



General Assembly

Distr.: General
16 July 2021

Original: English

Seventy-sixth session

Item 75 (b) of the provisional agenda*

Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights of internally displaced persons

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, submitted in accordance with Assembly resolution [74/160](#) and Human Rights Council resolution [41/15](#).

* [A/76/150](#).



Report of the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary

Summary

In the present thematic report, the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, addresses the prevention of arbitrary displacement in situations of armed conflict and generalized violence. She analyses the international legal standards on the prohibition of and obligation to prevent arbitrary displacement and their relevance to the response to displacement across the displacement cycle.

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I. Introduction

1. The number of people living in internal displacement because of armed conflict and violence reached 48 million globally at the end of 2020.¹ This is the highest number ever recorded and reflects the evolving nature of conflicts and resulting displacement. Situations of conflict and violence can also be compounded by disasters as drivers of displacement and, since 2020, by the coronavirus disease (COVID-19) pandemic and its far-reaching effects.

2. These concerning trends and the growing pressure on humanitarian aid have made it clear that more has to be done to prevent crises and address the root causes² and triggers of displacement. Preventing arbitrary displacement in line with international standards is the primary responsibility of States and protects the population from the harms associated with displacement. Preventing arbitrary displacement is also in the interest of States, as it can be less costly and easier than responding to displacement once it has occurred.

3. It is important to note, however, that liberty of movement and freedom to choose one's residence are rights protected under international human rights law,³ and that 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. It is also important to recognize the dangerous situation of persons trapped in conflict zones, who must be allowed and enabled to leave the area. Therefore, preventive measures must focus on addressing the conditions that lead to displacement and on protecting people from being forced to leave their homes, in line with international standards, and must not hinder civilians from seeking safety or aim to prevent human mobility.

4. The international community has been devoting increasing attention to the prevention of crises and their consequences. The 2030 Agenda for Sustainable Development, which is grounded in human rights, recognizes the interdependence of peace, security and sustainable development and the need to redouble efforts to resolve and prevent conflict. The international community has also recognized the importance of human rights and its interlinkages to security and development in sustaining peace.⁴ In 2016, the Secretary-General called for new and protracted internal displacement to be reduced by at least 50 per cent by 2030.⁵ In his call to action for human rights in 2020, he recalled that prevention was a top priority across United Nations organizations and that there was "no better guarantee for prevention than for Member States to meet their human rights responsibilities".⁶ Prevention was one of the pillars of the Plan of Action for Advancing Prevention, Protection and Solutions for Internally Displaced People launched by the Special Rapporteur and other stakeholders on the twentieth anniversary of the Guiding Principles on Internal Displacement,⁷ and is an area being examined by the Secretary-General's High-level Panel on Internal Displacement.

5. It is clear that measures to prevent crises and conflict are essential to preventing the conditions leading to displacement. These measures, however, aim at preventing

¹ Norwegian Refugee Council and Internal Displacement Monitoring Centre, *Global Report on Internal Displacement 2021*.

² Ibid., "Understanding the root causes of displacement: towards a comprehensive approach to prevention and solutions", 8 December 2015.

³ International Covenant on Civil and Political Rights, art. 12.

⁴ Security Council resolution 2282 (2016) and General Assembly resolution 70/262. See also A/72/707-S/2018/43, which asserts human rights as a critical foundation for sustaining peace.

⁵ A/70/709, paras. 81 to 85, and annex pp. 54 and 55.

⁶ United Nations, António Guterres, "The highest aspiration: a call to action for human rights".

⁷ See www.globalprotectioncluster.org/_assets/files/20180523-gp20-plan-of-action-final.pdf.

the broader context of crises underlying a range of human rights violations, which include but are not limited to arbitrary displacement. In the present report, the Special Rapporteur on the human rights of internally displaced persons, Cecilia Jimenez-Damary, aims at contributing key messages to the field of prevention with a particular focus on the prevention of arbitrary internal displacement in situations of armed conflict and generalized violence, adopting a rights-based approach grounded in the centrality of international human rights and humanitarian law.

6. In preparation for the present report, the Special Rapporteur benefited from consultations with a wide range of stakeholders, including the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration, the Global Protection Cluster and field protection clusters, and the Department of Political and Peacebuilding Affairs of the Secretariat. The Special Rapporteur would like to express her gratitude to all stakeholders that participated in consultations for sharing their views. She would also like to thank Oxford Pro Bono Publico for the comparative research on national laws and policies conducted to inform this report⁸ and Windesheim Honours College for their specialized theoretical research.⁹

II. Applicable international and regional legal standards

7. The Guiding Principles on Internal Displacement, which restate and clarify the international legal obligations relevant to internally displaced persons based on international human rights law and international humanitarian law, explicitly state the existence of the right not to be arbitrarily displaced, which was considered to be implicit under international law.¹⁰ The right not to be arbitrarily displaced entails: (a) the prohibition of arbitrary displacement; and (b) the obligation of authorities to prevent arbitrary displacement.

A. Prohibition of arbitrary displacement

8. Principle 6 of the Guiding Principles on Internal Displacement sets out the right of every human being to be protected from arbitrary displacement, and provides a non-exhaustive list of situations in which displacement would be arbitrary, acknowledging that in certain circumstances displacement would exceptionally be permissible. When it comes to the response to internal displacement, however, whether the forced displacement is arbitrary or permissible, authorities have the obligation to provide assistance and protection to internally displaced persons and to support durable solutions for them.

9. Regarding the notion of “arbitrariness”, as explained by the Human Rights Committee in relation to the right to life, it is “not to be fully equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality”.¹¹ Thus, to determine whether displacement is permissible or arbitrary, it is not sufficient for displacement to be lawful; it has to be assessed in the light of international law. In particular, three

⁸ See www.law.ox.ac.uk/research-and-subject-groups/oxford-pro-bono-publico/oxford-pro-bono-publico-project-work.

⁹ G. M. van Selm, “The prevention of arbitrary displacement: a grounded theory approach”, Windesheim Honours College, 2021. Available at https://hbo-kennisbank.nl/details/sharekit_windesheim:oai:surfsharekit.nl:d7fa7846-1d51-4a0e-bbf3-2f7a19bc5a42.

¹⁰ E/CN.4/1998/53/Add.1, paras. 4 and 88.

¹¹ Human Rights Committee, general comment No. 36 (2018), para. 12.

main criteria must be observed for this determination: the grounds for displacement, the due process and safeguards that must be respected during displacement and the duration of displacement.¹²

Grounds for displacement

10. Principle 6 of the Guiding Principles on Internal Displacement provides for a few exceptions where forced displacement is permissible. In the context of armed conflict, forced displacement by parties to armed conflict for reasons related to the conflict is arbitrary unless it is carried out for the security of the civilians involved or for imperative military reasons (Principle 6 (2) (b)). When displacement is used as a collective punishment or “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”, it is always arbitrary (Principle 6 (2) (a) and (e)), as these practices are absolutely prohibited under international law.

