



Mandate of the Special Rapporteur on the human rights of internally displaced persons

Response to request for an Advisory Opinion by the Inter-American Court of Human Rights: Human Mobility and Climate Change

1. Statement of identity and interest

This brief is being submitted by Paula Gaviria Betancur, in her capacity as the United Nations Special Rapporteur on the human rights of internally displaced person, appointed by the Human Rights Council to begin serving on 1 November 2022, pursuant to resolution 50/6 adopted by the Human Rights Council on 7 July 2022.

The present submission is made to the Inter-American Court of Human Rights in the proceedings concerning the Advisory Opinion Request made by Chile and Colombia to the Inter-American Court of Human Rights on “Human Mobility and Climate Change” under Article 13 of the American Convention on Human Rights.

In the performance of her mandate, the Special Rapporteur on the human rights of internally displaced persons is accorded certain privileges and immunities as expert on mission for the United Nations pursuant to the Convention on the Privileges and Immunities of the United Nations, adopted by the United Nations General Assembly on 13 February 1946. The present brief is provided by the Special Rapporteur on a voluntary basis without prejudice to, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its official and experts on mission, pursuant to the Convention on the Privileges and Immunities of the United Nations of 1946. Authorization for the positions and views expressed by the Special Rapporteur, in full accordance with her mandate, was neither sought nor given by the United Nations, the Human Rights Council, the Office of the High Commissioner for Human Rights, or any of the officials associated with those bodies.

2. Introduction

The request of Colombia and Chile to the Inter-American Court of Human Rights for an advisory opinion on the climate emergency and human rights recalls two important points put forward by the International Panel on Climate Change (IPCC)¹. First, the impacts of climate change have already begun to cause adverse effects such as increased migration and displacement (p. 2). Second, this migration and displacement undermines human rights and increases inequalities because of the differentiated impacts on women and children and the most vulnerable populations,

¹ Inter-American Court of Human Rights, *Request for Advisory Opinion of January 9, 2023 by the Republic of Colombia and the Republic of Chile*.

including coastal and island dwellers, Indigenous peoples and those of African descent, and peasant farmers, among others (p. 5).

The request contains three questions that directly address issues related to migration and displacement.

1. Question B addresses the right of people and communities affected by adverse impacts of climate change to seek, receive, and impart information.
2. Question F.3 focusses on the obligation of States to individually or collectively address displacement exacerbated by climate change.
3. Question F.1 addresses the duties of States to cooperate, an issue that, while covering many aspects, is also relevant in situations where people are displaced.

2. Question B: Freedom to seek, receive, and impart information.

Question B addresses the following issues: concerning the obligations of States to preserve the right to life and survival in the event of a climate emergency, in accordance with the criteria of science and human rights, Colombia and Chile, referring to Article 13 of the American Convention and articles 5 and 6 of the Regional Agreement on Access to Information, Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (Escazu Agreement), the Court is asked

- to clarify the scope of treaty obligations which States face regarding the determination of the impact on people, including migration or forced displacement (Question B.1.v); and
- to determine to what extent access to environmental information constitutes a right whose protection is necessary to ensure the rights to life, property, health, participation and access to justice, among other rights adversely affected by climate change, in accordance with the obligations of States under the American Convention (Question B.2).

In its Advisory Opinion on human rights and the environment, the Court has recognized that the right to information is an important procedural right and its exercise supports better environmental policymaking.² It concluded ‘that States have the obligation to respect and ensure access to information concerning possible environmental impacts ... to every person subject to their jurisdiction, in an accessible, effective and timely manner.’³ It also recognized that the obligation of States ‘to provide information, *ex officio*, the so-called “obligation of active transparency,” imposes on States the obligation to provide the necessary information for individuals to be able to exercise other rights, and this is particularly relevant in relation to the rights to life, personal integrity and health.’⁴ These principles must not only apply to human action such as ‘construction and operation of major new infrastructure projects’ that has negative impacts on the environment,⁵ which was the topic of that Advisory Opinion, but *a fortiori* where environmental hazards include adverse effects of climate change have severe impacts on individuals, families and communities.

² Inter-American Court of Human Rights, *Advisory Opinion OC-23/17 of November 15, 2017 Requested by the Republic of Colombia: The Environment and Human Rights*, para. 64.

³ *Ibid.*, para. 225.

⁴ *Ibid.*, para. 221 with references to the Court’s case law.

⁵ *Ibid.*, para 1.

