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A Global Concern Through Local Lenses

A Human Rights-Based Approach to Georgia's Law and Policy
Framework on Disaster- and Climate Change-Induced Internal
Displacement

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Abstract

Every year, millions of people are internally displaced as a result of disasters and the adverse effects of climate change. Considering that climate change acts as a “threat multiplier”, thus, posing a serious risk to the fundamental rights, such as the rights to life, health, food, an adequate standard of living of individuals and communities worldwide, it is expected that the magnitude of this issue will increase. However, given the lack of international “hard law” protection mechanisms and states’ primary responsibilities to uphold the rights of those internally displaced due to disasters and climate change effects, the pertinent domestic law and policy documents have the utmost importance. Therefore, the thesis examined the case of Georgia as one of the few countries that have a specific normative and policy framework for the protection of IDPs in disaster and climate change-related contexts. By applying the Human Rights-Based Approach as a methodology, the analysis dealt with two main questions: how does Georgia’s legal and policy framework address internal displacement in the context of disasters and the adverse effects of climate change, and how could Georgia’s efforts to prevent, mitigate, and end disaster- and climate change-induced internal displacement be enhanced.

The analysis revealed that the framework, on the one hand, partially or fully encompasses some aspects of the Human Rights-Based Approach. On the other hand, limitations have been identified in relation to all the elements of the Rights-Based Approach. The appraisal of the implementation practices, particularly focusing on the right to adequate standards of living without discrimination - as a crucial aspect of durable solutions, demonstrated that implementation processes are often ineffectively handled.

Therefore, the thesis argued that there is a dire need to strengthen the current framework by proposing and analysing three possible prospects in this regard. One relates to the amendment of the existing law, thus, extending the current definition of an IDP in Georgia. The definition explicitly excludes IDPs in disaster and climate change-related contexts from its scope. The second perspective would be the adoption of a new law, thus discussing *de lege ferenda*. While the third scenario suggests the enhancement of the current framework by strengthening the focus on durable solutions, as well as the DRRM and CCA strategies in managing disaster and climate change-induced internal displacement.

Keywords: internal displacement, disasters, the adverse effects of climate change, Human Rights-Based Approach, human rights, Guiding Principles on Internal Displacement, IDPs, Ecomigrants, Georgia

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Abbreviations

AR	Autonomous Republic
CCA	Climate Change Adaptation
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CENN	Caucasus Environmental NGO Network
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CIID	Climate-Induced Internal Displacement
COP	Conference of the Parties
COVID-19	COVID-19 disease caused by a new strain of Coronavirus
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
DID	Development-Related Internal Displacement
DRR	Disaster Risk Reduction
DRRM	Disaster Risk Reduction and Management
EDP	Environmentally Displaced Persons
EGRIS	Expert Group on Refugee and IDP Statistics
EIB	European Investment Bank
EMC	Education and Monitoring Center
FDPs	Forcibly Displaced Persons
GP20	GP20 Plan of Action for the 20th anniversary of the Guiding Principles on Internal Displacement
GPID	Guiding Principles on Internal Displacement
GRID	Global Report on Internal Displacement
HRBA	Human Rights-Based Approach
HRC	Human Rights Committee
IASC	Inter-Agency Standing Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICGLR	International Conference on the Great Lakes Region
IDMC	Internal Displacement Monitoring Centre
IDP	Internally Displaced Person
IHL	International Humanitarian Law
IHRL	International Human Rights Law
ILC	International Law Commission
IOM	International Organization for Migration
IPCC	Intergovernmental Panel on Climate Change
LEPL	Legal Entity of Public Law
MOH	Ministry of Internally Displaced Persons from the Occupied Territories,

	Labour, Health and Social Affairs of Georgia
MRA	Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia
NGO	Non-Governmental Organisation
NRC	Norwegian Refugee Council
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OGP	Open Governance Partnership
PDD	Platform on Disaster Displacement
RSG	Representative of the Secretary-General
SDGs	Sustainable Development Goals
TFD	Task Force on Displacement
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNHCR	United Nations High Commissioner for Refugees
UNISDR	United Nations Office for Disaster Reduction
WASH	Water, Sanitation, and Hygiene

“Migration may be an adjustment mechanism of first resort or a survival mechanism of last resort.”¹

CHAPTER 1. INTRODUCTION

1.1. Background and the Problem

According to the Global Report on Internal Displacement 2021 (GRID), a total of 40.5 million people were internally displaced worldwide in 2020.² Alarming this is the highest figure in a decade.³ As it reads in the foreword of the global report,

“Every year, millions of people are forced to flee their homes because of conflict and violence. Disasters and the effects of climate change regularly trigger new and secondary displacement, undermining people’s security and well-being.”⁴

Out of this total number of Internally Displaced Persons, 30.7 million were related to disasters and the adverse effects of climate change, whereas 9.8 million displacements were triggered by conflicts and violence.⁵ Meaning that disaster- and climate change-induced displacements that occurred solely in 2020 are three times more than internal displacement in conflict contexts. Considering that the coronavirus (COVID-19) pandemic noticeably affected the flexibility of movement, including internal displacement, these high figures indicate the gravity of the global challenge. COVID-19 has also aggravated the current vulnerabilities in the society, which, on the one hand, increases the risk of forced displacement in general, and on the other hand, exacerbates the plight of IDPs.⁶

Internal displacement, as the term suggests itself, occurs internally within the state borders. Consequently, the national governments bear the primary responsibility to protect Internally

¹ Gil Marvel Tabucanon and Brian Opeskin, ‘The Resettlement and Nauruans in Australia: An Early Case of Failed environmental Migration’ (2011) 46 *Journal of Pacific History*, available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1851910> seen in Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford University Press 2012) <<https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780199587087.001.0001/acprof-9780199587087>> accessed 8 May 2021.

² Internal Displacement Monitoring Centre (IDMC), Norwegian Refugee Council (NRC), ‘Global Report on Internal Displacement 2021 (GRID 2021)’ (*ReliefWeb*) <https://www.internal-displacement.org/sites/default/files/publications/documents/grid2021_idmc.pdf> accessed 20 May 2021.

³ *ibid.*

⁴ *ibid.*

⁵ *ibid.*

⁶ ‘Coronavirus Crisis: Internal Displacement’ (*IDMC*) <<https://www.internal-displacement.org/crises/coronavirus>> accessed 20 May 2021.

Displaced Persons.⁷ Unlike refugee law, which is regulated by the legally binding international convention, there are no so-called “hard law” international protection mechanisms for internal displacement. However, the landmark United Nation’s (UN) Guiding Principles on Internal Displacement (Guiding Principles or GPID) introduced in 1998 outline the protection standards for Internally Displaced Persons.⁸ Due to the soft nature of the Guiding Principles, to date, the number of countries which have voluntarily incorporated the principles into domestic laws and policies on internal displacement remains relatively low.⁹ This number is even fewer if counting the states which have set up a domestic legislative and policy framework addressing the disaster- and climate change-induced internal displacement.¹⁰

As known, climate change acts as a “threat-multiplier,”¹¹ thus, posing “a serious risk to the fundamental rights to life, health, food and an adequate standard of living of individuals and communities across the world.”¹² Therefore, considering the magnitude of internal displacement in the context of disasters and the adverse effects of climate change as an issue requires enhanced national responses. However, in order to ensure that human rights are respected, protected, and fulfilled, the responses at the national level, including Disaster Risk Reduction (DRR) and Climate Change Adaptation (CCA) efforts, need to be envisioned, enacted, planned and implemented with full consideration of international human rights standards.¹³

1.2. Purpose and Research Questions

In relation to the background and the problem at hand, the analysis of the existing domestic law and policy frameworks on internal displacement in the context of disasters and the adverse effects of climate change is pertinent for accumulating knowledge in this field, as well as contributing to the identification of perspectives for strengthened national responses to the challenge that occurs locally, though has a noticeable impact on a global scale.¹⁴

⁷ Walter Kälin, ‘The Guiding Principles on Internal Displacement as International Minimum Standard and Protection Tool’ (2005) 24 *Refugee Survey Quarterly* 27.

⁸ ‘OCHA Guiding Principles on Internal Displacement’ (*IDMC*) <<https://www.internal-displacement.org/publications/ocha-guiding-principles-on-internal-displacement>> accessed 21 March 2021.

⁹ ‘Global Database on IDP Laws and Policies | Global Protection Cluster’ <<https://www.globalprotectioncluster.org/global-database-on-idp-laws-and-policies/>> accessed 16 April 2021.

The domestic protections mechanisms for IDPs has been enshrined in the national law of 14 countries worldwide, and relevant policy instruments exist in about 40 countries.⁹

¹⁰ *ibid.*

¹¹ ‘Climate Change Recognized as “Threat Multiplier”, UN Security Council Debates Its Impact on Peace |’ <<https://www.un.org/peacebuilding/fr/news/climate-change-recognized-%E2%80%98threat-multiplier%E2%80%99-un-security-council-debates-its-impact-peace>> accessed 20 May 2021.

¹² ‘Climate Change and Human Rights | UNEP - UN Environment Programme’ <<https://www.unep.org/resources/report/climate-change-and-human-rights>> accessed 20 May 2021.

¹³ *ibid.* also in ‘OHCHR | IDPs’ <<https://www.ohchr.org/en/issues/idpersons/pages/issues.aspx>> accessed 20 May 2021.

¹⁴ ‘Global Report on Internal Displacement 2021 (GRID 2021) - World’ (n 2).

Correspondingly, the present thesis, based on the analysis of Georgia’s legal and policy framework on internal displacement in the context of disasters and the adverse effects of climate change, aims at contributing to the broader discourse on the importance of national responses to the issue. Georgia is one of the few countries worldwide with relevant laws and policies addressing internal displacement.¹⁵ Even though “[t]he Guiding Principles enjoy a long history of support in Georgia,”¹⁶ not all the grounds of internal displacement have earned the same recognition in the existing law and policy framework. Georgia has a seemingly distinctive approach to IDPs in conflict-related and IDPs in disaster- and climate change-induced contexts. Thus, the purpose of this thesis is to assess Georgia’s current law and policy framework in order to identify the merits and shortcomings of the protection mechanisms for those internally displaced as a result of disasters and the adverse effects of climate change.

The assessment intensely focuses on employing the Human Rights-Based Approach (HRBA) in the process of planning and implementing the domestic measures concerning disaster- and climate change-induced internal displacement, including prevention. Thus, the thesis also aims at fostering the Human Rights-Based Approach while examining national law and policy frameworks in this field.

Respectively, the thesis seeks to answer the following **research questions**:

1. Analysing through the Human Rights-Based Approach lenses, how does Georgia’s legal and policy framework address internal displacement in the context of disasters and the adverse effects of climate change?
2. How could Georgia’s efforts to prevent, mitigate, and end disaster- and climate change-induced internal displacement be enhanced?

1.3. Methodology

The thesis is guided by the legal-dogmatic research methodology combined with the Human Rights-Based Approach. The legal-dogmatic analysis is conceptualised as a research

“that aims to give a systematic exposition of the principles, rules and concepts governing a particular legal field or institution and analyses the relationship between these principles, rules, and concepts with a view to solving unclarities and gaps in the existing law.”¹⁷

¹⁵ ‘Global Database on IDP Laws and Policies | Global Protection Cluster’ (n 9).

¹⁶ Carolin Funke and Tamar Bolkvadze, ‘Work in Progress: The Guiding Principles in Georgia’ 3. FMR 59 (2018) accessed at < <https://www.fmreview.org/sites/fmr/files/FMRdownloads/en/funke-bolkvadze.pdf> > 14 May 2021

¹⁷ Jan M Smits, ‘What Is Legal Doctrine? On the Aims and Methods of Legal-Dogmatic Research’ (Social Science Research Network 2015) SSRN Scholarly Paper ID 2644088 <<https://papers.ssrn.com/abstract=2644088>>

In line with the main goals of the legal-dogmatic research, the thesis first describes the existing law and policy framework *de lege lata* in the field of disaster- and climate change-induced internal displacement on international and domestic levels. Thereafter, the analysis will be conducted by employing the Human Rights-Based Approach as a methodology to the case study. The HRBA is an acclaimed conceptual framework normatively based on international human rights standards and applied in the processes related to human development.¹⁸ Furthermore, the framework also requires development-related processes to be “operationally directed to promoting and protecting human rights.”¹⁹ According to the UN,

“under the HRBA, the plans, policies and processes of development are anchored in a system of rights and corresponding obligations established by international law including all civil, cultural, economic, political, and social rights, and the right to development. HRBA requires human rights principles (universality, indivisibility, equality and non-discrimination, participation, accountability) to guide United Nations development cooperation, and focus on developing the capacities of both ‘duty-bearers’ to meet their obligations, and ‘rights-holders’ to claim their rights.”²⁰

The approach was endorsed by the UN in 2003 by the Common Understanding on HRBA to Development Cooperation.²¹ To date, there is no “universal recipe”²² with regards to applying HRBA as a method. Depending on the subject, the tools may vary; however, the core principles of the HRBA need to be thoroughly considered in any settings.

As it has been recognised, internal displacement is a human rights issue.²³ However, internal displacement inherently entails a certain degree of vulnerability that can threaten the enjoyment of human rights.²⁴ Knowing that IDPs do not cross international borders, it is the state where displacement occurs, whose obligation is to uphold the rights of those internally displaced. Thus, the state has to cope with the matter by full consideration of fundamental human rights. This is when the HRBA appears to be particularly relevant since HRBA complements the scope of state

¹⁸ UNSDG, ‘The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies’ <<https://unsdg.un.org/resources/human-rights-based-approach-development-cooperation-towards-common-understanding-among-un>, <https://unsdg.un.org/resources/human-rights-based-approach-development-cooperation-towards-common-understanding-among-un>> accessed 19 May 2021.

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ United Nations Sustainable Development Group, ‘The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies,’ 2003 available at <https://unsdg.un.org/sites/default/files/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf>

²² UNSDG, ‘The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies’ (n 18).

²³ Elizabeth Ferris, ‘Internal Displacement: A Human Rights Issue’ (*Brookings*, 30 November 1AD) <<https://www.brookings.edu/on-the-record/internal-displacement-a-human-rights-issue/>> accessed 11 April 2021.

²⁴ UNHCR, ‘IDP Definition - UNHCR|Emergency Handbook’ (<<https://emergency.unhcr.org/entry/44826/idp-definition>> accessed 19 May 2021.

obligations in order to “prevent and prepare for displacement, protect people during evacuation and throughout displacement, and facilitate durable solutions.”²⁵ Moreover, as mentioned, the Guiding Principles “expressly adopt” the HRBA since human rights are “at the heart”²⁶ of those groundbreaking principles on internal displacement. Therefore, the HRBA will be employed in the present analysis to identify human rights implications of the law and policies on disaster and climate change-induced internal displacement, which will contribute to the broader discussion on perspectives for an enhanced domestic response.

The present thesis will follow the methodology adopted in the recent thematic study on “Climate Change, Disasters, and Internal Displacement in Asia and Pacific - A Human Rights-Based Approach”²⁷ led by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law. The tool²⁸ that has been developed as part of the study condenses the existing formulations of the HRBA in four key elements:

- Governance;
- Procedural;
- Substantive;
- Non-discrimination and equality;

The specific aspects of each element will be presented thoroughly in the third chapter. Considering the importance of national response, various practical guidelines and tools refer to the development of national laws and policies on internal displacements, such as the framework for national responsibility by Brookings Institute,²⁹ guidelines of the Inter-Agency Standing Committee (IASC),³⁰ etc. However, the HRBA evaluation tool pursued in the above-mentioned study specifically addresses internal displacement in the context of disasters and the adverse effects of climate change. Moreover, it is one of the most recent studies, meaning that the tool is particularly relevant to current contexts.

Furthermore, as known, “[l]egal doctrine is not limited to a mere description and understanding of the existing law. It also comprises of a search for practical solutions that fit the existing system best.”³¹ Therefore, the final part of the thesis will focus on possible prospects for enhancing the current framework, representing the *de lege ferenda* perspective of legal-dogmatic research. The

²⁵ Matthew Scott and Albert Salamanca, *Climate Change, Disasters, and Internal Displacement in Asia and the Pacific: A Human Rights-Based Approach* (Matthew Scott and Albert Salamanca eds, 1st edn, Routledge 2020) <<https://www.taylorfrancis.com/books/9781000223200>> accessed 9 February 2021.

²⁶ *ibid.*

²⁷ Scott and Salamanca (n 25).

²⁸ Matthew Scott, ‘*Human Rights-Based Tool for Evaluating Legal and Policy Responses to Displacement in the Context of Disasters and Climate Change*’ (Raoul Wallenberg Institute, 2020) accessed at <<https://rwi.lu.se/disaster-displacement/>>. Also in Annexe 1.

²⁹ The Brookings Institution-University of Bern and Project on Internal Displacement, ‘Addressing Internal Displacement: A Framework for National Responsibility’ (2005) 42.

³⁰ IASC, ‘IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters’ (2011) accessed at: <https://www.ohchr.org/Documents/Issues/IDPersons/OperationalGuidelines_IDP.pdf>

³¹ Smits (n 17).

concluding analysis will also reckon with the elements and their specific aspects of the Human Rights-Based Approach.

1.4. Structure of the Thesis

The present thesis is divided into five parts, including this introductory chapter. In the following part, the phenomenon of internal displacement in the context of disasters and the adverse effects of climate change and related aspects will be discussed. The chapter starts by discussing the concept of human mobility in the context of forced migration and forced displacement in general. The discussion continues towards introducing the phenomenon of internal displacement and an overview of the protection mechanisms for IDPs. Afterwards, the focus zooms in on internal displacement in the context of disasters and the adverse effects of climate change. Concerning the topic at hand, relevant international institutions and initiatives will be discussed, along with domestic legislation and policies. The discourse on the issue of implementation in relation to disaster- and climate change-induced displacement will conclude the second chapter.

The third chapter focuses on the Human Rights-Based Approach as a methodology. Moreover, it provides an overview of the existing tools and benchmarks for assessing the national laws and policies on internal displacement. The elements and related aspects of the Human Rights-Based evaluation methodology will be presented followingly.

The fourth chapter deals with the case study of Georgia. In the first part of the chapter, Georgia's law and policy framework on disasters- and climate change-induced internal displacement will be examined in accordance with the Human Rights-Based evaluation methodology. Four elements of the HRBA and their specific aspects will guide the analysis. The second part of this chapter focuses on the issue of implementation in the Georgian context. The adequate standard of living without discrimination will be discussed in terms of implementation practices in Georgia.

The concluding chapter explores the possible prospects of strengthening the protection mechanisms for IDPs in disaster and climate change contexts in Georgia. The findings of the fourth chapter related to the HRBA analysis of Georgia's law and policy framework will feed into the discussion on perspectives for better protection mechanisms.

1.5. Delimitations

The analysis relates to the internal displacement in the context of disasters and the adverse effects of climate change; therefore, while assessing Georgia's law and policy framework, the focus will be limited to the documents specifically connected to this issue. In case the documents, particularly policy documents, refer to internal displacement in general, not specifying the grounds of

displacement and not making any clarification regarding the target groups, the provisions of these documents will also be perceived as applicable to IDPs in disaster and climate change contexts.

Regarding the implementation practices, the adequate standard of living without discrimination will be chosen to examine further. Due to the vast volume of implementation as a topic, the analysis is limited to one concrete aspect of durable solutions that also interlinks with other aspects of the Human Rights-Based Approach.

CHAPTER 2. INTERNAL DISPLACEMENT IN THE CONTEXT OF DISASTERS AND THE ADVERSE EFFECTS OF CLIMATE CHANGE

2.1. Human Mobility in the Context of Forced Migration and Forced Displacement

The theoretical understanding of human mobility has been conceptualised in the “dichotomous classification of forced versus voluntary migration.”³² However, many have argued in the literature that this distinction is “far from clear-cut”³³ and the elements such as options, choice, and agency, along with the existence of constraints, which generally characterise the nature of human mobility,³⁴ draw a fairly complex picture of migration, in general. Moreover, since the concepts such as “mixed migration” or “survival migration”³⁵ are increasingly discussed, dichotomous delineation becomes even more challenging. Nevertheless, this chapter does not attempt to dive into the broader theoretical debate; instead, the purpose is to unpack the concept of forced migration as an overarching phenomenon that includes internal displacement as a form of forced human mobility.

Though there is not a universally agreed definition of the concept, according to the International Organisation for Migration (IOM), forced migration is “a migratory movement which, although the drivers can be diverse, involves force, compulsion, or coercion.”³⁶ In the following parts, “forced migration” along with “forced displacement” will be used to describe the involuntary

³² Hein de Haas, ‘A Theory of Migration: The Aspirations-Capabilities Framework’ (2021) 9 Comparative Migration Studies 8.

³³ Nicholas, Van Hear, and Rebecca Brubaker, and Thais Bessa, ‘Managing Mobility for Human Development: The Growing Salience of Mixed Migration’ (2009). Centre on Migration, Policy and Society (COMPAS), University of Oxford, also in Etienne Piguet, ‘Theories of Voluntary and Forced Migration’ in Robert McLeman and François Gemenne (eds), *Routledge Handbook of Environmental Displacement and Migration* (1st ed, Routledge 2018)

³⁴ Piguet (n 33). (Van Hear, Brubaker, and Bessa 2009) (Betts 2013),

³⁵ *ibid.*

³⁶ ‘Forced Migration or Displacement’ (*Migration data portal*) <<http://migrationdataportal.org/themes/forced-migration-or-displacement>> accessed 2 March 2021.

mobility of people since these umbrella terms “migration” and “displacement” are used interchangeably. As mentioned above, the elements - option, choice, and agency over the mobility decision appear to be decisive in conceptualising forced migration.³⁷ Those elements also determine the categorical distinctions within the concept.

Several theories and approaches have been evolved to understand the categorical distinction within forced migration. For instance, Nicholas Van Hear has developed a matrix, which presents the nexus between factors such as force and choice and the type of mobility.³⁸ According to the matrix, one axis runs from “voluntary”, which equals to more choice, more options, to “involuntary” - meaning little choice, few options.³⁹ There are five kinds of movement along the other axis: inward, outward, return, onward, and staying put. At the involuntary end of the continuum, there are refugees, people displaced by conflicts, disasters, and development projects. Therefore, people displaced in such ways have relatively few choices and relatively few options over their mobility.⁴⁰

Figure 1. Force and choice in five components of migration⁴¹

	Voluntary Migration More choice More options	Less choice Fewer options	Involuntary migration Little choice Few options
<----->			
<i>Proactive migrants</i>		<i>Reactive Migrants</i>	
Outward	Tourists Visitors Students Professional transients Business travellers	Economic/labor migrants Rural-urban migrants Anticipatory refugees People induced to move	Refugees Expellees Internally displaced people Development displacement Disaster displacement
Inward	Primary migrants/newcomers Family reunion/formation	Visitors, students, or tourists who seek asylum	Asylum seekers Refugee seekers
Return	Returning migrants and refugees Voluntary repatriates Voluntary returnees Repatriates long-settled abroad	Returning migrants and refugees A mixture of compulsion, inducement and choice	Deported or expelled migrants Refugees subject to <i>refoulement</i> Forced returnees Repatriates long-settled abroad
Onward	Resettlement Dispersal by strategy	Third country resettlement of refugees	Scattering forced dispersal
Staying put	Stayers by choice Household dispersal strategy	People confined to safe havens, safe countries, safe areas	Stayers of necessity containment

³⁷ de Haas (n 32).

³⁸ Nicholas Van Hear, *New diasporas: the mass exodus, dispersal and regrouping of migrant communities* (1998) reprinted 2003 by Routledge

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ *ibid.* pg. 44

This prefatory discussion has paved the way for introducing the main categories of forced migration and forced displacement. However, even before identifying the forced mobility drivers, the core element is seeing whether mobility has occurred within a state's borders or has a cross-border nature. The categorical distinction in the context of forced migration depends entirely on this specific factor, meaning that if displaced populations move within their own country, they are considered as Internally Displaced Persons (IDPs); thus, they should be entitled to the same rights and freedoms as the other citizens.⁴² When forced migrants move across the border of another country, their legal status changes and they might become asylum-seekers or refugees. The 1951 UN Refugee Convention establishes the legal status of asylum-seekers and refugees.⁴³ Whereas the UN's Guiding Principles on Internal Displacement,⁴⁴ introduced in 1998, delineate the rights and guarantees relevant to the protection of IDPs.⁴⁵

The grounds for recognising a person as a forced migrant or forcibly displaced are not identical in domestic and international contexts. For instance, while the Guiding Principles on Internal Displacement explicitly refer to disasters as one of the drivers for people to flee from their homes or places of habitual residence,⁴⁶ the refugee law does not yet recognise so-called "climate refugees".⁴⁷ However, in October 2020, the UNHCR has issued a document which conveys the "legal considerations regarding claims for international protection made in the context of the adverse effects of climate change and disasters."⁴⁸ The document has been applauded as "[t]he first step in ensuring [that] protection for those displaced by climate change" can become a reality.⁴⁹ The document acknowledges that the relationship between climate change and human rights is increasingly recognised in law by referring to the UN Human Rights Committee (HRC) recent decision in the *Teitiota v New Zealand* case.⁵⁰ In its landmark ruling, the HRC recognised, for the first time, that forcibly returning a person to a place where their life would be at risk due to the adverse effects of climate change may violate the right to life under Article 6 of the

⁴² Thomas G. Weiss and David A. Korn, *Internal Displacement. Conceptualization and Its Consequences*, (2006) London and New York, NY: Routledge, pg. 101

⁴³ Convention relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugee Convention)

⁴⁴ United Nations, Commission on Human Rights, *The Guiding Principles on Internal Displacement*, UN Doc. E/CN.4/1998/53/Add.2 (1998)

⁴⁵ 'OCHA Guiding Principles on Internal Displacement' (n 8).

⁴⁶ *ibid.* Art. 2

⁴⁷ United Nations High Commissioner for Refugees, 'Climate Change and Disaster Displacement' (*UNHCR*) <<https://www.unhcr.org/climate-change-and-disasters.html>> accessed 1 May 2021.

⁴⁸ UNHCR, 'Refworld | Legal Considerations Regarding Claims for International Protection Made in the Context of the Adverse Effects of Climate Change and Disasters' (*Refworld*) <<https://www.refworld.org/docid/5f75f2734.html>> accessed 1 May 2021.

⁴⁹ Kayly Ober, 'Opinion: What Does UNHCR's New Guidance on the Protection of "climate Refugees" Mean?' (*Devex*, 15 December 2020) <<https://www.devex.com/news/sponsored/opinion-what-does-unhcr-s-new-guidance-on-the-protection-of-climate-refugees-mean-98637>> accessed 5 May 2021.

⁵⁰ *Ioane Teitiota v. New Zealand* (advance unedited version), CCPR/C/127/D/2728/2016, UN Human Rights Committee (HRC), 7 January 2020, available at: <https://www.refworld.org/cases,HRC,5e26f7134.html> > accessed 1 May 2021.

International Covenant on Civil and Political Rights (ICCPR).⁵¹ Nevertheless, the term “climate refugee” is not yet endorsed by the UNHCR.⁵² Indeed, this topic is and should be the subject of great attention; however, the scope analysis presented in this thesis is limited to internal displacement in the context of disasters and climate change as it continues to unpack the concepts followingly.