11. The prohibition of arbitrary displacement as enunciated in Principle 6 is drawn from the provisions of international human rights law on freedom of movement and choice of residence (which includes the right to remain in one’s home),¹³ freedom from arbitrary interference with one’s home¹⁴ and the right to adequate housing, which entails the right to live somewhere in security, peace and dignity.¹⁵ As these rights are not absolute and can exceptionally be subjected to some restrictions where necessary, proportionate and based on objective reasons, forced displacement can exceptionally be permitted in certain circumstances. Under international human rights law, restrictions on freedom of movement and choice of residence can be imposed in some circumstances to protect national security, public order, public health or morals or the rights and freedoms of others, which must be viewed in the context of a democratic society, and must respect a number of standards (enumerated below).¹⁶

12. In situations of armed conflict, the prohibition of arbitrary displacement set out in Principle 6 is drawn from international humanitarian law. Different from international human rights law, international humanitarian law contains explicit prohibitions of forced displacement, albeit narrower in scope. Under international humanitarian law, parties to a conflict may not deport or forcibly displace the civilian population for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. These are the only permissible grounds for forced displacement by parties to the conflict in connection to an armed conflict. This prohibition applies with some nuances to both international armed conflicts, in relation to occupied territories, and non-international armed conflicts,

¹² See [E/CN.4/1998/53/Add.1](#); and Romola Adeola, “The right not to be arbitrarily displaced under the United Nations Guiding Principles on Internal Displacement”, *African Human Rights Law Journal*, vol. 16, No. 1 (2016).

¹³ Universal Declaration of Human Rights, art. 13; International Covenant on Civil and Political Rights, art. 12; American Convention on Human Rights, art. 22 (1); African Charter on Human and Peoples’ Rights, art. 12 (1); Protocol No. 4 to the European Convention on Human Rights, art. 2 (1); and Arab Charter on Human Rights, art. 26 (1). See also principle 9 of the principles on housing and property restitution for refugees and displaced persons.

¹⁴ Universal Declaration of Human Rights, art. 12; International Covenant on Civil and Political Rights, art. 17; American Convention on Human Rights, art. 11; European Convention on Human Rights, art. 8 (1); and Arab Charter on Human Rights, art. 21.

¹⁵ Universal Declaration of Human Rights, art. 25; International Covenant on Economic, Social and Cultural Rights, art. 11; and Arab Charter on Human Rights, art. 38. See also Committee on Economic, Social and Cultural Rights, general comment No. 4 (1991).

¹⁶ International Covenant on Civil and Political Rights, art. 12 (3); International Covenant on Economic, Social and Cultural Rights, art. 4; American Convention on Human Rights, art. 22 (3) and (4); European Convention on Human Rights, art. 8 (2); and Protocol 4 to the European Convention on Human Rights, art. 2 (3) and (4).

and has acquired customary status.¹⁷ It covers forced displacement, whether within or outside the bounds of national territory.¹⁸

13. 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.

14. At the regional level, the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) restates and further elaborates on these rules of international human rights and international humanitarian law. Article 4 (4) restates Principle 6 (2) and adds to the (non-exhaustive) list of situations in which displacement is arbitrary, referring to displacement intentionally used as a method of warfare or as a result of other violations of international humanitarian law in situations of armed conflict, displacement caused by generalized violence or violations of human rights and displacement as a result of harmful practices.

Due process and other safeguards

15. Displacement must also comply with minimum requirements of due process and other safeguards, which can be enumerated as follows: necessity; proportionality; lawfulness; participation and free and informed consent; safeguards during displacement; and provision of remedies.¹⁹

16. Principle 7 (1) of the Guiding Principles on Internal Displacement sets out that: “Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.” This principle reflects the requirements of necessity and proportionality. Forced displacement must be necessary to protect the legitimate interests which constitute the grounds for displacement. It must be a means of last resort, when there are no other feasible alternatives to protect such interests. Displacement must be proportionate to the legitimate interests being protected, appropriate to achieve this protection and be the least intrusive means available to do so.

¹⁷ Fourth Geneva Convention, art. 49; Protocol II Additional to the Geneva Conventions of 1949, art. 17; International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law* (Cambridge, United Kingdom, Cambridge University Press, 2009), rule 129. See also Protocol I Additional to the Geneva Conventions of 1949, arts. 51 (7) and 78 (1); and Protocol II Additional to the Geneva Conventions of 1949, art. 4 (3) (e).

¹⁸ Fourth Geneva Convention, art. 49; and Protocol II Additional to the Geneva Conventions of 1949, art. 17 (2). See also ICRC, *Customary International Humanitarian Law*, explanation of rule 129.

¹⁹ See Principles 7 and 8 of the Guiding Principles on Internal Displacement, which apply whether or not displacement is arbitrary. See also Human Rights Committee, general comments No. 16 (1998), No. 27 (1999) and No. 31 (2004); Committee on Economic, Social and Cultural Rights, general comment No. 7 (1997); Walter Kälin, *Guiding Principles on Internal Displacement: Annotations* (American Society for International Law, 2008); and Deborah Casalin, “Prohibitions on arbitrary displacement in international humanitarian law and human rights: a time and a place for everything”, in *Convergences and Divergences between International Human Rights, International Humanitarian and International Criminal Law*, Paul de Hert, Stefaan Smis and Mathias Holvoet, eds. (Intersentia, 2018).

17. “Lawfulness” means that the decision must be provided for by law and be taken by an authority empowered to do so by law, must not impair the existence of the right being restricted and must be consistent with other human rights, including the principles of equality and non-discrimination. Prior to displacement, the free and informed consent of those affected must be sought. They must be fully informed about the reasons for displacement and how it will be undertaken, and about their rights. Affected persons have the right to participate in decision-making and in the planning and management of their displacement.²⁰

18. Their displacement must also be carried out in compliance with other obligations under human rights. In particular, safeguards must be put in place to ensure satisfactory conditions of safety, nutrition, health and hygiene, which take into account the specific needs of women, children and persons with disabilities, and to preserve family unity. Internally displaced persons must be protected, especially with regard to their rights to life, dignity, liberty and security. People should not be moved at night or in especially bad weather, and displaced persons must be provided with alternative accommodation to the greatest extent possible.

19. Finally, displaced persons must have access to justice and effective remedies, including judicial review of the decision to displace them, and reparations. Any barriers that prevent displaced persons from accessing the judicial system should be removed and legal aid should, to the extent possible, be provided.

20. In situations of armed conflict, however, the applicable requirements need to be looked at in the context of obligations under international humanitarian law. For instance, where an evacuation is required, authorities might not be able to fully comply with the requirement of lawfulness and the requirement of participation and free and informed consent, given the urgency of the situation. This is recognized by the Guiding Principles on Internal Displacement, which provide that a number of these requirements should be complied with “if displacement occurs in situations other than during the emergency stages of armed conflicts and disasters” (Principle 7 (3)).