The duty to provide relevant information to affected persons as well as to seek information from them, and thus to consult, is particularly relevant in the following contexts:

- *Prevention*: Global warming exacerbates displacement risks for people and communities living in areas particularly exposed to sea-level rise, flooding, tropical storms and other adverse impacts of climate change. In this regard, the 2015 Sendai Framework for Disaster Risk Reduction highlights the importance of developing, updating, and disseminating to relevant authorities and affected communities ‘location-based disaster risk information, including risk maps’.⁶ This information should include the nature and level of disaster they are facing, possible measures to reduce risk and vulnerability as well as safe escape routes and local assistance facilities, with particular consideration for persons with specific needs⁷. Such information, and the provision of access to it in a language they understand, is essential for communities at particular risk of being displaced to take preventive measures and inform authorities about their disaster risk reduction needs as well as anticipate, prepare for and cope with displacement that may take place. Article 13, paragraph 1 of the American Convention should be understood as making the soft-law requirement of the Sendai Framework a legally binding duty.
- *Evacuations*: Facilitating or ordering evacuations from areas impacted by natural hazards that threaten life or health are measures required by the duty to protect life. In the *Budayeva case*, the European Court of Human Rights highlighted that ‘the obligation on the part of the State to safeguard the lives of those within its jurisdiction’ in disaster situations includes ‘a positive obligation to take regulatory measures and to adequately inform the public about any life-threatening emergency’⁸ as well as a duty to ‘show all possible diligence in informing the civilians and making advance arrangements for the emergency evacuation’.⁹ Practical measures include actions such as the provision of information about expected risks, evacuation routes and emergency shelters in a language people can understand and in a manner that is accessible to them, as well as timely information about the situation and future prospects for persons hosted in evacuation centres.¹⁰ Informing and consulting communities at risk on the necessity of evacuation and related plans not only serves preparedness. This also facilitates the participation of the population in the identification of suitable alternatives, evacuation routes and measures to safeguard their property and belongings.¹¹

⁶ ‘Sendai Framework for Disaster Risk Reduction 2015–2030’, UNGA Res 69/283, UN Doc A/RES/69/283 (23 June 2015) Annex II (hereafter Sendai Framework).

⁷ Inter-Agency-Standing Committee (IASC), *Operational Guidelines on the Protection of Persons in Situations of Natural Disasters*, Addendum to ‘Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin’ UN Doc A/HRC/16/43/Add.5 (31 January 2011), General Principle I.2.

⁸ *Budayeva and Others v. Russia*, App nos 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02 (ECtHR Judgment, 20 March 2008), para. 131.

⁹ *Ibid.*, para. 152. See also Burson, B., Kälin, W., McAdam, J., Weerasinghe, S., ‘The Duty to Move People Out of Harm’s Way in the Context of Climate Change and Disasters’ (2018) 37:4 *Refugee Survey Quarterly* 379, p. 386 with further references.

¹⁰ See Inter-Agency-Standing Committee (IASC), *Operational Guidelines on the Protection of Persons in Situations of Natural Disasters*, Addendum to ‘Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin’ UN Doc A/HRC/16/43/Add.5 (31 January 2011), Guideline A.1.1.

¹¹ *Ibid.*, Guideline A.1.3.

- *Planned relocations*: When authorities conclude that their duty to protect life and health requires them to relocate communities in anticipation of or in the aftermath of adverse effects of climate change such as eroding coastlines or landslides, human rights – in particular the prohibition of forced evictions – require them, among others, to provide affected people with an opportunity for genuine consultation and give them adequate and reasonable notice prior to the scheduled date of moving them to the new location.¹² Such information and consultation is particularly relevant for obtaining ‘the free, prior and informed consent’ that is required before indigenous peoples can be relocated.¹³
- *Protection during internal displacement*: The right to information and for displaced persons to be consulted on matters affecting them is an important prerequisite for the enjoyment of human rights during displacement. Without such information and consultation, displaced people might have difficulties to access humanitarian assistance or basic services, for instance, when water points or food distribution sites are too far away from where they are sheltered. Thus, according to the Committee on Economic, Social and Cultural Rights, the right of people ‘to participate in decision-making processes that may affect their exercise of the right to water must be an integral part of any policy, programme or strategy concerning water. Individuals and groups should be given full and equal access to information concerning water, water services and the environment, held by public authorities or third parties.’¹⁴
- *Durable solutions for internally displaced persons*: The duty to provide access to relevant information and proactively inform and consult with affected people is also relevant when it comes to finding durable solutions after a disaster for internally displaced people or people who have been displaced across borders due to the negative impacts of climate change. While the Court, in the *Case of the Río Negro Massacres*, ordered authorities to consult with IDPs before implementing specific development projects for their permanent settlement¹⁵ because of their obligation to make reparations for the serious human rights violations committed by state security forces, an obligation to consult on durable solutions can also be derived from Article 13 if the displacement was not arbitrary or otherwise unlawful. The Council of Europe’s Committee of Ministers stated that “internally displaced persons should be properly informed, but also consulted to the extent possible, in respect of any decision affecting their situation prior to, during or after their displacement”.¹⁶ This is in line with Guiding Principle on Internal Displacement 28 which states that “special efforts

¹² Committee on Economic, Social and Cultural Rights, *General Comment No. 7 The right to adequate housing (Art.11.1): forced evictions* (20 May 1997), para. 15. Similarly IASC *Operational Guidelines* (n 15) at C.2.4 and International Law Association, Resolution 6/2018, Committee on International Law and Sea Level Rise, *Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise*, Principle 6, para. 5.

¹³ United Nations Declaration on the Rights of Indigenous Peoples, UNGA Res. 61/295 (2007), Article 10.