2.2. The Phenomenon of Internal Displacement

In the early 1990s, internal displacement was introduced on the map of international relations and law. At that time, millions of people were being forced to flee from their homes due to ongoing “state breakdowns”, civil wars, and other violent disorders worldwide.⁵³ This specific group of people did not have any assured access to international humanitarian relief and, in general, international protection. Meaning that the 1951 Convention did not apply to them, and the UNHCR had no automatic mandate to assist them – since, unlike refugees, they did not flee across borders. Instead, they remained within their own countries under the jurisdiction of their own governments.⁵⁴ Considering that the phenomenon of internal displacement became “*real enough*,”⁵⁵ small yet significant steps were taken steadily by the UN since 1992.

The continuous endeavours of various international organisations, experts, and state representations, particularly to mention invaluable work of the Representative of the Secretary-General (RSG) on Internally Displaced Persons – Francis M. Deng, and the Senior Adviser of the RSG – Roberta Cohen, was culminated by presenting the Guiding Principles on Internal Displacement to the Commission on Human Rights in 1998. The Guiding Principles on Internal Displacement remain the most important international framework for the protection of IDPs.⁵⁶ In line with international human rights and humanitarian law, and with refugee law by analogy, 30 Principles set forth the rights of IDPs and the obligations of governments and the international community toward these populations.⁵⁷ However, the Guiding Principles do not contain any new legal norms, rather portray how existing principles of international law and humanitarian law can

⁵¹ ‘Teitiota v New Zealand: A Step Forward in the Protection of Climate Refugees under International Human Rights Law?’ (OHRH, 28 January 2020) <<http://ohrh.law.ox.ac.uk/teitiota-v-new-zealand-a-step-forward-in-the-protection-of-climate-refugees-under-international-human-rights-law/>> accessed 5 May 2021.

⁵² *ibid.*

⁵³ Weiss and Korn, (n42) pg. 11

⁵⁴ Roberta Cohen, ‘The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting’ (2004) 10 *Global Governance: A Review of Multilateralism and International Organizations* pg. 459.

⁵⁵ Weiss and Korn, (n42) pg.11

⁵⁶ IOM, ‘IOM Framework for Addressing Internal Displacement’ (2017). Geneva.

⁵⁷ Cohen, (n54) pg. 465

be applied in the context of internal displacement.⁵⁸ More regarding the legal nature of the Guiding Principles will be discussed in the following parts.

The Guiding Principles define IDPs as:

“Persons or groups of persons who have been forced or obliged to flee or to leave their homes or place of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border.”⁵⁹

Based on this rather descriptive definition, two main components emerge:

- that the person’s movement is coerced or involuntary, this is to distinguish them from economic and other voluntary migrants;⁶⁰ and
- that the person stays within internationally recognised state borders in order to distinguish them from refugees;⁶¹

Moreover, a person does not need to be a citizen of his or her country to be considered an IDP; hence habitual residence is sufficient. “Non-citizens, foreigners, and stateless people may also qualify as IDPs if they fled their habitual residence - a place where they had lived for a significant amount of time and had the intention of remaining.”⁶² Former refugees who have returned to their country of origin but are unable to find a durable solution to their vulnerable situation caused by displacement may also be considered as an IDP.⁶³

The definition of an IDP in the Guiding Principles includes the words “*in particular*”, which has caused a significant debate between the two sides. On the one hand, some advocated considering only the persons affected by the national or intra-national armed conflicts and major human rights violations as internally displaced. On the other, the idea of expanding the categories displacement grounds was encouraged.⁶⁴ The current definition also includes the natural or human-made disasters as reasons to flee from the habitual place; however, the words “*in particular*” left open the possibility of including even broader categories of causes. Nevertheless, it is also fair to mention that the focus had been remaining on conflict-induced internal displacement for some time. This dominant narrative has also been reflected in national legislation and policies. However, the issue of disaster- and climate change-induced displacement is becoming more challenging than

⁵⁸ Anne Koch and Stiftung Wissenschaft Und Politik, ‘On the Run in Their Own Country: Political and Institutional Challenges in the Context of Internal Displacement’ (2020) SWP Research Paper, pg. 22

⁵⁹ United Nations, Commission on Human Rights, The Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add.2 (1998) Art 2.

⁶⁰ ‘Fact Sheet on Internal Displacement | Global Protection Cluster’
<<https://www.globalprotectioncluster.org/gp20/fact-sheet-on-internal-displacement/>> accessed 19 March 2021.

⁶¹ *ibid.*

⁶² ‘Fact Sheet on Internal Displacement | Global Protection Cluster’ (n 60).,

⁶³ *ibid.*

⁶⁴ Weiss and Korn, (n42) pg. 64

ever due to the adverse effects of climate change.⁶⁵ Thus, it requires greater attention on national and international levels.

As conveyed by the Guiding Principles, few major categories of displacement triggers have been recognised at the present day, such as armed conflicts, situations of generalised violence, violations of human rights, natural or human-made disasters. Moreover, large-scale economic development projects,⁶⁶ such as the construction of dams and highways, have become considerably relevant. In addition, there are also discussions in the literature to include organised crime, under specific conditions, as a cause for internal displacement. Though the line between armed conflicts and organised crime is not always lucid.⁶⁷

Along with the causes and triggers of internal displacement, several types of displacement need to be named, such as protracted displacement, meaning that sometimes IDPs have to live in internal displacement for many years or not going back to their initial habitual place at all.⁶⁸ However, the determining criterion for describing a displacement as “protracted” is not its duration but rather progress towards durable solutions for the IDPs.⁶⁹ Furthermore, “[o]nce displaced, people are prone to multiple displacements,”⁷⁰ therefore, multiple displacements need to be a matter of concern, as a phenomenon, while addressing the issue of internal displacement.

2.3. Protection Mechanisms for Internally Displaced Persons

The following part explores the protection mechanisms for IDPs by analysing the international framework and its legal nature. As already discussed above, IDPs are not considered as refugees since they do not cross internationally recognised borders; therefore, they cannot benefit from the international protection guarantees enshrined in the Refugee Convention. Considering that their protection is still not linked to any particular normative model endorsed by the Guiding Principles, the protection mechanisms for IDPs depend on the analogical application of pre-existing norms of International Human Rights Law, International Humanitarian Law, and International Refugee Law.⁷¹

⁶⁵ IDMC, ‘No Matter of Choice: Displacement in a Changing Climate’ (2018) <<https://www.internal-displacement.org/sites/default/files/publications/documents/20181213-slow-onset-intro.pdf>>.

⁶⁶ Koch, (n 19) pg. 13

⁶⁷ Koch (n 13) pg. 14

⁶⁸ Katie Peters and Emma Lovell, ‘Reducing the Risk of Protracted and Multiple Disaster Displacements in Asia-Pacific’ 41. (2020) UNDRR

⁶⁹ IDMC, IDPs in Protracted Displacement: Is Local Integration a Solution? Report from the Second Expert Seminar on Protracted Internal Displacement, 19–20 January 2011 (2011)

⁷⁰ Weiss and Korn, (n42) quoting Paula Banarjee, pg. 91,

⁷¹ Magdalena Silska, *Protection of Internally Displaced Persons: An International Legal Obligation?* Polish Yearbook of International Law, Wydawnictwo Naukowe Scholar (2014) Warsaw, pg. 250

The Guiding Principles provide a descriptive definition of an IDP, meaning that it merely describes the factual situation of a person being displaced within one's country of habitual residence; thus, the term does not establish a special legal status.⁷² In contrast, the refugees require a special legal "label" since they are outside of their own state, whereas IDPs hold the rights and guarantees due to the fact that they are "citizens or habitual residents of a particular state".⁷³ IDPs should enjoy the full range of human rights as well as those guarantees of international humanitarian law that are applicable to the citizens of that country in general.⁷⁴ Nevertheless, it is also undeniable that the plight of IDPs is related to specific necessities and vulnerabilities "[...]any examination of IDP rights would have to be based on the special needs of this distinct category of persons."⁷⁵ Therefore, states are responsible for providing sufficient protection for those internally displaced while addressing their special needs. Nevertheless, initially, it has not been that conspicuous to understand what exactly state responsibility entailed with regards to the protection of IDPs.

The challenging mission for the first RSG - Francis M. Deng, along with other experts in the field, was to "identify those guarantees and concepts implicit in the rich body of existing international law that respond to the special needs of IDPs, and to make this protection explicit."⁷⁶ The mission was accomplished by introducing the Guiding Principles, which has set out the rights and guarantees relevant to the protection of IDPs in all phases of displacement.⁷⁷ Meaning that they cover all three phases of internal displacement: the pre-displacement phase, the situation during displacement, and the phase of return or resettlement and reintegration.⁷⁸

However, the Guiding Principles is not a legally binding document, meaning that it does not constitute any obligations for states since states themselves has not negotiated them.⁷⁹ The drafting, review process, and finalisation were done outside the traditional intergovernmental process by a group of independent experts led by the RSG - F. M. Deng. Therefore, the Guiding Principles might be even considered "softer than typical soft law".⁸⁰

Kälin, in his article, scrutinises the reasons for not making a treaty – a legally binding document relating to the legal status of IDPs considering the broader context of international affairs at that time.⁸¹ For instance, the fact that treaty-making in the area of human rights, in general, had become noticeably difficult due to growing pluralism and differences between positions about human

⁷² E. D. Mooney, *The Concept of Internal Displacement and the Case for Internally Displaced Persons as a Category of Concern*, *Refugee Survey Quarterly*, Volume 24, Issue 3, 2005, pgs. 13–14

⁷³ *Ibid.* pg. 14

⁷⁴ Walter Kälin, 'The Guiding Principles on Internal Displacement as International Minimum Standard and Protection Tool' (2005) *Refugee Survey Quarterly* 27, pg. 28

⁷⁵ Cohen, (n54) pg.463

⁷⁶ Kälin, (n74) pg. 28

⁷⁷ 'OCHA Guiding Principles on Internal Displacement' (*IDMC*) <<https://www.internal-displacement.org/publications/ocha-guiding-principles-on-internal-displacement>> accessed 05 March 2021.

⁷⁸ Cohen, (n54) pg. 456

⁷⁹ Walter Kälin, 'How Hard Is Soft Law? The Guiding Principles on Internal Displacement and the Need for a Normative Framework' 9, (2001) *Brookings/CUNY Project on Internal Displacement* pg. 7

⁸⁰ *ibid.*

⁸¹ *ibid.*

rights among states. Moreover, even where a text is adopted, there is no guarantee that the treaty is successful.⁸² Therefore, the time was a challenge - treaty-making could take decades, whereas rapidly growing numbers of IDPs and their urgent needs would not wait.⁸³ Furthermore, it was known that the existing treaties already covered the rights of IDPs to a large extent, though in some cases only implicitly. It was acknowledged that the Guiding Principles are “*very well-grounded*”⁸⁴ in IHRL and IHL, and they are based on more general norms deduced to be applied to specific conditions of IDPs.⁸⁵

Naturally, the question was related to the state’s responsibility – how the Guiding Principles would make its way to actual implementation while Westphalian understanding⁸⁶ of International Law system is still such a deep-rooted foundation? The core idea behind the Guiding Principles as a protection mechanism for IDPs is a “*sovereignty as responsibility*”,⁸⁷ which has two essential parts:

- governments are responsible for the human rights of their citizens, particularly those in vulnerable conditions, as part of the essence of statehood;
- when they are unwilling or unable (not having enough capacity)⁸⁸ to provide for the security and well-being of their citizens, an international responsibility arises to protect vulnerable individuals.⁸⁹

The Guiding Principles on Internal Displacement has inspired and encouraged the adoption of various legally binding international instruments, non-binding guidelines, and initiatives concerning internal displacement. In 2005, the UN Sub-Commission on Human Rights adopted the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, also known as *Pinheiro Principles*, which define the rights of refugees and IDPs to return to their homes and to recover the property.⁹⁰ The purpose of the non-binding Pinheiro Principles is to provide guidelines for durable solutions to IDP and refugee crises. In 2006, the International Conference on the Great Lakes Region (ICGLR) adopted the Protocol on the Protection and Assistance to Internally Displaced Persons. The IDP protocol obliges member states of the ICGLR to enact national legislation, developed in consultation with IDPs themselves, to incorporate the Guiding Principles and provide a legal framework for their implementation.

⁸² *ibid.*

⁸³ *ibid.*

⁸⁴ Kälén, (n74) *ibid.*

⁸⁵ Kälén, (n74) *ibid.*

⁸⁶ Andreas Osiander, ‘Sovereignty, International Relations, and the Westphalian Myth’ (2001) 55 *International Organization* 251.

⁸⁷ Weiss and Korn, (n42) pg. 3

⁸⁸ Cohen, (n54) pg. 459

⁸⁹ Weiss and Korn, (n42) pg. 3

⁹⁰ The Pinheiro Principles United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons, Centre on Housing Rights and Evictions, accessed at: cohre.org.

Moreover, in 2009, the African Union developed and adopted the first legally binding regional treaty on internal displacement – The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, otherwise known as the Kampala Convention.⁹¹ Though both instruments limit their scope to one geographical region, they can be an important benchmark for the rest of the world. In addition, introduced by the Inter-Agency Standing Committee (IASC) Framework on Durable Solutions for IDPs⁹² presents itself as a valuable international policy-oriented document, which further clarifies and strengthens the concept of durable solutions set out in the Guiding Principles⁹³ and provides general guidance on how to achieve them.

As known, adopted in 2015 by the UN General Assembly, the 2030 Agenda for Sustainable Development makes an ambitious commitment to “*leave no one behind*” in its implementation.⁹⁴ The core of the 2030 Agenda is 17 Sustainable Development Goals (SDGs), with, in total, 169 targets measured by 247 indicators.⁹⁵ To ensure that this global commitment is effectively met, several vulnerable population groups are recognised for attention in the Agenda, including migrants, refugees, and other forcibly displaced persons (FDPs).⁹⁶ In 2019, the Expert Group on Refugee and IDP Statistics (EGRIS) identified three key policy areas that are most relevant for forcibly displaced populations: basic needs and living conditions, livelihoods and economic self-reliance, civil, political, and legal rights. The Expert Group also mapped 12 top priority SDG indicators pertinent to these areas.⁹⁷ The inclusion of FDPs in the 2030 agenda is essential for ensuring better protection mechanisms for those forcibly displaced.

To conclude, these international documents carve the framework for the international protection mechanism of IDPs, however, the solid foundation of that framework is undoubtedly the Guiding Principles, which have become the “*minimum international standard*” for the protection of IDPs. The Guiding Principles have been recognised as an “*important tool*”⁹⁸ and “*useful framework*”⁹⁹ to deal with the phenomenon of internal displacement. While it is crucial to have specific international documents available for better protection mechanisms of the IDPs, at its fundament, internal displacement has always been a human rights issue. As Erin Mooney writes, “it was within the human rights framework of the UN, after all, that the plight of the internally displaced emerged

⁹¹ ‘The Kampala Convention: Key Recommendations Ten Years On’ (*International Committee of the Red Cross*, 27 January 2020) <<https://www.icrc.org/en/document/kampala-convention-key-recommendations-ten-years>> accessed 8 March 2021.

⁹² ‘IASC Framework on Durable Solutions for Internally Displaced Persons | IASC’ <<https://interagencystandingcommittee.org/other/iasc-framework-durable-solutions-internally-displaced-persons>> accessed 9 March 2021.

⁹³ Guiding Principles: Art.6 Art 28-30

⁹⁴ ‘Transforming Our World: The 2030 Agenda for Sustainable Development | Department of Economic and Social Affairs’ <<https://sdgs.un.org/2030agenda>> accessed 18 March 2021.

⁹⁵ *ibid.*

⁹⁶ UNHCR, ‘Data Disaggregation of SDG Indicators by Forced Displacement’ (202) accessed at: unhcr.org.

⁹⁷ *ibid.* Box 1. pg. 7

⁹⁸ Kälin, (n35) pg. 27

⁹⁹ *ibid.*

on the international agenda and international consensus around the issue was forged”.¹⁰⁰ Therefore, it is essential to realise that human rights should be the cornerstone of any debate when addressing the protection mechanisms for IDPs.

2.4. Disaster- and Climate Change-Induced Internal Displacement

As mentioned initially, the new internal displacements related to disasters and the adverse effects of climate change outnumbered conflict-triggered displacement by three times only in 2020.¹⁰¹ The trend was similar in 2019. Moreover, the number of disasters- and climate change-related internal displacements increased by 5.8 million last year comparing with the previous year. Thus, the scale of such displacement is seemingly large. However, the protection of those displaced due to disasters, especially the slow-onset hazards caused by ongoing climate change, has received “far too little attention”¹⁰² compared to conflict-induced displacement.

The definition of IDPs conveyed in the Guiding Principles recognises natural and human-made disasters as one of the causes to flee,¹⁰³ which is quite significant. As discussed, at the time of developing the principles, not “everyone”¹⁰⁴ agreed with having included such reasons in the definition. Considering that the adverse effects of climate change already display themselves by triggering slow-and sudden-onset hazards, which are expected to increase as the world population is getting closer to the point when the “irreversible damage” cannot be avoided anymore,¹⁰⁵ international recognition of disaster-induced displacement has vital importance.

As mentioned in the IDP definition, the Guiding Principles adopt the following wording - “natural disasters.” However, it should be clarified what is meant by disaster – can a disaster happen naturally? According to the current common understanding, natural disasters do not exist, whereas natural hazards do. As Martin Ras argues, “hazards are natural events, occurring more or less frequently and of a greater or lesser magnitude, but disasters are due to risk-blind development.”¹⁰⁶

¹⁰⁰ E. D. Mooney, ‘Principles of Protection for Internally Displaced Persons’, *International Migration* (2000) vol. 38, no. 6, pg. 82.

¹⁰¹ ‘Global Report on Internal Displacement 2021 (GRID 2021) - World’ (n 2).

¹⁰² Megan Bradley and Roberta Cohen, ‘Disasters and Displacement: Gaps in Protection’ (2010) 1 *Journal of International Humanitarian Legal Studies* 95. Pg. 3

¹⁰³ The Guiding Principles

¹⁰⁴ See Roberta Cohen, *The Guiding Principles on Internal Displacement: An Innovation in International Standard Setting*, *Global Governance* 10 (2004), 459–480 “...*Not all humanitarian or human rights groups wanted to include these other groups, preferring to limit the IDP definition to those subject to persecution or who would be considered refugees if they crossed a border. But the overriding opinion was that persons uprooted by natural and human-made disasters or development projects are also displaced and in need of attention;*” pg. 466

¹⁰⁵ ‘Only 11 Years Left to Prevent Irreversible Damage from Climate Change, Speakers Warn during General Assembly High-Level Meeting | Meetings Coverage and Press Releases’
<<https://www.un.org/press/en/2019/ga12131.doc.htm>> accessed 26 March 2021.

¹⁰⁶ Martin Ras, ‘Natural Disasters Don’t Exist but Natural Hazards Do’ (*UNDP*)
<<https://www.undp.org/content/undp/en/home/blog/2017/5/18/Natural-disasters-don-t-exist-but-natural-hazards-do.html>> accessed 9 April 2021.

Natural events become disastrous when they negatively affect human life, livelihoods, or property. Thus, the phenomenon of a “disaster” should be understood as a “natural hazard plus vulnerability.”¹⁰⁷

Moreover, various factors such as vulnerability assessment, preparedness, proper implementation of Disaster Risk Reduction (DRR) and Climate Change Adaptation (CCA) strategies impact the scale of the calamity.

“The crucial point about understanding why disasters happen is that it is not only natural events that cause them. They are also the product of social, political, and economic environments[...].”¹⁰⁸

Therefore, terminology such as “natural disasters” should not be employed; however, following the literal translation of the Guiding Principles, it might be the case that some countries also use “natural disasters” in their national legal and policy documents as an overarching term.¹⁰⁹ Nevertheless, even if the wording says “natural disasters”, it should be understood as natural hazards which might become disastrous/catastrophic as per the above argumentation.

In terms of the concrete types of natural hazards, the sudden-onset and slow-onset hazards can be classified. The sudden-onset hazards are hurricanes, floods, tsunamis, earthquakes, volcanic eruptions, forest fires, etc. Forced relocation might also occur due to gradual environmental changes, i.e., slow-onset hazards, such as desertification or sea-level rise, glacial retreat, increasing temperatures, land degradation, loss of biodiversity, ocean acidification, salinisation, etc.¹¹⁰ It has been recognised that the slow-onset hazards also lead to displacement, but the scale of the phenomenon is unknown because it is complicated to monitor.¹¹¹ Additionally, there can be multi-hazards as displacement grounds, which relate to more than one hazard in a given place, and/or the interrelations between these hazards, including their simultaneous or cumulative occurrence and their potential interactions.¹¹² Moreover, disasters in conflict situations can be considered as one of the categories of disaster displacement.¹¹³ For instance, it might also be the case that people

¹⁰⁷ Dug Cubie and Marlies Hesselman, ‘Accountability for the Human Rights Implications of Natural Disasters: A Proposal for Systemic International Oversight’ (2015) 33 *Netherlands Quarterly of Human Rights* 9.

¹⁰⁸ Ben Wisner, ‘At risk: natural hazards, people’s vulnerability, and disasters.’ 2004, Abingdon: Routledge (second edition), seen in: Matthew Scott and Albert Salamanca, *Climate Change, Disasters, and Internal Displacement in Asia and the Pacific: A Human Rights-Based Approach* (Matthew Scott and Albert Salamanca eds, 1st ed., Routledge 2020) <<https://www.taylorfrancis.com/books/9781000223200>> accessed 9 February 2021.

¹⁰⁹ For instance, Georgia uses “disastrous/catastrophic natural events” throughout the regulatory document of disaster-induced displacement – the Decree No 779 of the Minister “About the Approval of Resettlement Procedure, Accommodation Criteria, a Unified Electronic Database of Register, and the Commission on Resettlement Issues of Displaced and Subject to Displacement Families (Ecomigrants) Affected by Disastrous Natural Events.”

¹¹⁰ ‘Global Report on Internal Displacement 2021 (GRID 2021) - World’ (n 2).

¹¹¹ *ibid.*

¹¹² ‘Defining Multi-Hazard - Cascading and Interacting Natural Hazards’ <<http://www.interactinghazards.com/defining-multi-hazard>> accessed 15 March 2021.

¹¹³ Platform on Disaster Displacement, ‘Internal Displacement in the Context of Disasters and the Adverse Effects of Climate Change’ (2020). Submission to the High-Level Panel on Internal Displacement by the Envoy of the Chair of the Platform on Disaster Displacement

previously displaced by conflict who live in overcrowded and poorly planned camp settings often face secondary displacement due to various natural hazards.¹¹⁴

As mentioned, climate change affects the severity and frequency of slow and sudden-onset disasters; thus, discussing climate change in connection to displacement and, more specifically, to internal displacement is an unavoidable topic. Anthropogenic climate change is defined by Article 1 of the United Nations Framework Convention on Climate Change (UNFCCC) as

“a change of climate which is attributed by directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.”¹¹⁵

Climate change challenges various areas of human development; as the UN Secretary-General – Antonio Guterres mentioned at the high-level event on climate change in 2018

“Climate change is the defining issue of our time – and we are at a defining moment.”¹¹⁶

Human mobility is considered as an adaptation strategy to climate change – a mechanism to cope with extreme weather conditions; while it can save lives, enhance resilience and reduce risk, forced mobility can also make people (even more) vulnerable and expose them to new risks.¹¹⁷ It is expected that as climate change accelerates, massive new waves of displacement will occur not only within the borders of states but also cross-border climate change-induced forced migration becomes increasingly noticeable. Nine out of every ten disasters are climate-related, meaning that climate change acts as a “threat multiplier” in relation to disasters.¹¹⁸ These new patterns of human mobility already challenge the established international concepts, norms, and institutional arrangements/capacities for dealing with forced displacement.¹¹⁹

As mentioned, the disaster- and climate change-induced displacement affect people differently based on various factors and tends to “exacerbate existing inequalities”¹²⁰; therefore, relevant protection mechanisms have crucial importance for mitigating the plight of disaster and climate change-related IDPs. However, depending on the type of disasters and human mobility in the context, the protection mechanisms differ. As outlined in the Guiding Principles, international human rights law provides a solid legal basis for protection in the case of IDPs displaced by sudden-onset hazards.¹²¹ This becomes more challenging in relation to slow-onset hazards since

¹¹⁴ *ibid.* pg. 18

¹¹⁵ United Nations Framework Convention on Climate Change, 1992, Art. 1

¹¹⁶ ‘Remarks at High-Level Event on Climate Change | United Nations Secretary-General’

<<https://www.un.org/sg/en/content/sg/speeches/2018-09-26/remarks-high-level-event-climate-change>> accessed 13 March 2021.

¹¹⁷ ‘Human Mobility in the UNFCCC | Environmental Migration Portal’

<<https://environmentalmigration.iom.int/human-mobility-unfccc>> accessed 15 March 2021.

¹¹⁸ Jenty Kirsch-Wood, Jacob Korreborg, and Anne-Marie Linde, “What Humanitarians Need to Do” (2008) 31 *Forced Migration Review* 40

¹¹⁹ *ibid.* Bradley and Cohen (n 98). Pg. 34

¹²⁰ Bridget Lewis and Rowena Maguire, ‘A Human Rights-Based Approach to Disaster Displacement in the Asia-Pacific’ (2016) 6 *AsianJIL* pg. 327

¹²¹ Bradley and Cohen (n 98), *ibid.* pg. 10

there are no criteria for establishing at what point voluntary movement becomes forced, and as known, the element of “force” is a crucial aspect of IDP definition in the Guiding Principles.¹²²

In terms of terminology, there is no one entirely consensual name for the IDPs displaced by disasters and the adverse effects of climate change. As mentioned in the previous parts, FDPs – Forcibly Displaced Persons is an overarching term that includes forced migrants, refugees, and IDPs. However, concerning the disaster- and climate change-induced displacement, some authors and organisations use Environmentally Displaced Persons (EDPs), which according to the IOM, refers to

“persons who are displaced within their country of habitual residence or who have crossed an international border and for whom environmental degradation, deterioration or destruction is a major cause of their displacement, although not necessarily the sole one.”¹²³

Moreover, formal and informal terminology might differ from country to country; for instance, in Georgia, IDPs in disaster contexts are often named eco or environmental migrants.¹²⁴ Terms such as “climate/environmental refugees/migrants” are also frequently used, particularly in the recent period; however, there is a consensus amongst international lawyers not to employ these terms related to the refugee regime,¹²⁵ and naturally, they also do not accurately reflect the concept of disaster-related internal displacement. The submission to the High-Level Panel on Internal Displacement by the Envoy of the Chair of the Platform on Disaster Displacement (hereafter “Submission of the Envoy”) uses the following terminology: internal displacement in the contexts of disasters and the adverse effects of climate change and refers to those displaced as “IDPs in disaster and climate change contexts”. Thus, this terminology will also be adopted in this thesis as an overarching term along with “ecomigrants”, particularly in the parts about Georgia (Chapter 4 and Chapter 5) since “ecomigrants” is the most common and widely agreed terminology in Georgia.

2.5. International Institutional Protection and Initiatives for IDPs in Disasters and Climate Change Contexts

As noted, given that internal displacement occurs within the state borders, national governments have the primary responsibility to protect IDPs; this is also underlined in the Guiding Principles (Principle 3(1)).¹²⁶ However, since many governments do not have the capacity or willingness to

¹²² Bradley and Cohen (n 98).

