putting in place the appropriate legal, policy and institutional framework at the domestic level, in line with international law, is key to preventing arbitrary displacement. This includes ensuring compliance with International Humanitarian Law and International Human Rights Law by ratifying relevant treaties as well as taking measures to implement their obligations at the domestic level through laws and policies.

Laws and policies relating to the protection of internally displaced persons need to ensure an appropriate response to internal displacement when it occurs, so as to prevent multiple displacements. Amending any laws and policies that have a discriminatory effect on internally displaced persons in the exercise of their rights, which perpetuates displacement and poses obstacles to durable solutions, is essential in this respect. Developing and implementing legal

provisions to support conditions that prevent arbitrary displacement and to criminalize behaviours leading to arbitrary displacement is of high interest to authorities across ministries and at all levels of government.

Currently, there are around 50 countries which have adopted varying degrees and levels of IDP laws and policies. One of the priorities of the mandate of the Special Rapporteur on internally displaced persons is to encourage these policies and laws. Importantly, the internally displaced persons themselves have to be engaged. When I visited Nigeria, I was proud to march in the streets with the government officials of Nigeria, the internally displaced persons, the unions and civil society, in a show of force to reiterate their collective advocacy for a law. They have since moved forward.

As previously mentioned, States also have a particular obligation to protect against the displacement of groups of people “with a special dependency on and attachment to their lands”. These would include indigenous peoples, minorities, peasants, pastoralists and others. As far as indigenous peoples are concerned, this protection draws from the explicit prohibition under human rights law against the forcible displacement of indigenous peoples from their lands or any form of forced displacement that would affect the rights of indigenous peoples. In Mexico, I met many indigenous peoples who had been displaced by the drug cartels operating in the mountains. One grandmother I met was lamenting about how her sons were killed defending their house, which was eventually burned and fields taken over by the gangs so that the cartels can illegally plant marijuana. The remaining members of the family and the community had to leave the lands of their

ancestors. Indeed, policies towards the protection of indigenous peoples should not be forgotten.

Some States do not have a law specifically on internal displacement but have provisions on internally displaced persons scattered over different instruments, or have adopted national policies on internal displacement instead of legal provisions. Where they do, laws and policies on internal displacement should assign clear responsibilities within the Government, set up the relevant administrative structures to operationalize their responsibilities and establish accountability mechanisms. Governments should also establish monitoring and early warning mechanisms that incorporate human rights and displacement risks as part of their risk assessments.

Lastly, a number of States have adopted legislation prohibiting arbitrary displacement by including provisions to protect people from displacement and criminalising the commission of arbitrary displacement subject to domestic penal law. Arbitrary displacement as a crime may also amount to an international crime if it meets the criteria applicable to being a crime against humanity, a war crime or genocide, for example.

Compliance with international law by ratifying relevant treaties and adopting and implementing the appropriate laws and policies are important first steps that must be followed by the necessary measures to ensure their full implementation and monitoring.

### **Incorporating a Preventive Approach in All Phases of Displacement**

Contrary to a common misconception, prevention is not relevant only before displacement occurs; it is relevant to all phases

**“Contrary to a common misconception, prevention is not relevant only before displacement occurs; it is relevant to all phases of displacement.”**

of displacement. Incorporating a preventive approach in the response to displacement prevents further displacement, including in countries that accept persons fleeing from armed conflict and violence in neighbouring countries.

Humanitarian assistance and protection measures, while addressing the immediate needs of internally displaced persons, also prevents 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. In many countries where armed conflict continues to rage, one of the interesting emerging practices I have seen is the establishment of humanitarian corridors in order to deliver life-saving assistance. In others where a number of internally displaced persons have found refuge in other areas in the country, it is likewise important to ensure the living conditions that would facilitate not only shelter, food and other important rights, but access to livelihood as well.

The facilitation of conditions to prevent arbitrary displacement is particularly important as well for other countries who have received people fleeing from armed conflict and violence from another, usually, neighbouring country. National screening and protection systems may need to be established in order to ensure that there are the clear conditions and due process standards to accept those who need safety and security, provide conditions that improve their access to rights and services and regularise the stay of persons in need of international protection. In these cases, it would be important to ensure capacity-building of State officials across the departments, as well as effective and appropriate public communications, to implement these national processes.

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. As one of the Government officials informed me in South Sudan, the Government has a key role not only in the protection of IDPs, but also to include them in developmental processes.



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. For example, in some contexts, some 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, forcing people to go back to unsafe conditions.

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. Peace agreements

have increasingly included provisions to address internal displacement and protect the rights of internally displaced persons, although to different extents. This practice is commendable and should be extended to cover a wide range of issues related to internal displacement, and include durable solutions as a specific goal in the peace process.

Furthermore, transitional justice can help prevent further displacement by ensuring accountability for acts that had led to displacement. Truth commissions can investigate, report and officially acknowledge displacement as a serious human rights issue. Whether through judicial or non-judicial processes, transitional justice can provide victims with reparation for the harm suffered, such as restitution, compensation, apologies and guarantees of non-repetition, helping to heal grievances and repair the social fabric. In my country, the Philippines, the peace process between the Government of the Republic of the Philippines and the Moro Islamic Liberation Front, in their successful endeavour brought the armed conflict to a close. As I was the government-appointed member of the Transitional Justice

and Reconciliation Commission established by the peace process, we made sure that internal displacement was part of the discourse of transitional justice as part of prevention and solutions.

### **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 realizing 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.

Lack of political will, reluctance to acknowledge risks at early stages of crises and resource constraints can unfortunately divert actors from taking preventive measures and trap them into a reactive approach. Prevention requires strategic thinking and a fundamental shift in approach to avert the consequences of displacement by looking at risks and taking early action.

Effective prevention strategies require a whole-of-government and whole-of-society approach, with the participation of internally displaced persons and displacement-affected communities, and the support of the international community, including humanitarian, development

and peace actors. Moreover, collaboration of humanitarian, development and peace building actors in prevention efforts to prevent future displacement are essential.

Your Royal Highness,

Excellencies, Ladies and Gentlemen,

Armed conflict and violence affect the lives of the very people directly in their midst. They affect the peace, security and safety of humankind, including ours. The protective nature of International Human Rights and Humanitarian Law can only be as effective as their implementation. As I conclude this lecture, I call on all actors, stakeholders and the international community to join forces and capacities to urgently redouble efforts for the prevention of arbitrary displacement, the protection of the rights of displaced persons and towards contributing to conditions for their durable solutions. These efforts can only be effective through well-designed and well-implemented laws, policies, programmes and processes that are grounded in human rights.

Anent to all of these is the need to ensure the genuine participation of internally displaced persons in a democratic, transparent and decision-making process. One of the women internally displaced with whom I spoke to was adamant: “As a woman fleeing war and violence in my country, I want that my story to be known and awareness raised on the effects of armed conflict on my people. But more importantly for me, I want to be part of the solution - I need to participate in decisions affecting me.”

Your Royal Highness, I thank you for this opportunity and your kind attention. ♦