¹⁴ Committee on Economic, Social and Cultural Rights, *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant)* (20 January 2003), para 48.

¹⁵ *Case of the Río Negro Massacres v Guatemala*, Inter-American Court of Human Rights Series C, No 250 (4 September 2012) para 284. Similar, *Case of Massacres of El Mozote and Nearby Places v El Salvador*, Inter-American Court of Human Rights Series C, No 252 (25 October 2012) para 339.

¹⁶ Council of Europe, *Recommendation Rec(2006)6 of the Committee of Ministers to member states on internally displaced persons*, 5 April 2006, Committee of Ministers Rec(2006)6, para. 11.

should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.”¹⁷

- *Migrants caught up in disasters*: Finally, the duty to provide information and consult with affected people is highly relevant for migrants caught in a disaster situation in countries of transit or destination. The so-called MICIC Guidelines restate international legal obligations and provide practical advice for States and others to protect and assist migrants in crisis situations, including on access to information: ‘Migrants need to understand potential risks associated with a crisis, where and how to obtain assistance, and how to inform stakeholders of their needs...[they] should receive information on the evolving nature of a crisis and on ways to access assistance...Involving migrants and civil society, who have first-hand knowledge of the specific needs and challenges faced by migrants can improve the effectiveness of efforts to protect migrants in countries experiencing crises.’¹⁸

3. Question F: Preventing, addressing, and resolving displacement in the context of adverse effects of climate change

3.1 Conceptualising climate-related displacement

Question F of the request reads:

Concerning the shared but differentiated obligations and responsibilities in terms of rights on the part of States due to the climate emergency, and taking into account the fact that the climate emergency is causing more damage in certain regions, such as the Caribbean countries, the island and coastal territories of our region and among their inhabitants:

1. *How should the obligations of cooperation between States be interpreted?*
2. *[...]*

In view of the fact that one of the impacts of the climate emergency is the aggravation of the factors at the origin of human mobility - migration and forced displacement of people:

3. *What obligations and principles should guide the individual and coordinated actions to be taken by States in the region to address non-voluntary human mobility, exacerbated by the climate emergency?*

To answer these questions, it is useful to first ask how non-voluntary human mobility in the context of climate change (hereafter displacement) is best understood. As a member of the Steering Group of the Platform on Disaster Displacement (PDD) – a state-led initiative process addressing the protection needs of people at risk of or being displaced in the context of disasters and adverse effects of climate change – we base this analysis on the Nansen Initiative Protection Agenda¹⁹ whose implementation is one of the goals of the Platform.

¹⁷ *Guiding Principles on Internal Displacement*, Addendum to ‘Report of the Representative of the Secretary-General, Mr Francis M Deng, submitted pursuant to Commission Resolution 1997/39, UN Doc E/C.N.4/1998/53/Add.2 (11 February 1998), Principle 28.

¹⁸ *Migrants in Countries in Crisis (MICIC) Initiative, Guidelines to protect migrants in countries experiencing conflict or natural disaster* (June 2016), Guideline 6, p. 28. See also Guidelines 7 and 9.

¹⁹ Nansen Initiative, *Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change*, vol I (2015) 16. The Protection Agenda was endorsed by 109 States in October 2015 and is, among others, referenced in *The Global Compact for Safe, Orderly and Regular Migration*, UNGA Res 73/195 (19 December 2018) UN Doc A/RES/73/195, Annex, para. 18(1). The following draws from Walter Kälin, *Internal Displacement and the Law* (Oxford University Press 2023, pp. 113–123.

The relationship between global warming and displacement is complex. To properly understand climate-related displacement, it is important to stress that there is no direct causality between global warming and displacement. Rather, people are forced to leave their homes and seek refuge when they are exposed to a climate-related natural hazard and too vulnerable to withstand and cope with its impacts and ensuing damages. Thus it is the combination of the elements of (a) a natural or human-made hazard, (b) exposure, and (c) vulnerability or the lack of resilience that force people to move.²⁰ In the case of climate change, the *hazards* are adverse effects of global warming such as sea-level rise, the increased occurrence and severity of drought, more powerful tropical storms or increased flooding. To what extent people are exposed to such hazards often depends on geographical factors such as living on a low-lying coastal area or atoll island. Exposure may also result from human factors, for instance when poverty and population growth forces people to live in irregular settlements on steep slopes or flood-plains that were considered unfit for human habitation by previous generations. *Vulnerability* and lack of resilience result from a multitude of factors. They include socio-economic marginalization, the lack of disaster risk reduction measures, bad governance, and many more. In other words: Displacement in the context of disasters and adverse effects of climate change always has multiple causes.²¹