¹²³ IOM, Migration, Environment and Climate Change: Evidence for Policy (MECLEP), Glossary, pg.13

¹²⁴ Justin Lyle, ‘Resettlement of Ecological Migrants in Georgia: Recent Development and Trends in Policy, Implementation, and Perceptions’ (2012) ECMI Working Paper #53

¹²⁵ IOM ‘IOM Outlook on Migration, Environment and Climate Change’ (2014). Accessed at <https://publications.iom.int/system/files/pdf/mecc_outlook.pdf>

¹²⁶ ‘Internal Displacement’ (OCHA, 17 September 2016) <<https://www.unocha.org/fr/themes/internal-displacement>> accessed 20 March 2021.

carry out these responsibilities,¹²⁷ the role of international institutions and initiatives becomes significant. Nevertheless, there is no “central actor”¹²⁸ on the international level which can serve as the principal to advocate for better protection of the IDPs worldwide. Though the number of humanitarian, human rights, and development-oriented actors has been increasing in the past years, the “fragmentation of responsibilities”¹²⁹ and an institutional gap for the protection of IDPs on the international level remains. Fair to note, this “gap” enlarges when addressing the internal displacement in the context of disasters and the adverse effects of climate change, while it has been acknowledged that climate change and environmentally induced forced mobility is a “*global process, not a local crisis.*”¹³⁰ Thus, as mentioned in the GRID, the global implications of internal displacement also require a global response and enhanced international cooperation.¹³¹

The following part describes several key international organisations and international initiatives dealing with internal displacement in general and particularly in the context of disasters and climate change. It has to be noted that most of these “actors” and initiatives are interconnected and build a general knowledge/expertise hub and lead core advocacy actions.

UNHCR, as the chief agency of the UN dedicated to the forced mobility of people, primarily has been focusing on refugees and asylum-seekers following its original mandate. However, in the last two decades, the UNHCR has gradually expanded its efforts towards the protection of both IDPs in conflict and IDPs in disaster contexts. As mentioned in the vision of the “Policy on UNHCR’s Engagement in Situations on Internal Displacement,” the UNHCR will pursue measures and approaches to anticipate better and effectively respond to situations of internal displacement and will support reinforcing state responsibility and enhancement of national and local protection capacities.¹³² Important to be stressed that the UNHCR will also contribute to any joint response to disaster-induced internal displacement and taking the lead on protection whenever the three criteria are met: field presence, a government request, and an inter-agency agreement.¹³³ Furthermore, the resolution by the General Assembly 73/163 was adopted relatively recently on 16 December 2020, para. 58

¹²⁷ Roberta Cohen, ‘For Disaster IDPs: An Institutional Gap’ (*Brookings*, 30 November 1AD) <<https://www.brookings.edu/opinions/for-disaster-idps-an-institutional-gap/>> accessed 20 March 2021.

¹²⁸ Koch and Stiftung Wissenschaft Und Politik (n 58). *Ibid.*,

¹²⁹ *ibid.*

¹³⁰ Council of Europe: Parliamentary Assembly, ‘*Environmentally induced migration and displacement: a 21st century challenge*’, PACE - Resolution 1655 23 December 2008, Doc. 11785, <<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17719>> accessed 20 March 2021.

¹³¹ ‘Global Report on Internal Displacement 2021 (GRID 2021) - World’ (n 2).

¹³² UNHCR, United Nations High Commissioner for Refugees, ‘UNHCR and Internally Displaced Persons: UNHCR’s Role in Support of an Enhanced Humanitarian Response to IDP Situations’ , UNHCR/HCP/2019/1 <<https://www.unhcr.org/protection/idps/50f951df9/unhcr-internally-displaced-persons-unhcrs-role-support-enhanced-humanitarian.html>> accessed 20 March 2021.

¹³³ *ibid.*

“[e]xpresses concern about the challenges associated with climate change and environmental degradation to the operations of the Office of the High Commissioner and the assistance it provides to vulnerable populations of concern across the globe, particularly in the least developed countries, and urges the Office to continue to address such challenges in its work, within its mandate, and in consultation with national authorities and in cooperation with competent agencies in its operations;”¹³⁴

The resolution, indeed, has paramount importance for increasing UNHCR’s role in climate change-related matters, including displacement.

Within the UN system, the Special Rapporteur on the human rights of internally displaced persons also plays an important role to support mainstreaming the human rights of the internally displaced into all relevant parts of the UN system; as well as to strengthen the international response to internal displacement and engage in coordinated international advocacy.¹³⁵ Appointed by the UN Human Rights Council, the Special Rapporteur is an independent human rights expert. In 2010, the Special Rapporteur position replaced the mandate of the Representative of the Secretary-General (RSG) on the human rights of Internally Displaced Persons. As was discussed above, the first RSG was the main initiator and the leader in creating landmark Guiding Principles on internal displacement. Therefore, the role of the Special Rapporteur on the matter is noteworthy.

Furthermore, in late 2019, the High-Level Panel on Internal Displacement was set up by the UN Secretary-General in order to increase global attention on and support internally displaced persons. The panel focuses on addressing protracted displacement and achieving durable solutions for persons displaced internally, including internal displacement caused by disasters and the adverse effects of climate change.¹³⁶ The establishment of the panel was built upon the 2017 UN General Assembly Resolution on the protection of and assistance to IDPs¹³⁷ and initiatives such as the GP20 Plan of Action¹³⁸ to Advance Prevention, Protection and Solutions for IDPs and the Platform on Disaster Displacement (PDD).

The Platform on Disaster Displacement (PDD) on its own is a state-led initiative working towards better protection for people displaced across borders in the context of disasters and climate change. The platform is mainly oriented to following up the work started by the Nansen Initiative consultative process and implementing the Nansen Initiative Protection Agenda

¹³⁴ Resolution of the UN General Assembly, No 75/163. Office of the United Nations High Commissioner for Refugees, 16 December 2020, A/RES/75/163

¹³⁵ OHCHR | Special Rapporteur on the Human Rights of Internally Displaced Persons <<https://www.ohchr.org/en/issues/idpersons/pages/idpersonsindex.aspx>> accessed 20 March 2021.

¹³⁶ UN Secretary-General’s High-Level Panel on Internal Displacement <<https://www.un.org/internal-displacement-panel/>> accessed 20 March 2021.

¹³⁷ UN General Assembly Resolution on the protection of and assistance to IDPs (A/RES/72/182) 2017

¹³⁸ GP20 Plan of Action is a multi-stakeholder Plan of Action which was launched in 2018, to mark the 20th anniversary of the Guiding Principles on Internal Displacement, accessed at: <https://www.globalprotectioncluster.org/gp20/gp20-plan-of-action/>

recommendations, endorsed by 109 governmental delegations during a Global Consultation in October 2015.¹³⁹

Along with the above-mentioned institutions and initiatives, the Task Force on Displacement (TFD) should be named, which was established by the Conference of the Parties (COP) - a supreme decision-making body of the UN Framework Convention of Climate Change (UNFCCC), at the same time when the Paris agreement was adopted in 2015. The TFD aims at developing recommendations for integrated approaches to avert, minimise and address displacement related to the adverse impacts of climate change.¹⁴⁰

This relatively brief overview of the international organisations and initiatives concerning the internal displacement in the context of disasters and the adverse effects of climate change does not intend to provide a detailed description. Indeed, various international intra-governmental and non-governmental organisations actively deal with the growing “challenge of our time.”¹⁴¹ However, as mentioned above, the gap remains in terms of overarching institutional protection for IDPs in general, specifically for IDPs in disaster and climate change contexts.

A few international soft-law documents and initiatives need to be highlighted concerning the disaster- and climate change-induced displacement. Along with the SDGs, the Sendai Framework for Disaster Risk Reduction 2015-2030 adopted by the UN General Assembly in 2015 is an important global agenda. The Framework has significantly contributed to the advancement of relevant actions in the field of disaster risk reduction with a stronger focus on migration and displacement.¹⁴² Moreover, the “Disaster Displacement: How to Reduce Risk, Address Impacts and Strengthen Resilience - A companion for implementing the Sendai Framework Target (E)”¹⁴³ also known as “Words into Action” guidelines by the UNDRR, provides practical guidance on how to integrate disaster displacement into disaster risk reduction strategies.¹⁴⁴ The guidelines are designed to help states implement the target “E” of the Sendai Framework. The target “E” focuses

¹³⁹ ‘Disaster Displacement – Towards a Protection Agenda for People Displaced across Borders in the Context of Disasters and the Effects of Climate Change.’ <<https://disasterdisplacement.org/>> accessed 20 March 2021.

¹⁴⁰ ‘Task Force on Displacement | UNFCCC’ <<https://unfccc.int/process/bodies/constituted-bodies/WIMExCom/TFD>> accessed 31 March 2021.

¹⁴¹ ‘Addressing Climate Change, Secretary-General Says World’s Fate Is in Our Hands, Requires Rising to Challenge Before It’s Too Late | Meetings Coverage and Press Releases’ <<https://www.un.org/press/en/2018/sgsm19205.doc.htm>> accessed 21 March 2021.

¹⁴² IOM, ‘IOM and UNHCR Call for Improved Safeguards for the Displaced on the Frontlines of Climate Emergency’ (4 February 2021) <<https://www.iom.int/news/iom-and-unhcr-call-improved-safeguards-displaced-frontlines-climate-emergency>> accessed 31 March 2021.

¹⁴³ UNDRR, ‘Disaster Displacement: How to Reduce Risk, Address Impacts and Strengthen Resilience - A Companion for Implementing the Sendai Framework Target (E) “Words into Action Guidelines”’ <https://www.preventionweb.net/files/58821_wiadisasterdisplacement190511webeng.pdf>.

¹⁴⁴ Platform on Disaster Displacement (n 109).

on a substantial increase in the number of countries with national and local disaster risk reduction strategies by 2020.¹⁴⁵

In 2018, to mark the 20th anniversary of the Guiding Principles on Internal Displacement (GP20), a multi-stakeholder 3-year plan was launched, the Plan of Action for Advancing Prevention, Protection, and Solutions for IDPs.¹⁴⁶ The GP20 Initiative intended to establish a platform for capturing best practices, sharing experiences and lessons learned on internal displacement, especially focused on developing laws and national implementation, with the participation of the Member States and other stakeholders.¹⁴⁷

Moreover, the Inter-Agency Standing Committee (IASC) has developed several practical guidelines, such as “Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster”; as well as the IASC Framework on Durable Solutions for Internally Displaced Persons, which has been recognised as an authoritative guidance on what is necessary to achieve sustainable solutions.¹⁴⁸

To conclude, though the institutional response to internal displacement, particularly those displaced in the contexts of disasters and climate change, has indeed become more proactive and less *ad hoc*, the need for more comprehensive, cross-sectorial, and operative institutional protection for IDPs is still relevant. Moreover, as mentioned, the plight of IDPs is a human rights issue.¹⁴⁹ Thus, internal displacement has to be dealt with by all consideration of protecting and respecting human rights. That is why the Human Rights-Based Approach comes as an effective method to address the issue, including legislative, policing, and implementation processes, both on national and international levels.

2.6. National Legislation and Policies on Disaster- and Climate Change-Induced Internal Displacement

Considering that the national governments bear the primary responsibility to protect their internally displaced citizens, the question arises – is there a need for adopting domestic normative documents tailored explicitly for the protection of IDPs? It has been acknowledged that the peculiar conditions of IDPs require special legal protection.¹⁵⁰ Therefore, enacting domestic laws and policies on internal displacement is pivotal. The national normative frameworks should outline

¹⁴⁵ UN ‘Sendai Framework for Disaster Risk Reduction 2015 - 2030’

<<https://www.preventionweb.net/files/43291sendaiframeworkfordrren.pdf>> Accessed 01 May 2021.

¹⁴⁶ ‘GP20 | Global Protection Cluster’ <<https://www.globalprotectioncluster.org/gp20/>> accessed 11 April 2021.

¹⁴⁷ *ibid.*

¹⁴⁸ ‘IASC Framework on Durable Solutions for Internally Displaced Persons | IASC’ (n 88).

¹⁴⁹ Ferris (n 23).

¹⁵⁰ Kälin (n 42).

the rights of IDPs and the measures to ensure they are fully protected, though the measures may vary depending on local contexts. The authoritative experts and international organisations strongly recommend structuring and adopting domestic laws and policies in line with the Guiding Principles as an overarching benchmark.¹⁵¹

A guide on developing “National Instruments on Internal Displacement”¹⁵² lists the reasons and rationale behind adopting domestic legislation for IDP protection. First of all, national sovereignty also entails the primary responsibility of the governments to address internal displacement; on the other side of duty bearers, there are right-holders, *i.e.*, IDPs who need and have a right to effective protection and assistance. Furthermore, the states have international and regional (for instance Kampala Convention) obligations to protect and assist IDPs.¹⁵³ National instruments can also boost the reliability and credibility of government responses to IDPs, facilitate domestic and international cooperation on internal displacement, and facilitate tailored responses to particular displacement situations. Overall, through the development of national instruments, the government responses to internal displacement potentially become more efficient and effective.¹⁵⁴

The Guiding Principles have encouraged and impacted the proposal, adoption, and implementation of numerous laws, sub-normative acts, and policies addressing internal displacement in all regions of the world.¹⁵⁵ However, the total number of countries with a comprehensive normative framework for IDP protection remains relatively low. To date, the protection of IDPs has been enshrined in the domestic law of 14 countries worldwide, and relevant policy instruments exist in about 40 countries.¹⁵⁶ These numbers include both full and partial transmission of the Guiding Principles into domestic legislation and policies. Meaning that, for instance, not all of the laws include IDPs in disaster contexts which indicates only partial compatibility with the Guiding Principles. At the same time, some countries have regulated specific problems related to displacement consistent with their international obligations without necessarily referencing the Guiding Principles.¹⁵⁷

Excluding IDPs in disaster contexts from the recognised IDP definition in national laws and policies may result in unequal treatment of people in equal need of protection, eventually depriving

¹⁵¹ Global Protection Cluster, *Regulatory Frameworks on Internal Displacement*, Global, Regional and National Developments, (2016) accessed at: <<https://www.internal-displacement.org/>>

¹⁵² IDMC, NRC, Brookings LSE, ‘National Instruments on Internal Displacement - A Guide to Their Development’ (2013) <https://www.ohchr.org/Documents/Issues/IDPersons/Law-and-policymaking_Guide-2013.pdf>.

¹⁵³ *ibid.*

¹⁵⁴ *ibid.*

¹⁵⁵ Brookings Institution—University of Bern: Project on Internal Displacement, *Protecting Internally Displaced Persons: A Manual for Law and Policymakers* (2008) accessed at: <https://www.brookings.edu/wp-content/uploads/2016/06/10_internal_displacement_manual.pdf>.

¹⁵⁶ The database of Global Protection Cluster, last updated on 13 May 2020, accessed at: <<https://www.globalprotectioncluster.org/global-database-on-idp-laws-and-policies/>> last seen 29.03.2021
As well as in Romola Adeola and Phil Orchard, ‘The Role of Law and Policy in Fostering Responsibility and Accountability of Governments Towards Internally Displaced Persons’ (2020) 39 *Refugee Survey Quarterly* 412.

¹⁵⁷ Brookings Institution—University of Bern: Project on Internal Displacement (n 106). pg. 4

them of their rights under international human rights and humanitarian law.¹⁵⁸ Therefore, states have a duty to protect the people and property on their territories from natural hazards by taking actions such as integrating risk reduction strategies into development plans and enacting or amending legislation accordingly.¹⁵⁹

As mentioned in the Submission of the Envoy to the High-Level Panel on Internal Displacement, the enactment of national legislation or strategies to deal with internal disasters Displacement is a powerful expression of political will as well as a first step in building or improving state capability at all levels.¹⁶⁰ The submission outlines possible ways for better protection of IDPs in disaster contexts on the national level, such as the stand-alone law and policies on internal displacement that include displacement related to climate change and disasters together with conflict-related displacement. Moreover, with or without specific laws, the systematic integration of displacement issues into laws, policies, and strategies on Climate Change Adaptation (CCA) and/or Disaster Risk Reduction (DRR) is pivotal.¹⁶¹ Though disaster displacement might be addressed in various CCA or DRR strategies in the national contexts, in many cases, the issue is somewhat scattered and lacks the systemic approach.¹⁶² For instance, the relevant strategies often left out finding durable solutions for internal disaster displacement¹⁶³ while seeking durable solutions for IDPs in disaster contexts is a core standpoint of the Guiding Principles.

2.7. The Issue of Implementation

Adopting domestic laws and policy-making on internal displacement is an advancement for better protection of IDPs, though the discourse on implementation always appears as a critical point for the practical realisation of IDP rights. The Guiding Principles do not have any monitoring or enforcement mechanisms; Kälin considers this as an “obvious disadvantage” since states cannot be held accountable if they disregard them. Moreover, they cannot be invoked by IDPs in legal proceedings at the domestic level.¹⁶⁴

Phil Orchard and Romola Adeola, while analysing “the role of law and policy in fostering responsibility and accountability of governments towards internally displaced persons”,¹⁶⁵ discuss the importance of effective implementation and mention that to date, overall implementation of

¹⁵⁸ *ibid.* pg. 14

¹⁵⁹ *ibid.* pg. 14

¹⁶⁰ Platform on Disaster Displacement, ‘Internal Displacement in the Context of Disasters and the Adverse Effects of Climate Change’ (n 69) pg. 34

¹⁶¹ *ibid.*

¹⁶² *ibid.*

¹⁶³ *ibid.* pg. 21

¹⁶⁴ Robert K Goldman, ‘Internal Displacement, the Guiding Principles on Internal Displacement, the Principles Normative Status, and the Need for Their Effective Domestic Implementation in Colombia’ (2009) 2 28. Pg. 74

¹⁶⁵ Adeola and Orchard (n 152).

national laws “has been problematic.”¹⁶⁶ Orchard categorises implementation patterns under five types: strong, progressing, limited, problematic, and no implementation cases. According to the data,¹⁶⁷ less than a third of the laws and policies adopted before 2018 were successfully implemented. With regards to poor implementation of the Guiding Principles, Orchard, among various reasons, mentions that, in some cases, laws and policies have remained in draft form or “simply reflecting aspirational claims which the government was unable or unwilling to follow.”¹⁶⁸ Moreover, Kälin points out a lack of necessary capabilities and tools, such as laws, policies, and relevant institutions, that can hinder the successful implementation of the Guiding Principles into domestic legislation.¹⁶⁹

In numerous cases, political will appears as a decisive aspect of effective and comprehensive implementation of domestic policy concerning internal displacement. Orchard and Adeola list out few factors that can critically impact “generating the political will”,¹⁷⁰ such as the contextual factors, including timing, peace agreements particularly in connection with conflict IDP policies, and linkages with other regional and international processes.¹⁷¹ Another set of factors include the positive engagement of independent actors/institutions outside of the state - the courts and national human rights institutions and national and local Non-Governmental as well as other civil society organisations, in both negotiation and implementation processes.¹⁷² The engagement might take various forms, including monitoring and evaluation, providing independent information, improving data gathering, etc.¹⁷³ Furthermore, international support is also considered a significant factor for the effective implementation of domestic laws and policies on internal displacement.¹⁷⁴ However, as Koch argues, international support might also be perceived as an “undue interference in their internal affairs”;¹⁷⁵ therefore, political will is a sensitive yet decisive issue in numerous cases.

The concern of implementation becomes bigger in connection with IDPs in disaster and climate change contexts. Since the number of countries that have enacted domestic laws and policies on internal displacement, precisely including IDPs in disaster contexts, is already lower than countries addressing the conflict displacement, correspondingly, the level of implementation in case of disaster displacement is also lower. At the same time, a higher number of countries have Disaster

¹⁶⁶ *ibid.*

¹⁶⁷ Phil Orchard, ‘Improving the Implementation of National Internally Displaced Persons Laws and Policies’ (2018) accessed at <<https://www.unhcr.org/en-us/5a86d0497.pdf>>, also in Adeola and Orchard (n 107), and Global Protection Cluster

¹⁶⁸ Phil Orchard (n 119) *ibid.*, pg. 8

¹⁶⁹ Goldman (n 160). As well as in Walter Kälin, Guiding Principles on Internal Displacement, Annotations (American Soc. of International Law 2002).

¹⁷⁰ Adeola and Orchard (n 152).

¹⁷¹ *ibid.* pg. 420

¹⁷² *ibid.* pg. 414

¹⁷³ *ibid.* pg. 421

¹⁷⁴ *ibid.* pg. 422

¹⁷⁵ Koch and Stiftung Wissenschaft Und Politik (n 58).

Risk Reduction (DRR) and Climate Change Adaptation (CCA) law and policy,¹⁷⁶ which can indirectly contribute to preventing and preparing for displacement, protecting people during evacuation and throughout displacement, and facilitating durable solutions. Therefore, it is crucial to consider DRR and CCA policies while assessing the implementation in national contexts.

CHAPTER 3. HUMAN RIGHTS-BASED APPROACH

3.1. Benchmarks and Tools for Assessing National Legislation and Policies on Internal Displacement

Considering that the availability of relevant domestic laws and policies is the core for IDP protection, it is important to discuss the benchmarks/guidelines for shaping such normative documents; or to assess existing law and policy frameworks. As stated in the “Framework for National Responsibility”, prepared by Brookings Institute, “[the] measurable indicators or benchmarks are needed to provide guidance to governments in discharging this responsibility and as a basis for assessing whether it is being effectively exercised.”¹⁷⁷

Naturally, the Guiding Principles should guide the states in the effective national response to internal displacement as the title itself suggests.¹⁷⁸ Thus, the Guiding Principles is the central reference point, *i.e.*, benchmarks for states in managing internal displacement. However, since the Guiding Principles are merely principles without any clear and detailed explanation of incorporating them into national normative frameworks and implementing them into practice, there was a need for more technical counselling. As a result, various manuals and tools have been developed in order to assist governments with the task. For instance, Brookings Institute has developed concrete benchmarks within the framework for national responsibility, where each benchmark marks a step that governments should consider taking to assume their obligations toward their internally displaced populations.¹⁷⁹ The benchmarks, 12 in number, are following:

- Prevent displacement and minimise its adverse effects;
- Raise national awareness of the problem;
- Collect data on the number and conditions of IDPs;
- Support training on the rights of IDPs;

¹⁷⁶ Representatives from 187 countries have adopted the “Sendai Framework” IISD’s SDG Knowledge Hub, ‘WCDRR Adopts Sendai Framework for Disaster Risk Reduction | News | SDG Knowledge Hub | IISD’ <<https://sdg.iisd.org:443/news/wcdr-adopts-sendai-framework-for-disaster-risk-reduction/>> accessed 7 May 2021.

¹⁷⁷ The Brookings Institution-University of Bern and Project on Internal Displacement, ‘Addressing Internal Displacement: A Framework for National Responsibility’ 42. Accessed: brookings.edu

¹⁷⁸ *ibid.*

¹⁷⁹ *ibid.*

- Create a legal framework for upholding the rights of IDPs;
- Develop a national policy on internal displacement;
- Designate an institutional focal point on IDPs;
- Encourage national human rights institutions to integrate internal displacement into their work;
- Ensure the participation of IDPs in decision-Making;
- Support durable solutions;
- Allocate adequate resources to the problem;
- Cooperate with the international community when national capacity is insufficient

The fundamental characteristic of the national response, as stated in the framework guidance, among others, is to be inclusive and non-discriminatory, embracing all causes of displacement, including disasters.¹⁸⁰ Therefore, all of these benchmarks should also apply to the national response to the disaster- and climate change-induced internal displacement. The guidelines and benchmarks only assist the effective organisation of national response; thus, they can be used as a beneficial but non-mandatory resource. However, there is no practical mechanism to ensure that States follow the benchmarks comprehensively.

3.2. Human Rights-Based Approach to Normative and Policy Frameworks on Disaster- and Climate Change-Induced Internal Displacement

As discussed initially, the Human Rights-Based Approach will be adopted to assess Georgia's legal and policy framework on disaster and climate change-induced internal displacement.

The HRBA is a “normative working methodology based on internationally recognised human rights”¹⁸¹ which can be employed in the legislative and policy-creation processes as guidance; on the other hand, it can also be used as methodological “lenses” for analysis of the human rights considerations in the existing laws and policies. As the International Law Commission (ILC) has explained:

“[...] a rights-based approach deals with situations not simply in terms of human needs, but in terms of society's obligation to respond to the inalienable rights of individuals, empowers them to demand justice as a right, not as a charity, and gives communities a moral basis from which to claim international assistance when needed.”¹⁸²

¹⁸⁰ *ibid.* pg. 9

¹⁸¹ SIDA ‘Human Rights Based Approach’ <<https://www.sida.se/en/for-partners/methods-materials/human-rights-based-approach>> accessed 9 April 2021.

¹⁸² Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford University Press 2012) <<https://oxford.universitypressscholarship.com/view/10.1093/acprof:oso/9780199587087.001.0001/acprof-9780199587087>> accessed 2 May 2021.

Therefore, using a human rights-based approach to address the phenomenon of disaster- and climate change-induced internal displacement is principal for developing laws and policies that aim to ensure the rights of IDPs are respected, protected, and fulfilled.¹⁸³

As known, disasters do not “pause” states’ obligations to respect, protect and fulfil all human rights, including the rights of those displaced. On the contrary, the state’s positive obligations to protect the rights of disaster-affected populations undoubtedly must be the core of any disaster management normative and policy frameworks. Moreover, depending on particular vulnerabilities, the disasters impact populations differently, and those negatively affected require special protection.

“Fundamental to a human rights-based approach is the recognition that, even in the worst case of disaster or displacement, people remain entitled to the fundamental human rights which are guaranteed to them under international law.”¹⁸⁴

The central aspect of the rights-based approach is primarily to identify right-holders and duty-bearers and pinpoint the rights that are likely to be impacted in times of disaster and the duty-bearers in relation to those rights.¹⁸⁵ Hence, the HRBA can effectively map the rights and entitlements of the displaced populations as rights-holders enshrined under national and international human rights instruments, including economic, social, and cultural rights, the right to access to information, participation in decision-making, etc.¹⁸⁶

To summarise:

“A human rights-based approach focuses on the responsibility of states to take steps, to the maximum of available resources, to prevent and prepare for displacement, protect people during evacuation and throughout displacement, and facilitate durable solutions in a manner that promotes the full and equal enjoyment of human rights by all, tailoring interventions according to intersecting gender, age, ability, ethnicity, and other factors that can contribute to differential exposure and vulnerability.”¹⁸⁷

¹⁸³ IDMC, Global Protection Cluster and etc, ‘Capacity building for law and policy-making on internal displacement’, accessed at: <<https://www.internal-displacement.org/sites/default/files/inline-files/Session-2-summary-note.pdf>>

¹⁸⁴ Draft Articles on the Protection of Persons in the Event of Disasters, United Nations International Law Commission, provisionally adopted so far by the Commission, UN General Assembly Official Records, 68th session, Supplement No.10 (A/68/10) at art. 8 [ILC Draft Articles], seen in Bridget Lewis and Rowena Maguire, ‘A Human Rights-Based Approach to Disaster Displacement in the Asia-Pacific’ (2016) 6 Asian Journal of International Law 326.

¹⁸⁵ Lewis and Maguire, *ibid.* pg. 329

¹⁸⁶ Scott and Salamanca (n 25). pg.37

¹⁸⁷ Matthew Scott and Albert Salamanca, ‘A Human Rights-Based Approach to Internal Displacement in the Context of Disasters and Climate Change’ (2020) 39 Refugee Survey Quarterly 564.

