

Towards a uniform legal system of protection

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There exists a set of inter-related normative texts for the protection of the environment and for the prevention and reduction of disasters, as well as for ensuring respect for human rights in all circumstances. Taken together these standards constitute an effective legal and operational framework and should not be interpreted independently or in isolation.

The Guiding Principles on Internal Displacement and the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) of 2009 already specifically place national governments under an obligation to set up a legal framework to prevent displacement. Three other areas of law could be considered, however, to show the relationship between governments' various obligations and to make a more effective contribution to reducing the risk of displacement:

1. Reducing disasters

The mechanism for disaster reduction enshrined in the Hyogo Framework for Action gives governments responsibility for reducing natural and anthropogenic environmental risks and protecting populations by introducing policies, programmes or legislation aimed at reducing natural threats.¹ The problem of displacement was not initially included in disaster management.

The strategies developed, however, have enhanced the ability to respond to such situations and can have a significant impact on the extent of displacement.

At a national level, such an obligation has been included in the constitutional provisions of several countries. The Ethiopian Constitution of 1994, for example, states that the government "shall take measures to provide protection against natural and man-made disasters; and, in the event of disasters, it shall provide timely assistance to the victims." Other governments have adopted national regulations. India's 2005 Disaster Management Act in India, Tuvalu's 2008 National Disaster Management Act and the Philippines' 2010 Disaster Risk Reduction and Management Act all aim to institutionalise measures to reduce the risk of disasters in order to increase the resilience of vulnerable communities and tackle the issue of displacement.

At a regional level, the 2005 ASEAN Agreement on Disaster Management and Emergency Response and the 2005-15 Madang Framework for Action for the Pacific both emphasise the introduction of binding measures in relation to prevention. The 1987 European and Mediterranean Major Hazards Agreement also aspires to strengthen the region's preventive approach to natural and technological disasters. At an international level, the specialist institutions of the UN are required to work in ways that support the implementation of the Hyogo Framework for Action.

As far as displacement due to industrial accidents in particular is concerned, the prevention system for industrial disasters is not solely limited to the obligations of the Hyogo Framework. Although the incident at Japan's Fukushima nuclear power station in March 2011 resulted in the displacement of 40,000 people, various national and international conventions and agreements relating to the issue of prevention and assistance have been adopted, obliging governments to implement proper national policies for protecting the environment and populations under threat.

2. Protecting human rights

As far as the human rights-centred approach is concerned, the consequences of environmental damage on life, health or property impose an obligation on national governments to adopt preventive measures in order to avoid – as far as possible – populations being displaced and to respect their fundamental rights. The European Court of Human Rights stated, in the case of *Öneryıldız v. Turkey*, that prevention is the primary duty of the state and is derived from its positive obligation to safeguard the right to life. The same obligation appeared in the case of *Boudaïeva et al. v. Russia*, when the Court reiterated that the state has a positive obligation to establish a legislative and administrative framework for the purpose of protecting human rights from the consequences of a disaster.² The African Commission also recognised, in the case of *Federal Republic of Nigeria v. Ogoni Community*, that failing to implement preventive measures designed both to protect the community from pollution stemming from a particular source and to avoid displacement is a violation of rights under the African Charter. Similarly, it is increasingly recognised that it is incumbent upon states to disseminate information in the event of an industrial risk, such as the nuclear accident in Japan, and to ensure public participation in decisions about, for example, evacuation and compensation. Procedural rights – like the right to information and the right to public participation in decision making, as well as the right to access to justice – are central in preventing displacement.

3. Protecting the environment

A general obligation to protect the environment underlies the duty imposed on national governments to take necessary measures to prevent the occurrence of environmental risks likely to result in displacement. At the same time as governments are being forced to introduce adaptation programmes to slow down the effects of climate change and prevent displacement, the preventive principle – as well as the precautionary principle – has acquired a certain degree of authority at an international level. Numerous international laws



Nurseries and forestation programmes in Kakuma refugee camp, Kenya, were set up by GTZ and UNHCR to help prevent further degradation of the local environment.

and regulations attest to the obligation that national governments are under to implement protective measures designed to stop an environmental risk from becoming a reality and therefore resulting in displacement. This kind of obligation is increasingly linked to the concept of sustainable development, requiring better evaluation of imminent risks and reduction of repercussions for people. This approach appears clearly in the 1996 Convention to Combat Desertification, which emphasises the significance of sustainable development in combating important social problems "and those arising from migration, displacement of persons and demographic dynamics."³

Complementarity of systems

Although in some cases the original target for protection was not the displaced person directly, a set of interrelated and complementary normative texts has been introduced to protect the environment and to prevent and reduce disasters, as well as to ensure respect for human rights in all circumstances. In reality these three areas constitute a broad legal and operational framework which not only highlights the obligations incumbent on national governments to minimise the effects of disasters on individuals but also, more fundamentally, shows that it is the responsibility of public authorities to combat the actual causes of the displacement. It is therefore imperative not to consider the various obligations imposed by such conventions and agreements as being independent of each other. All the obligations incumbent on national governments, dispersed across different areas of law, need to be applied as a single, uniform system of protection in order to ensure that they achieve tangible results. For this to happen, there will need to be increased international cooperation across all three areas.

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1. www.unisdr.org/we/coordinate/hfa

2. See Walter Kälin and Claudine Haenni Dale 'Disaster risk mitigation – why human rights matter', FMR 31 www.fmreview.org/FMRpdfs/FMR31/38-39.pdf

3. Paragraph 9 of the Preamble to the Convention to Combat Desertification.