3.2 Prevention: Helping people to stay.

This understanding opens the way for what the PDD calls the toolbox approach to policy interventions to prevent and mitigate displacement: States can reduce the hazard by reducing the emission of greenhouse gases in accordance with the Paris Agreement; they can reduce vulnerability and help people to stay with disaster risk reduction and climate change adaptation measures and action to build their resilience; and where these efforts are not possible or ineffective, they can reduce exposure by helping people moving out of harm's way through planned relocation or the provision of pathways for regular migration. Where these measures fail, States have an obligation to protect people displaced within their country or across state borders. This understanding is to a large extent reflected in the Global Compact on Migration (GCM)²² as well as the recommendations on integrated approaches to averting, minimizing and addressing displacement related to the adverse impacts of climate change adopted by COP24 in 2018.²³

The duty to protect life, as enshrined in Article 4(1) of the American Convention, article 6 of the International Covenant on Civil and Political Rights (ICCPR)²⁴ and corresponding guarantees

²⁰ This notion builds on the definition of disaster used by the UN Office for Disaster Risk Reduction (UNDRR), 'Terminology on Disaster Risk Reduction- 'Disaster', <<https://www.undrr.org/terminology/disaster> >

²¹ See Nansen Initiative, *Agenda* (n 21), paras. 16 and 17.

²² Global Compact for Safe, Orderly and Regular Migration (n 21).

²³ COP 24, Decision 10/CP.24, *Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts*, Annex, para 1(g).

²⁴ International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171.

in other regional human rights conventions,²⁵ is the legal cornerstone of duties to prevent displacement in the context of disasters linked to natural hazard such as tropical storms, floods, landslides, wildfires, drought or sea-level rise.

The European Court of Human Rights (ECtHR) developed in the leading case of *Budayeva v Russia*²⁶ a series of principles regarding due diligence obligations that authorities have to prevent disaster-related deaths. They can be summarized as follows:

‘The duty to protect life as a human rights obligation requires authorities to (i) enact and implement, in terms of general prevention, laws dealing with all relevant aspects of disaster risk mitigation and set up the necessary mechanisms and procedures; (ii) take the necessary administrative and technical measures, including monitoring potential dangers, in locations with specific risks to the extent that the threat is real, known and likely to be reduced by such measures; and (iii) inform potentially affected populations about possible risks so that they can evacuate when dangers become imminent.’²⁷

As regards ICCPR, Article 6, the failure of a State to protect the lives of its citizens amounts to a human rights violation if competent authorities fail ‘to take reasonable, positive measures that do not impose disproportionate burdens on them in response to reasonably foreseeable threats to life’²⁸ emanating, among others, from ‘natural and manmade disasters that may adversely affect enjoyment of the right to life’.²⁹ The Human Rights Committee also found that States ‘should ... develop, when necessary, contingency plans and disaster management plans designed to increase preparedness and address natural and manmade disasters, which may adversely affect enjoyment of the right to life’.³⁰ In *Teitiota v New Zealand*, a case involving a citizen of Kiribati who (unsuccessfully) claimed that returning him to his country of origin would violate his right to life due to the impacts of sea-level rise, the Committee alluded to State obligations to reduce and mitigate displacement risks when, in an *obiter dicta*, it mentioned that without ‘robust national and international efforts, the effects of climate change ... may expose individuals to a violation’ of their right to life.³¹

These developments suggest that the IACtHR's conclusion in relation to major environmental accidents that States must prepare contingency plans, ‘in order to respect and to ensure the rights to life and to personal integrity’³² also applies to the obligation of States to integrate climate-related displacement into disaster risk management and reduction plans and strategies as well as strategies on climate change adaptation. This would be in line with the Sendai Framework on Disaster Risk

²⁵ African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev 5, art 4; Arab Charter on Human Rights (ArCHR) (adopted 25 May 2004, entered into force 15 March 2008) reprinted in (2005) 12 International Human Rights Reports 893, 5; European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) CETS No 005, art 2.

²⁶ *Budayeva and Others v. Russia*, App nos 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02 (ECtHR Judgment, 20 March 2008). The judgement concerned the case of a mudslides killing several persons in the aftermath of extensive rainfalls.

²⁷ Kälin, *Internal Displacement and the Law* (n 21), p. 115.

²⁸ Human Rights Committee, *CCPR General Comment No. 36: Article 6: Right to life*, UN Doc CCPR/C/GC/36 (3 September 2019) para 21 (hereafter CCPR General Comment No 36).

²⁹ *Ibid*, para 27.

³⁰ *Ibid*, para 26.

³¹ HRCtee, *Teitiota v New Zealand*, Communication No. 2728/2016 (7 January 2020) para 9.11.

³² IACtHR, *Advisory Opinion OC-23/17* (n 8), para 242.

Reduction and its call for ‘transboundary cooperation’ in areas of shared ecosystems ‘such as within river basins and along coastlines, to build resilience and reduce disaster risk, including ... displacement risk’³³ and its emphasis on the importance of enhancing the disaster-resilience of public infrastructures, livelihoods, and the like.³⁴ It would also be in line with the recommendations adopted by COP24 calling on States to ‘strengthen preparedness, including resilience-building strategies and plans, and develop innovative approaches, such as forecast-based financing’ to prevent climate change-related displacement and to ‘[i]ntegrate human mobility challenges and opportunities into national planning processes, including nationally determined contributions’³⁵ and similar recommendations in the Global Compact on Migration.³⁶

3.3 Helping People to move out of harm’s way.

Reducing exposure in anticipation of climate change-related hazards is an important way to protect the life and personal integrity of persons and allow them to avoid displacement and ensuing humanitarian crises. These instruments are planned relocation and the creation of pathways for safe, orderly and regular migration.