Due to the ongoing climate crisis, it is expected that the frequency and severity of disasters will increase,¹⁸⁸ so the numbers of people who are likely to move on account of climate change impacts.¹⁸⁹ Therefore, adopting the HRBA as an evaluation method to assess the current national law and policy frameworks is a promising way to ensure better rights-based protection mechanisms for IDPs in disaster contexts.

Along with examining existing legal and policy frameworks through the Human Rights-Based lenses, it is also important to integrate the HRBA considerations in the current developments of a national legal and policy document. Moreover, the HRBA analysis of relevant national law and policy frameworks on disaster management and disaster-related displacement contributes to the main aspirations of the world's current sustainable development efforts - "*leaving no one behind*"¹⁹⁰ since the right-based approach explicitly places non-discrimination and equality principles at the forefront of any HRBA programming and analysis.

3.1.2 Human Rights-Based Approach as a Methodology and its Elements

In general, there are various techniques and tools for applying HRBA as a normative working methodology - "[h]uman rights-based approaches comprehend a range of techniques for applying human rights laws and principles."¹⁹¹

Therefore, there is no one universal template depicting the HRBA as methodology and the analytical technique. However, as mentioned, this thesis is guided by the methodology adopted in the recent thematic study on "Climate Change, Disasters, and Internal Displacement in Asia and Pacific - A Human Rights-Based Approach."¹⁹² The Human Rights-Based evaluation of law and policy tool has been developed throughout the study.¹⁹³

According to the study, as mentioned, the methodology has been a result of consolidating the existing formulations of the HRBA, condensed into the following four key elements:¹⁹⁴

- governance;
- procedural;
- substantive;
- non-discrimination and equality.

¹⁸⁸ Vinod Thomas and Rammon Lopez, 'Global Increase in Climate-Related Disasters' [2015] SSRN Electronic Journal <<http://www.ssrn.com/abstract=2709331>> accessed 24 April 2021.

¹⁸⁹ McAdam (n 1).

¹⁹⁰ Scott and Salamanca (n 25). pg. 8

¹⁹¹ Lewis and Maguire (n 180). 328

¹⁹² Scott and Salamanca (n 25).

¹⁹³ Matthew Scott (n 28).

¹⁹⁴ Scott and Salamanca (n 183).

The element of governance in the evaluation tool refers to the existence, quality, and implementation of the legal and policy framework and principles of transparency, access to justice, and accountability.¹⁹⁵ The benchmarks for this particular element are:

- Legal and policy documents expressly invoke human rights, a rights-based approach, or key international standards and guidelines as part of the foundational principles;
- A legal and policy framework that mainstreams displacement in the context of disasters and climate change, thus it is not in passing or *ad hoc* reference to displacement;¹⁹⁶

The procedural element focuses on consultation with and participating people “who have a stake in the particular matter at hand,”¹⁹⁷ *i.e.*, stakeholders. This element encompasses the following benchmarks:

- All measures relating to displacement expressly incorporate the principle of Free, Prior and Informed Consent;
- Measures relating to displacement include express provision for active and meaningful participation of all potentially affected individuals and groups;
- Access to information (including early warning);¹⁹⁸

The substantive element refers to the specific rights which are crucial to consider while addressing disasters, including disaster displacement: the right to life, right to work, right to adequate food, right to adequate shelter, right to the highest attainable standard of health, right to water, and right to social security.¹⁹⁹ The element sets out the indicators for assessing disaster response, such as preventing and preparing for displacement, protection during the evacuation and throughout the displacement and seeking durable solutions. More specifically, in terms of durable solutions, the following benchmarks have been identified: long term safety and security; adequate standard of living without discrimination; access to livelihoods and development; effective and accessible mechanisms to restore housing, land, and property rights; access to personal and other documentation without discrimination; family reunification; participation in the public affairs without discrimination, as well as access to effective remedies and justice.²⁰⁰

The last element in the tool non-discrimination and equality entails “taking positive steps to ensure equality of treatment for all, irrespective of gender, age, disability, ethnicity, and other characteristics.”²⁰¹ This element is particularly important for addressing different needs for various vulnerabilities based on intersectionality. For instance, children, older people, persons with disabilities, people with non-normative genders and sexualities, ethnic and religious minorities,

¹⁹⁵ *ibid.*

¹⁹⁶ Matthew Scott (n 28).

¹⁹⁷ Scott and Salamanca (n 183).

¹⁹⁸ Matthew Scott (n 28).

¹⁹⁹ Scott and Salamanca (n 183).

²⁰⁰ Matthew Scott (n 28).

²⁰¹ Scott and Salamanca (n 183).

and others may face particular challenges accessing relief.²⁰² The element is significant for recognising the importance of women’s full, active, and meaningful participation in all processes related to disaster risk reduction and management.

Furthermore, the HRBA evaluation tool also emphasises the necessity of including provisions on collecting, using, accessing, and storing relevant data in relevant legal and policy documents. Each element includes the crucial aspects of displacement management, such as prevention, planned relocation, preparedness, evacuation, displacement, and durable solutions. These aspects also reflect the various phases of displacement.

CHAPTER 4. CASE STUDY: GEORGIA

4.1. Assessing Georgia’s Law and Policy Framework on Disaster- and Climate Change-Induced Internal Displacement as A Case Study

As emphasized in the previous parts, the number of countries which recognise the IDP status in the national legislation is seemingly low.²⁰³ The number becomes even fewer when addressing the internal displacement in the context of disasters and climate change since some of those countries only refer to conflict-related IDPs in their national legislation and leaving disaster-related displacement without any precise protection mechanisms.²⁰⁴ However, along with the states that expressly address disaster-induced internal displacement in relevant legal and policy documents, countries with certain normative and policy documents concerning the matter constitute partial implementation of the Guiding Principles. An example of such a case is Georgia.

According to the Global Database of the IDP law and Policy provided by the Global Protection Cluster, among six other countries globally, Georgia is in colour “red”, meaning that those states have both laws and policies on internal displacement, in general.²⁰⁵ The database does not specify whether these countries also have laws and policies addressing disaster- and climate change-related internal displacement. However, it should be noted that although persons internally displaced by disasters in Georgia are not formally recognized as IDPs and given IDP status, the government does recognize and act upon its responsibilities to assist persons displaced due to disasters.²⁰⁶ Thus, Georgia has set up a particular normative and policy framework for IDPs in

²⁰² *ibid.*

²⁰³ ‘Global Database on IDP Laws and Policies | Global Protection Cluster’ last updated 13 May 2020, <<https://www.globalprotectioncluster.org/global-database-on-idp-laws-and-policies/>> accessed 10 April 2021.

²⁰⁴ For instance: Bosnia and Herzegovina, Russia, Serbia, according to the *ibid.*

²⁰⁵ *ibid.*

²⁰⁶ Erin Mooney, ‘From Solidarity to Solutions: The Government Response to Internal Displacement in Georgia’ Case Studies 51.

disaster contexts which will be presented and analysed in the following parts. Considering that there is such a sparse representation of disaster- and climate change-induced internal displacement in domestic laws and policies worldwide, Georgia stands out as an exception.

This country, located in the South-Caucasian sub-region, has a relatively long history of responding to internal displacement, including adopting, and implementing relevant legal and policy documents. The first laws on internal displacement pre-date the Guiding Principles (The Law of Georgia on Forcibly Displaced Persons — Persecuted Persons (1996)). However, as it was the case for many countries at that time, the national law defined the concept of “IDP” more narrowly than it is defined in the Guiding Principles by focusing on conflict-induced IDPs and failing to address IDPs in the context of disasters.²⁰⁷ Important to note, the “Forcibly Displaced Person (FDP)” is used as the primary term, since in the literal translation “Internally Displaced Person” does not fully comprehend the meaning in Georgian. However, the Forcibly Displaced Person has the same connotation as an Internally Displaced Person in Georgian legislation. In fact, these terminological difference is only linked to linguistic matters and does not have any legal implications. In official translations of the normative documents, it is common to translate FDPs as IDPs to avoid possible confusion regarding the terminology; thus, this thesis will also interpret FDPs as IDPs where needed.

Since the adoption of the first law, Georgia’s legal and policy framework on internal displacement has been evolved in order to meet the needs of internally displaced people and find durable solutions for their plight. However, it is noticeable that, to date, Georgia has been prioritising conflict-related IDPs protection over those displaced in disaster-related contexts.²⁰⁸ Such discourse is motivated by the occurrence of two conflicts in the past three decades that resulted in a massive scale of internal displacement. Nevertheless, the country is also familiar with disaster-induced displacement. The chronology and volume of internal displacement in Georgia will be described in the following parts.

Therefore, Georgia, as an example of partial incorporation of the Guiding Principle in the national law and policy frameworks and one of the few countries globally that has set up a specific regulatory framework concerning the disaster and climate change-induced internal displacement, is selected to be zoomed in as a case study for the following analysis. Thus, the analysis intends to assess how Georgia’s legal and policy framework addresses disaster- and climate change-related displacement through the Human Rights-Based lenses. The main findings in this part will also feed into the concluding discussion on enhancing national response to the matter.

²⁰⁷ Elizabeth Ferris Stark Erin Mooney, and Chareen, ‘From Responsibility to Response: Assessing National Approaches to Internal Displacement’ *Brookings*, (2011) accessed at: Brookings.edu

²⁰⁸ ‘Global Database on IDP Laws and Policies | Global Protection Cluster’ (n 9). See also in ICMPD, Mariam Chumburidze and others, *The State of Migration in Georgia: Report Developed in the Framework of the EU-Funded Enhancing Georgia’s Migration Management (ENIGMMA) Project* (2015) <http://www.icmpd.org/fileadmin/ICMPD-Website/ICMPD-Website_2011/Capacity_building/Illegal_Migration_and_Return/Publications/The_State_of_Migration_in_Georgia.pdf> accessed 1 March 2021.

4.1.1. An Overview: Internal Displacement in Georgia

Throughout the three-decades-long history as an independent state, Georgia has experienced numerous waves of internal displacement due to various reasons, including conflicts, disasters, development projects. Despite the variety of displacement causes, conflict-related displacement has earned more attention than disaster-induced displacement in Georgia.

The major waves of internal conflict-related displacement occurred first in the early 90s and then in 2008. The separatist wars were fought in the Autonomous Republic of Abkhazia and South Ossetia by the Ossetian and Abkhazian ethnic groups to separate from Georgia. Consequently, thousands of people, mostly with Georgian ethnic background, were forced to leave their homes and become IDPs.²⁰⁹ The Russo-Georgian war of 2008 resulted in a further increase in the number of displaced people. According to the data provided by the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs (MOH), at this moment, there are 273 411 conflict-related IDPs in Georgia,²¹⁰ the number also includes people displaced during the Abkhazian conflict in the 90s, who are still living in protracted displacement. Due to the gravity of the issue, the efforts for managing internal displacement were primarily concerned with conflict displacement. One of the reasons for openly prioritising IDPs in conflict-related contexts might also be related to the fact that to date (2020),

“[...]no progress could be reported as regards the voluntary, safe, dignified and unhindered return of internally displaced persons (IDPs) and refugees on the basis of internationally recognised principles. In the absence of conditions conducive to their return, the Georgian central government continues to provide IDPs with alternative durable solutions in terms of housing and improvement of socio-economic conditions”²¹¹

Nevertheless, due to its geographical location, Georgia is also prone to natural hazards such as landslides, avalanches, floods, rockfalls, etc., which frequently occur in certain areas. A lack of relevant DRRM and CCA policies and their insufficient implementation increases the risks of disasters.²¹² At the same time, exposure to hazards and vulnerability is higher, particularly for those residing in remote and mountainous areas where disaster-induced displacement is triggered usually. Moreover, the adverse effects of climate change have exacerbated the existing vulnerabilities. According to the data, in the past few years, hydrometeorological natural hazards have increased by 15 %, and the geological hazards are seen to be increased by 58 %.²¹³ Therefore,

²⁰⁹ David Gogishvili, ‘Urban Dimensions of Internal Displacement in Georgia: The Phenomenon and the Emerging Housing Policy’ (2015) 18 The GSSI Working Paper Series in Urban Studies 1.

²¹⁰ MRA ‘IDP Figures’ <<http://mra.gov.ge/eng/static/55>> accessed 10 April 2021.

²¹¹ Council of Europe, ‘Consolidated Report on the Conflict in Georgia (April – September 2020)’ Information Documents SG/Inf(2020)30

<<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680a066c>>

²¹² Institute of Democracy (IOD), ‘Ecomigration in Georgia - Summary Report’ (2017). Accessed at <<http://iod.ge/files/Documents/ekoangarishi.pdf>>

²¹³ Government of Georgia, ‘The Decree No 4, National Disaster Risk Reduction Strategy for 2017-2020’. Accessed at: <http://gov.ge/files/469_59429_120118_4.pdf> last seen 24 May 2021

in the past three decades, alongside conflict-triggered displacements, Georgia has also witnessed disaster- and climate change-induced internal displacement. The massive waves of disaster-induced internal displacement were recorded in 1987, from Svaneti to the Kvemo Kartli and Kakheti regions. Around 16 000 persons were evacuated and displaced from the risk zone at that time.²¹⁴ In 1989, around 24 287 persons²¹⁵ were displaced from mountainous Adjara to Kvemo and the regions of Shida Kartli, Kakheti, and Javakheti.²¹⁶ The populations of both regions suffered from heavy winter snow, which led to large-scale landslides and avalanches. The majority of these people have never gone back to their original habitual place, and until today they live in protracted displacement while facing numerous challenges related to housing, access to land, lacking integration with hosting communities, etc.²¹⁷ Periodical smaller-scale disasters have forced thousands of other families to displace or live in life-threatening conditions.

As mentioned in the questionnaire in relation to the Human Rights Council Resolution A/HRC/35/20 on human rights and climate change,

“More than 5,000 landslides and mudflows, the areas of erosion downwash and spots of avalanches were recorded in Georgia by 2015. About 250 settlements are under periodic threat, which causes stress to the local population and a consequent increase of mental disorders. Thousands of hectares of arable lands are falling into disuse, hundreds of kilometres of roads and their communications are deformed and require rehabilitation, resettlement of ecomigrants became a serious problem.”²¹⁸

Moreover, in June 2015, the flooding occurred in Tbilisi, the capital of Georgia, killed 19 people (a further three are still missing), displaced 67 families and directly affected around 700 people. The flooding also destroyed much of Tbilisi’s zoo, killing most of the animals, and damaged around 40 roads, dozens of homes, and various urban infrastructure and communication systems.²¹⁹ The intense rainfall triggered the flash flood over the south-eastern part of the Vere River’s drainage basin area.²²⁰

“The city’s authorities have faced criticism for not having an emergency response plan in place. Some have pointed out they could have at least closed the Vere valley road upon

²¹⁴ Office of the Public Defender of Georgia, ‘Human Rights Situation of Persons Affected by and Displaced as a Result of Natural Disasters/Eco-Migrants in Georgia.’ (2013)
<<https://www.ombudsman.ge/res/docs/2019041315541069366.pdf>>.

²¹⁵ *ibid.*

²¹⁶ *ibid.*

²¹⁷ Institute of Democracy (n 208).

²¹⁸ Grigol Lazrievi, ‘Questionnaire in Relation to Human Rights Council Resolution A/HRC/35/20 on Human Rights and Climate Change’ accessed at <https://www.ohchr.org/Documents/Issues/ClimateChange/Protection/Georgia.pdf>. accessed May 5, 2021

²¹⁹ GFDRR and others, ‘Tbilisi Disaster Needs Assessment 2015’ (2015). Accessed at
<<https://reliefweb.int/report/georgia/tbilisi-disaster-needs-assessment-2015>>

²²⁰ *ibid.*

hearing about the massive landslide outside the city. Others have accused the emergency services of responding slowly to the incident.”²²¹

This particular case manifested the acute need for effective DRR policies.

Furthermore, the scale of displacement disasters was the sole cause of all of the new displacements in 2018. Floods in Chuberi, Kakheti, Gori, and Gardabani triggered 280 new displacements in July 2018, and a landslide triggered 24 new displacements in Svaneti in June 2018.²²²

Important to mention, an ethnic group called “Svans” residing in Svaneti region of Georgia who were displaced during the massive waves of disaster-triggered displacement in the 80s and 90s might be even considered as indigenous people. Svans are an ethnic group in Georgia, constituting approximately one per cent of the Georgian population, with their own distinct cultural and religious traditions, as well as a unique language and societal establishment.²²³ Although the UNESCO defines Svan as a “definitely endangered language,” it is not legally protected in Georgia.²²⁴ Recently, the European Ombudsman issued the decision regarding the European Investment Bank’s refusal to disclose an expert report on whether Svans are indigenous people.²²⁵

According to the case, the European Investment Bank (EIB) agreed, in 2018, to co-finance a project to construct hydropower installations in the Svaneti region of Georgia. In evaluating the project, the EIB and the co-financiers had to consider whether the local community affected, the Svans should receive special protection as “indigenous people”. The EIB concluded that the Svans were not to be regarded as such,²²⁶ and EIB refused to grant public access to an expert report on that matter.²²⁷ However, this was challenged by the network of NGOs. The Ombudsman found that the EIB’s reasons for withholding the report were unfounded. It also turned out that the document was not drafted by an independent expert as claimed by the EIB during the meeting but by the project promoter’s expert.²²⁸ Thus, the EIB was requested to disclose relevant information publicly. This decision is an important step in formally recognising the status of Svans as indigenous people; however, to date, Georgia does not acknowledge such status.

²²¹ Joseph Alexander, ‘The Human Cost of the Tbilisi Floods: “The Truth Is, I’d Really Lost All Hope”’ (*the Guardian*, 3 July 2015) <<http://www.theguardian.com/cities/2015/jul/03/tbilisi-floods-georgia-capital-destroyed-zoo-wild-animals>> accessed 14 May 2021.

²²² IDMC, ‘Internal Displacement Index Report 2020’ (2020) accessed at <internal-displacement.org>.

²²³ Bankwatch, ‘EIB’s Lack of Public Disclosure on the Svans Challenged by Ombudsman’ (2020) <<https://bankwatch.org/blog/eib-s-lack-of-public-disclosure-on-the-svans-challenged-by-ombudsman>> accessed 7 May 2021.

²²⁴ Bankwatch, ‘Indigenous Communities in Georgia Threatened by a Major Hydropower Project Financed with European Public Money’ (2019) <<https://bankwatch.org/blog/indigenous-communities-in-georgia-threatened-by-eib-project>> accessed 7 May 2021.

²²⁵ European Ombudsman, ‘Decision in Case 670/2019/PL on the European Investment Bank’s Refusal to Disclose an Expert Report on Whether Svans Are Indigenous People’ (*European Ombudsman*, 17 July 2020) <<https://www.ombudsman.europa.eu/en/decision/en/130294?fbclid=IwAR1E0zFCAUHyCYzYeV0bTpXSDfDe14OD9ZL4zY2HHKtNigAVINwnhCA7u8>> accessed 7 May 2021.

²²⁶ *ibid.*

²²⁷ *ibid.*

²²⁸ ‘EIB’s Lack of Public Disclosure on the Svans Challenged by Ombudsman’ (n 219).

As massive hydropower plants are being planned to be built in Upper Svaneti, it is expected that these developments will significantly impact the lives of people in Upper Svaneti - threaten the Svans' culture and traditions and the livelihood of many.²²⁹ Therefore, it is crucial to further research whether these people could benefit from the special status as indigenous people, considering that development-induced internal displacement is expected to happen. Moreover, there are also concerns that these will trigger more natural hazards in a seismically unstable region such as Svaneti,²³⁰ thus, aggravate the risk of disaster-related internal displacement.

According to the data provided by the Legal Entity of Public Law (LEPL) Agency for Refugees, Ecomigrants, and Livelihoods, as of today, there are 5285 ecomigrant families, which means that there is no specific number of the displaced individuals, rather the number of families.²³¹ It is unclear whether this data also includes people living in protracted displacement for already a few decades or those who are not yet displaced but in need of displacement due to sudden or slow-onset hazards. Additionally, as mentioned in the study conducted in 2015, "some of the families had to resettle independently, without state assistance and never had an incentive to register with any state agency due to the absence of support programs. Hence, the estimates of a total number of ecomigrants in the country available from the MRA or other sources do not account for such cases."²³² Since there is a lack of coordination between the central governmental institutions (such as the Ministry and Agency) and the local self-governments regarding the data collection, collecting specific and accurate information is a challenge.²³³ As estimated, there are about 35,200 families affected by the disasters in Georgia, including people either displaced or in need of displacement.²³⁴

Thus, it is evident that disaster displacement has greatly affected the lives of those displaced and who have been living in protracted displacement for years. "Without proactive action, the impending effects of climate change are expected to make matters worse, leading to even greater hazard-related damages and losses,"²³⁵ as mentioned in one of the studies. However, in comparison with conflict-triggered displacement, the state does not recognise these two types of displacement equally; thus, protection mechanisms differ. Correspondingly, the following parts will be focusing

²²⁹ *ibid.*

²³⁰ Eurasianet 'Troubled Dams on Georgia's Waters' (2020) <<https://eurasianet.org/troubled-dams-on-georgias-waters>> accessed 7 May 2021.

²³¹ MoH, 'Statistics: The Number of Ecomigrant Families in Georgia' <<https://www.moh.gov.ge/uploads/files/2019/Failebi/27.03.2019-52.pdf>> accessed 5 April 2020.

²³² ICMPD, Chumburidze and others, The State of Migration in Georgia: Report Developed in the Framework of the EU-Funded Enhancing Georgia's Migration Management (ENIGMMA) Project (2015) <http://www.icmpd.org/fileadmin/ICMPD-Website/ICMPD-Website_2011/Capacity_building/Illegal_Migration_and_Return/Publications/The_State_of_Migration_in_Georgia.pdf> accessed 1 March 2021.

²³³ Institute of Democracy (n 208).

²³⁴ *ibid.*

²³⁵ 'How Preparedness Pays off Evolution, Costs, Benefits and Prospects of Disaster Risk Management in Georgia' <<https://primarysources.brillonline.com/browse/human-rights-documents-online/international-federation-of-red-cross-and-red-crescent-societies-geneva;hrdhrd98132015012>> accessed 14 May 2021.

on identifying relevant normative and policy documents for IDPs in disaster contexts in Georgia, which will prepare the ground for further assessment at a later stage.

4.2. The Law and Policy Framework on Disaster- and Climate Change-Induced Internal Displacement in Georgia

The first law of the Republic of Georgia concerning Internally Displaced People was adopted in 1996, predating the creation of the UN Guiding Principles on Internal Displacement. The law only referred to IDPs in the conflict contexts, leaving all the other causes of internal displacement aside. However, considering that there was a dire need of aligning national legislation to international standards, the law on IDPs was amended in 2014. Regrettably, the law On Internally Displaced Persons from the Occupied Territories of Georgia maintained its narrow focus in terms of IDP definition.

In 2007 the government also adopted the “State Strategy for Internally Displaced Persons – Persecuted.”²³⁶ Even though the strategy explicitly refers to the Guiding Principles, the focus remained on conflict-related displacement. The strategy was supported by the action plans, the “2017-2018 Action Plan for implementation of the IDP State Strategy”²³⁷ only mentions disasters in the part which concerns possible risks for the implementation, stating that

“[f]orced displacement of a large part of the population, including for ecological reasons and natural disasters, may also cause the appearance of new priorities and challenges in implementing the Action Plan activities”.

As already mentioned in the previous parts, disaster-induced internal displacement is not a novel phenomenon for Georgia. In fact, the concept of “*ecomigration/eco-migration*”, which is the terminology used in Georgia for addressing the disaster-induced internal displacement, has been discussed and referred to in the legal and political discourses since the occurrences of massive disaster-induced displacements in the 90s. The terminology stems from “ecological/environmental migration.” Accordingly, people displaced in the disaster contexts are called “*ecomigrants/eco-migrants*.” The term is broadly used even in relevant normative documents along with the more formal terminology such as “families affected by, displaced and subject to displacement as a result of disastrous natural events.”²³⁸

²³⁶ State Strategy for Internally Displaced Persons – Persecuted, (2007) Tbilisi, Georgia, accessed at <http://mra.gov.ge/res/docs/2013112112105167523.pdf>

²³⁷ United Nations High Commissioner for Refugees, ‘Refworld | Georgia: 2017-2018 Action Plan for the Implementation of the IDP State Strategy’ (*Refworld*) <<https://www.refworld.org/docid/5b3e0697c.html>> accessed 13 April 2021.

²³⁸ Decree No 779 of the Minister ‘about the approval of resettlement procedure, accommodation criteria, a unified electronic database of register, and the commission on resettlement issues of displaced and subject to displacement families (ecomigrants) affected by disastrous natural hazards,’ 13/11/2013, accessed at <https://www.moh.gov.ge/uploads/files/2020/Failebi/brdzaneba_779.pdf>

The first steps in regulating the status and protection for people displaced in disaster contexts were taken in 1998 when the Presidential Ordinance No 67 on ecomigrants established a special commission to monitor the process and developments in the field.²³⁹ The other attempts were made later in the 2000s, though, as Lyle writes, the initiatives did not succeed due to weak institutional set-up at the implementation phase and “partly because none of the initiatives or actions were comprehensive enough.”²⁴⁰ Therefore, the government dealt with disaster-induced internal displacement in a rather sporadic and reactive manner.²⁴¹ However, somewhat progressive developments have been seen in the last decade.

In the extensive assessment of the environmentally-induced displacement in Georgia conducted in 2012, Lyle emphasized the need to either extend the domestic law definition of Internally Displaced Persons to include disasters as an admissible criterion for IDP status or to develop a new law dedicated exclusively to regulating ecomigration.²⁴² Soon after, in 2013, Decree No 123 of the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia established the commission for the development of a new law on the legal status, rights, and socio-economic protection of persons displaced in disaster contexts.²⁴³ The commission included representatives from the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia, international and local civil society organizations, etc. However, the commission was criticized for not including the Ministry of Environment and Natural Resources Protection, which is the sole state agency responsible for monitoring geologic and ecologic developments and forecasting expected natural hazards.²⁴⁴ Moreover, the creation of a commission for developing new law on disaster-induced internal displacement was encouraged by the Special Rapporteur on the human rights of internally displaced persons on his follow-up mission to Georgia in 2013.

“The Special Rapporteur notes that the Government is planning to pass a new law on ecomigrants; he encourages the Government to ensure that the proposed draft law indeed defines the rights and guarantees for legal, economic, and social protection for persons internally displaced as a result of natural and human-induced disasters, in accordance with international standards.”²⁴⁵

²³⁹ ICMPD, Mariam Chumburidze and others, *The State of Migration in Georgia: Report Developed in the Framework of the EU-Funded Enhancing Georgia’s Migration Management (ENIGMMA) Project* (2015) <<http://www.icmpd.org>> accessed 1 March 2021. pg. 59

²⁴⁰ Justin Lyle, ‘Resettlement of Ecological Migrants in Georgia: Resettlement of Ecological Migrants in Georgia: Recent Developments and Trends in Policy, Implementation, and Perceptions’ (2012) ECMI Working Paper #53

²⁴¹ *ibid.*

²⁴² *ibid.* pg. 4

²⁴³ ICMPD, Chumburidze and others (n 204).

