

Book Event *Internal Displacement and the Law*

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“One day, the rebels arrived in our village. I saw them shoot a woman. We all fled into the bush. We survived eating edible leaves and some berries. We drank the water we found, but some small children later died of diarrhoea. When we realized that we couldn’t go back because the rebels were still in our village, we decided to come to this town. Now we are here waiting for help. We’ve lost everything. We have no future.”

The skinny elderly man sitting under a tree in the small northern town of N’Délé in the Central African Republic quietly told his story when I met him in my former capacity as Representative of the UN Secretary General on the human rights of internally displaced persons. He was too polite and perhaps too exhausted to ask the obvious question: ‘And, Sir, can you tell me how your human rights can give me back my future?’

This is how my book begins, and in essence this is the question it attempts to answer in the context of the multifaceted global internal displacement crisis. It’s a crisis of huge and increasing numbers of IDPs, an assistance and protection crisis affecting the displaced as well as the communities hosting them, and a crisis of all too often insufficient or inadequate efforts by governments and the international community do to address the specific needs of IDPs and help them to achieve durable solutions.

1. Why is the book called «*Internal Displacement and the Law*»?

Because the question I try to answer in this book is: How can law – understood in a wide sense - contribute to address these crises? And what are the limits of what law can achieve? I explore in detail how international human rights and humanitarian law create entitlements for IDPs as right holders and obligations for governments as duty bearers. Chapters also look at how countries implement these obligations in their domestic laws, policies and strategies. With a strong focus on what we call hard law, the book goes way beyond the legally non-binding Guiding Principles on Internal Displacement.

Not surprisingly, I conclude that international human rights and humanitarian law, if taken seriously and properly understood in all its technical aspects, provides very important entitlements for IDPs as well as highly relevant guidance for governments and international actors. At the same time, the potential of the law is insufficiently utilised. For instance, the overall number of IDP-specific case law by courts and other human rights mechanisms remains limited. There are hardly any internal displacement cases in the individual communication procedures of the UN treaty bodies. On the other hand, the case law of the Inter-American Court of Human Rights and the now defunct International Criminal Tribunal for the Former Yugoslavia and, at the domestic level, the Constitutional Court of Colombia is particularly rich and interesting. The European Court of Human Rights and the African Commission on Human and Peoples’ Rights and the African Court of Justice and Human Rights have decided some hugely important cases that set important standards, including on aspects of durable solutions. However, unlike in other areas of human rights law, legal activists have not yet discovered the potential of strategic

litigation on internal displacement. I also feel that strengthening the ability of the UN System to protect people through their human rights as promoted by the new *United Nations Agenda for Protection* requires humanitarian actors to adopt a more sophisticated and profound understanding of relevant human rights guarantees and their relevance for operational activities.

2. What does the book say about policy issues?

“Internal Displacement and the Law”: Despite its title, the book is more than a legal book. True, there are parts that only legal experts will enjoy, such as the comparison between the European case law seeing solutions as an inherent element of human rights guarantees and the understanding of solutions as an element of the right to reparation that is promoted by the Inter-American Court of Human Rights. Much of the book, however is about policy. Thus, Chapter 2 looks at the primary responsibility of the State, its role and the role of other actors. It reiterates and reinforces key messages of the High-Level Panel on Internal Displacement regarding the need for a new narrative that builds on seeing IDPs as citizens with rights rather than just helpless beneficiaries of humanitarian action. Chapter 3 revisits an old but – as the Independent review of the IASC response to internal displacement shows – still relevant question: Are IDPs a category of special concern? The Chapter sets out the well-known argument that IDPs have specific needs and neglecting them undermines effective action, contributes to protracted displacement, and jeopardizes efforts to achieve durable solutions. While in the humanitarian community this is still not fully embraced or even rejected, Chapter 4 on legal sources shows that such attitudes are at odds with existing international, regional and domestic law.