Planned relocation is both a preventive measure³⁷ as well as a possible solution if in the aftermath of a disaster affected people are unable to remain or (in the case of evacuation or internal displacement) return to their homes because a hazard rendered that location uninhabitable or too dangerous for human habitation. While such measures may be necessary to save lives and protect the integrity of persons and thus be required by the duty to protect life enshrined in Article 4 of the American Convention, they interfere with the freedom of movement and residence (Article 22). Therefore, relevant international standards³⁸ require that that planned relocations are a measure of last resort that can only be ordered by competent authorities based on a law, are implemented after the free and informed consent of those affected is sought and, to the extent possible, involve those affected, including women, in the planning and management of the relocation. According to Article 16 of the ILO Convention No 169 and Article 10 of the UN Declaration on the Rights of Indigenous Peoples, the principle of free and informed consent is particularly important if such peoples are relocated away from their ancestral lands. If consent cannot be obtained, ‘such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned’.³⁹

³³ Sendai Framework (n 12), para 28(d).

³⁴ Ibid, para 30.

³⁵ ‘Report of the Warsaw International Mechanism for Loss and Damage associated with Climate Change, Annex, Decision 10/CP.24 (15 December 2018) UN Doc FCCC/CP/2018/10/Add.1 (19 March 2019) para 1 (g) (iii) – (v).

³⁶ Global Compact for Safe, Orderly and Regular Migration (n 21), para 18(i) and (j).

³⁷ See Sendai Framework (n 12), para 27(k),

³⁸ *Guiding Principles on Internal Displacement*, Addendum to ‘Report of the Representative of the Secretary-General, Mr Francis M Deng, submitted pursuant to Commission Resolution 1997/39, UN Doc E/C.N.4/1998/53/Add.2 (11 February 1998), Principle 7; *Sydney Declaration of Principles* (n 16), Principle 6; .

³⁹ International Labour Organization, Convention (No 169) concerning indigenous and tribal peoples in independent countries (adopted 27 June 1989, entered into force 5 September 1991) 1650 UNTS 383, art 16. The Committee on Economic, Social and Cultural Rights has referred to the requirement of consent in the context of the right to adequate housing and the prohibition of forced eviction. See Committee on Economic, Social and

As the International Panel on Climate Change (IPCC) already emphasised in 2014, greater opportunities for *voluntary migration* can reduce the vulnerability of populations at risk of displacement and be an effective strategy to adapt to climate change impacts.⁴⁰ Objective 5 of the legally non-binding Global Compact on Migration (GCM) commits to enhance options and pathways for safe, orderly and regular migration, recommends to *temporarily* admit migrants who had to leave their country due to sudden-onset disasters ‘while adaptation in or return to their country of origin is not possible’, and calls for cooperation ‘to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin owing to slow-onset natural disasters, the adverse effects of climate change, and environmental degradation, ... including by devising planned relocation and visa options, in cases where adaptation in or return to their country of origin is not possible.’⁴¹ Enhancing pathways for safe, orderly and regular migration for people affected by adverse impacts of climate change is important. Equally important is ensuring full respect for the rights of such migrants.

3.1. Protecting the displaced and achieving durable solutions

3.4.1 Internal Displacement

Displacement in the context of adverse impacts of climate change is predominantly internal. Such internally displaced persons (IDPs) are covered by the UN Guiding Principles on Internal Displacement as persons who have been forced or obliged to leave their homes ‘as a result of or in order to avoid the effects of [...] natural or human-made disasters’⁴² regardless of whether these are sudden- or slow-onset. While legally non-binding, the Guiding Principles ‘reflect and are consistent with international human rights law’⁴³ and have been recognized by the international community as an ‘important international framework for the protection of internally displaced persons’.⁴⁴ The Guiding Principles restate and spell out in greater detail what is implicit in relevant human rights guarantees, including those of the American Convention and the Protocol of San Salvador,⁴⁵ and highlight the primary responsibility of national authorities to protect and assist IDPs as well as establish conditions for durable solutions (Principles 3 and 28).

Several tools, while legally non-binding, provide guidance that is based on and reflects international and regional human rights law. The IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters⁴⁶ show in detail how to protect the rights of disaster-

Cultural Rights, *General comment No 7: The right to adequate housing (Art 11[1]) of the Covenant: Forced evictions*, UN Doc E/1998/22 (20 May 1997) Annex IV, paras 15 and 20. See also the *Basic Principles and Guidelines on Development-based Evictions and Displacement*, Annex 1 to ‘Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, Miloon Kothari’ UN Doc A/HRC/4/18 (5 February 2007) paras 37-51.