Duration of displacement

21. Even where displacement is undertaken on permissible grounds and in compliance with the required due process and safeguards, if displacement is prolonged, and lasts longer than necessary, it violates the necessity and proportionality required, under international human rights law, to impose restrictions on the rights to freedom of movement and choice of residence, and freedom from interference with one’s home.²¹ Therefore, displacement that was permissible at first can become arbitrary in the light of its duration. In situations of armed conflict, international humanitarian law provides that an evacuation must last for as long as the conditions warranting it exist; displaced persons have the right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist, for example when hostilities in the area have ceased.²² This standard is recognized in Principle 6 (3) of the Guiding Principles on Internal Displacement, which states that displacement shall not last longer than required by the circumstances.²³

²⁰ See [A/72/202](#).

²¹ Walter Kälin, *Guiding Principles on Internal Displacement: Annotations*, annotation on Principle 6 (3).

²² Fourth Geneva Convention, art. 49 (2); and ICRC, *Customary International Humanitarian Law*, rule 132.

²³ See also International Labour Organization (ILO) Convention No. 169, art. 16 (3).

B. Arbitrary displacement as an international crime

22. Under certain circumstances, acts of arbitrary displacement may amount to international crimes, triggering individual criminal responsibility in addition to the responsibility of the State that may also arise under international law. The Rome Statute of the International Criminal Court provides that deportation or transfer of the civilian population, if committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack, constitutes a crime against humanity.²⁴ In this context, it defines deportation or forcible transfer of population as the “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law”.²⁵ The Rome Statute includes provisions on war crimes related to acts of forced displacement under international humanitarian law in both international and non-international armed conflict.²⁶ It also provides that forcibly transferring children of the group to another group amounts to genocide if committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group.²⁷ The Statutes of the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone and the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia also contain provisions criminalizing several of these acts.²⁸ Other international crimes may also be relevant in situations of arbitrary displacement. For example, forcible displacement committed on discriminatory grounds may amount to the crime against humanity of persecution,²⁹ and arbitrary displacement can be committed as part of the crime against humanity of apartheid.³⁰ Forcible transfer may amount to crimes against humanity as “other inhumane acts”.³¹

23. However, arbitrary displacement does not always amount to an international crime. For acts of arbitrary displacement to amount to an international crime, all elements of the crime must be met.³² For instance, the contextual elements of international crimes (war crimes, crimes against humanity or genocide) must be present. The act of the perpetrator must have contributed to the forced displacement, for example by ordering the displacement, or by creating a situation that forces people

²⁴ Rome Statute of the International Criminal Court, art. 7 (1) (d).

²⁵ *Ibid.*, art. 7 (2) (d).

²⁶ *Ibid.*, arts. 8 (2) (a) (vii), (b) (viii) and (e) (viii). See also ICRC, *Customary International Humanitarian Law*, explanation of rule 156.

²⁷ Rome Statute, art. 6 (e).

²⁸ Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, arts. 2 (g), 4 (2) (e) and 5 (d); Statute of the International Criminal Tribunal for Rwanda, arts. 2 (2) (e) and 3 (d); Statute of the Special Court for Sierra Leone, art. 2 (d); and Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, arts. 5 and 6.

²⁹ Rome Statute, art. 7 (1) (h); and Statute of the International Criminal Tribunal for Rwanda, art. 3 (h). See also International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Krnojelac*, Case No. IT-97-25-A, Appeals Judgment, 17 September 2003, para. 218; and Guido Acquaviva, “Forced displacement and international crimes”, Legal and Protection Policy Research Series (Geneva, UNHCR, Division of International Protection, 2011), p. 14.

³⁰ Rome Statute, art. 7 (1) (j).

³¹ *Ibid.*, art. 7 (1) (k); Updated Statute of the International Criminal Tribunal for the Former Yugoslavia, art. 5 (i); and Statute of the International Criminal Tribunal for Rwanda, art. 3 (i). See also International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Stakić*, Case No. IT-97-24-A, Appeals Judgment, 22 March 2006, para. 317.

³² In relation to the Rome Statute, see International Criminal Court, *Elements of Crimes* (The Hague, Netherlands, 2011). See also Knut Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court – Sources and Commentary* (Cambridge, United Kingdom, Cambridge University Press, 2003).

to move (e.g. by destroying civilian property or intentionally creating an environment of fear). Moreover, mens rea must be proven (i.e. the intention to cause displacement).

C. Obligation to prevent arbitrary displacement

24. Section II of the Guiding Principles on Internal Displacement sets out the obligations of States and other duty bearers to take preventive measures to protect individuals from displacement, including but not limited to arbitrary displacement. The reference to “protection from” instead of “prevention” avoids misinterpretation, given that civilians must not be hindered from seeking safety and human mobility, as such is not to be prevented.

25. Principle 5 of the Guiding Principles states that all authorities and international actors must respect and ensure respect for human rights and humanitarian law so as to prevent and avoid conditions that could lead to displacement of persons. This Principle recognizes that drivers of displacement, such as armed conflict and generalized violence and the structural factors in society that fuel them, and the specific triggers of displacement within a particular context, such as attacks on civilians and civilian property or other violence against the population, are often linked to violations of human rights and international humanitarian law. Protecting human rights thus prevents the crises that expose populations to a range of threats which leave people with no option but to flee. While not intending to address them in the present report, the Special Rapporteur acknowledges the key role of measures such as those related to conflict-prevention, peacebuilding, justice and accountability, crime prevention and law enforcement, as well as the importance of addressing the root causes of violence and conflict, such as persistent poverty, lack of livelihood opportunities and socioeconomic inequalities, and grievances owing to economic, political or social exclusion. In situations of armed conflict, international humanitarian law plays a fundamental role in preventing the conditions leading to displacement by restraining the conduct of parties to an armed conflict.³³

26. The right to be protected against arbitrary displacement is stated in Principle 6 of the Guiding Principles.³⁴ This right entails the obligation of States to protect individuals from arbitrary displacement by the State or non-State actors, including through legislative, judiciary and other measures. The Kampala Convention further elaborates on these obligations. In particular, article 3 (1) of the Kampala Convention provides that State parties undertake to refrain from, prohibit and prevent arbitrary displacement (subpara. (a)); ensure individual responsibility for acts of arbitrary displacement in accordance with applicable domestic and international criminal law (subpara. (g)); and ensure the accountability of non-State actors concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts (subpara. (h)). Article 3 (2) lists the obligations of States in relation to the incorporation of the Convention into domestic law by establishing the appropriate legal, policy and institutional frameworks at the national level and incorporating the principles of the Convention into peace negotiations and agreements. Article 4 (6) provides that States parties shall declare as offences punishable by law acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity. Article 7 (5) (a), relating to situations of armed conflict, states that members of armed groups shall be prohibited from carrying out arbitrary displacement.

³³ See also ICRC, *Customary International Humanitarian Law*, explanation of rule 129.

³⁴ See also principles on housing and property restitution for refugees and displaced persons, principle 5.