²⁴⁴ *ibid.* pgs. 59-60

²⁴⁵ ‘Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons, Chaloka Beyani - Addendum: Follow-up Mission to Georgia (A/HRC/26/33/Add.1) - Georgia’ (*ReliefWeb*)

The Rapporteur also made recommendations in terms of revising then-current laws on IDPs in conformity with international human rights standards, in particular with the Guiding Principles. Eventually, Georgia adopted the renewed law on Internally Displaced Persons - Persecuted Persons from the Occupied Territories of Georgia,²⁴⁶ abrogating the 1996 Law of Georgia on Forcibly Displaced Persons-Persecuted Persons. Thus, the law again solely aimed at conflict-related IDP protection and excluded IDPs in disaster contexts. Whereas the draft-law proposal on “ecomigrants” developed by the commission did not pass the parliamentary hearings in late 2014. It was sent back to the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia (MRA) for revision.²⁴⁷ However, there have not been any further developments in this direction to this date.

Nevertheless, the creation of the commission and draft-law document should be assessed as a positive step towards better protection mechanisms for people displaced in disaster and climate change contexts. Almost at the same time, when the commission was established for developing the draft law, the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees issued the Decree No 779. The Decree is a subordinated normative act; however, it remains as the primary reference document relating to internal displacement in disaster and climate change contexts. Since then, several policy documents have been developed, which will be discussed in details in the following part while presenting Georgia’s normative and policy framework.

4.2.1 Key Normative and Policy Documents Concerning People Affected By and Displaced in the Contexts of Disasters and the Effects of Climate Change in Georgia

Nowadays, Georgia’s legal and policy framework concerning the disaster- and climate change-related internal displacement encompasses several documents, including the Decree of the Minister and relevant policy documents.

Decree No 779 of the Minister, 13 November 2013

<<https://reliefweb.int/report/georgia/report-special-rapporteur-human-rights-internally-displaced-persons-chaloka-beyani>> accessed 16 April 2021

²⁴⁶ Internally Displaced Persons - Persecuted Persons from the Occupied Territories of Georgia 2014. Accessed at <<https://www.refworld.org/pdfid/44ab85324.pdf>>

²⁴⁷ ICMPD, Chumburidze and others (n 204).

About the approval of resettlement procedure, accommodation criteria, a unified electronic database of register, and the commission on resettlement issues of displaced and subject to displacement families (ecomigrants) affected by disastrous natural events.²⁴⁸

The Decree of the Minister with its annexes issued in 2013 is the central normative act that regulates the rules, procedures, criteria, and distribution of housing units for “ecomigrants.” The Decree also provides the definition of an ecomigrant family, according to which

“A family shall be considered as affected by disastrous natural events and subjected to displacement (ecomigrant) if their house or its part has been demolished or damaged (so that it is inhabitable) and cannot be recovered[...].”

According to the same order,

“[...]ecomigrants are also those families whose houses have not been destroyed, but natural hazards surrounding their territory threaten their life, health, and property, because of landslide, downpour, rock avalanches, rockfall, river erosion or snow avalanches, except an earthquake and volcano.”

The Decree of the Minister is an important step for filling in the pre-existing “grey area” in terms of an “ecomigrant” definition, even though this terminology itself was used in practice before the Decree. Nevertheless, as various studies have assessed it, the Decree has its “flaws” and is not enough for providing comprehensive protection and durable solutions for people displaced in disaster and climate change contexts.²⁴⁹ However, this will be addressed while using the Human Rights-Based evaluation tool in the following parts to examine the concrete human rights implications of the regulation.

Ordinance No 257 of the Government of Georgia, 13 February 2014

Replaced by Ordinance No 360 of the Government of Georgia, 11 March 2021

The national strategy on ensuring access to livelihoods for the families of internally displaced persons from the occupied territories of Georgia, ecomigrants and returning emigrants.²⁵⁰

In terms of policy documents, by Ordinance No 257 of the Government of Georgia, the Government has adopted the national strategy in 2014 on ensuring access to livelihoods for IDPs from the occupied territories of Georgia. Thus, initially, the national strategy on livelihoods only

²⁴⁸ Decree No 779 of the Minister ‘about the approval of resettlement procedure, accommodation criteria, a unified electronic database of register, and the commission on resettlement issues of displaced and subject to displacement families (ecomigrants) affected by disastrous natural events’ 13/11/2013, accessed at <https://www.moh.gov.ge/uploads/files/2020/Failebi/brdzaneba_779.pdf>

²⁴⁹ Web-portal on Human Rights in Georgia, ‘Ecomigrant Families without Legal Protection’ (*HUMANRIGHTS.GE*) <<http://www.humanrights.ge/index.php?a=main&pid=18405&lang=eng>> accessed 25 April 2021. Also in: Concluding Report “Ecomigration in Georgia”, Institute of Democracy (n 208).

²⁵⁰ The document was accessed as a public information provided by the representative of the MOH, the dedicated website on livelihoods policy in Georgia <<http://livelihood.gov.ge/>>

targeted people displaced in conflict-related contexts. However, the strategy has been renewed recently by the Ordinance No 360 of the Government of Georgia, issued on March 11, 2021. The renewed strategy expressly includes people displaced or subject to displacement due to disastrous natural events (ecomigrants); one separate chapter in the strategy is exclusively dedicated to ecomigrants issues. The strategy will also be evaluated based on the HRBA tool followingly.

Ordinance No 359 of the Government of Georgia, 11 March 2021

The Action Plan 2020-2021 of the National Strategy on ensuring the access to livelihoods for the families of Internally Displaced Persons from the occupied territories of Georgia, ecomigrants and returning emigrants.²⁵¹

Along with the state strategy, the action plan for 2020-2021 which serves as an implementation guide on the access to livelihood for the internally displaced persons – persecuted from the occupied territories of Georgia and the families affected by and displaced as a result of disastrous natural hazards, should be mentioned. The action plan is regulated by the Ordinance of Government of Georgia No 1046, adopted on June 22, 2020. Specific changes have been made in the action plan, reflected in Ordinance No 359 of the Government of Georgia issued on March 11, 2021.

Furthermore, the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs (MOH) of Georgia issued an order No 01-11n on January 27, 2020, concerning the approval of the grant, *i.e.*, allowance award procedure in order to ensure socio-economic integration and access to livelihoods for the IDPs both in conflict and disaster contexts.

Ordinance of the Government No 4, 11 January 2017

Approval of National Disaster Risk Reduction Strategy of Georgia 2017-2020 and its Action Plan²⁵²

In 2017, Georgia adopted the National Disaster Risk Reduction Strategy for 2017-2020; however, the document does not refer to internal displacement as such, nor evacuation. Though the strategy and action plan explicitly mention the Sendai Framework as a reference standpoint, and as it has been argued in the study by the UNDRR²⁵³ in this field, “[t]he normative assumption is that attaining the Sendai Framework and accompanying guidelines would go some way towards reducing the risk of displacement.”²⁵⁴

²⁵¹ *ibid.*

²⁵² Government of Georgia, ‘The Decree No 4, National Disaster Risk Reduction Strategy for 2017-2020’. Accessed at: <http://gov.ge/files/469_59429_120118_4.pdf> last seen 24 May 2021

²⁵³ Katie Peters and Emma Lovell, ‘Reducing the Risk of Protracted and Multiple Disaster Displacements in Asia-Pacific’ (2020) UNDRR Report, accessed at <undrr.org>

²⁵⁴ *ibid.*

Moreover, the DRR strategy is closely linked to the obligations undertaken as part of the “Association Agreement” between the European Union and Georgia.²⁵⁵ As Article 376 of the agreement of the chapter concerning “Civil protection” states

“The Parties shall develop and strengthen their cooperation on natural and man-made disasters. Cooperation shall be conducted considering the interests of the Parties on the basis of equality and mutual benefit, as well as taking into account the interdependence existing between the Parties and multilateral activities in the field.”²⁵⁶

Therefore, the national DRR strategy is an essential document concerning the issue; thus, it will also be analyzed as part of Georgia’s legal and policy framework on disaster- and climate change-related internal displacement.

4.2.2. Other Relevant Documents

In terms of broader legislation which can also be applied in disaster contexts, the Law on State Emergency and the Law²⁵⁷ on State of Martial Law have to be noted since they prescribe the conditions under which it is not only legitimate but an obligation for the state to evacuate populations in order to protect from the dangers.²⁵⁸ Moreover, the Criminal Code of Georgia criminalizes displacement that amounts to genocide or crimes against humanity.²⁵⁹

In March 2014, Georgia adopted the National Strategy 2014-2020 for the Protection of Human Rights in Georgia and the Action Plan on the Protection of Human Rights 2014-2016.²⁶⁰ The action plan has a separate action point 16, which solely refers to the rights of ecomigrants. The action point aims to provide legal and social protection of displaced persons as a result of disastrous natural or human-made hazards (ecomigrants), and objective 16.1 refers to resettlement issues of ecomigrants. The action point lists several measures to achieve its goal,²⁶¹ such as proceeding with the resettlement of displaced persons as per the Decree No 779, as well as the ensuring legislative base for legal recognition of ecomigrants; formation of the database on ecomigrants; initiating the process of assigning legal ownership rights to the living spaces inhabited by ecomigrants for those resettled prior to 1 January 2014 by the MRA.

²⁵⁵ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part. L 261/4, 30.8.2014, Official Journal of the European Union. Accessed at: <[https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22014A0830\(02\)](https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22014A0830(02))>

²⁵⁶ *ibid.* Article 376

²⁵⁷ Law on State of Emergency of Georgia No 972/ 17/10/1997 <<https://matsne.gov.ge/en/document/view/33472>> accessed 15 April 2021.

²⁵⁸ Erin Mooney, ‘Enhancing the National Response to Internal Displacement A Guide to Good Practices by Council of Europe Member States’ (2017) Council of Europe, accessed at <<https://rm.coe.int/guide-to-good-practices/16808c49b2>> Georgia, Law on State Emergency, 17 October 1997; and Law on State of Martial Law, 31 October 1997

²⁵⁹ *ibid.*

²⁶⁰ Action Plan of the Government of Georgia on the Protection of Human Rights 2014-2016, Appendix 1. Accessed at <<https://www.coe.int/t/commissioner/source/NAP/Georgia-National-Action-Plan-on-Human-Rights.pdf>>

²⁶¹ *ibid.*

4.2.3 Institutional Arrangements

In terms of institutional arrangements, at the central level, the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs (MOH) is the leading government institution responsible for managing internal displacement, replacing the former Ministry of IDPs from the Occupied Territories, Accommodation and Refugees of Georgia (MRA). The LEPL Agency for IDPs from the Occupied Territories of Georgia, Ecomigrants, and Livelihood coordinates the resettlement procedures and access to livelihoods.

Along with the central governmental institutions, the role of local self-government and the government of the Autonomous Republic (AR) of Adjara should be emphasized. The Government of the AR of Adjara issued Ordinance No 5 on February 13, 2014,²⁶² establishing a general rule of assisting the families affected by disasters residing on the territory of Adjara. Moreover, the previous organic law of the local self-government code and the responsibility to gather data and information about disaster-affected persons were laid on local municipalities. However, the new code of local self-governments²⁶³ does not include this responsibility, and there is no mention of ecomigrants.

4.2.4 Concluding Remarks

As presented, Georgia has set up a particular regulatory framework – including subordinated normative acts and mainly policies for protecting IDPs in disasters- and climate change-related contexts. On the one hand, establishing the special commission for drafting the law proposal in 2014 can be acknowledged as a positive dynamic. On the other hand, it is thought-provoking to explore the specific reasons for postponing the additional enhancement of the law proposal. Moreover, questions arise related to the concrete provisions – to what extent the human rights standards were reflected in the draft law. Furthermore, how effectively the draft law would address the plight of IDPs in disaster and climate change contexts. These questions require further research and the continuation of relevant conversations around the topic, especially if adopting the specific law on IDPs in disaster and climate change contexts returns to the active debate.

Nevertheless, the thesis mainly focuses on *lex lata* in the following analysis. *De lege ferenda* and the draft law will be discussed as a possible prospect for Georgia's better protection mechanisms for IDPs in disaster and climate change contexts towards the end of this thesis.

²⁶² Ordinance No 5, 13 February 2014, accessed at <<https://matsne.gov.ge/en/document/view/2252880?publication=0>>

²⁶³ Organic Law of Georgia Local Self-Government Code No 4087 of 22 July 2015, accessed at <<https://matsne.gov.ge/en/document/download/2244429/15/en/pdf>>

4.3. Analysis of Georgia’s Law and Policy Framework on Disaster- and Climate Change-Induced Internal Displacement by Applying HRBA

As described in the previous parts, the Human Rights-Based evaluation tool of the domestic law and policy on disaster- and climate change-induced internal displacement includes the following elements: governance, procedural, substantive, non-discrimination, and equality. Accordingly, Georgia’s above-presented normative and policy framework will be analyzed against these major four elements and their benchmarks. The forthcoming part of the analysis focuses on relevant documents and does not concern the implementation at this stage. Thus, the following analysis aims to assess how Georgia’s legal and policy framework addresses the disaster and climate change-related displacement. Moreover, applying the Human Rights-Based Approach will identify human rights considerations of the current framework – the advantages and limitations in this regard.

The primary normative and policy documents along with other relevant documents to be analysed, are:

- The Decree of the Minister No 779 about the approval of the resettlement procedure, accommodation criteria, a unified electronic database of register, and the commission on resettlement issues of displaced and subject to displacement families (ecomigrants) affected by disastrous natural hazards (hereafter “Decree No 779”);
- The National Strategy on Ensuring Access to Livelihoods for the Families of Internally Displaced Persons from the Occupied Territories of Georgia, Ecomigrants and Returning Emigrants (hereafter “Strategy on livelihoods”) along with its action plan 2020-2021;
- The National Disaster Risk Reduction Strategy 2017-2020 (hereafter “DRR strategy”) and the action plan;

4.3.1. The Governance Element

The Governance element of the Human Rights-Based evaluation tool inquires whether relevant documents of the framework expressly invoke human rights, a rights-based approach, or key international standards and guidelines as part of the foundational principles.

As presented, the Decree No 779 is a central normative act regulating the status of those displaced in disaster-related contexts since it describes who falls in the category of an ecomigrant family and regulates procedures related to their resettlement. Moreover, based on the decree, the decision regarding resettlement and housing assistance is made by the special regulator commission (hereafter “Commission”) established by the same decree. The Commission’s composition and rules of operation are generally approved by an individual administrative-legal act of the Minister. Thus, the decree mainly outlines procedural aspects of resettlement and provision of housing for

families affected by and displaced due to disastrous natural hazards. The concrete aspects will be discussed in-depth in relation to the following elements of the HRBA, particularly concerning the procedural element. However, what is relevant for the governance part is that the decree does not explicitly mention human rights, the right-based approach, and/or key international standards and guidelines in this field. Overall, the decree seemingly adopts a needs-based rather than rights-based approach. For instance, on this account, the decision regarding providing housing for ecomigrant families is made based on pre-defined criteria wherein each aspect of the criteria amounts to concrete scores/points according to the needs of the families already displaced or subject to be displaced. Furthermore, experts have argued that the normative act defines ecomigrant families “only for specific purposes – who is in need to get a place to live.”²⁶⁴ Thus, the decree No 779 solely focuses on resettlement and housing issues in a strictly technical manner, without expressly referring to the rights of those internally displaced in disaster- and climate change-related contexts.

In terms of the existing policy documents in this field, it can be acknowledged that the national Strategy on Livelihoods better responds to the crucial aspects of governance elements. The principles of the Strategy on Livelihoods reflected in Article 3.1. expressly mention that the Strategy has been developed with full consideration of Georgia’s legislation, the UN Guiding Principles on Internal Displacement, universally recognized human rights, and the principles of international law. Moreover, in paragraph 3.4. among other principles that should be firmly considered while implementing the strategy, the document refers to the prohibition of discrimination and a right to an adequate standard of living. The same paragraph also explicitly mentions the Human Rights-Based Approach as a founding principle and indicates several aspects of intersectionality such as age, gender, diversity, participation, etc. Objective III in the strategy refers to the phased approach to livelihood programming,²⁶⁵ which is a well-recognised approach by the UNDRR and other international institutions in the field.

Furthermore, as argued in the previous parts, the normative assumption can be made that attaining the Sendai Framework would go some way towards reducing the risk of displacement.²⁶⁶ The Sendai Framework refers to the “protection of persons and their assets while promoting and protecting all human rights including the right to development” as one of the guiding principles.²⁶⁷ According to the paper on “Reading of the Sendai Framework for Disaster Risk Reduction 2015-2030 (“Sendai Framework” by the UNISDR),

“This principle requires that in taking all the necessary measures to prevent and reduce disaster risk, states and all other stakeholders promote and protect all human rights. The recognition of the link between disaster risk reduction and the promotion and protection of

²⁶⁴ ‘Ecomigrant Families without Legal Protection’ (n 202).

²⁶⁵ International Recovery Platform, UNDP, UNISDR, ‘Guidance Note on Recovery - Livelihood’ (2010) <https://www.unisdr.org/files/16771_16771guidancenoteonrecoveryliveliho.pdf>.

²⁶⁶ Katie Peters and Emma Lovell, ‘Reducing the Risk of Protracted and Multiple Disaster Displacements in Asia-Pacific’ (2020) UNDRR Report, accessed at <undrr.org>

²⁶⁷ ‘Sendai Framework for Disaster Risk Reduction 2015 - 2030’ 19 (C) (n 108).

human rights is important. It renders explicit the fact that preventing and reducing disaster risk are in and of, themselves means to protect and promote human rights, and also that the application of the human rights standards can strengthen disaster risk management. Civil and political rights, economic, social, and cultural rights, elimination of racial discrimination and discrimination against women, children and persons with disabilities rights, to mention just a few, have a direct bearing on participation, capabilities, vulnerabilities, resilience, the possibility of taking a risk-informed decision, accountability, etc. and thus on disaster risk reduction.”

As already presented, Georgia’s National Strategy on DRR and its accompanying action plan explicitly mention the Sendai Framework as a reference standpoint. Paragraph 2.3.1. of the DRR strategy describes the main goals of the Sendai Framework and the four priority areas for action:

Priority 1: Understanding Disaster Risk

Priority 2: Disaster Risk Governance

Priority 3: Investing in disaster risk reduction for resilience

Priority 4: Enhancing disaster preparedness for effective response and to “Build Back Better” in recovery, rehabilitation, and reconstruction;

Moreover, as stated in the DRR Strategy, Georgia defines its priority areas of action in accordance with its obligations at the international level, within the framework of Georgian legislation, based on the principles of the Sendai Action Framework Program and considering the specific conditions that might be connected to the Georgian context.²⁶⁸ The priority areas of action include reducing the disaster risks identified in the “National Threat Assessment Document 2015-2018.”²⁶⁹ Establishing the DRR system at the national level entails improved DRR legislation, capacity building, human and material resources, and allocating reserves for crisis-related situations. The DRR strategy also focuses on developing DRR systems at the local level, which is positive in terms of decentralising the disaster response. Furthermore, the Strategy draws attention to the development and implementation of methodologies and approaches to assess post-disaster damage, recovery needs and the calculation of economic losses. One of the action points also refers to integrating early warning and alarm systems into the DRR national systems, which is pivotal for preventing and mitigating disaster-triggered internal displacements.

Moreover, the DRR strategy stresses the importance of international cooperation in this field, as well as the enhanced role of mass media and the private sector, cooperation with the academic and scientific communities, and incorporation of the DRR model in the education system. Remarkably, the DRR strategy underlines the need to ensure gender equality in the DRR policy and involve

²⁶⁸ The Decree of Government of Georgia No 4, National Disaster Risk Reduction Strategy for 2017-2020, accessed at <http://gov.ge/files/469_59429_120118_4.pdf> 2 April 2021

²⁶⁹ National Security Council, ‘National Threat Assessment Document 2015-2018’ <<https://www.nsc.gov.ge/en/CONCEPTUAL-DOCUMENTS/Threat-Assessment-Document>> accessed 10 April 2021.

persons with disabilities more actively in the DRR policy development and implementation processes.

Thus, it is apparent that the national DRR strategy is largely based on the considerations under Sendai Framework, which is indeed a positive finding. Though the strategy does not expressly mention human rights, the link to human rights can be made through the reference to Sendai Framework. As recognised, the Sendai Framework explicitly adopts the Human Rights-Based Approach,²⁷⁰ thus, reflecting international standards in the national DRR strategies promotes rights-based approaches in domestic policies.

In terms of mainstreaming disasters and climate change-induced displacement in the national legal and policy framework, which is the second benchmark of governance element, it can be assessed that the tendency is somewhat moderate. The conflict-triggered displacement is broadly addressed by the relevant legal and policy documents, whereas the disaster-related displacement has not yet earned equal attention.

Thus, to conclude, the regulating normative acts, specifically the decree No 779 of the Minister, do not expressly refer to human rights, a Human Rights-Based Approach, and/or international standards and guidelines. In contrast, the policy documents refer to key international standards and guidelines as founding principles. Such policy documents are the National Strategy on Ensuring Access to Livelihoods and the National DRR Strategy, along with their action plans. However, as known, the policy documents have a certain time frame of implementation and do not weigh the same as laws. Therefore, it is critical to establish a more comprehensive normative framework for disaster- and climate change-induced internal displacement that expressly invokes human rights standards and incorporates the Human Rights-Based Approaches in protection measures.

4.3.2. The Procedural Element

Concerning the procedural element of the Human Rights-Based evaluation, a few crucial aspects emerge, such as the necessity of expressly incorporating the principle of free, prior, and informed consent in all measures relating to displacement; as well as the active and meaningful participation of all potentially affected individuals and groups; and the access to information.

As presented, the decree No 779 sets out the criteria and procedures for resettlement. Annexe 3 of the decree compiles specific categories and criteria which can be converted into pre-defined points.

²⁷⁰ Marie Aronsson-Storrier, 'Sendai Five Years on: Reflections on the Role of International Law in the Creation and Reduction of Disaster Risk' (2020) 11 International Journal of Disaster Risk Science 230. Accessed at <<https://link.springer.com/article/10.1007/s13753-020-00265-y>> last seen: 5 May 2021

The priorities are given to those whose conditions will amount to the most scores. According to the Annex of the decree, there are two categories of damage to the house:²⁷¹

- when the house or part of it is destroyed or damaged (uninhabitable) by any natural hazards (landslides, mudslides, rock falls, washing of river-banks, snow avalanches, slippery ground), except for earthquakes and volcanoes and is not subject to restoration;
- The house is not destroyed, but the natural hazards (landslides, mudslides, rockfalls, rock falls, washing of rivers, avalanches, landslides), except earthquakes and volcanoes, endanger the lives, health, and property of people living there.

Moreover, the criteria also refer to social-economic conditions of the family, such as

- dependent on the state social protection programs;
- the family has three and more underaged adolescents;
- heavily sick member/s in the family;
- disabilities;
- single or widow parents of the minor;
- an older person (s) exercising guardianship or custody of a minor child or children(s) in accordance with the law;
- a retiree living alone and a family consisting of elderly members, the family consists of only or mainly (more than half) persons who have reached retirement age;
- there are seven or more members in the family;

The majority of these conditions should be confirmed by the official documents for relevant state institutions. Moreover, the criteria also grant scores based on the ownership status of the house, meaning that the family receives more points if they do not own any other house or use it in *de facto* ownership. A minimal score is given to those who have alternative housing; however, an exception is made if the size of the living space is not sufficient for the number of family members. Nevertheless, there is no explicit indication of standards used to assess such situations. There is no mention of adequate standards of living standards.

According to Article 2 (7) of the decree, the Agency on conflict-related IDPs, ecomigrants and livelihoods will inform the ecomigrant families regarding the application procedure for housing in accordance with the regulations established by law, using various informational channels such as mass media, reception hours for citizens, and public relations offices of the Ministry. This is an essential aspect to assure that the consent made for housing is initially well-informed. Thus, it can be acknowledged as an advantage.

After the application period, the Agency should process the applications, which includes the following: the examination of living conditions and needs of the ecomigrant family based on submitted documentation, if needed additional data retrieval and other required documentation;

²⁷¹ Decree No 779 and the Annex 3, accessed at <<https://matsne.gov.ge/ka/document/view/4253322?publication=0>> last seen: 4 May 2021

During the examination, the Agency can also send assessment forms to evaluate damage categories of the house to respective municipalities. Thus, the local self-governments can also be involved in the process in some ways. The municipality should examine and send back duly filled out assessment forms on the damage categories (Article 2 (14)).

Based on gathered information, the Agency assigns pre-scores to each ecomigrant family through pre-established criteria. Upon verification, if it was found that the information and documentation submitted are false in the database, the application will be given the status “Application Canceled”. The applicant is notified by the individual administrative-legal act of the Head of the Agency. The decree does not clarify whether the decisions can be appealed against; however, it might be possible through the general rule of Administrative Law of Georgia. Nevertheless, the decree is silent on this matter. Therefore, the appealing procedure should be clearly identified or referred in the normative act. Otherwise, this may jeopardize free, prior, and informed consent as an important aspect of the procedural element.

Afterwards, the Agency will transfer the information of whoever qualifies in accordance with the preset criteria to the Commission. The Commission, in case of necessity, might ask for additional clarifying information. After having the information of the final assessment, the Commission decides by voting. The decree also mentions that the applicant must submit a written consent to accept the Commission’s decision regarding housing (Article 2 (20)). Based on the written consent form, the individual administrative-legal act will be issued, which conveys the decision regarding the housing of the ecomigrant family members in a specific house (s). While the written consent can be assessed as a positive side of the procedure, a lack of information on appeal procedures is a drawback.

Turning to the other relevant documents, the Strategy on livelihoods sets out three objectives in relation to the integration of IDPs from the occupied territories of Georgia. One of those objectives is to run informational campaigns to provide information about livelihood strategy and the action plan of the activities for conflict-related IDPs and the local communities and make sure that IDPs make informed decisions about concrete opportunities. Important to notice, these objectives are solely referring to the IDPs in conflict-related contexts. Even though objective IV of the Strategy refers to the importance of providing information about various state support programs, specifically those oriented to initiating an economic activity and its development, the wording “informed decisions” is not mentioned anywhere else, aside from the parts about integrating conflict-related IDPs.

In terms of active and meaningful participation of potentially affected individuals and groups, the Strategy in its principles 3.4. explicitly mentions that the IDPs from the occupied territories and ecomigrants should have a permanent representation at the local, regional, and national levels. Nevertheless, it does not refer to concrete procedures of organizing this representation.

Furthermore, the Strategy in its objective IV acknowledges the critical importance of motivation and participation of conflict-related IDPs, eco-migrants, and the returned emigrants in creating sustainable livelihood opportunities.

The document on the approval of the statute of the agency on IDPs, eco-migrants, and livelihoods outlines the functions, roles, and entitlements of the agency. According to the document, the agency should promote the involvement of IDPs and eco-migrants in the state programs and inform them about the projects and programs on the access to livelihoods initiated by state institutions, international or local non-governmental organizations (Article 2). In relation to early warnings, the DRR strategy in paragraph 3.5. refers to the necessity of integrating early warning and alarm systems. Thus, relevant standards and a unified approach should be developed in order to ensure that an early warning system is in place during the crisis.