⁴⁰ IPCC, ‘2014: Summary for policymakers’, in: *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part A: Global and Sectoral Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change (CUP 2014)* 20.

⁴¹ Global Compact for Safe, Orderly and Regular Migration (n 21), para 21.

⁴² Guiding Principles (n 40), Introduction, para. 2.

⁴³ *Ibid*, Introduction, para. 3.

⁴⁴ *2005 World Summit Outcome*, UNGA Res 60/01 (24 October 2005) UN Doc A/RES/60/1, para. 132 and many subsequent resolutions by the UN General Assembly and Human Rights Council.

⁴⁵ See the detailed references in Walter Kälin, *Guiding Principles on Internal Displacement – Annotations* (2nd edn, ASIL 2008).

⁴⁶ IASC *Operational Guidelines* (n 15)

affected persons, including IDPs, in practice. The IASC Framework on Durable Solutions for Internally Displaced Persons⁴⁷ is recognized as authoritative guidance on what is necessary to achieve solutions that are sustainable. The Peninsula Principles on Climate Displacement within States,⁴⁸ elaborated by a group of experts in 2013, contextualize the Guiding Principles for situations where people move within their country due to the effects of climate change.

At the regional level, the Guiding Principles are complemented by the legally binding African Union Kampala Convention which explicitly addresses ‘persons who have been internally displaced due to natural or human made disasters, including climate change’.⁴⁹ The Convention is formulated in terms not of rights but rather the obligations of States and other actors.⁵⁰ Article 3 of the Convention highlights the duty to incorporate the rights of IDPs into domestic law and create the necessary institutional arrangements. Taking into account the growing relevance of internal displacement in the context of disasters and adverse effects of climate change, Articles 2 and 26 of the American Convention arguably also create such a duty. However, domestic provisions explicitly addressing internal displacement in disaster situations hardly exist in the Americas.

As regards to durable solutions, the Inter-American Court has identified a series of obligations of States to support IDPs to rebuild their shattered lives. However, all these judgements refer to cases of arbitrary displacement in situations of armed conflict and violence committed by State agents where the Court deduced these obligations from the duty to provide reparation for serious violations of human rights.⁵¹ While a reparations approach is hardly applicable to disaster situations, unless damages result from a failure of authorities to fulfil their human rights duties to protect,⁵² economic, social and cultural rights as well as certain civil and political rights create positive obligations that create specific duties of States to take measures helping IDPs to achieve sustainable solutions that end their displacement.⁵³

1. Cross-border displacement

As mentioned above, the Global Compact on Migration (GCM) highlights the importance of admission and stay for persons moving across borders in situations where return to or adaptation

⁴⁷ ‘Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced Persons, Walter Kälin, Addendum, Framework on Durable Solutions for Internally Displaced Persons’ UN Doc A/HRC/13/21/Add.4 (9 February 2010).

⁴⁸ Available at <http://displacementsolutions.org/peninsula-principles/> (accessed 7 April 2020).

⁴⁹ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (adopted 23 October 2009, entered into force 6 December 2012), Article 5(4).

⁵⁰ See articles 6 (international humanitarian agencies and other organizations), 7 (non-State actors), and 8 (the African Union).

⁵¹ See case of *Massacres of El Mozote and Nearby Places v El Salvador*, Inter-American Court of Human Rights Series C No 252 (25 October 2012) paras 345-346 and Order, para 8; *Massacres of Río Negro v Guatemala*, Inter-American Court of Human Rights Series C, No 250 (4 September 2012), para. 284 and Order, para. 6.

⁵² See, however, ECtHR, *Budayeva and Others v. Russia* (n 13).

⁵³ The European Court of Human Rights deduces such duties mainly from the right to protection of property and the right to respect of one’s home. See, e.g., *Doğan and others v. Turkey*, App nos 8803-8811/02, 8813/02, 8815-8819/02 (Judgment [merits], 29 June 2004) and *Sargsyan v Azerbaijan* (Grand Chamber), App No 40167/06 (Judgment, 16 June 2015) Reports 2015-IV. For a discussion of the American approach qualifying obligations to support solutions as an element of the right to reparation and the European approach of understanding such obligations as an inherent element of human rights guarantees see Kälin, *Internal Displacement and the Law* (n 21), pp. 245-254.

in countries of origin is temporarily or permanently impossible. Many States in the Americas have already implemented these recommendations by providing in their national legislation for the possibility of granting humanitarian visas or temporary protection.⁵⁴

While these measures are discretionary and based on humanitarian considerations and are not understood as being required by international law, the question arises whether under certain circumstances non-rejection at the border and non-execution of deportation orders are legally required by the principle of non-refoulement. The Inter-American Court of Human Rights has repeatedly recognized the principle of non-refoulement enshrined in Article 33 of the 1951 Convention on the Status of Refugees as customary law⁵⁵ and highlighted⁵⁶ the importance of Article 22, para. 8 of the American Convention prohibiting, in absolute terms, deporting or returning aliens to countries where their ‘right to life or persona freedom is in danger of being violated because of [their] race, nationality, religion, social status, or political opinions’. While these guarantees may apply in certain cases,⁵⁷ persons displaced across borders in the context of disasters and adverse effects of climate change are normally not at risk of becoming victims of human rights violations for the reasons set out by these guarantees.