27. In accordance with Principle 9 of the Guiding Principles, States also have a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and “other groups with a special dependency on and attachment to their lands”. This Principle draws from international human rights law, which contains explicit prohibitions against the forcible displacement of indigenous peoples from their lands or any form of forced displacement that would affect the rights of indigenous peoples.³⁵

III. Contemporary armed conflicts, generalized violence and arbitrary displacement

28. Reports have pointed to the evolving nature of armed conflicts, which have become more complex, asymmetric and fragmented, often involving multiple States and non-State actors.³⁶ In some contexts, conflict dynamics can be mixed with situations of generalized violence involving other non-State actors, including gangs and organized crime. The armed groups involved can vary significantly in terms of their level of organization, cohesion and capabilities, and can have complex connections to local, regional and international power brokers. Climate change, digitization and new technologies have also added new layers to the complexity of conflicts. These trends, among others, have made it harder to enhance compliance with international humanitarian law and human rights and increased the risk of violations. Political solutions have become more elusive and displacement increasingly prevalent and protracted.

29. Urban warfare, the indiscriminate use of improvised explosive devices, the use of explosive weapons in densely populated areas and the presence of non-State armed groups among civilians expose populations to greater risks. In many conflicts, civilians have been subjected to violations of international humanitarian laws by parties to the conflict. Civilians, hospitals, schools and humanitarian actors have been deliberately targeted or indiscriminately attacked. Parties have committed sexual violence and have deliberately targeted objects indispensable to the survival of the civilian population, such as foodstuffs and agricultural fields, which has resulted in famine. Parties have recruited and used children in hostilities, and carried out killings, arbitrary deprivation of liberty and enforced disappearances.³⁷

30. At the same time, figures indicate that homicides not connected to armed conflicts have killed significantly more than all armed conflicts combined, and in some countries gangs and organized crime have driven homicide rates, especially in parts of Central America.³⁸ Situations of generalized violence are also highly complex, at times involving several groups with opaque memberships, levels of organization and networks, and fluid allegiances, interests and motivations. Organized crime networks have extended across borders, creating complex regional dynamics. In many contexts, gangs and criminal groups have committed violence against the population, such as killings, abductions, intimidation and threats, extortion, violations against children and gender-based violence, which has affected families, schools, hospitals, local businesses and livelihoods, and forced people to

³⁵ ILO Convention No. 169, art. 16; and United Nations Declaration on the Rights of Indigenous Peoples, arts. 8 (2) (c) and 10.

³⁶ See www.un.org/en/un75/new-era-conflict-and-violence. See also United Nations and World Bank Group, *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict* (Washington, D.C., 2018).

³⁷ See [S/2021/423](https://www.un.org/development/desa/en/news/population/S/2021/423.html).

³⁸ United Nations Office on Drugs and Crime, *Global Study on Homicide 2019* (Vienna, 2019).

flee their homes in search of safety.³⁹ Nevertheless, displacement in situations of generalized violence remains largely unacknowledged in various contexts.

31. As situations of armed conflict and generalized violence have become increasingly long and intractable,⁴⁰ pendular patterns of displacement have become the reality of many communities that are exposed to regular military and security operations in their areas, especially where government forces do not have the capacity to retain territory. Where temporary incursions or raids are conducted regularly to clear areas of armed elements and are followed by the withdrawal of State forces, residents tend to be displaced for short periods of time but return as soon as fighting ceases. They are repeatedly exposed to the risks of hostilities or violence and displacement, and are often subjected to discrimination by State forces and authorities in the area where they took refuge and to reprisals by armed elements when they return home.

32. Situations of armed conflict and generalized violence can also be compounded by disasters as drivers of displacement.⁴¹ Since 2020, crisis situations have also been compounded by the COVID-19 pandemic and its socioeconomic impact, which have had a disproportional effect on the most vulnerable, including internally displaced persons.⁴² The pandemic-related movement restrictions have also had an impact on human mobility, with limitations on cross-border movement possibly contributing to the observed increase in internal displacement in 2020. The pandemic is also believed to have had an impact on conflict dynamics, with an increase in conflict and violence-driven internal displacement.⁴³

33. These worrying trends in contemporary armed conflicts and situations of generalized violence, and the ever-increasing numbers of persons internally displaced by violence and conflict, call for the urgent attention of Governments and the international community to prevent them.

IV. Preventing arbitrary displacement across the displacement cycle

34. First and foremost, a prevention approach requires States, the international community and other actors to be willing to look at risks and take early action instead of waiting for the emergence of a problem. Lack of political will, reluctance to acknowledge risks at early stages of crises and resource constraints can divert actors from taking preventive measures and trap them into a reactive approach. Prevention requires strategic thinking to avert the far-reaching consequences of crises and arbitrary displacement in the lives of people and in society. Data collection and its analysis and use are central to prevention, allowing for the identification, understanding and monitoring of the emergence and evolution of risks and of the underlying vulnerabilities of affected communities. Protecting people from displacement requires a whole-of-government and whole-of-society approach, grounded

³⁹ See, for example, [A/HRC/32/35/Add.4](#) and [A/HRC/38/39/Add.1](#).

⁴⁰ United Nations and World Bank Group, *Pathways for Peace*.

⁴¹ See, for example, [A/75/207](#).

⁴² See www.ohchr.org/EN/NewsEvents/Pages/COVID-19.aspx; www.ohchr.org/EN/HRBodies/SP/Pages/COVID-19-and-Special-Procedures.aspx; www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25763; and ICRC, *As if the War Was not Enough: Stories of Hardship and Resilience in Times of COVID-19* (Geneva, 2021).

⁴³ International Organization for Migration, *COVID-19 and the State of Human Mobility in 2020* (Geneva, 2021).

in human rights, that addresses the root causes of crises and displacement holistically and uses targeted measures to prevent arbitrary displacement when a crisis emerges.

A. Adopting a human rights-based approach to prevention

35. In his speech to the Human Rights Council in February 2017, the Secretary-General said: “Perhaps the best prevention tool we have is the Universal Declaration of Human Rights – and the treaties that derive from it. The rights set out in it identify many of the root causes of conflict, but equally they provide real world solutions through real change on the ground.”

36. There are many reasons for human rights to be recognized as such an effective prevention tool.⁴⁴ First, the root causes and immediate triggers of displacement are usually related to human rights violations. Human rights violations are often at the origin of situations of armed conflict and generalized violence that drive displacement. Discrimination on the basis of ethnicity, religion or other grounds; social inequality and exclusion, such as unequal access to livelihood opportunities, natural resources and social services; poverty; and violations of economic, social and cultural rights often compose the structural causes of conflict and violence.

37. Moreover, human rights violations are a consequence of arbitrary displacement, starting with violations of the freedom of movement and choice of residence, freedom from interference with one’s home and right to adequate housing. During displacement, people are at higher risk of violence and violations of economic, social and cultural rights. In the context of an existing crisis, violations of human rights, and of international humanitarian law when applicable, often trigger further displacement.⁴⁵ As long as internally displaced persons are not able to enjoy their human rights without discrimination based on their displacement, no durable solution is achieved and displacement can become protracted. Thus, respecting, protecting and fulfilling human rights is the main path to preventing crises and related displacement, mitigating their effects when they take place and resolving them. In the aftermath of a conflict, human rights provide the tools to ensure recovery and non-recurrence through accountability and reparation.

