



# Conceptualising “Relocation” Across Displacement Contexts

*David James Cantor* | ORCID: 0000-0002-2364-7419

Professor and Director, Refugee Law Initiative, University of London,  
London, UK

*david.cantor@sas.ac.uk*

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## Abstract

Planned relocations often take place in displacement contexts. They ensue not only in settings of disasters and climate change, but also during armed conflicts and in development projects. But what is ‘relocation’? Is its meaning identical across these diverse contexts? And what is its relationship to displacement? Conceptual clarity on these points is needed if humanitarians are to engage with the critical question of how international law regulates such relocation processes. This article reviews scholarly, policy and legal sources on relocations across these varied contexts in order to (i) propose a universal concept of relocation and (ii) reflect on its relationship to concepts of displacement. Then, by considering the issue in relation to internal displacement frameworks, the article explains how international law governs relocations, regardless of the specific setting in which they occur. This has important implications in a world of diverse, and often entwined, displacement contexts.

## Keywords

relocation – resettlement – displacement – IDPs – disasters – conflict – development – international law

## 1 Introduction

Planned relocations have attracted considerable attention from policymakers and scholars in the disaster and climate change fields in the past decade. The global Sendai Framework for Disaster Risk Reduction 2015–2030 adopted by the United Nations ('UN') World Conference on Disaster Risk Reduction calls for the 'relocation, where possible, of human settlements in disaster risk-prone zones'.<sup>1</sup> Similarly, the 2010 Cancun Agreements call on States Parties to the global UN Framework Convention on Climate Change ('UNFCCC') to enhance adaptation to the effects of climate change, *inter alia*, by taking measures to boost understanding, coordination and cooperation with regard to 'climate change induced displacement, migration and *planned relocation*'.<sup>2</sup> The emphasis on relocation in these global frameworks is reflected in regional frameworks in these fields.<sup>3</sup> However, as scholars have observed, unpacking the concept of 'relocation' is 'a bit like unlocking Pandora's Box: a host of complex issues emerge'.<sup>4</sup> This has given rise to a growing parallel body of research on relocation in the contexts of disasters and climate change, emphasising the variety and complexity of relocation processes in practice.<sup>5</sup> A range of soft law

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- 1 Third UN World Conference on Disaster Risk Reduction, 'Sendai Framework for Disaster Risk Reduction 2015–2030' (18 March 2015) ('2015 Sendai Framework'), para 27(k).
  - 2 UNFCCC Conference of the Parties, 'The Cancun Agreements' (10–11 December 2010, Decision 1/CP.16) ('2010 Cancun Agreements'), para 14(f), emphasis added.
  - 3 In the Americas, for example, see Comisión Centroamericana de Ambiente y Desarrollo, 'Estrategia Regional de Cambio Climático, operational objective 1.1.5.3' (November 2010) <<http://bvssan.incap.int/local/cambio-climatico/Estrategia-Regional-Cambio-Climatico.pdf>>.
  - 4 Jane McAdam and Elizabeth Ferris, 'Planned Relocations in the Context of Climate Change: Unpacking the Legal and Conceptual Issues' (2015) 4(1) Cambridge Journal of International and Comparative Law 137, 165.
  - 5 See also, eg Elena Correa, *Preventive Resettlement of Populations at Risk of Disaster: Experiences from Latin America* (World Bank 2011); Erica Bower and Sanjula Weerasinghe, *Leaving Place, Restoring Home: Enhancing the Evidence Base on Planned Relocation Cases in the context of Hazards, Disasters, and Climate Change* (Kaldor Centre 2021); Daria Mokhnacheva, *Leaving Place, Restoring Home II* (International Organization for Migration, 2021); Elizabeth Ferris and Erica Bower, 'Planned Relocations: What We Know, Don't Know, and Need to Know' (Researching Internal Displacement, 15 March 2023) <[https://researchinginternaldisplacement.org/short\\_pieces/planned-relocations-what-we-know-dont-know-and-need-to-learn/](https://researchinginternaldisplacement.org/short_pieces/planned-relocations-what-we-know-dont-know-and-need-to-learn/)>.