To summarise this part, the significant aspects of the procedural element have been addressed by the major legal and policy documents concerning the disaster-related displacement. However, the need for a more comprehensive and intersectional approach remains. Moreover, certain topics are not partially or fully addressed. For instance, the situation when disaster-affected families are not willing to leave the risky area and disagree with the measures undertaken by state institutions is practically unregulated – creating a legal lacuna.²⁷²

4.3.3 The Substantive Element

The substantive element focuses on preventing and preparing for displacement and protecting during evacuation and throughout displacement and providing durable solutions for displaced populations. When discussing matters related to protection during evacuation and throughout displacement, particular attention must be drawn to how shelter, food, WASH, health, security, and family unity are addressed. Are the measures taken in accordance with international standards? With regards to durable solutions, the following aspects have to be considered:

- long term safety and security;
- adequate standard of living without discrimination;
- access to livelihoods and development;
- effective and accessible mechanisms to restore housing, land, and property rights;
- access to personal and other documentation without discrimination;
- family reunification;
- participation in public affairs without discrimination;
- access to effective remedies and justice

The analysis of the substantive element is divided into three subparts followingly.

²⁷² Institute of Democracy (n 208).

4.3.3.1. Measures to Prevent and Prepare for Displacement

In terms of prevention and preparedness, the competencies and mandates of the relevant state institutions will be briefly presented to provide a better understanding of their responsibilities. The Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs (MOH), which is the central government institution in charge, as discussed, does not focus on prevention and preparedness. The Ministry is chiefly responsible for resettlement and accommodation. Thus, the normative acts issued by the Ministry do not indicate any measures regarding prevention and preparedness for displacement.

Another governmental institution relating to disaster prevention and preparedness is the Ministry of Environment and Natural Resources Protection of Georgia. The Ministry is responsible for forecasting, preventing, and monitoring disasters. Particularly, the department of geology, among other functions, is also in charge of undertaking an operational assessment of the situation when natural hazards (landslide, mudslide, rockfall, etc.) occur. The geology department should also envision negative results and determining the risk of danger, followed by recommendations for populations in emergencies dealt with by appropriate actions.²⁷³ Naturally, the actions taken by the Ministry and its department are crucial for prevention and preparedness for displacement; however, it is also known that the geology department is not directly concerned with displacement. Therefore, there is a need for more collaborative and cross-sectorial approaches to this matter. Both ministries should prioritize prevention and preparedness and complement each other in accordance with their competencies.

Even though the local self-governments are pivotal actors in preventing or preparing for displacement, to date, the legal framework does not define the specific roles and functions of the self-government in terms of prevention and preparedness measures.²⁷⁴

The central policy document concerning disaster prevention and preparedness is the national DRR strategy adopted in 2017.²⁷⁵ The strategy outlines measures and priorities for reducing risks related to natural hazards, which are undoubtedly salient for displacement prevention. For instance, priority 1 of the strategy emphasizes the necessity of understanding the determinants of disaster-related risks to better assess, prevent, mitigate, prepare, and respond. The DRR strategy also prioritizes (2) strengthening the DRR management and disaster risk control on national, regional, and global levels. Moreover, the strategy encourages collaboration, partnership, and coordination between relevant sectors and stakeholders in the implementation processes of disaster risk control and disaster risk reduction management programs. The 3rd priority of the strategy advocates investing in DRR actions to ensure sustainability, which also makes a close link with the 2030 agenda. The Strategy refers to the need for strengthening disaster preparedness and adopting a

²⁷³ *ibid.*

²⁷⁴ *ibid.*

²⁷⁵ Government of Georgia (n 209).

“Build Back Better” approach in recovery and rehabilitation processes - “appropriate means must be in place to ensure that all levels of response and remedial action are carried out effectively.”²⁷⁶

Even though the DRR strategy does not explicitly refer to displacement at any point, the identified priorities could potentially play a critical role in displacement prevention and preparedness. The DRR strategy is closely linked to the obligations undertaken as part of the “Association Agreement” between the European Union and Georgia.²⁷⁷ The Association Agreement in Chapter 22 on Civil Protection outlines the concrete provisions on disaster risk reduction. Article 376 states that

“Parties shall develop and strengthen their cooperation on natural and man-made disasters.”

The following articles in the agreement identify concrete areas and steps to take in this regard. Article 377 states that:

“Cooperation shall aim at improving the prevention of, preparation for, and response to natural and man-made disasters.”

Article 379

- (f) exchange of best practices and guidelines in the field of disaster prevention, preparedness, and response;
- (g) cooperating on Disaster Risk Reduction by addressing, *inter alia*, institutional linkages and advocacy; information, education, and communication; best practices aiming at preventing or mitigating the impact of natural hazards;
- (h) cooperating on improving the knowledge base on disasters and hazard and risk assessment for disaster management;
- (i) cooperating on the assessment of the environmental and public health impact of disasters;

Therefore, the “Association Agreement” is stimulating and will stimulate potentially while developing and implementing DRR policies in Georgia. However, with regards to internal displacement, the Agreement only mentions the implementation of a Six-Point Agreement of 12 August 2008, which solely concerns the IDPs in conflict contexts.

²⁷⁶ *ibid.*

²⁷⁷ Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part. L 261/4, 30.8.2014, Official Journal of the European Union. Accessed at: <[https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22014A0830\(02\)](https://eur-lex.europa.eu/legal-content/en/TXT/PDF/?uri=CELEX:22014A0830(02))> 12 April 2021

4.3.3.2. Protection During Evacuation and throughout the Displacement

Another aspect of the substantive element is relating to the protection during evacuation and throughout displacement. The legal and policy framework on disaster-induced internal displacement does not expressly refer to evacuation. However, the Law on State Emergency²⁷⁸ in Article 13 outlines the state's obligations in this regard.

“During a state of emergency, or for the purposes of its prevention, the State shall provide shelter, compensation for material damage, and shall ensure assistance in job seeking, and otherwise assist citizens who have suffered due to actions undertaken for the elimination of the state of emergency.”

Nevertheless, it is unclear whether the state is committed to these obligations outside of emergency situations. In general, the legal and policy framework on disaster- and climate change-induced internal displacement does not explicitly acknowledge evacuation as a form of displacement. As McAdam argues, displacing evacuations appear to be a blind spot in disaster displacement research.²⁷⁹ She also refers to possible implications of this ambiguity relating to evacuations, particularly pre-emptive evacuations and displacement in general:

“...some people may be able to return after just a few hours, others may be unable to return – or settle elsewhere – for years, with serious consequences for their livelihoods, access to resources, legal status, and overall well-being.”

Thus, McAdam suggests that there is a need for

“[e]xpressly examining the space between short-term, temporary (and often recurrent) evacuations and long-term, permanent relocations, where people may be caught in a legal limbo without sustainable or durable solutions.”²⁸⁰

Based on the above analysis, it seems neither Georgia's legal and policy framework sheds any light on this “blind spot.” Since there is such an ambiguous, almost non-existent line between evacuation as a form of displacement, relatively short-term displacement, and protracted displacement in Georgian contexts, it becomes challenging to identify which concrete measures are set out for protecting displaced populations throughout displacement. It should be noted that there are several normative documents concerning the standards for the rehabilitation, reconstruction, and construction of collective centres to provide long-term shelter for IDPs from

²⁷⁸ ‘On State of Emergency’ (n 253).

²⁷⁹ Jane McAdam, ‘Displacing Evacuations: A Blind Spot in Disaster Displacement Research’ (December 1, 2020). *Refugee Survey Quarterly*, 39(4), p. 583-590 (2020), UNSW Law Research Paper No. 21-24, Available at <SSRN: <https://ssrn.com/abstract=3787189>>

²⁸⁰ *ibid.*,

the occupied territories of Georgia.²⁸¹ However, these documents exclusively refer to conflict-related IDPs and do not mention disaster- and climate change-induced internal displacement.

As discussed, the decree No 779 defines an ecomigrant family. Indeed, this is crucial for recognizing disaster-related internal displacement as a phenomenon. However, the decree is relatively sparse in terms of envisioning concrete protection mechanisms. The document mainly refers to housing procedures as discussed in the previous parts. Considering that the procedure requires and involves various phases before reaching the final decision with regards to housing assistance, the whole process might become considerably lengthy. The decree does not expressly indicate the protection mechanisms for displaced populations before finding durable housing solutions. Moreover, the document also does not specify what can be the maximum waiting time for the decision. If there are any other regulations regarding the timeframe of such decisions, for instance, in the administrative law, this has to be also clearly indicated by the decree.

A more comprehensive document in this regard is a recently adopted national strategy on livelihoods. The Strategy in its vision (3.1) states that IDPs from the occupied territories of Georgia, ecomigrants, and returning emigrants attain, maintain, and improve decent living and livelihood conditions, they are well integrated with the hosting communities and can access financial, social, and material resources, their livelihoods are strengthened and viable. Moreover, they are not dependent on state aid, and their self-sufficiency is achieved.

Objective III, paragraph 2 of the strategy defines the provision of livelihoods for the purposes of this document. Accordingly, the provision of livelihoods aims to provide food, health care, and other vital assistance. Apart from this reference, no concrete measures are indicated, which refer to food, health, WASH, family unity, etc. The Strategy indicates three phases of state support depending on the conditions of the beneficiaries. The first phase of the livelihood support programs is directed to the group of beneficiaries in the most impoverished conditions – meaning that ecomigrants in this category struggle to achieve self-sufficiency since they lack the skills or are not motivated to create livelihoods and ensure their self-sufficiency sustainability. The Strategy expressly adopts a need-based approach for the development of livelihood programs. The following two categories of beneficiaries are characterized by the socio-economic conditions of the displaced populations and their capacity to improve the conditions. The Strategy outlines various interventions that are mostly related to the economic empowerment of displaced populations according to the categories of the beneficiaries and the phases of state support.

²⁸¹ Internally Displaced Person's issues, the documents approved by the supervisory commission on IDPs, accessed at < <http://mra.gov.ge/geo/static/529/0>> 15 April, 2021

4.3.3.3. Durable solutions

The Guiding Principles stipulate in Principle 6 that “displacement shall last no longer than required by the circumstances.” Drawing on existing international law, the right of internally displaced persons to a durable solution is articulated in Principles 28-30.²⁸² According to the IASC framework, the durable solutions can be understood as:

- A gradual, often long-term process of reducing displacement-specific needs and ensuring the enjoyment of human rights without discrimination;
- A complex process that addresses human rights, humanitarian, development, reconstruction, and peace-building challenges;
- A process requiring the coordinated and timely engagement of different actors
- The Human Rights-Based evaluation tool of law and policy refers to durable solutions as part of the Substantive element and lists several aspects that have to be considered, as mentioned at the beginning of this sub-chapter.

In the case of Georgia, the decree No 779, apart from regulating housing procedures in a strictly technical manner, does not outline concrete provisions for durable solutions. Again, the recently adopted Strategy on livelihoods appears to be a relatively far-reaching document in this regard. The Strategy explicitly mentions in its principles (para. 3.4.) that an adequate standard of living without discrimination should be guaranteed for displaced populations – for the IDPs both in conflict and disaster and climate change-related contexts.

Moreover, the economic empowerment and employability of the displaced populations are at the centre of attention of the Strategy on livelihoods. As stated in the preamble, the Strategy aspires to implement activities that support socio-economic conditions and economic independence. Objective II of the Strategy focuses on increasing the competitiveness of the IDPs and ecomigrants in the labour market, which can be achieved by developing professional skills and acquiring the professions which are in high demand in the labour market. As described above, there are three phases and three categories of beneficiaries, depending on their socio-economic conditions. Therefore, concrete interventions to support those in need differ, respectively. However, most of these interventions are oriented to increase the beneficiaries’ economic capacities and employability. The Strategy also aspires to boost the motivation of the displaced populations and encourage their participation in developing and implementing livelihood programs.²⁸³ For the effective management of the livelihood sector, Strategy advocates for consolidating efforts of the various stakeholders. (Objective I, 1.1.)

Furthermore, the action plan on livelihoods for 2020-2021 is pivotal for implementing the strategy. The action plan provides concrete activities measured by the indicators, budget, responsible

²⁸² ‘IASC Framework on Durable Solutions for Internally Displaced Persons | IASC’ (n 88).

institutions, and timeline. In terms of economic empowerment and employability, the action plan sets out the following activities:

- Involving IDPs and ecomigrants in the national programs of professional training and qualification, as well as involving them in the state program for the development of employment promotion services;
- Facilitating the Enrollment of IDPs and ecomigrants in the state Vocational Education Institutions and promoting self-employment of IDPs and eco-migrants by providing them with workshop tools;
- Providing support for greenhouse farming and involve IDPs and ecomigrants in the “Enterprise in Georgia” programme;

In order to support the integration of displaced populations, the action plan also refers to funding opportunities for local initiatives led by IDPs and ecomigrants.

The action plan considerably focuses on raising awareness and spreading information on livelihood programs. For instance, one of the points in the action plan is to train the personnel at the call centres, agency receptions, relevant local-government departments, and service providers about the livelihood programmes. Also, awareness-raising will be ensured by conducting informational sessions on livelihood programs in the IDP and ecomigrant settlements by the agency representatives, sending out text messages about livelihood programs, displaying relevant information on the web page, and spreading printed informational brochures, as well as door-to-door informational campaigns by the volunteers. The action plan also refers to the indicator that 40 % of the informed population should be women. The action plan mentions that pilot projects will be implemented to support increasing access to livelihoods for IDPs in vulnerable situations. However, this only refers to IDPs in the conflict contexts and not those displaced due to disasters and the adverse effects of climate change.

To conclude, Georgia’s law and policy framework lack concrete provisions on prevention and preparedness of disaster- and climate change-induced internal displacement. The adoption of the national DRR strategy is indeed focal for fulfilling better disaster prevention and risk-reduction mechanisms. However, the DRR policies need to consider displacement risk in accordance with the Sendai Framework 28 (d), 33 (h, j).²⁸⁴ Moreover, the DRR strategy is a time-bound document; therefore, there is a need for a more stably continuous approach on national and local levels.

In terms of protection during evacuation and throughout displacement, more clarity is needed on how the state ensures that displacement during evacuation does not turn into protracted

²⁸⁴ IDMC, NRC, ‘Positioned for Action Displacement in the Sendai Framework for Disaster Risk Reduction’ (2017) <<https://www.internal-displacement.org/sites/default/files/publications/documents/20170216-idmc-briefing-paper-drr.pdf>>.

displacement. Furthermore, the crucial aspects such as shelter, food, WASH, health, security, family unity, and other essential necessities in accordance with the international standards should be better addressed by the relevant national normative and policy documents. The measures for protecting displaced populations should expressly adopt the Human Rights-Based Approach in order to ensure their fundamental rights are respected, protected, and fulfilled.

Indeed, seeking durable solutions should be the core of any protection measures for displaced populations. Based on the above assessment, it can be concluded that there are specific considerations of durable solutions scattered mainly in the policy documents. However, it is still noticeable that some of the measures exclude IDPs in disaster- and climate change-related contexts while they address conflict-induced displacement. Therefore, the state should ensure that these two categories of displaced populations are equally protected since their conditions are factually identical even though their causes of displacement differ. The respective documents addressing durable solutions should also better consider aspects such as the long-term safety and security; effective and accessible mechanisms to restore housing, land, and property rights; access to personal and other documentation without discrimination; family reunification; participation in the public affairs without discrimination; access to effective remedies and justice;

4.3.4 The Non-discrimination and Equality Element

According to the non-discrimination and equality element of the Human Rights-Based Approach, all measures for protecting IDPs in disaster and climate change contexts should expressly adopt and reflect the non-discrimination principle and identify and take steps that ensure full and equal participation and protection for the displaced populations.

To start with, as it has been reiterated, displaced populations in the context of disasters and adverse effects of climate change have unequal protection mechanisms in comparison with IDPs in conflict-related contexts. As mentioned, the specific law IDPs²⁸⁵ solely concerns people displaced due to conflict, global violence and/or massive violation of human rights. Whereas the legal status and protection mechanisms for those displaced due to disasters and climate change effects are regulated by the subordinated normative act - a lower-ranking document in contrast to a law in the legislative hierarchy. As mentioned, the Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs (MOH) is the principal governmental institution dealing with the matter. However, even in the name of the Ministry, unlike ecomigrants, IDPs from the occupied territories are explicitly included. Thus, this diversification of grounds for displacement is a mainstreamed practice that results in a seemingly unequal approach on law and policy level to IDP protection depending on their displacement contexts.

²⁸⁵ Internally Displaced Persons - Persecuted Persons from the Occupied Territories of Georgia.

Moreover, the definition of an ecomigrant family conveyed by the decree No 779 has its flaws, which becomes significantly sensitive in terms of non-discrimination and equality elements. According to the definition, the families affected by natural disaster and subject to displacement (ecomigrants) are considered those families whose houses or parts were destroyed or damaged and are not recoverable. The definition also grants the status of an ecomigrant to those families whose houses have not been yet destroyed, but natural disasters surrounding the territory threaten their life, health, and property, because of landslide, downpour, rock avalanches, rockfall, river erosion, or snow avalanches, except an earthquake and volcano.²⁸⁶ The definition provides an exhaustive list of natural hazards but excludes volcanoes and earthquakes. While knowing that Georgia “is one of the most seismically active regions in Alpine-Himalayan collision belt,”²⁸⁷ persons affected by these specific natural hazards should not be left outside of legal protection.²⁸⁸

Concerning the resettlement procedures and specifically housing provision as outlined by the Decree, particular questions might arise. The definition of an ecomigrant family in the decree expressly indicates that the damaged house or at the risk of damage has to be under the ownership of the family residing in the dwelling. According to Article 1 (4), the ownership of property rights need to be confirmed by the official extract of the Public Registry as proof, which became a mandatory requirement on 1 January 2021. However, this might create barriers for those who have not registered their ownership rights but used the house under factual ownership. Meaning that for those who do not own a house as property due to socio-economic hardships, this provision might force them into even more vulnerable situation and deepen the existing inequalities

Article 2, paragraph 9 sets out exceptions when the proof of ownership of the house is not requested to submit such as the situations when the house

“was not registered in accordance with the law before the natural hazard occurred and is destroyed/no longer exists or its relief and/or the building on it is altered in such a way that it is impossible to register this property, which must be confirmed on the basis of the administrative body/monitoring letter/protocol provided by this rule.”

This does not exclude the possibility of potentially hindering access to the right of adequate housing for those having the property under factual ownership or any other agreement with the legal owner. Moreover, according to Article 1 para. 12, the respective department of the Ministry will not consider the applications as admissible from those families who have already once received assistance from the state or donor organisations. Due to this limitation, the applications of the families who might be the victim of multiple displacements may be unfairly disregarded. Therefore, these obstacles can significantly impact exacerbating the current vulnerabilities among the displaced populations.

²⁸⁶ ‘Ecomigrant Families without Legal Protection’ (n 173).

²⁸⁷ T Chelidze and others, ‘Seismic Hazard Assessment of Georgia (Probabilistic Approach)’ 15. Accessed at <http://drm.cenn.org/Hazard_assessment_files/eng/Seismic_hazard_assessment_of_Georgia.pdf> 8 May 2021

²⁸⁸ ‘Ecomigrant Families without Legal Protection’ (n 245).

The policy documents such as the DRR strategy and the national strategy on livelihoods are noteworthy for expressly focusing on the aspects of non-discrimination and equality element. The DRR strategy explicitly refers to gender equality as a principle for developing and implementing Disaster Risk Reduction-related policies. Paragraph 3.12 of the DRR strategy states that

“Since women, especially during pregnancy, are conditionally considered as a disaster-sensitive group, their involvement at all stages of the disaster management system is very important. The specifics of women need to be taken into account in defining disaster preparedness policies as well as in risk mitigation, prevention, assessment, preparedness and response measures.”

Having gender equality included in the DRR strategy is undoubtedly a positive sign; however, more could have been addressed in this part of the strategy in connection with specific vulnerabilities that women can experience during disasters and beyond. There is no mention of women’s Sexual and Reproductive Health and Rights concerns at any phase of disaster management, including disaster prevention. Moreover, the usage of the word “conditionally” is somewhat a vague description of women as a disaster-sensitive group.

The DRR strategy also refers to persons with disabilities and increasing their role in the DRR policy development and implementation processes. Paragraph 3.13. states that:

“In order to have a broader and more community-oriented approach to disaster risk reduction, it is necessary to increase the involvement of a relatively vulnerable group to natural disasters - people with disabilities (especially children with disabilities) in disaster risk reduction policies. The practice of disaster risk reduction is effective when it is available to every citizen.”

Moreover, the DRR strategy reaffirms that it is necessary to raise awareness of persons with disabilities on the circumstances/types of natural hazards in the country, risk identification, analysis, assessment, and mitigation. It is also essential to consider the needs of persons with disabilities when assessing disaster risks and developing the appropriate plans (taking into account the universal principles of planning development). These considerations indeed contribute to a more intersectional approach to participation, and in general, the non-discrimination and equality principle.

The Strategy on livelihoods, which is an important policy document to address disaster- and climate change-induced internal displacement, clearly states that

“[...]for this strategy, all beneficiaries are equal.”

Furthermore, the strategy considers the different needs of those beneficiaries. Moreover, the Strategy refers to non-discrimination as one of the major principles of the policy. It is also significant that the Strategy encourages relevant stakeholders to pay particular attention to young people to enhance their educational opportunities and employability.

Regarding the action plan of the livelihood strategy, indicators for some of the planned activities refer to women. For instance, IDP and ecomigrant students who require assistance and are enrolled in state vocational education institutions will be provided with transportation, and 40 % of those should be women.

It can be concluded that the non-discrimination and equality element is better presented and understood throughout policy documents. In contrast, particular concerns might arise with regard to an appropriate reflection of the non-discrimination and equality principle by the respective normative acts. Therefore, the state should make sure that the current legal and policy framework does not jeopardise the non-discrimination and equality principle. Moreover, the specific conditions of vulnerable and potentially vulnerable individuals have to be taken into account²⁸⁹ and respectively addressed. Hence, a more intersectional and inclusive approach is needed at all phases of displacement management, including prevention. This also aligns with the main aspiration of the Sustainable Development Goals – “*Leaving No One Behind*” and the Agenda 2030.

4.4. Concluding Remarks on the Human Rights-Based Assessment of the Law and Policy Framework on Disaster- and Climate Change-induced Internal Displacement of Georgia

Based on the above analysis of law and policy framework on disaster- and climate change-induced internal displacement of Georgia, the following findings emerge. Reflecting on the methodology used, it should be emphasized that the Human Rights-Based evaluation tool is an effective technique for detecting and identifying the shortcomings of domestic protection mechanisms for IDPs in disaster and climate change contexts. As demonstrated, the analysis detected the specific drawbacks and challenges that need to be addressed appropriately. Moreover, the HRBA can also guide the development of the policies around this topic in order to assure that those policies fully reflect human rights considerations which would result in more comprehensive and intersectional protection for IDPs in disaster and climate change contexts.

In terms of concrete findings, it is apparent that Georgia has unequal protection mechanisms for those displaced in disaster and climate change contexts compared to the conflict-triggered displacement. While the “[g]rounds for internally displaced persons and ecomigrants displacement are different, [...] their needs for new dwelling space, integration, and social, economic assistance are absolutely identical.”²⁹⁰ Thus, these two categories of IDPs to enjoy equal protection mechanisms enshrined in the law and policy framework has utmost importance.

²⁸⁹ Scott and Salamanca (n 25).

²⁹⁰ ‘Ecomigrant Families without Legal Protection’ (n 207).

Moreover, it appears that the relevant policy documents, such as the Strategy on the Access to Livelihoods, the National DRR Strategy, and their action plans, better reflect on human rights considerations. Certain drawbacks have been identified relating to the various aspects of the Human Rights-Based Approach, as discussed in the previous parts, indicating the existing limitations in the current law and policy. However, significant concerns are related to the fact that policy documents such as the strategies and action plans are time-bounded, meaning they are envisioned for a certain period of time. Moreover, there is a lack of proper monitoring and evaluation programs to measure the outcomes of those strategies, at least what has been observed throughout the conducted research for the presented thesis. Though, further examination is needed in this regard.

As mentioned, the development of the DRR strategy is a milestone for Georgia's overall displacement prevention and management efforts. However, since the strategy timeframe only covered the period of 2017-2020, there is a need for more sustainable and continuous policies in this direction. The upcoming DRR strategy (if any) should also explicitly focus on displacement prevention as outlined in the Sendai Framework.

To conclude, Georgia, indeed, has provided specific protection mechanisms for internally displaced persons in the context of disasters and climate change and even for those who have not yet been displaced but are at the risk of displacement due to disaster threats. However, the above analysis of the current framework also revealed that concrete shortcomings emerge which need to be adequately addressed by applying the Human Rights-Based Approach at all the phases of displacement management, including prevention of and preparedness for displacement, protection during the evacuation, and throughout displacement and durable solutions.

4.5. The Issue of Implementation in Georgia's Context

Needless to say, even if the relevant domestic legislation and policy framework is in place, this does not automatically amount to its successful implementation in reality. Thus, the implementation stage is of paramount importance for IDPs to benefit from the protection mechanisms outlined in the national normative and policy documents. The need for proper implementation with full consideration of the Guiding Principles has been advocated by the UN resolutions,²⁹¹ various international guidelines, and experts in this field.²⁹² For instance, the GP20

²⁹¹ General Assembly resolution on "Protection of and Assistance to Internally Displaced Persons", A/RES/72/182, 19 Jan. 2018, which "Welcomes the fact that an increasing number of States, United Nations organizations and regional and non-governmental organizations are applying the Guiding Principles on Internal Displacement as a standard and encourages all relevant actors to make use of the Guiding Principles when dealing with situations of internal displacement."

²⁹² Adeola and Orchard (n 152). See also Walter Kälin and American Society of International Law (eds), *Incorporating the Guiding Principles on Internal Displacement into Domestic Law: Issues and Challenges* (American Society of International Law 2010).

Plan of Action includes promoting, developing, and implementing national frameworks to prevent and address internal displacement as a critical priority.²⁹³

As Orchard and Adeola argue, two significant limitations might arise at the domestic level. The first refers to the gaps

“[b]etween the textual commitments states make in their own laws and policies and those in the Guiding Principles, with these commitments being constructed more narrowly than advocated for within the Guiding Principles. This occurs specifically in terms of how IDPs are defined and in terms of offering them durable solutions.”²⁹⁴

As discussed in the previous parts, the domestic law of Georgia on IDPs defines the concept of an IDP in a narrower sense – exclusively focusing on conflict-related internal displacement, thus, not including those displaced in disaster- and climate change-related internal displacement. Even though Georgia has set up a normative and policy framework specifically concerning disaster-related displacement, as assessed through the HRBA lenses, certain limitations need to be better addressed.

According to Orchard and Adeola’s analysis, “[t]he second limitation is that even a law or policy which is strong on paper may have issues with respect to the subsequent implementation process following adoption.”²⁹⁵ Correspondingly, it is pertinent to examine how this argument plays out in Georgian context - what are the potencies and drawbacks in this regard? How effectively is the framework being implemented? However, considering that this thesis does not chiefly focus on implementation, this topic will not be appraised extensively. Instead, the adequate standard of living without discrimination as one of the significant aspects of durable solutions that also interlinks with other fundamental human rights will be zoomed in for closer analysis in terms of implementation.

More specifically, the attention will be drawn to the right to adequate housing, considering that Georgia’s framework essentially prioritizes housing issues in its normative and policy documents. The non-discrimination aspect of an adequate standard of living will also be addressed in the context of implementation.

4.5.1. The Right to an Adequate Standard of Living and the Right to Adequate Housing

The right to an adequate standard of living is enshrined in the principal international human rights instruments. According to Article 25 (1) of the Universal Declaration of Human Rights (UDHR),

²⁹³ United Nations Global Protection Cluster, GP20 Plan of Action, available at: <https://www.globalprotectioncluster.org/_assets/files/unhcr-gp20-plan_of_action-a5-scren.pdf> accessed 6 May 2021

²⁹⁴ Adeola and Orchard (n 152).