38. Human rights and protection monitoring can be an effective early warning mechanism, as human rights violations constitute early signs of the onset of a crisis and help identify emerging issues and risks. Early warning mechanisms that fully incorporate human rights allow for the detection of areas and communities most at risk, the identification of an emerging crisis before it escalates and the issuance of alerts and warnings to authorities, humanitarian actors and the communities at risk in order to allow for early action to prevent further harm, including arbitrary displacement.

39. Human rights, and international humanitarian law when applicable, set the standards against which the actions of Governments and other duty bearers are measured by clarifying how they should prevent and respond to internal displacement. International human rights and humanitarian law also give stakeholders the tools to engage with States on the basis of obligations they have already agreed to undertake. Human rights standards also guide the manner in which programmatic activities should be carried out by duty bearers. For example, human rights provide for the participation of affected communities in decision-making, which is not only a right

⁴⁴ See also the submission by OHCHR to the High-level Panel on Internal Displacement at www.un.org/internal-displacement-panel/sites/www.un.org.internal-displacement-panel/files/published_ohchr_submission.pdf.

⁴⁵ See, for example, ICRC, *Displacement in Times of Armed Conflict: How International Humanitarian Law Protects in War, and Why it Matters* (Geneva, 2019).

but also a powerful tool to inform decisions that are implementable and sustainable. In addition, human rights mechanisms provide recommendations on how to address shortcomings and implement human rights obligations, which guides solutions.

40. A human rights-based approach also takes into account the differentiated impacts of conflict, violence and displacement on various groups, and their particular vulnerabilities, agency and coping mechanisms, which is essential to informing prevention and protection strategies. For instance, in the light of the particular obligation of States to protect indigenous peoples, minorities, peasants and pastoralists from displacement, it is important to understand the impact of armed groups on indigenous peoples, which in some contexts have entered indigenous lands to conduct criminal activities, such as drug trafficking and illegal farming, mining and logging. Strategies should also aim at addressing any barriers encountered by indigenous peoples with regard to accessing the justice system, such as cultural and language barriers, the lack of capacity of the judicial system to understand and protect indigenous rights, or physical distance. Peasants and pastoralists might be affected in different ways as armed elements establish themselves in rural areas, which will have an impact on local communities and result in different displacement patterns, coping mechanisms and prospects for durable solutions. In some cases, peasants and pastoralists might be directly involved in intercommunal disputes in rural areas, where farmers and herders clash over land and natural resources, resulting in the displacement of communities.⁴⁶

41. The vulnerabilities of specific groups in situations of conflict and violence, such as children and youth,⁴⁷ women and girls, and lesbian, gay, bisexual, trans and gender diverse persons, must also be taken into account. A human rights analysis also enables an understanding of how other forms of human mobility can interact with displacement. For example, if migrants or refugees are returned to their country of origin, but their return is not safe and dignified and reintegration is not sustainable according to international human rights standards, they might become internally displaced. Or, as another example, conflict can push regular migrants into irregularity, heightening their vulnerability and risk of displacement.

42. A human rights-based approach also recognizes the agency of those affected and the importance of the strategies they develop to protect themselves from harm and cope with crises. When displaced, they organize themselves to identify how best to undertake their journey, where to go and how to protect their children and others. They also adopt early warning and community-based protection mechanisms. For example, women protection networks in camps can facilitate mapping hotspots, profiling perpetrators and analysing threats to inform early warning.⁴⁸ Efforts to prevent and respond to arbitrary displacement should take into account community-based self-protection mechanisms and aim at strengthening such mechanisms through the participation of affected communities in the design and implementation of strategies.⁴⁹

B. Domestic legal, policy and institutional framework to prevent arbitrary displacement

43. Before displacement occurs or before a risk of arbitrary displacement can even be identified, States must conduct a review of their international legal obligations and their domestic legislation, policy and institutional frameworks to identify potential

⁴⁶ See, for example, [A/HRC/38/39/Add.3](#).

⁴⁷ See, for example, [A/HRC/32/35/Add.4](#), paras. 13, 23 and 30.

⁴⁸ See, for example, [S/2021/312](#), para. 54.

⁴⁹ See, for example, Angela Cotroneo and Marta Pawlak, "Community-based protection: the ICRC approach", *Forced Migration Review*, No. 53, October 2016.

gaps. States need to put in place or adapt the appropriate laws, regulations, policies and procedures to prevent, respond to and resolve internal displacement, in line with international obligations and standards. This includes ratifying treaties on international humanitarian and human rights law, such as the Kampala Convention, and taking measures to implement their obligations at the domestic level. 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.

44. 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. This includes 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. This is the case, for example, with laws and policies that require unreasonably detailed documentation from internally displaced persons to access education, health care, employment, social security, housing and land and property rights. Internally displaced persons are often unable to present such documentation, as many have had their documentation destroyed, confiscated or lost. Laws and policies should address all types of displacement and causes, including but not limited to armed conflict, generalized violence, disasters and development projects.

45. A number of States have adopted legislation prohibiting arbitrary displacement and including provisions to protect people from displacement. For example, in Colombia, Law No. 387 of 1997, on forced displacement in situations of internal armed conflict, generalized violence and violations of international human rights law and international humanitarian law, provides for the right not to be forcibly displaced. Act No. 56 of 2012 of Kenya states that no person shall intentionally cause arbitrary displacement (sect. 23 (2) (a)). More recently, El Salvador adopted a law on internal displacement caused by gang violence that states that preventive and protection measures must be adopted before, during and after displacement (art. 7). It provides that authorities must adopt measures to identify the causes of forced displacement and adjust the policies necessary to prevent them, and adopt an early warning system for the timely identification of places, causes and situations that trigger displacement.

46. A number of States parties to the Kampala Convention have adopted legislation to implement it, and others are in the process of doing so. For example, Law No. 2018-74 of the Niger affirms the right to be protected against arbitrary displacement (art. 10) and provides for measures to prevent the conditions leading to displacement in different contexts, including armed conflict and generalized violence (chap. II). Several countries have developed draft laws for the incorporation of the Kampala Convention into domestic law that are pending adoption.

47. A number of countries do not have a law specifically on internal displacement but have provisions on internally displaced persons scattered over different instruments. Other countries have adopted national policies on internal displacement instead of legal provisions. For example, the policy of Nepal on internally displaced persons adopted in 2007 states that the State shall not cause displacement, except for development projects and industry/occupation for public and national interests. Uganda adopted its National Policy for Internally Displaced Persons in 2004, which states that everyone is protected against arbitrary displacement.