3. What is the key finding of the book?

Since the Guiding Principles on Internal Displacement were submitted to the then UN Human Rights Commission in 1998, the law related to internal displacement has matured into what I call an *emerging legal regime on internal displacement*, a notion that I use to frame the book’s discussion. The notion of legal regime denotes the set of norms, institutions and institutional frameworks as well as the processes that shape and guide the behaviour of states and other relevant actors in addressing internal displacement. The notion of legal regime is helpful because it entails the idea that substantive norms such as human rights guarantees are insufficient unless there are institutions and processes that ensure or at least facilitate their implementation. Refugee law is a good example of a legal regime: Its normative pillar consists of the 1951 Refugee Convention, regional instruments and the many domestic refugee and asylum laws. UNHCR with its exclusive and strong mandate at the global level and refugee commissions or ministries with specific refugee related mandates at domestic levels provide a rather robust institutional framework, and ExCom meetings as well as the Global Refugee Forum based on the Global Compact on Refugees ensure on-going processes to forge consensus on key issues among stakeholders, renew previous and express new commitments, and develop new ideas.

Obviously, the area of internal displacement has nothing comparable to offer. Regarding *protection from displacement* I nevertheless conclude that over the last three decades, important progress has been made at legal and policy levels to strengthen the prevention of internal displacement by prohibiting displacement that cannot be justified and therefore, to use the Guiding

Principles' terminology, is arbitrary. The worst forms of arbitrary displacement have been penalized in international criminal law. However, institutions and processes to prevent conflict-induced displacement remain weak. While criminal courts could play an important role due to the preventive effects of criminal sanctions, there are only few cases of convictions for displacement as a war crime or crime against humanity. Recent developments in the areas of disaster risk reduction (DRR) and climate action are more encouraging. The inclusion of displacement risks in the 2015 Sendai Framework and many national DRR strategies as well as the establishment of the Task Force on Displacement under the Paris Agreement and the recognition that displacement belongs to the categories covered by the loss and damage fund established by COP27 are important steps. Nevertheless, in this age of climate change efforts to prevent disaster displacement must be stepped up.

Regarding *protection during displacement*, I identify some shortcomings of the existing legal landscape, particularly at the level of domestic laws, policies and strategies, but conclude that it is fair to say that in terms of international, regional, and domestic law, the protection of IDPs during displacement is the strongest part of the normative element of the emerging regime on internal displacement. In contrast – as also highlighted by the Independent IASC review – humanitarian action is marred by several weaknesses. For instance, problematic understandings of the humanitarian principle of independence tempt humanitarian actors to create parallel systems and substitute for authorities even when these are able and willing to act or where, such as in many disaster situations, the need to be perceived as non-partisan, is not an issue. In such cases, humanitarian action risks undermining the primary responsibility of governments to protect and fulfil the rights of their displaced citizens, thereby jeopardising one of the cornerstones of the emerging internal displacement regime.

Regarding *durable solutions*, the law is ambiguous and complex on whether IDPs have a right to a durable solution and what such right entails. Nevertheless, regional human rights mechanisms have clarified that several aspects of the IASC Framework on Durable Solutions are underpinned by human rights law. This is an area where the law has become much clearer since we drafted the Guiding Principles. As the High-Level Panel on Internal Displacement has shown and as I reiterate in Chapter 9, most IDPs will continue to end up in protracted internal displacement if we do not address institutional challenges such as strengthening governmental will and capacity, building sustainably partnerships with civil society and the private sector, making the UN system fit for purpose, and building predictable financing mechanisms.

I end the book with the conclusion that, despite some shortcomings, the existing norms are largely adequate, but the institutional and procedural pillars of the emerging legal regime remain weak at the international and, in many countries, at the national level. This means that policy efforts should focus on these aspects.

Let me conclude:

Is any of this new? Not really, I fear. However, the book offers a synthesis of the work I and many others have done over so many years. We know what needs to be done, but advocating

for it is still important and my book provides a multitude of insights and arguments for those doing this kind of advocacy.

The book is also an academic attempt to bring an issue that - unlike refugee law - is rather neglected by legal scholars to their attention. I hope, it encourages universities and other academic institutions to focus more on an area of research that is highly relevant and full of unresolved issues.

Finally, this book is my personal attempt to look back on important chapters of my life and bring together what has always fascinated and continues to fascinate me. Whether I have succeeded or not is for the reader to decide.