²⁹⁵ *ibid.*

“everyone has the right to a standard of living adequate for the health and well-being of himself and his family.”²⁹⁶ This provision sets out some of the elements of this right: food, clothing, housing, medical care, and necessary social services.

Under Article 11, International Covenant on Economic, Social and Cultural Rights (ICESCR), everyone has the right to “an adequate standard of living for himself and his family.”²⁹⁷ The Committee on Economic, Social, and Cultural Rights has issued several General Comments explaining the components of this right, including the right to adequate housing (General Comments 4 and 7).²⁹⁸ Through these General Comments, the Committee elaborates on which criteria are to be met to fulfil the rights to housing, food, and water and provides the single most comprehensive interpretation of these rights under international law.²⁹⁹ Moreover, the Convention on the Rights of the Child (CRC) also refers to an adequate standard of living under Article 27 “States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”³⁰⁰

Furthermore, the Conventions such as on the Elimination of All Forms of Discrimination Against Women (CEDAW) under Article 14(2)(h) requires measures to be taken to ensure that women in rural areas enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity, and water supply.³⁰¹ The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in Articles 5(e)(iii) and 7 states that the countries guarantee the right of everyone to housing, without distinction as to race, colour, or national or ethnic origin.³⁰² The Convention on the Rights of Persons with Disabilities (CRPD) requires countries to take

²⁹⁶ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 25 (1) accessed at ‘OHCHR | International Standards on the Right to Housing’

<<https://www.ohchr.org/EN/Issues/Housing/Pages/InternationalStandards.aspx#udhr>> accessed 10 May 2021.

²⁹⁷ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at:

<<https://www.refworld.org/docid/3ae6b36c0.html>> accessed 10 May 2021

²⁹⁸ ‘CESCR General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant) Resourcing Rights’ <<https://resourcingrights.org/en/document/9c55otxgab9jyodmjujwgdnuq5mi?page=1>> accessed 10 May 2021. United Nations High Commissioner for Refugees, ‘Refworld | General Comment No. 7: The Right to Adequate Housing (Art.11.1): Forced Evictions’ (*Refworld*) <<https://www.refworld.org/docid/47a70799d.html>> accessed 11 May 2021.

²⁹⁹ ‘The Right to an Adequate Standard of Living’ (*Icelandic Human Rights Centre*)

<<https://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-an-adequate-standard-of-living>> accessed 10 May 2021.

³⁰⁰ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <<https://www.refworld.org/docid/3ae6b38f0.html>> accessed 10 May 2021

³⁰¹ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at:

<<https://www.refworld.org/docid/3ae6b3970.html>> accessed 10 May 2021

³⁰² UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, United Nations, Treaty Series, vol. 660, p. 195, available at:

<<https://www.refworld.org/docid/3ae6b3940.html>> accessed 10 May 2021

appropriate measures to ensure clean water services and public housing programs for persons with disabilities.³⁰³

In addition, the Global Agenda 2030 on Sustainable Development under SDG target 11.1 mentions that states have declared to “by 2030, ensure access for all to adequate, safe and affordable housing and basic services and upgrade slums”.³⁰⁴ Specifically concerning the internal displacement, the Guiding Principles sets out the right to an adequate standard of living, including essential food and potable water, basic shelter and housing, appropriate clothing and essential medical services, and sanitation in Principle 18.³⁰⁵ As well as the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, known as the Pinheiro Principles, should be mentioned. Principle 8 concerns the right to an adequate housing

8.1 Everyone has the right to adequate housing.

8.2 States should adopt positive measures aimed at alleviating the situation of refugees and displaced persons living in inadequate housing.³⁰⁶

Georgia has ratified these major international human rights treaties.³⁰⁷ Moreover, As stipulated in the Constitution of Georgia in Article 5 (4)

“The State shall take care of human health care and social protection, ensuring the subsistence minimum and decent housing, and protecting the welfare of the family. The State shall promote the employment of citizens. Conditions for providing the subsistence minimum shall be determined by law.”³⁰⁸

However, Georgia has not appropriately recognized and addressed the right to an adequate standard of living in the domestic policy to date.³⁰⁹ There have been attempts for pursuing effective policies in this regard, but the state did not succeed.³¹⁰ According to the action plan for 2018-2019 adopted in the framework of Open Governance Partnership (OGP), Georgia undertook the

³⁰³ UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106, available at:

<<https://www.refworld.org/docid/45f973632.html>> accessed 11 May 2021

³⁰⁴ ‘SDG Indicators - Metadata Repository’

<<https://unstats.un.org/sdgs/metadata/?Text=housing&Goal=11&Target=11.1>> accessed 10 May 2021.

³⁰⁵ ‘OCHA Guiding Principles on Internal Displacement’ (n 8).

³⁰⁶ United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons "Pinheiro Principles". E/CN.4/Sub.2/2005/17

Accessed at <https://reliefweb.int/sites/reliefweb.int/files/resources/14513560A4FD818FC1257458004C8D88Pinheiro_Principles.pdf>

³⁰⁷ UN Treaty Body Database - Georgia

<https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=65&Lang=EN> accessed 10 May 2021.

³⁰⁸ ‘Constitution of Georgia’ 24/08/1995 available at <<https://matsne.gov.ge/en/document/view/30346>> accessed 10 May 2021.

³⁰⁹ Social Justice Center (formerly known as EMC) “The Right to Housing – Review of International Standards and Practice” (2019) available at: <<https://socialjustice.org.ge/>> accessed 10 May 2021

³¹⁰ *ibid.*

obligation to develop a national strategy and action plan on adequate housing.³¹¹ The Special Commission was established in 2019 by the Government of Georgia in order to prepare the relevant strategy.³¹² However, the Commission did not meet the deadline as per the OGP action plan. Thus, the state does not have any tangible strategic vision for implementing the right to adequate housing at the current date.

As presented, the decree No 779 established an institutional and legal framework for the housing provision for ecomigrants. Moreover, the National Strategy on Livelihoods expressly mentions in its principles (para. 3.4.) that an adequate standard of living without discrimination should be guaranteed for displaced populations. However, certain limitations have been observed in terms of implementing these aspects, which will be discussed in the following parts.

4.5.2. Housing for Ecomigrants and Issues Related to Ownership Titles

To date, the majority of displaced populations in disaster- and climate change-related contexts still live in protracted displacement, some even for already a few decades.³¹³ As mentioned in the various studies, ecomigrants resettled to new places systematically face problems in terms of access to water, sanitation, gas, and electricity.³¹⁴ Along with these challenges, the issue of ownership titles over the houses and property that has been allocated for emigrants has been a subject of various discussions and criticism towards the state policy and its implementation on adequate housing for ecomigrants.³¹⁵

To touch upon the background processes of the problem, the distribution of dwellings for resettled ecomigrants has been somewhat disorganised since the first massive waves of disaster-triggered internal displacement in the 80-s.³¹⁶ According to the studies on this matter, in most cases, the government failed to provide the houses to the intended beneficiaries during the resettlement process.³¹⁷ Since the Government could not manage to find durable housing solutions for those

³¹¹ *ibid.*,

³¹² The State did not fulfill the obligation of developing national strategy and action policy on adequate housing (*Open Society - Georgia Foundation*, 5 February 2021) <<https://osgf.ge/sackhovrisis-politikis-dokumentisa-dasamoqmedo-gegmis-shemushavebis-valdebuleba-ar-shestrulda/>> accessed 10 May 2021.

³¹³ Institute of Democracy (n 208).

³¹⁴ CENN, George Dvaladze, Policy Paper ‘Legislation Issues Regarding Ecomigration in Georgia’ 22 (2015)

³¹⁵ Social Justice Centre, ‘Ecomigrants from Tsalka’ (22 April 2015) <<https://socialjustice.org.ge/ka/products/ekomigrantebi-tsalkidan-photo>> accessed 13 May 2021. Also in Institute of Democracy (n 208).

³¹⁶ Tamari Bulia, ‘Eco-Migration and Vulnerability: Linkages between Human Rights Protection and Environmental Governance in Georgia’, 9 Fla. A&M U. L. Rev. (2014). Available at: <http://commons.law.famu.edu/famulawreview/vol9/iss2/7>

³¹⁷ *ibid.*

resettled, in some cases, the ecomigrants took the abandoned houses in Bolnisi and Tsalka municipalities without official permissions. The “abandoned” houses have initially been owned by ethnically Greek and Azeri communities who left Georgia for various reasons.³¹⁸ Thus, most of the ecomigrants had to deal with troubled registration as the legal owner of the house was still the Greek and Azeri families who left the municipalities. As of 2014, 69% of the relocated people faced problems with house/land ownership.³¹⁹ Around that period, there have been cases of ethnic Greeks returning to Georgia and claiming their ownership rights over the houses already occupied by the ecomigrants due to poorly managed housing policy.³²⁰

As mentioned in the Submission of the Human Rights Education and Monitoring Center (EMC) to Georgia’s Second Cycle of the Universal Periodic Review in 2018, “[a]lthough the transferring process of the legal ownership of the dwellings to the eco-migrants continued, in 2017, much fewer families (101 families) were provided with the ownership of the residential property, than in 2016 (311 families).”³²¹ Furthermore, the long waiting period before receiving the final decisions regarding ownership titles over the houses and land aggravates their vulnerable situations. Consequently, a lack of certainty and stability hinders the practical realisation of livelihood programs.³²² These again points out the necessity to have relevant procedural aspects clearly outlined in the normative acts, including appealing procedures, transparency and meaningful participation of the beneficiaries.

Moreover, the Public Defender (Ombudsman) of Georgia, in the general report on the Situation of Protection of Human Rights and Freedoms in Georgia, mentions that ecomigrants who have been resettled in 2004-2012 have not yet transferred the ownership rights over the house they have been allocated in.³²³ This is because prior to 2014, the displaced populations were mainly accommodated in pre-selected compact settlements in different parts of Georgia.³²⁴ Most families settled in this way do not own houses or land since the property registration process started only in 2015.³²⁵ Therefore, the ecomigrants displaced in earlier periods were facing the same problems

³¹⁸ *ibid.*

³¹⁹ *ibid.*

³²⁰ Social Justice Center, ‘Ecomigrants from Tsalka’ (22 April 2015)

<<https://socialjustice.org.ge/ka/products/ekomigrantebi-tsalkidan-photo>> accessed 11 May 2021.

³²¹ The United Nations Human Rights Council, The Submission of the Human Rights Education and Monitoring Center (EMC) to Georgia’s Second Cycle of the Universal Periodic Review ‘The Protection of Social and Economic Rights in Georgia’ 2018 <https://socialjustice.org.ge/uploads/products/pdf/1_1530610232.pdf>. accessed 11 May 2021

³²² Otar Saldadze and Anna Mushkudiani, ‘Adjarian ecomigrants in Tsalka: Integration and Adaptation Strategies’ (2018) accessed at:

<https://www.researchgate.net/publication/333043607_achareli_ekomigrantebi_tsalkashi_integratsiisa_da_adaptatsiis_strategiebi> 11 May 2021

³²³ Public Defender (Ombudsman) of Georgia, ‘On the Situation of Protection of Human Rights and Freedoms in Georgia’ (2018). Accessed at <<https://www.ombudsman.ge/res/docs/2019042620571319466.pdf>> accessed 11 May 2021

³²⁴ Institute of Democracy (n 208).

³²⁵ *ibid.*

in relation to ownership titles over the years. This makes the concern in relation to the requirement of presenting proof of the legal ownership rights even more valid. The Ombudsman addressed ownership registration problems in the annual report of 2019 and recommended that the government need to complete transferring ownership rights on house and land for those resettled in 2004-2012.³²⁶ The Government of Georgia has not addressed the recommendation since the Ombudsman's annual report in 2020 reiterates this issue and proposes the government to finalize this process by 2021.³²⁷ According to the report, the state provided housing for fewer families than in 2019, while the need was much bigger-scaled. Thus, the dynamics of the past three years do not seem to be improving. Moreover, the NGOs and media have been continuously reporting deplorable housing conditions where ecomigrants have lived for years.

The hardships in relation to registering ownership titles for the resettled ecomigrants and a lack of adequate standards for living in some cases resulted in “reversed displacement.”³²⁸ Even if returning to the damaged houses and risky areas is not an option, ecomigrants still prefer to go back due to inadequate living standards. As quoted in the blogpost, in 2019, ecomigrants say that “[they] are forced to leave from Tsalka, soon there will be another ‘dream town’ in Batumi.” The so-called “dream town” refers to the slum that was created as a result of poor resettlement management of the ecomigrants. According to the observations on the human rights situation in Georgia made by the Commissioner for Human Rights of the Council of Europe in 2016, the so-called “dream town” is a semi-formal settlement in Batumi's outskirts.³²⁹ Reportedly the settlement is inhabited by 900 families who relocated from the high mountainous areas of Adjara because of poverty, difficult living conditions, and disasters. Several families, mostly ecomigrants originally, also came from the area of Tsalka that they had to leave because of housing problems.

As mentioned in the report,

“[m]any of the families settled in “dream town” live in substandard conditions with no running water or sewage and lack adequate healthcare and social assistance. Concerns were also raised regarding children’s access to education and insufficient care for persons with disabilities. The Commissioner urges the authorities to assess the socio-economic situation of the population living in the “dream town” and provide assistance to those who are in need. Durable solutions should be proposed to address the housing and other needs of concerned families or individuals, taking into consideration their wishes. Additionally, more should be done to improve living conditions in the high mountainous areas of Adjara.

³²⁶ Public Defender (Ombudsman) of Georgia, ‘On the Situation of Protection of Human Rights and Freedoms in Georgia’ (2019). Accessed at <<https://www.ombudsman.ge/res/docs/2020040215365449134.pdf>>

³²⁷ Public Defender (Ombudsman) of Georgia, ‘On the Situation of Protection of Human Rights and Freedoms in Georgia’ (2020). Accessed at <<https://ombudsman.ge/eng/akhali-ambebi/sakartvelis-sakhalkho-damtsvelis-saparlamento-angarishi-2020>>

³²⁸ Batumelebi/Netgazeti ‘Ecomigrants: We are forced to leave from Tsalka, soon there will be another "Dream Town" in Batumi' (2019) <<https://batumelebi.netgazeti.ge/news/210071/>> accessed 27 May 2021.

³²⁹ Commissioner for Human Rights of the Council of Europe, ‘Observations on the Human Rights Situation in Georgia: An Update on Justice Reforms, Tolerance and Non-Discrimination’ CommDH(2016)2. <<https://rm.coe.int/16806db79f>>

Finally, the Commissioner encourages the Georgian authorities to address the situation of ecomigrants who settled in the area of Tsalka with a view to avoiding the deterioration of the situation between the different groups living there.”³³⁰

The above-discussed examples point out the drawbacks of the implementation practices in terms of adequate housing. Therefore, there is an urgent need for aligning the implementation of resettlement procedures and housing provision to international standards. The so-called *Pinheiro Principles* should mainly be considered, as they outline the concrete aspects of proper housing procedures for displaced populations.

4.5.3. Adequate Standards of Living without Discrimination

Another noticeable hardship for ecomigrants to fully exercise their human rights is a lack of integration programs in the local communities that would ensure the provision of adequate standards of living without discrimination. In the early years of Georgia's independence, ecomigrants were often resettled to the regions primarily populated by the ethnic minority (predominantly ethnically Armenian and Azeri minorities), which sometimes led to altering the demographic balance on the ground.³³¹ As Lyle mentions in the study conducted in 2012, “[...] given the absence of any type of integration and adjustment programs, these communities were predestined for social tensions and conflicts”.³³²

Indeed, numerous conflicts and tensions occurred in the communities fueled by religious differences, language barriers, unequal access to agricultural lands, and so forth. In 2005, however, Georgia ratified the Framework Convention of the Council of Europe for the Protection of National Minorities, which outlaws the official policies and measures that change the demographic picture in the regions populated by ethnic minorities.³³³ After Georgia ratified the Framework Convention, the above-mentioned practice stopped, though there has not been elaborated any comprehensive and continuous policy to tackle the issue of ecomigrants either on a practical or a legislative level since then.³³⁴ Also, important to mention, this has not affected the policy of relocating ethnically Georgian Muslims (mainly from the Adjara region) to be displaced in the various areas of Georgia. Thus, the policy focused on the ethnicity of the displaced people and disregarded religion as a factor.

³³⁰ *ibid.*

³³¹ ICMPD, Chumburidze and others (n 204).

³³² *ibid.*

³³³ *ibid.*

³³⁴ *ibid.*

Moreover, the challenges that ecomigrants face based on ethnic and religious differences in local communities where they have been relocated are much more common for them than for those in conflict-related contexts. This can be explained by the fact that IDPs in conflict-related contexts have been provided with housing either in compact resettlements or in the areas mainly populated with ethnically Georgian and Orthodox, thus, the homogeneous populations.³³⁵

Absence or poor implementation adaptation and integration policies³³⁶ resulted in continuous religious harassment in various communities between the local population and relocated Adjarian Muslim ecomigrants. The Social Justice Center thoroughly describes the recent (December 2020) escalations of religion-related conflicts in Buknari Village 2020).³³⁷ The organisation mentions that “the chain of such religious conflicts was revealed in previous years in the villages of Tsikhisdziri (2013), the village of Nigvziani (2012), the village of Tsintskaro (2013), the village of Samtatskaro (2013) the village of Chela (2013), Kobuleti (2014), the village of Mokhe (2014) and the village of Adigeni (2016). It must be said that all these conflicts had common social and cultural causes and contexts. [...] As the history of conflicts shows, this rhetoric is even more severely revealed in relation to the Georgian Muslim community, which is ethnically Georgian, and that is why their Islamic self-identity becomes doubly unacceptable to the framework of prevailing ethnoreligious nationalism.”³³⁸

Consequently, the social tensions and confrontations with host communities often prompt ecomigrants to return to their home regions due to inadequate integration policies.³³⁹ In some cases, they even prefer to return to their homes and live in life-threatening conditions where they do not face the problem of integration.³⁴⁰ Due to the integration difficulties and inadequate living conditions in their new places of residence, ecomigrants are again forced to move to other parts of the country, or even become homeless, thus experience multiple displacements. Therefore, there is also an urgent need to implement adequate integration policies to ensure that everyone has a right to adequate standards of living without discrimination.

³³⁵ ‘Statistics of IDP Settlements and the Number of IDP Families Provided with Accommodation (2009-2015)’ (<https://idfi.ge/en>) <<https://idfi.ge:443/en/number-of-provided-living-areas-for-idps>> accessed 27 May 2021.

³³⁶ Public Defender (Ombudsman) of Georgia, ‘On the Situation of Protection of Human Rights and Freedoms in Georgia’ (n 319).

³³⁷ Social Justice Center ‘Buknari – One More Place of Religious Conflict’ 2020

<<https://socialjustice.org.ge/en/products/buknari-kidev-erti-religiuri-konfliktis-adgili>> accessed 13 May 2021.

‘...Talking to the locals, it is clarified that relations between the village residents got strained in December 2020, after information was spread on social networks that a Muslim community was planning to build a mosque in the village. Although the Muslim community denied the allegations and explained to the local Orthodox community that they only wanted to perform the Friday prayers collectively, this acknowledgment and promise did not resolve tensions between the neighbors.’

³³⁸ *ibid.*

³³⁹ ICMPD, Chumburidze and others (n 204).

³⁴⁰ Social Justice Center (formerly EMC) ‘EMC Has Submitted Individual and Joint Submissions to the UN Human Rights Council for the 2nd Cycle of Georgia’s Universal Periodic Review (UPR)’

<<https://socialjustice.org.ge/en/products/emc-im-sakartvelos-universaluri-perioduli-mimokhilvistvis-upr-individualuri-da-kolektiuri-angarishebi-moamzada>> accessed 12 May 2021.

4.6. Summarising Notes on Implementation

Indeed, the topic of implementation is a broad subject. The purpose of the above analysis was not to thoroughly examine the implementation practices in Georgia. Instead, the discussion flowed in light of the argument stated at the beginning of this sub-chapter - “even a law or policy which is strong on paper may have issues with respect to the subsequent implementation process following adoption.”³⁴¹

It is essential to employ the Human Rights-Based Approach elements and their specific aspects not only in law and policymaking but also in the process of implementation. Great attention should be drawn to the principles such as *inter alia* non-discrimination and equality, free, prior, and informed consent, active and meaningful participation of all potentially affected individuals and groups, access to information.

Inadequate implementation and current limitations of the law and policy frameworks aggravate the existing inequalities. In fact, Ecomigrants are repeatedly referred to as one of Georgia’s most vulnerable and disadvantaged groups.³⁴² Which points out inadequate implementation practices occurring over the years. Therefore, while advocating for better protection mechanisms represented by respective domestic laws and policies, the need for effective implementation should also be consistently underlined. What is needed for effective implementation policies and what hinders the processes may differ case by case, and it also largely depends on the contexts. However, the significant aspects in this regard are related to political will, sufficient capacities, including human and financial resources, coordination mechanisms, etc.³⁴³

CHAPTER 5. CONCLUDING REFLECTIONS: TOWARDS BETTER PROTECTION MECHANISMS FOR IDPs IN DISASTER AND CLIMATE CHANGE CONTEXTS IN GEORGIA

In these concluding reflections, the plausible prospects of improving protection mechanisms for IDPs in disaster and climate change contexts in Georgia will be discussed. The Human Rights-Based analysis in the previous parts manifested the current state of the law and policy framework with its strengths and shortcomings in light of the international standards. In order to better respond

³⁴¹ Adeola and Orchard (n 152).

³⁴² Institute of Democracy (n 208). see also the annual reports of Public Defender (Ombudsman) of Georgia, NGO reports, media.

³⁴³ Platform on Disaster Displacement Submission to the High-Level Panel on Internal Displacement (n 79).

to the growing challenge, there is a need to enhance the present framework for improved protection mechanisms for IDPs in disasters and climate change in Georgia.

As mentioned in the Submission of the Envoy,³⁴⁴ strengthening normative base could include

“[...]stand-alone law and policies on internal displacement that include displacement related to climate change and disasters together with conflict-related displacement, or the systematic integration of such displacement into laws, policies, and strategies on climate change adaptation and/or disaster risk reduction.”

Thus, considering the Georgian context, three possible developments can be identified in this regard:

- Amending the existing law on IDPs;
- *De lege ferenda*: A new law on IDPs in disaster and climate change contexts;
- Enhancing the Current Framework:
 - Durable Solutions;
 - A Strengthened Focus on DRRM and CCA;

Moreover, at all the phases of developing each of these possible “scenarios”, a Human Rights-Based Approach needs to be adopted in order to effectively reflect human rights standards in the relevant normative and policy documents. The recommendations regarding the possible prospects of strengthening the current framework will be discussed followingly.

5.1. Amending the Existing Law on IDPs

As mentioned, the law on IDPs of Georgia was amended in 2014. However, the law did not expand its narrow focus, which solely referred to IDPs from the occupied territories of Georgia. Thus, IDPs in disaster and climate change contexts were again excluded from protection mechanisms. Nevertheless, the question is, in case of amending the existing law on IDPs in future to also address so-called ecomigrants, could this be an effective way for better protection mechanisms for those internally displaced in disaster and climate change contexts? Challenges might arise in relation to redefining the concept. As per the decree No 779, ecomigrants are not only families who have been displaced but also those at risk of displacement. Whereas the phenomenon of internal displacement has been conceptualized around the process of fleeing or leaving from the habitual residence as a result of or to avoid specific threats.

Consequently, those who have not yet been displaced cannot be considered as IDPs. However, the Georgian approach to also protect those at risk of displacement can be acknowledged as advantageous. Amending the existing law on IDPs would potentially face this dilemma. Therefore,

³⁴⁴ *ibid.*

as the Caucasus Environmental NGO Network (CENN) concludes, “even in case of extending the protection for IDPs to ecomigrants, the separate legislative piece would be required for those persons who have been affected by the natural disasters but not yet been displaced.”³⁴⁵

In light of the discussion about referring IDPs in disaster and climate change contexts or extending the concept to everyone affected by the disasters, the Envoy of the Chair of the PDD in the submission to the High-Level Panel on Internal Displacement has also touched upon this issue as a problematic assumption.³⁴⁶ As stated in the submission, “natural hazards and their effects do not differentiate between displaced and nondisplaced persons.”³⁴⁷ Thus, disaster-affected persons may have similar needs regarding food, water, or access to medical services during the emergency phase and beyond regardless of their displacement status.³⁴⁸ However, the submission highlights that “IDPs have specific needs not shared by non-displaced people in disaster contexts.”³⁴⁹ For instance, protection “against potential discrimination if [IDPs] are perceived as competing for access to resources, livelihoods, and basic services by the host community members.”³⁵⁰ Moreover, “only IDPs need to find a durable solution to their displacement, which can be extremely difficult particularly if they cannot return to their homes.”³⁵¹

Therefore, if amending the existing law on IDPs will stand on the agenda, certain challenges can be already foreseen. Moreover, the possibility of expanding the focus from IDPs in conflict-related situations to those displaced in disaster and climate change contexts does not seem to be promising in the near future.³⁵² The Government of Georgia conspicuously draws greater attention to conflict-related internal displacement. For instance, in order to ensure an inclusive consultation process, the High-Level Panel on Internal displacement gathered the written contributions from a wide range of stakeholders, including the Member States, UN Agencies, NGOs, researchers, and think tanks.³⁵³ In total, 90 submissions have been made, of which 23 were from the Members States, Georgia, among them. Eighteen Members States explicitly refer to disaster- and climate change-related displacement, while three states do not specify different internal displacement causes. Only two Member States – Georgia and Ukraine, expressly exclude disaster- and climate change-induced displacement and solely focus on conflict-related displacement. This points out that Georgia maintains conflict-related internal displacement at the centre of attention and does not adequately acknowledge the issue of disaster- and climate change-induced displacement at the acclaimed international platform such as the High-Level Panel on Internal Displacement.

³⁴⁵ CENN, (n 248).

³⁴⁶ Platform on Disaster Displacement (n 109).

³⁴⁷ *ibid.*

³⁴⁸ *ibid.*

³⁴⁹ *ibid.*

³⁵⁰ *ibid.*

³⁵¹ *ibid.*

³⁵² CENN, Dvaladze (n 310).

³⁵³ ‘Submissions from Stakeholders | UN Secretary-General’s High-Level Panel on Internal Displacement’ <<https://www.un.org/internal-displacement-panel/content/Inputs-from-Stakeholders>> accessed 16 May 2021.

5.2. *De lege ferenda*: A New Law on IDPs in Disaster and Climate Change Contexts

As discussed, the law proposal on ecomigrants was drafted in 2013-14 by the special commission established under the decree No 123 of the Minister.³⁵⁴ However, the draft law has never passed the parliamentary hearings, and there have not been any further developments recorded to the current date.³⁵⁵ According to the assessment conducted in 2015 by the CENN, the following recommendations have been identified to improve the draft law further.