instruments have also emerged to offer conceptual, policy and legal guidance on relocation in these contexts.<sup>6</sup>

This body of law, policy and scholarship frames ‘relocation’ as a process for addressing the risks of disasters and climate change. Certainly, disaster and climate relocations have a long history.<sup>7</sup> However, similar processes are observed in other contexts too. During armed conflict, relocations are used by warring parties as a way of controlling and/or protecting populations. This has often taken the form of mass ‘villagization’ projects, used by militaries as a counterinsurgency strategy in conflicts from Vietnam to Uganda.<sup>8</sup> Relocations in such contexts have been undertaken not only to quell local uprisings but also to promote rural development.<sup>9</sup> In more recent conflicts, like that currently unfolding in northern Mozambique, humanitarian agencies such as the office of the UN High Commissioner for Refugees (‘UNHCR’) have been asked by governments to assist in the mass relocations of people displaced by the conflict.<sup>10</sup> More generally, whole communities frequently find themselves

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- 6 Inter-Agency Standing Committee (‘IASC’), *Operational Guidelines on the Protection of Persons in Situations of Natural Disasters* (Brookings-Bern Project on Internal Displacement 2011) (‘IASC 2011 Disasters Guidelines’); United Nations High Commissioner for Refugees (‘UNHCR’), *Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation* (Brookings Institute and Georgetown University, 7 October 2015) (‘UNHCR 2015 Guidance’); Nansen Initiative, *Agenda for the Protection of Cross-border Displaced Persons in the context of Disasters and Climate Change, Vol I* (December 2015) (‘Nansen 2015 Protection Agenda’), paras 94–98; International Law Association, *Resolution 6: 2018, Annex – Sydney Declaration of Principles on the Protection of Persons Displaced in the context of Sea Level Rise* (2018) (‘ILA 2018 Declaration’).
- 7 See, eg Nicholas Pinter, ‘The Lost History of Managed Retreat and Community Relocation in the United States’ (2021) 9(1) *Elementa: Science of the Anthropocene* 00036.
- 8 See, eg Christian Gerlach, ‘Sustainable Violence: Mass Resettlement, Strategic Villages, and Militias in Anti-Guerrilla Warfare’ in Richard Bessel and Claudia Haake (eds), *Removing Peoples: Forced Removal in the Modern World* (OUP 2009); Ruth Mukwana and Katinka Ridderbos, ‘Uganda’s Response to Displacement: Contrasting Policy and Practice’ (2008) *Special Issue GP10 Forced Migration Review* 21.
- 9 Hannah Whittaker, ‘Forced Villagization during the Shifta Conflict in Kenya, c. 1963–8’ (2012) 45(3) *International Journal of African Historical Studies* 391–408; Bernardo Pinto da Cruz, ‘The Penal Origins of Colonial Model Villages: From Aborted Concentration Camps to Forced Resettlement in Angola (1930–1969)’ (2019) 47(2) *Journal of Imperial and Commonwealth History* 343–371.
- 10 Mozambique Protection Cluster, ‘Standard Operating Procedures: Go-and-See Visits in the context of IDP Relocations’ (Relief Web, August 2022) <<https://reliefweb.int/report/mozambique/standard-operating-procedures-go-and-see-visits-context-idp-relocations-august-2022>> (‘GPC Mozambique 2022 SOPs’). Other examples include UNHCR, *South Sudan: Bentiu IDP Sites A&B Relocation Due Diligence Checklist* (Relief Web, 30 May 2022) <<https://reliefweb.int/report/south-sudan/south-sudan-bentiu-idp-sites-ab-relocation-due-diligence-checklist>> (‘UNHCR 2022 South Sudan Relocation Checklist’).