48. In some countries, laws and policies provide for the specific protection of peasants, pastoralists or indigenous peoples from arbitrary displacement.⁵⁰ A few

⁵⁰ See, for example, Philippines, Indigenous People's Rights Act of 1997; Colombia, National Plan for Comprehensive Assistance; and Nepal, national policy on internally displaced persons of 2007.

countries have laws or policies which define displacement that lasts longer than necessary as arbitrary.⁵¹ Laws and policies relating to different sectors should integrate the rights of internally displaced persons and ensure their access to public services on an equal basis with the rest of the population.

49. States must also criminalize arbitrary displacement, at least when it amounts to a crime against humanity, war crime or genocide. Arbitrary displacement is criminalized in several countries. Some have included provisions in their penal code, criminalizing certain acts of arbitrary displacement⁵² or reflecting provisions on war crimes or international humanitarian law.⁵³ Others have adopted laws implementing the Rome Statute or international humanitarian law treaties that criminalize acts of arbitrary displacement amounting to international crimes.⁵⁴ Where a law on internal displacement has been adopted, it might also include criminal provisions.⁵⁵

50. Governments must also ensure that military manuals, codes of conduct, standard operating procedures and regulations reflect international human rights law, and international humanitarian law as applicable, and provide training and capacity-building to government officials and armed and security forces to ensure respect for laws and policies. For example, some countries have adopted standard operating procedures for the evacuation of civilians in situations of armed conflict.

51. Adopting the appropriate laws and policies is an important first step that must be followed by the necessary measures to ensure their full implementation and monitoring. Implementation is unfortunately often inadequate owing to insufficient funding, lack of planning, coordination or political will, or weak judicial enforcement. To enhance implementation, the appropriate governance structure needs to be put in place.⁵⁶ In this regard, Governments should assign a national focal point for internal displacement that is in charge of ensuring coordination among the various relevant branches of the Government as well as between the Government and other actors, including civil society, humanitarian, development and peace actors, and is placed at a high level within the Government and has the authority and resources to effectively discharge its responsibilities.

52. In addition to a national focal point, it is essential to assign responsibilities and resources to local authorities and build their capacity. Local authorities are best placed to identify risks at an earlier stage and develop early warning mechanisms, yet they often have the fewest resources and capacities. In this regard, decentralization and local empowerment can be key to effectively addressing crises locally before they evolve into a wider problem.

53. The establishment of independent national human rights institutions in line with the Paris Principles, with a strong mandate that covers internal displacement, is also a crucial step. The Special Rapporteur has dedicated a report to the role of national human rights institutions in internal displacement, including prevention.⁵⁷ The establishment

⁵¹ See, for example, Uganda, National Policy for Internally Displaced Persons of 2004, chap. 3, sect. 3.3 (vi).

⁵² See, for example, El Salvador, Criminal Code of 1998, art. 152 (a); and Colombia, Criminal Code of 2000, art. 180.

⁵³ See, for example, Colombia, Criminal Code of 2000, art. 159; El Salvador, Criminal Code of 1998, art. 362; Niger, Criminal Code, art. 208.3; and Rwanda, Penal Code of 2012, art. 123 (7).

⁵⁴ See, for example, Philippines, Act on Crimes against International Humanitarian Law, Genocide and Other Crimes against Humanity of 2009; Uganda, International Criminal Court Act of 2010; and Kenya, International Crimes Act of 2008.

⁵⁵ See, for example, Niger, Law No. 2018-74, art. 31; and Kenya, Act No. 56 of 2012, sect. 23 (1), cf. Kenya, International Crimes Act of 2008.

⁵⁶ See [A/70/334](#).

⁵⁷ [A/HRC/41/40](#).

of national committees on international humanitarian law, or similar bodies, is also important to promote compliance with international humanitarian law.⁵⁸

54. Governments should also establish monitoring and early warning mechanisms that incorporate human rights and displacement risks as part of their risk assessments, and include the collection and analysis of data and evidence on internal displacement in line with international standards. The ability to identify the very early signs and trends of displacement is a valuable tool that can be used to address its causes and prevent further displacement. Displacement can also be an indicator that a broader crisis is emerging. Protecting the civil society space is also essential, and civil society can contribute to early warning through its activities. Non-governmental organizations and human rights defenders can play a crucial role in drawing the attention of authorities to human rights violations and emerging crises, including arbitrary displacement, and calling for action.

C. Prevention in assistance and protection during displacement

55. Once a crisis has already emerged, immediate measures must be taken to prevent its escalation and mitigate its worst effects to avoid affecting more people. Whether it is at the first signs of displacement or in a full-fledged crisis, the response to internal displacement must be in line with human rights obligations and standards so as to prevent further displacement. Humanitarian assistance and protection address the immediate needs of internally displaced persons but also prevent secondary displacement by creating the conditions for people to stay in safety and dignity in an area pending a solution to their displacement. If the conditions are not in place for their survival, internally displaced persons might be forced to move again, for example to escape hunger, insecurity or violence.

56. The demographic pressure resulting from the large influx of internally displaced persons to some areas might put an additional strain on limited resources, such as natural resources, basic services, housing and livelihood opportunities, generating tensions between displaced persons and host communities. Disputes over resources can be further exacerbated by the adverse effects of climate change and environmental degradation, or compounded by ethnic or religious differences, driving intercommunal violence and further displacement. A preventive approach to the response to internal displacement must therefore address not only the needs of internally displaced persons but also those of host communities, and promote social cohesion and integration. To achieve this, responses must integrate human rights standards of participation, inclusion and equality, and peacebuilding approaches to resolve grievances. It is also important to work with communities to strengthen and develop new strategies identified by the communities themselves to prevent and reduce their exposure to threats and harmful coping mechanisms.

D. Preventing the recurrence of arbitrary displacement in durable solutions processes

57. The response to displacement should take into account the root causes of conflict and violence so as to prevent its recurrence. Where a displacement crisis already exists, it is important to fully understand why and how people were displaced, and build the lessons learned into the response so as to prevent it from happening

⁵⁸ See ICRC, *National Committees and Similar Entities on International Humanitarian Law: Guidelines for Success, Towards Respecting and Implementing International Humanitarian Law* (Geneva, 2018).

again. Strategies must be developed during the crisis to pave the way for solutions that are durable, for example through interventions in the areas of origin and destination of internally displaced persons to address grievances and patterns of exclusion and promote reconciliation and social cohesion.

58. Preventing the recurrence of arbitrary displacement requires a human rights-based approach to solutions to make such solutions sustainable. In this regard, the Inter-Agency Standing Committee's Framework on Durable Solutions for Internally Displaced Persons remains a valuable tool to guide policymakers and stakeholders. The Special Rapporteur would like to highlight a few points of concern regarding emerging trends on responses to displacement that in reality trigger further displacement.

Camp closures, return processes and resettlements or relocations

59. In critical situations where a heavy influx of internally displaced persons overwhelms urban areas or where displacement becomes protracted, Governments are usually under pressure to resolve the situation. Far too often, political interests determine government policies that favour one type of solution over another, and authorities push through plans that might not meet the required standards. In some contexts, Governments have imposed camp closures in an attempt to forcefully end a displacement crisis.