The approach taken by the UN Human Rights Committee in *Teitiota v New Zealand*⁵⁸ might be more relevant. The case concerned a citizen of Kiribati who claimed that he was displaced due to the effects of sea-level rise from this low-lying Pacific island State to New Zealand and would risk his life if returned there. The Human Rights Committee recognized that ‘the effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 [...] of the Covenant, thereby triggering the non-refoulement obligations of sending states’.⁵⁹ While not related to a disaster triggered by natural hazards, the European Court of Human Rights held in *Sufi and Elmi v The United Kingdom* that forcible return may amount to inhuman treatment in situations where in the absence of family support lack of access to humanitarian assistance would cause intense suffering.⁶⁰ Thus, the right to life and the prohibition of inhuman treatment, which are also enshrined in the American Convention, may prohibit forcible return. This is particularly relevant in the case of sudden-onset disasters where people displaced across the border would be exposed to life-threatening dangers if returned, whether in the context of protracted natural hazards or the breakdown of law and order in the aftermath of a disaster, or where they would be exposed to suffering due to the absence of humanitarian protection and assistance.⁶¹

⁵⁴ See David J. Cantor, (2021) ‘Environment, Mobility, and International Law: A New Approach in the Americas’, (2021) 21:2 *Chicago Journal of International Law*, 263.

⁵⁵ IACtHR, *The institution of asylum, and its recognition as a human right under the Inter-American System of Protection (interpretation and scope of Articles 5, 22(7) and 22(8) in relation to Art. 1(1) of the American Convention on Human Rights)*, Advisory Opinion OC-25/18 of 30 May 2018, Series A No. 25, para 179; IACtHR, *Rights and guarantees of children in the context of migration and/or in need of international protection*, Advisory Opinion OC-21/14 of 19 August 2014, Series A No. 21, para. 211; IACtHR, *Caso Familia Pacheco Tineo v. Estado Plurinacional de Bolivia*, Judgment of 25 November 2013, Serie C No. 272, para. 151.

⁵⁶ IACtHR, *The institution of asylum* (n 57), paras. 185 ff.

⁵⁷ See UNHCR, *Legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters* (UNHCR 1 October 2020).

⁵⁸ Human Rights Committee, *Teitiota v New Zealand* (n 33).

⁵⁹ *Ibid.*, para 9.11. In the specific case, the Committee rejected Mr. Teitiota’s claim that he would encounter a life-threatening situation upon return.

⁶⁰ *Sufi and Elmi v The United Kingdom*, App nos 8319/07 and 11449/07 (Judgment, 28 June 2011).

⁶¹ See also Nansen Initiative *Agenda* (n 21), para 39.

Even where the refusal to admit people displaced across borders in the context of disasters and adverse effects of climate change and their deportation would not amount to a human rights violation, individuals who have to return to devastated countries of origin are unlikely to be able to enjoy their human rights there. Therefore, the laws mentioned above, as well as past⁶² and ongoing efforts of Central and South American States to adopt guidance and guidelines to harmonize their approaches are important tools to safeguard the human rights of such persons.

3.5 International Cooperation

International law fully recognizes the obligation of States to cooperate in areas relevant for the protection of human rights. While Articles 55 and 56 of the Charter of the United Nations – reflected in Chapter VII of the Charter of the Organization of American States – remain at a general level, Article 26 of the American Convention and several articles of the Protocol of San Salvador concretize this obligation for economic, social and cultural rights.⁶³

Since 2010, the international community has repeatedly recognized that the duty to cooperate also exists with regard to matters related to displacement and similar adverse impacts of climate change. In 2010, the Cancún Adaptation Framework adopted by COP16 invited States to ‘enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at national, regional and international levels’.⁶⁴ In 2015, the Sendai Framework called for the promotion of ‘transboundary cooperation ... to build resilience and reduce disaster risk, including ... displacement risk’.⁶⁵ In 2018, States adopting the Global Compact for Safe, Orderly and Regular Migration (GCM), committed to [i]ntegrate displacement considerations into disaster preparedness strategies and promote cooperation with neighbouring and other relevant countries to prepare for early warning, contingency planning, stockpiling, coordination mechanisms, evacuation planning, reception and assistance arrangements, and public information’ (GCM, para. 18(j), and to ‘[c]ooperate to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin due to slow-onset natural disasters, the adverse effects of climate change [. . .] in cases where adaptation in or return to their country of origin is not possible’ (GCM, para. 18(h).

Codifying present international law, the UN’s International Law Commission (ILC) highlighted in its 2016 Draft Articles on the Protection of Persons in the Event of Disasters ‘the fundamental value of solidarity in international relations and the importance of strengthening international cooperation in respect of all phases of a disaster’⁶⁶ as well as the duty of affected States to

⁶² Regional Conference on Migration, *Protection for Persons Moving Across Borders in the Context of Disasters. A Guide to Effective Practices for RCM Member Countries* (Nansen Initiative, November 2016); Conferencia Suramericana sobre Migraciones, Lineamientos regionales en materia de protección y asistencia a personas desplazadas a través de fronteras y migrantes en países afectados por desastres de origen natural (CSM 2018).