“Draft law on eco-migration to be strengthened in line with international standards:

The Draft Law should be further refined by providing more detailed safeguards in order to

- prevent forced evictions of ecomigrants and ensure the provision of alternative housing for ecomigrants;
- ensure the adaptation and integration of ecomigrants into their new environment; (currently no clear regulations exist);
- ensure the social and economic protection of ecomigrants, which are not less favourable than those provided for internally displaced persons [in conflict-related contexts].”³⁵⁶

Meaning that even if Georgia decides on enacting a specific law on this matter in the future, i.e., *lex ferenda* and turn back to the draft law, there will be a need for significant improvements. The precedent itself is indeed a positive step forward; however, holding the draft law back for already eight years raises valid questions that require broader context analysis. Moreover, the revision or development processes of a new law need to consider a Human Rights-Based Approach; this would ensure eliminating current shortcomings of the existing framework.

Nevertheless, as acknowledged in the submission of the Envoy, “[t]he adoption of national laws or policies that address internal disaster displacement is an important expression of political will as well as a first step towards building or strengthening the capacity of States at all levels.”³⁵⁷ In case of Georgia, it is apparent that there is not sufficient political will at this stage to recall the efforts made several years ago regarding the development of a law on ecomigrants. A specific law on disaster and climate change-related internal displacement would potentially reduce the current equality gap of domestic protection mechanisms compared with conflict-related contexts. Moreover, adopting a national law would also contribute to the “hardening” process of the soft-law international documents, particularly the Guiding Principles, in this field. In that case, the precedent will support the general positive tendency of protecting those displaced in disaster and climate change contexts.

³⁵⁴ ICMPD, Chumburidze and others (n 204).

³⁵⁵ *ibid.*

³⁵⁶ CENN, Dvaladze (n 310). Policy Paper (2015)

³⁵⁷ Platform on Disaster Displacement (n 109).

5.3. Enhancing the Current Framework

The above-discussed two ways of addressing the issue might seem unconfident due to various complexities. However, enhancing the current law and policy framework is not merely a perspective but an urgent necessity. As the Human Rights-Based analysis demonstrated, the current framework has specific shortcomings, particularly regarding prevention and preparedness of internal displacement, durable solutions, non-discrimination, and equality elements. Moreover, the essential aspects such as active and meaningful participation of all potentially affected individuals and groups, access to information, free, prior, and informed consent are scarcely presented. In order to enhance the current framework for better protection mechanisms for IDPs in disaster and climate change contexts, the following areas need to be prioritized and adequately addressed.

“[d]isaster preparedness, addressing vulnerabilities, and human rights protection, are key elements in protecting people from disaster-related displacement. These developments are not only significant in law, they coincide with a substantial increase in the incidence of disaster displacement and therefore have the potential for meaningful impact to the extent that states adapt domestic law and policy accordingly.”³⁵⁸

The enhancement measures of the current framework need to focus on two crucial aspects, first durable solutions as one of the core concepts of Guiding Principles. Articulated in principle 28 of the Guiding Principles, IDPs have the right to a durable solution and often need assistance in their efforts.³⁵⁹ Thus, the adequate consideration of durable solutions is the prerequisite of a rights-based law and policy framework.

Moreover, great attention has to be drawn to strengthening the DRRM and CCA policies. As it has been acknowledged

“[t]he Guiding Principles must be complemented by more detailed standards and guidelines, including from the field of disaster risk reduction and management (DRRM), climate change adaptation (CCA), and sustainable development.”³⁶⁰

5.3.1. Amplifying Durable Solutions

Finding durable solutions for the plight of IDPs is essential moving towards better protection mechanisms.³⁶¹

³⁵⁸ Miriam Cullen, ‘Disaster, Displacement and International Law: Legal Protections in the Context of a Changing Climate’ (2020) 8 *Politics and Governance* 270.

³⁵⁹ ‘OCHA Guiding Principles on Internal Displacement’ (n 8).

³⁶⁰ Scott and Salamanca (n 25).

³⁶¹ ‘OCHA Guiding Principles on Internal Displacement’ (n 8). Principles 6.3; 28.2; 29;

“Displacement is a life-changing event. While the often traumatic experience of displacement cannot be undone, internally displaced persons (IDPs) need to be able to resume a normal life by achieving a durable solution.”³⁶²

Thus, in order to enhance Georgia’s current law and policy framework on disaster- and climate change-induced internal displacement, the full spectrum of durable solutions³⁶³ need to be considered. As known, the IASC Framework (2010) is widely recognized as the benchmark on durable solutions for IDPs.³⁶⁴ According to the IASC framework,

“a durable solution is achieved when IDPs no longer have specific assistance and protection needs that are linked to their displacement and such persons can enjoy their human rights without discrimination resulting from their displacement.”³⁶⁵

The framework also outlines the key human rights-based principles meant to guide the search for durable solutions and to establish the criteria to determine the extent to which they have been achieved.³⁶⁶ The IASC framework expressly adopts the Human Rights-Based Approach. Thus, while seeking durable solutions within the domestic body of law and policies, the framework needs to be considered a reference point along with other guidelines in this area.³⁶⁷

In case of Georgia, as argued, the durable solutions have been better reflected in the policy documents, particularly the Strategy on Livelihoods and its action plan. However, policy documents have limited timeframes to be implemented, and if there is no sustainable continuation of the policies, this can hinder the search for durable solutions. Therefore, the full range of durable solutions needs to be enshrined into respective normative acts - as discussed in the previous parts, the decree No 779 of the Minister focuses on finding housing solutions for ecomigrants. On the one hand, this is, indeed, a positive measure towards durable solutions. However, on the other hand, the Decree has flaws in almost all the elements of the Human Rights-Based analysis, as shown. Moreover, finding a housing solution would not be sufficient if the framework does not address the crucial modalities such as the sustainable return and reintegration, sustainable local integration in the area where the internally displaced persons have taken refuge, sustainable integration in another part of the country.³⁶⁸ Therefore, apart from searching for housing solutions,

³⁶² NRC, ‘Durable Solutions for Internally Displaced People: In a Nutshell’ (November 2019) <https://www.nrc.no/globalassets/pdf/briefing-notes/durable-solutions-for-internally-displaced-people/durable-solutions_briefer_eng.pdf> accessed 20 May 2021.

³⁶³ ICRC ‘We Must Consider the Full Spectrum of Durable Solutions to Effectively Address Needs of Displaced - World’ (*ReliefWeb 2019*) <<https://reliefweb.int/report/world/we-must-consider-full-spectrum-durable-solutions-effectively-address-needs-displaced>> accessed 19 May 2021.

³⁶⁴ Joint IDP Profiling Service (JIPS), ‘Durable Solutions Analysis Guide A Tool to Measure Progress towards Durable Solutions for IDPs’ <<https://inform-durablesolutions-idp.org/wp-content/uploads/2018/01/Interagency-Durable-Solutions-Analysis-Guide-March2020.pdf>>.

³⁶⁵ ‘IASC Framework on Durable Solutions for Internally Displaced Persons | IASC’ (n 88).

³⁶⁶ Joint IDP Profiling Service (JIPS) (n 360).

³⁶⁷ For instance “Durable Solutions Indicator Library” ‘Durable Solutions Indicator Library - Select Your Indicators!’ (*Durable Solutions*) <<https://inform-durablesolutions-idp.org/indicators-2/>> accessed 20 May 2021.

³⁶⁸ Joint IDP Profiling Service (JIPS) (n 360).

there is a wide range of other essential aspects of integration and reintegration processes that need to be addressed by respective durable solutions.

Furthermore, it is essential to ensure that the

“Processes to support a durable solution should be inclusive and involve, on the basis of full equality, all parts of the displaced population, including women, children (in accordance with their age and level of maturity), persons with special needs and persons who are potentially marginalized.”³⁶⁹

As stated in the report of the UNHCR submitted to the Human Rights Council,³⁷⁰ IDPs are often unable to exercise their economic, social, cultural, civil, and political rights as a result of marginalisation practices. Their vulnerability status is also acknowledged by the SDGs’ indicators framework, as mentioned. Thus, durable solutions to displacement need to be intersectional; otherwise, they may remain “elusive”.³⁷¹

Regarding the implementation practices, the challenges arise not only due to poor governance but also because of the paucity of durable solutions in the current framework, particularly a lack of integration policies. Therefore, as stated in the report,

“[a]ddressing those patterns required, in turn, supporting legal, policy, institutional and other measures and taking a human rights-based approach that promoted equality and inclusion in support of durable solutions. It also meant the free, active, and meaningful participation of all citizens, particularly internally displaced persons themselves, in all those processes, to ensure accountability and sustainability.”³⁷²

Therefore, respectively, the Human Rights-Based Approach needs to be considered in envisioning, planning, and implementing policies of respective measures on durable solutions.

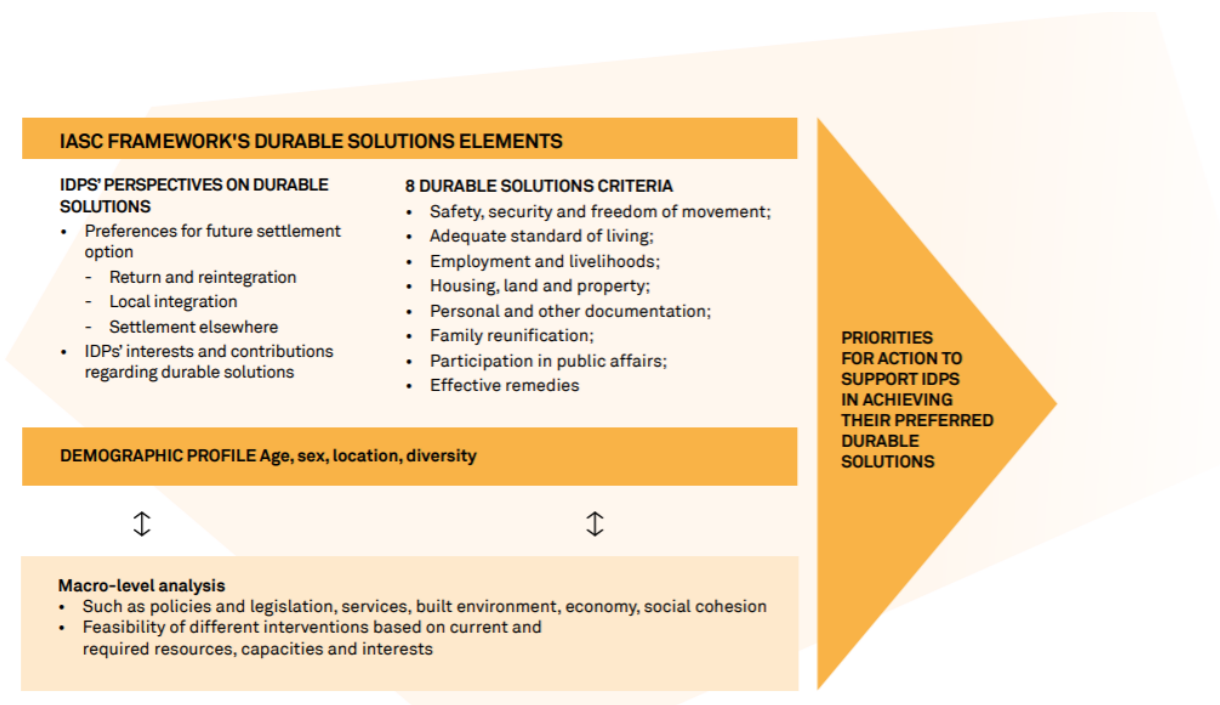
³⁶⁹ ‘IASC Framework on Durable Solutions for Internally Displaced Persons | IASC’ (n 88).

³⁷⁰ Report of the UNHCR, ‘Summary of the Panel Discussion on the Human Rights of Internally Displaced Persons in Commemoration of the Twentieth Anniversary of the Guiding Principles on Internal Displacement’ <<https://primarysources.brillonline.com/browse/human-rights-documents-online/promotion-and-protection-of-all-human-rights-civil-political-economic-social-and-cultural-rights-including-the-right-to-development;hrdhrd99702016149>> accessed 25 May 2021.

³⁷¹ ‘Submissions from Stakeholders | UN Secretary-General’s High-Level Panel on Internal Displacement’ (n 349).

³⁷² Report of the UNHCR (n 366).

Figure 2. The analytical framework for durable solutions (2018).³⁷³



5.3.2 A Strengthened Focus on DRRM and CCA

It has been acknowledged that disaster preparedness, addressing vulnerabilities, and human rights protection, are critical elements in protecting people from disaster-related displacement.³⁷⁴ Moreover, as conveyed by the General Comment No 36 on Article 6 on the right to life of the ICCPR,

“States parties should also develop, when necessary, contingency plans and disaster management plans designed to increase preparedness and address natural and man-made disasters, which may adversely affect enjoyment of the right to life.”³⁷⁵

Thus, the nexus between Disaster Risk Reduction and displacement has become an explicit component of the state obligation to protect life.³⁷⁶ This nexus has also been expressly acknowledged and enshrined in the Sendai framework, particularly the Target E.³⁷⁷

³⁷³ Joint IDP Profiling Service (JIPS) (n 360).

³⁷⁴ Cullen (n 354).

³⁷⁵ UN Human Rights Committee (HRC), General comment no. 36, Article 6 (Right to Life), 3 September 2019, CCPR/C/GC/35, available at: < <https://www.refworld.org/docid/5e5e75e04.html>> accessed 25 May 2021.

³⁷⁶ Cullen (n 354).

³⁷⁷ ‘Sendai Framework for Disaster Risk Reduction 2015 - 2030’ (n 141).

“[w]here disaster risk is not reduced, displacement may become chronic or protracted. This, in turn, may act as a driver of disaster risk.”³⁷⁸

As discussed, Georgia had adopted the National Disaster Risk Reduction Strategy for 2017-2020. The strategy successfully captured the principal aspects of the Sendai framework. However, emphasized in the previous parts, there is a need for a sustainable continuation of the state policies in this area. Moreover, even though attaining the Sendai Framework might indicate the improved prevention mechanisms for displacement,³⁷⁹ disaster-related displacement has not yet been recognised as a specific aspect of disaster management in Georgia’s case. Therefore, it is crucial for the successor of the DRR strategies to explicitly refer to disaster- and climate change-induced internal displacement. In this regard, the “Words into Action” guide offers practical guidance to help government authorities integrate disaster displacement and other related forms of human mobility into regional, national, sub-national and local disaster risk reduction strategies according to Target (E) of the Sendai Framework.

Moreover, as known, the Sendai framework highlights the importance of human rights in paragraph 19 (C). In general, the nexus between DRR and human rights is increasingly recognised.³⁸⁰ Therefore, the domestic DRR policies need also be developed by considering the Human Rights-Based Approach as a benchmark.

In addition, a strengthened focus is necessary to Climate Change Adaptation (CCA) strategies. As known, the DRR and CCA agendas both strive to reduce vulnerability and enhance resilience. “Thus, it is crucial to link DRR and CCA to benefit simultaneously from risk reduction and adaptation measures.”³⁸¹ Georgia has developed the CCA strategy 2030 and the Action plan for 2021-2023.³⁸² The strategy and the accompanying action plan does not refer to disaster- and climate change-induced internal displacement at this stage. Nevertheless, a strengthened focus on CCA is a positive sign of Georgia’s enhanced law and policy framework, in general.

Additionally, in 2020, the Government of Georgia has signed the Cooperation Framework Agreement with the ‘United Nations Georgia’ to implement actions for sustainable development.³⁸³ The Cooperation Framework 2021-2025 expressly refers to the importance of

³⁷⁸ IDMC, NRC, ‘Positioned for Action Displacement in the Sendai Framework for Disaster Risk Reduction’. (2016) accessed at: <<https://www.internal-displacement.org/sites/default/files/publications/documents/20170216-idmc-briefing-paper-drr.pdf>> 20 May 2021

³⁷⁹ Peters and Lovell (n 68).

³⁸⁰ Marie Aronsson-Storrier (n 266).

³⁸¹ Rawshan Ara Begum and others, ‘Toward Conceptual Frameworks for Linking Disaster Risk Reduction and Climate Change Adaptation’ (2014) 10 International Journal of Disaster Risk Reduction 362.

³⁸² The Climate Change Adaptation Strategy of Georgia 2030 and the Action Plan 2021-2023 (2020) accessed at: <<http://www.eiec.gov.ge/getattachment/30bb3f45-7d2e-442d-8b47-26bd650e72db/CSAP-01-12-2020.pdf.aspx>>

³⁸³ United Nations Georgia, Government of Georgia, ‘United Nations Sustainable Development Cooperation Framework Georgia 2021-2025’ (2020) <https://unsdg.un.org/sites/default/files/2020-11/Georgia_UNSDCF_%202021%20to%202025_0.pdf>. Accessed at: <https://unsdg.un.org/sites/default/files/2020-11/Georgia_UNSDCF_%202021%20to%202025_0.pdf> 20 May 2021

DRR and CCA policies and their implementation. Moreover, according to the document, the UN representation in Georgia will continue its support

“for increasing adaptive capacities for climate risk management, disaster preparedness and functional multi-hazard early warning systems; [...]it will build capacities to reduce disaster risk and enhanced preparedness at national and community-level and work to mainstream DRR in various sectoral policies including education; it will support the National Strategy on Disaster Risk Reduction the country is about to start developing; [...] help in adaptation and mitigation of climate change, reduce land degradation and ensure shared prosperity and well-being at local, regional and national scales.”

This, undoubtedly, is significant support for enhancing DRR and CCA policies in Georgia. However, considering that such promising perspectives are given, the Government of Georgia should prioritise sustained DRR and CCA agendas and explicitly connect them with the issue of disaster- and climate change-induced internal displacement.

Conclusion

The presented thesis has dealt with examining Georgia’s current law and policy framework on disaster- and climate change-induced internal displacement by applying the Human Rights-Based Approach as a guiding methodology. The implementation aspect of the framework was assessed in relation to the right to adequate standards of living without discrimination. Moreover, the discussion referred to possible prospects of strengthening the current protection mechanism for IDPs in disaster and climate change contexts in Georgia. Based on the analysis, the following findings and concluding reflections emerge.

Undoubtedly, the importance of strengthened national response is paramount for finding durable solutions for the plight of Internally Displaced Persons. However, due to the soft law nature of the Guiding Principles on Internal Displacement, which is the primary international benchmark in this field and the characteristics of internal displacement, as a phenomenon, it is challenging to invoke the specific protection mechanisms for IDPs at a national level. Concurrently, it has been argued that the specific needs of IDPs in disaster and climate change contexts require special protection guarantees. In light of this, Georgia, as a country with a “long history of supporting Guiding Principles”³⁸⁴ in its domestic response to internal displacement, has been selected for closer examination. The analysis demonstrated the advantages of the existing framework and the

³⁸⁴ Funke and Bolkvadze (n 16).

limitations that can hinder the full enjoyment of human rights for IDPs in disaster and climate change contexts.

More specifically, as argued, Georgia has a seemingly distinctive approach while provisioning protection mechanisms for IDPs in conflict-related contexts, and IDPs uprooted due to disasters and the adverse effects of climate change (also known as ecomigrants in Georgia). The special law for IDPs in conflict-related contexts excludes ecomigrants from its target group. The issue of internal displacement in the context of disasters and the adverse effects of climate change are regulated by the subordinated normative acts, including the decree No 779 of the Minister (issued in 2013), and the policy documents such as the Strategy on Livelihoods along with the action plan (2020-2021). Moreover, the National Strategy on Disaster Risk Reduction (2017-2020) is a pertinent policy document, particularly in displacement prevention and preparedness. These documents embody the framework for the protection of IDPs in disaster and climate change contexts. While Georgia's legal and policy framework has its merits, it is also crucial to recognise that the need for strengthened national responses is paramount for tackling the challenge that occurs locally but has an increasing impact on a global scale, as mentioned at the beginning of this thesis.

The Human Rights-Based analysis of Georgia's law and policy revealed that, on the one hand, the current framework reflects some aspects of the Human Rights-Based Approach. Specifically, provisions on durable solutions, though not comprehensively, livelihood and employment programmes, housing and resettlement issues, access to information and participation of the affected groups. However, the framework is relatively sparse or even silent with regards to numerous aspects of the HRBA, such as free, prior and informed consent on displacement-related processes and access to information, particularly in terms of early warning, the essential aspects of protection during evacuation and throughout displacement, including shelter, food, WASH, health, security, family unity and other rights. There is also a need to extensively represent crucial aspects of durable solutions, specifically long term safety and security, family reunification, access to effective remedies and justice, participation in public affairs without discrimination, effective and accessible mechanisms to restore housing, land and property rights, access to personal and other documentation without discrimination. The drawbacks have also emerged in relation to resettlement and the provision of housing.

Moreover, the principle of intersectionality needs to be substantially considered while developing the respective policies. In terms of mainstreaming internal displacement in the context of disasters and climate change in the current legal and policy framework, the tendency can be assessed as moderate. This specific category of displacement is not explicitly mainstreamed and prioritised; in fact, the state maintains its distinctive approach in relation to displacement grounds.

Furthermore, the analysis of the implementation practices, specifically concerning the adequate standard of living without discrimination, demonstrated the critical role of effective and comprehensive implementation actions. The challenges were related to housing, property rights,

inadequate living conditions, and lack of integration and adaptation programmes. In some cases, poorly managed implementation processes may result in the reversal of displacement, meaning that ecomigrants sometimes prefer to go back to their original habitual places, even if the area threatens their life and well-being, then staying at the new places where they might feel estranged, not integrated enough and without a sense of stability and ownership over the place. As discussed, ineffectively managed policies resulted in creating the slum – a so-called “dream town” in the centre of Batumi. Thus, while laws and policies may look compelling, proper and adequate implementation is always critical.

Based on the analysis of the law and policy framework, along with implementation practices, this thesis also discussed the possible prospects of strengthening the existing mechanisms. Three possibilities emerged. The first being the amendment of the existing law and extension of the current IDP definition to IDPs in disaster and climate change-related contexts. Moreover, *de lege ferenda*, thus, the creation of a new law. As a third prospect, strengthening the current framework by focusing on DRRM, CCA and durable solutions has been identified. As argued, there might be a lack of political will and readiness to amend the existing law or adopt a new one. Considering this, enhancing the current framework is the most realistic way towards better protection mechanism for IDPs in disaster and climate change-related contexts in Georgia.

Enhancement of the current framework requires the adequate and improved provision of durable solutions and the strengthened focus on DRRM and CCA. Finding durable solutions for those displaced due to disasters and the adverse effects of climate change is pivotal. At the same time, recognising DRRM and CCA policies as part of the national response to disasters- and climate change-induced internal displacement is inescapable. As the UN High Commissioner for Refugees mentioned, “[w]aiting for disaster to strike is not an option,”³⁸⁵ Indeed, prevention and preparedness, envisioned and effectively amplified durable solutions have to be the core of enhanced, adequate and long-lasting national responses in Georgia and beyond.

³⁸⁵ UNHCR, Filippo Grandi ‘Climate Change and Disaster Displacement’ (n 47).

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Annexe 1.

Human Rights-Based Evaluation of Law and Policy Tool

Internal Displacement in the Context of Disasters and Climate Change

Country:

Name of document being evaluated:

Date of evaluation:

Name of person/team conducting the evaluation:

	Issue	Colour scale
	GOVERNANCE	
<u>1</u>	Legal and policy documents expressly invoke human rights, a rights-based approach, or key international standards and guidelines as part of the foundational principles	
<u>2</u>	A legal and policy framework that mainstreams displacement in the context of disasters and climate change (not in passing or ad hoc references to displacement).	
	PROCEDURAL	
<u>3</u>	All measures relating to displacement expressly incorporate the principle of Free, Prior and Informed Consent	
<u>4</u>	Measures relating to displacement include express provision for active and meaningful participation of all potentially affected individuals and groups	
<u>5</u>	Access to information (including early warning)	
	SUBSTANTIVE	
<u>6</u>	Measures to prevent and prepare for displacement	
<u>7</u>	Protection during evacuation and throughout displacement	
<u>8</u>	Durable solutions	
	NON-DISCRIMINATION AND EQUALITY	
<u>9</u>	All provisions and measures expressly adopt and reflect the non-discrimination and equality principle, actively identifying and taking steps to ensure full and equal participation and protection	
	DATA	
<u>10</u>	Provision for collection, use, access and storage of data	

The evaluation tool

GOVERNANCE																		
1	<p>Legal and policy documents <i>expressly invoke human rights</i>, a rights-based approach, or key international standards and guidelines <i>as part of the foundational principles</i>.</p> <table border="1" style="width: 100%; text-align: center;"> <tr> <td style="background-color: red; color: white;"><input type="checkbox"/></td> <td style="background-color: #FFDAB9;"><input type="checkbox"/></td> <td style="background-color: yellow;"><input type="checkbox"/></td> <td style="background-color: #D9EAD3;"><input type="checkbox"/></td> <td style="background-color: green; color: white;"><input type="checkbox"/></td> </tr> </table> <p>Evaluation</p> <hr/> <p>Recommendations</p> <hr/> <p>Aspects of displacement addressed in the national law and policy framework</p> <table border="1" style="width: 100%; text-align: center;"> <tr> <th>Prevention</th> <th>Planned relocation</th> <th>Preparedness</th> <th>Evacuation</th> <th>During displacement</th> <th>Durable solutions</th> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table> <hr/> <p>See entries under remainder of the document for sources of assessment.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Prevention	Planned relocation	Preparedness	Evacuation	During displacement	Durable solutions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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	Evaluation	
	Recommendations	
	Observations	Source
7	Protection during evacuation and throughout displacement	
	Evaluation	
	Recommendations	
	Observations	Source
	- General	
	- Shelter addressed in accordance with international standards	
	- Food addressed in accordance with international standards	
	- WASH addressed in accordance with international standards	
	- Health addressed in accordance with international standards	
	- Security addressed in accordance with international standards	
	- Family unity addressed in accordance with international standards	
	- Other rights addressed in accordance with international standards	
8	Durable solutions	
	Evaluation	
	Recommendations	
	Observations	Source
	- General	

	- Long Term Safety and Security																	
	- Adequate Standard of Living without Discrimination																	
	- Access to Livelihoods and Employment																	
	- Effective and Accessible Mechanisms to Restore Housing, Land and Property Rights																	
	- Access to Personal and Other Documentation without Discrimination																	
	- Family Reunification																	
	- Participation in Public Affairs without Discrimination																	
	- Access to Effective Remedies and Justice																	
NON-DISCRIMINATION AND EQUALITY																		
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10	<p>Provision for collection, use, access and storage of data</p> <table border="1" style="width: 100%; text-align: center;"> <tr> <td style="width: 20%; background-color: red; color: white;"><input type="checkbox"/></td> <td style="width: 20%; background-color: #FFCCBC;"><input type="checkbox"/></td> <td style="width: 20%; background-color: yellow;"><input type="checkbox"/></td> <td style="width: 20%; background-color: #C8E6C9;"><input type="checkbox"/></td> <td style="width: 20%; background-color: green; color: white;"><input type="checkbox"/></td> </tr> </table> <p>Evaluation</p> <p>Recommendations</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>												
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<div style="border: 1px solid black; height: 20px; margin-bottom: 5px;"></div> <p>Context</p> <table border="1" style="width: 100%; text-align: center;"> <thead> <tr> <th style="width: 16.6%;">Prevention</th> <th style="width: 16.6%;">Planned relocation</th> <th style="width: 16.6%;">Preparedness</th> <th style="width: 16.6%;">Evacuation</th> <th style="width: 16.6%;">During displacement</th> <th style="width: 16.6%;">Durable solutions</th> </tr> </thead> <tbody> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </tbody> </table> <div style="border: 1px solid black; height: 20px; margin-top: 5px;"></div>							Prevention	Planned relocation	Preparedness	Evacuation	During displacement	Durable solutions	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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