60. In such situations, government policies have often imposed returns as the preferred solution to internal displacement, depriving internally displaced persons of their right to choose the durable solution of their preference, and leading to situations where sustainable reintegration was not possible. In other cases, under the label of "relocation", Governments have transferred or facilitated the transfer of internally displaced persons, at times for unclear purposes, including whether it was for the provision of humanitarian assistance, for the purpose of resettlement as a durable solution or driven by other motivations.

61. The manner in which returns and relocations or resettlements have been undertaken have also varied in terms of the extent to which the free and informed consent of those affected was obtained and their participation in the planning process was ensured, whether their transfer was carried out with respect for human rights standards, and the extent to which humanitarian actors were involved. In some cases, Governments have imposed premature camp closures and forcibly evicted residents while the conditions for durable solutions were not in place. Return, relocation and resettlement processes that do not give enough notice or sufficient information for displaced persons to freely choose whether to return, remain or settle somewhere else and to prepare for it, that provide for inadequate means for transportation without access to food, water and sanitary services, or expose people to insecurity, harassment and violence, may amount to arbitrary displacement. Internally displaced persons might also undergo secondary displacement to escape such return and relocation processes and move to informal settlements or other temporary accommodations where they are exposed to the risk of evictions and further displacement.

62. Durable solution processes must be safe, informed, voluntary and dignified. To be voluntary, the movement must respect the requirement for free, prior and informed consent and must be free from any form of coercion. If people are being evicted and are given no or little alternative regarding where to go, if assistance to internally displaced persons is interrupted with the intention of forcing them to move, or if they are not provided with full information about their journey and the conditions in the destination area of return or resettlement, their movement is not voluntary. Where their transportation is assisted, they must be given enough notice to prepare, and their safety and security during travel, as well as that of their belongings, must be ensured. Families must not be separated and women, children, persons with disabilities, older

persons, minorities and any groups that might be at greater risk of discrimination, violence or human rights violations or abuses in a given context must be protected and their specific needs addressed.

63. It is also essential to ensure appropriate conditions in the areas of return or resettlement. In some cases, internally displaced persons were taken back to areas that were unsafe owing to the presence of armed actors or to land contamination by mines and unexploded ordnance. Where the displacement was linked to ethnic and/or religious tensions, returnees might also be exposed to the risk of discrimination, intercommunal violence, harassment and violence. Returns can place further strain on local services and resources, exacerbating tensions between returnees and communities and in some cases resulting in violence and clashes that trigger further displacement. Returnees might find that infrastructure and their houses have been destroyed, occupied or damaged. They might be unable to resume their livelihoods and lack access to essential services such as health care, education, electricity, water and sanitation.

64. In some contexts, as part of relocations or resettlement processes, people were moved to locations outside busy urban centres that were intended as camps or settlements but lacked the appropriate conditions to receive them. In some instances, internally displaced persons were taken to remote camps where they were provided with shelter and some level of humanitarian assistance, but they were unable to access livelihood opportunities and education, perpetuating their dependence on assistance and prolonging their displacement. In other cases, internally displaced persons were allocated land in remote locations where they were unable to settle owing to a lack of basic services. Where the conditions in areas of return, relocation or resettlement are inadequate, the assistance and protection needs of internally displaced persons persist or even increase, while humanitarian actors might encounter challenges in identifying and accessing those in need and redirecting the humanitarian response accordingly.

65. Premature camp closures, and returns or resettlement in conditions that do not allow for sustainable (re)integration, do not bring displacement to an end. To the contrary, instead of providing solutions, such measures tend to result in further displacement, deepen the crisis and disrupt the provision of humanitarian assistance and protection services to those displaced. Governments must ensure that areas of return or resettlement are safe and offer the necessary conditions to receive people, in line with the Inter-Agency Standing Committee's Framework on Durable Solutions for Internally Displaced Persons. Governments must also ensure that internally displaced persons have access to justice and effective remedies for any violations committed during return, relocation or resettlement processes.

Peace processes

66. 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.⁵⁹ 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.

⁵⁹ See, for example, the Comprehensive Peace Agreement between the Government of Nepal and the Communist Party of Nepal (Maoist) of 2006 and the Final Agreement for Ending the Conflict and Building a Stable and Lasting Peace of 2016 between the Government of Colombia and the Revolutionary Armed Forces of Colombia-People's Army (FARC-EP).

67. For example, the inclusion of housing, land and property provisions in peace agreements and transitional justice processes is essential in order to address violations perpetrated during the conflict and, where relevant, pre-conflict grievances and the structural causes and inequalities that led to the conflict. Housing and land might have been destroyed or damaged during conflict, or occupied by others following the displacement of the population, posing numerous challenges for durable solutions. In many contexts, violations of housing, land and property have been part of discriminatory strategies to displace certain groups based on their religious, ethnic, social or political affiliation and prevent their return. Therefore, the provision of remedies for past violations of housing, land and property rights is key to the achievement of durable solutions, peacebuilding, development and a return to the rule of law.⁶⁰

68. The obligation to prevent arbitrary displacement also entails the duty to investigate, prosecute and punish acts of arbitrary displacement. However, internally displaced persons can encounter numerous barriers to accessing justice, including discrimination based on gender, ethnicity, religion, political affiliation or displacement, or an inability to access legal services and pay fees and other costs. Conflict and violence might also have had an impact on judicial systems. These obstacles must be removed. In post-conflict settings, transitional justice can help prevent further displacement through the criminal prosecution of perpetrators of arbitrary displacement where it amounts to a crime, as well as the prosecution of other violations that led to arbitrary 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.⁶¹

V. Role of the international community

69. The international community has been engaging in numerous programmes to support States in the implementation of their obligations to prevent arbitrary displacement. For example, protection actors have supported Governments in reviewing their domestic legal frameworks for gaps and provided technical assistance for the drafting of new legislation to implement their international obligations. The international community has conducted in-country training and awareness-raising and has advocated with authorities and parties to conflicts for respect for international human rights and humanitarian law. Humanitarian actors have provided life-saving assistance during rapidly unfolding crises that overwhelmed the capacity of Governments to respond, as well as in protracted situations that stretched resources to the limit.

70. Early warning and early action are powerful tools to prevent and mitigate crises and resulting displacement. In this regard, the regional monthly review mechanism, a United Nations system-wide risk assessment framework conceived under the Human Rights Up Front initiative to better assess risks and prevent crises as a collaborative effort, has enhanced information-sharing and joint analysis across the United Nations system. The mechanism draws from the expertise and information gathered globally by different parts of the United Nations and uses a combination of development, political, human rights and humanitarian analyses to bring information to United Nations leadership in a timely manner and coordinate early action by the Organization.

⁶⁰ See [A/HRC/47/37](#).

⁶¹ See [A/73/173](#).

71. The challenge that faces existing early warning mechanisms at the national and international levels is usually to ensure early action on identified risks. Hesitance from the international community has at times also delayed action. It can be difficult to engage political actors in issues that have not yet fully emerged and to get Governments to recognize risks while other political interests might prevail. Political will on the part of Governments is essential, and the international community can play a vital role in directing the attention of Governments to their responsibilities and to the transformative potential of a preventive approach.