⁶³ Protocol of San Salvador, preamble and Articles 1, 12 and 14.

⁶⁴ *The Cancún Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention*, in Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010, Addendum, Part Two: Action taken by the Conference of the Parties at its sixteenth session, UN Doc. FCCC/CP/2010/7/Add.1 (15 March 2011), para 14(f).

⁶⁵ Sendai Framework, para. 28.

⁶⁶ *Draft Articles on the Protection of Persons in the event of Disasters*, adopted by the International Law Commission (ILC) at its 68th session in 2016 and submitted to the General Assembly as part of the ILC’s report of that session: UN General Assembly Official Records Supp No 10, UN Doc. A/71/10, preamble.

seek assistance from the international community ‘as appropriate’.⁶⁷ It also highlighted that ‘[c]ooperation in the response to disasters includes humanitarian assistance, coordination of international relief actions and communications, and making available relief personnel, equipment and goods, and scientific, medical and technical resources’.⁶⁸ While the Draft articles focus on humanitarian responses, the International Law Association, building on these and other sources,⁶⁹ adopted in 2018 the Sydney Declaration of *Principles on the Protection of Persons Displaced in the Context of Sea Level Rise* which sets out cooperation duties in terms that also apply to situations other than sea level rise. Reaffirming the duty to ‘enhance international cooperation among themselves and with relevant international organisations and agencies to assist [affected] States ... to prevent, avoid, and respond to disaster- and climate change-related risks, including the risk of displacement’⁷⁰, Principle 4 lists a series of areas of cooperation. They include disaster risk reduction, climate change adaptation, and resilience building; evacuations ‘necessary to save lives, including across borders’; the facilitation of ‘cross-border migration in anticipation of, or in reaction to, irreversible environmental degradation or sudden-onset disasters’; the enhancement of ‘the humanitarian response in situations of internal displacement’; support for ‘recovery, including durable solutions, for internally displaced persons’;⁷¹ as well as the admission and stay of and durable solutions for persons moving across borders.⁷² According to Principle 9(4) ‘States ready to admit cross-border disaster-displaced persons should strive to harmonise their practices regarding the admission and protection of cross-border disaster-displaced persons at the regional and/or sub-regional levels.

4. Conclusions

Regarding Question B (Freedom to seek, receive, and impart information):

In order to respect and ensure the rights to life and survival in relation to the climate emergency,

States

- must provide affected people with access to relevant information in a language they understand as well as proactively inform and consult with them before, during and after displacement and with regard to disaster risk reduction and preparedness, evacuation and planned relocation, protection during displacement, and durable solutions.
- must carry out these same duties with regard to migrants caught up in climate-related disasters.

Regarding Question F. 1 and F.3 (Preventing, addressing, and resolving displacement in the context of adverse effects of climate change):

In order to respect and ensure the rights to life and to personal security and other relevant human rights protecting people at risk of being displaced in the context of adverse effects of climate change, States

⁶⁷ Ibid, Article 11.

⁶⁸ Ibid, Article 8.

⁶⁹ See International Law Association, Sydney Conference (2018), *International Law and Sea Level Rise*, Report of the Committee on International Law and Sea Level Rise (2018), p. 31-35.


⁷⁰ *Sydney Declaration of Principles* (n 16), Principle 4(1).

⁷¹ Ibid, Principle 4(2)(a).

⁷² Ibid, Principle 4(2)(b). See also Principle 9(3) on cooperation of ‘States that have admitted cross-border disaster-displaced persons ... with States of origin to find durable solutions for such persons’ that include ‘include return where possible, or permanent admission and stay in the host State.’

- must take measures to *prevent* displacement, in particular by integrating climate-related displacement risks into disaster risk management and reduction plans and strategies, including contingency plans, as well as strategies on climate change adaptation, and by taking positive action that do not disproportionately burdens them when foreseeable natural hazards create specific life-threatening situations that will trigger displacement;
- must implement *planned relocations* only as a measure of last resort and in accordance with international standards, in particular in consultation with affected communities and with their consent;
- should cooperate to expand *pathways for safe, orderly and regular migration* for people unable to adapt to adverse impacts of climate change in their own country;
- must protect *internally displaced persons* in accordance with the UN Guiding Principles on Internal Displacement;
- must *refrain from forcibly returning* persons to countries affected by the adverse effects of climate change, where their lives would be seriously threatened or where they would experience severe suffering because humanitarian assistance and protection are unavailable or inaccessible; and should, out of humanitarian considerations, admit and provide temporary stay to persons displaced across the border and in need of protection if this threshold is not met;
- must enhance *cooperation* in all these areas, including by harmonizing their approaches to the protection of persons displaced in the context of adverse effects of climate change.

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