72. The international community can also enhance national capacities to prevent and respond to internal displacement, and to provide equal access to livelihoods and basic services to displaced communities. It is clear that resolving internal displacement and preventing its recurrence requires a joint approach that includes humanitarian, development and peace actors. Humanitarian actors can improve access to basic services through structural support or through capacity-building and strengthening the domestic legal framework. Development actors can support Government-led policies to address the structural socioeconomic issues that drive conflict and violence and the socioeconomic aspects of displacement that pose obstacles to solutions and prolong displacement.⁶² Concerted humanitarian, development and peace action under the umbrella of human rights is of the essence so that prevention efforts address the causes and effects of conflict and crises. This encompasses action towards achieving the Sustainable Development Goals in order to address root causes, as well as sustaining peace to prevent the outbreak, escalation, continuation and recurrence of conflict.

73. Peace actors have an important role to play in resolving and preventing the recurrence of displacement by supporting and monitoring peace processes and promoting reconciliation and the participation of internally displaced persons and displacement-affected communities in peace processes. Peace missions have advanced protection of civilians, thus preventing conflict-induced displacement, and have supported conflict resolution, access to justice and accountability for crimes committed during conflict. For example, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo established Prosecution Support Cells to support military and civilian justice authorities in investigating and prosecuting the most serious crimes committed by members of armed groups.⁶³ The United Nations Assistance Mission in Afghanistan has a programme to support local conflict resolution mechanisms, which in Nangarhar facilitated the resolution of a long-standing dispute over water resources, enabling displaced families to return to their homes and children to go back to schools.⁶⁴

VI. Conclusion and recommendations

74. Contrary to a common misconception, the relevance of prevention is not limited to the stages before displacement takes place. Preventive measures must also be taken during displacement and in durable solutions processes so as to prevent multiple displacements and their recurrence after solutions have been achieved. Effective prevention strategies require a whole-of-government and whole-of-society approach, with meaningful and inclusive consultation with and

⁶² See also submissions by the United Nations Development Programme and the World Bank to the Secretary-General's High-level Panel on Internal Displacement. Available at www.un.org/internal-displacement-panel/content/Inputs-from-Stakeholders.

⁶³ See <https://monusco.unmissions.org/en/what-rule-law-section-mandate>.

⁶⁴ See <https://unama.unmissions.org/un-backed-local-peace-initiative-ends-longstanding-dispute-nangarhar>.

the participation of internally displaced persons and displacement-affected communities, and the support of humanitarian, development and peace actors.

75. The Special Rapporteur calls upon the stakeholders indicated below to:

States

(a) Ratify and implement international and regional instruments for the protection of human rights and international humanitarian law;

(b) Recognize that arbitrary displacement needs to be prevented and responded to through concerted action from all parts of the Government, and establish an adequate national legal, policy and institutional framework for the implementation of the State's obligations to prevent and respond to displacement, including by:

(i) Incorporating relevant international legal standards into domestic legal systems, including on the prohibition against arbitrary displacement and the criminalization of acts of arbitrary displacement, at a minimum, when those acts amount to war crimes, crimes against humanity or genocide;

(ii) Setting up the necessary governance structures to implement international obligations, including by identifying a national focal point for internally displaced persons, establishing effective coordination mechanisms at and between the national and local levels and allocating clear responsibilities and sufficient resources, with a focus on enhancing capacities, particularly with regard to strengthening local-level governmental institutions;

(iii) Establishing mechanisms to ensure the participation of affected communities in decision-making for the prevention of and response to displacement, including internally displaced persons and host communities;

(c) Strengthen data collection and its analysis and use for prevention, including through human rights and protection monitoring, to understand the evolution of risks and the underlying vulnerabilities of affected communities;

(d) Establish and enhance early warning mechanisms that fully integrate human rights standards, and give due consideration to early signs of violations of human rights and international humanitarian law, including gender-based violence, as potential drivers, triggers and symptoms of displacement; ensure that early warning and early action mechanisms effectively trigger timely measures and responses to identified threats; and engage affected communities in such mechanisms;

(e) Enhance the compliance of State military and security forces with international humanitarian law and international human rights law as applicable by:

(i) Ensuring that military manuals, standard operating procedures and other materials to guide military and security operations fully incorporate international human rights law and international humanitarian law;

(ii) Providing training and capacity-building to members of military and security forces to ensure knowledge of and sensitivity towards the rights of communities affected by violence and conflict and the rights of internally displaced persons, mainstreaming a gender and diversity perspective;

(f) Ensure that laws, policies and authorities do not discriminate against internally displaced persons and communities affected by conflict, violence and displacement on any grounds, including but not limited to discrimination by

authorities against populations residing in or displaced from areas under the control or influence of non-State armed groups, and promote an institutional culture conducive to respect for human rights by ensuring that the protection of civilians and populations is embedded in the assessment of the success of military and security operations;

(g) Enhance protection measures for communities most at risk from the impact of conflict and other violence, including criminal and gang violence, before and during displacement, taking into consideration the differentiated vulnerabilities in the light of their diversity and intersecting forms of discrimination and inequality; and provide humanitarian assistance and protection to internally displaced persons while also addressing the needs of host communities;

(h) Ensure that camp closures, returns and other durable solutions processes are conducted in line with international obligations and standards, including in relation to the voluntary nature, safety and dignity of those processes, access to information, and consultation with and the participation of those affected in decision-making and planning;

(i) Ensure effective access to justice for internally displaced persons and accountability for perpetrators, strengthen the capacity of judicial systems to investigate and prosecute acts of arbitrary displacement and grant effective remedies to victims;

(j) Ensure the inclusion of issues linked to arbitrary internal displacement in peace agreements and the meaningful and inclusive participation in peace processes of internally displaced persons and displacement-affected communities, including women, children and youth, and persons with diverse ethnic and religious backgrounds;

International community

(k) Provide technical support, capacity-building and sensitization to Governments regarding the incorporation into domestic law and implementation of international legal standards relating to the prevention of arbitrary displacement;

(l) Support Governments in establishing and enhancing national, local and community-based early warning and early action mechanisms, and in adopting and implementing human rights-based laws, policies and strategies to prevent arbitrary displacement and its reoccurrence, including by promoting conflict resolution mechanisms, access to justice and accountability, reconciliation and social cohesion; and promote inclusive and participatory peace processes that protect the rights of internally displaced persons and affected communities;

(m) Establish accountability and due diligence policies and mechanisms, among other measures, to ensure that any support provided to military and security forces is consistent with and promotes respect for international human rights and humanitarian law;

(n) Enhance the collaboration of humanitarian, development and peacebuilding actors in prevention efforts, and implement flexible community-based programmes containing elements of self-reliance, social cohesion, peacebuilding and measures to build the resilience of the affected populations to prevent future displacement, regularly engaging displaced persons and host communities in the different phases of the process.