resettled so that national or regional development projects can be carried out, such as the building of dams and other infrastructure construction.<sup>11</sup>

These scenarios suggest that 'relocation' is a concept that has salience not only in the disaster and climate change fields but in a much wider range of humanitarian and development contexts. This raises the question of whether, rather than treating it separately in different contexts, 'relocation' might be understood in a broader perspective. Indeed, is it possible to infer a general concept of relocation from scholarly and policy work across these contexts? If so, what might be its essential features? These questions have not yet been directly addressed by the scholarly literature or in the policy arena. Indeed, relatively few scholars have tried even to link work on relocations in one context to those in another.<sup>12</sup> Drawing on diverse international legal and policy sources and the dispersed academic literature, the present article advances the debate by arguing that a general concept of relocation with broadly consistent features can be elucidated across these varied contexts. This has implications not only for scholars but also for practitioners working on relocations from the legal, policy and operational standpoints across a range of fields.

One key implication of this approach is that it allows us to engage directly with a key concern that crosscuts the scholarship on relocations. Research in the disaster and climate change contexts shows that relocation often entails significant adverse impacts on the people being relocated. This is not a new observation. Since the 1960s, scholarship in the development context has noted that people subjected to relocation often experience disenfranchisement and exploitation.<sup>13</sup> Accordingly, from the 1990s, some of these scholars began to

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11 Christopher McDowell (ed), *Understanding Impoverishment: The Consequences of Development-induced Displacement* (Beghahn 1996); Art Hansen and Anthony Oliver-Smith (eds), *Involuntary Migration and Resettlement* (Westview Press 1982); Elizabeth Colson, *The Social Consequences of Resettlement* (Manchester University Press 1971); Robert Chambers, *Settlement Schemes in Tropical Africa* (Routledge 1969).

12 For exceptions that try to apply lessons on relocations from the development context to that of climate change, see Brooke Wilmsen and Michael Webber, 'What Can We Learn from the Practice of Development-Forced Displacement and Resettlement for Organised Resettlements in Response to Climate Change' (2015) 58 *Geoforum* 76–85; Annah E Piggott-McKellar et al, 'A Livelihood Analysis of Resettlement Outcomes: Lessons for Climate-induced Relocations' (2020) 49(9) *Ambio* 1474.

13 See, eg Correa (n 5); sources cited in footnotes 11 and 12.

frame these relocations as a form of displacement.<sup>14</sup> That contention rests largely on apparent similarities in the negative outcomes of these 'involuntary resettlements' in the development context and displacement in war. Both were seen to forcibly deprive people of their homes, land and assets, disrupt their livelihood strategies and social networks, and leave them among 'host populations often suspicious of them or directly hostile'.<sup>15</sup> At the same time, the planned and permanent character of development-related relocations, and their implementation through legal procedures, was said by some scholars to distinguish them from 'spontaneous', 'uncoordinated' and 'illegal' conflict displacement.<sup>16</sup> The present article advances these debates by showing how a general concept of relocation can shed new light on the relationship between relocations and displacement, not only in conflict and development project settings but in other contexts too.

A second key implication for practitioners and scholars is that it allows us to better understand how international law regulates relocation processes in these contexts. Indeed, it is notable that international guidance on planned relocation in the disaster and climate change contexts is generally ambiguous as to whether the proposed standards are binding as a matter of international law. As this article argues, this vagueness likely results from the fact that they define relocation as a process that can be either voluntary or involuntary, since the application of many pertinent international law rules will depend on whether we are dealing with voluntary movement or (forced) displacement. Yet relatively little research directly addresses how international law regulates relocation in the disaster and climate change context;<sup>17</sup> and none does so in relation to a general concept of relocation applicable across varied contexts, as proposed here. Having outlined the essential features of such a concept (section 2), this article will then show that international law governs relocations in relatively consistent and predictable ways (section 3).

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14 See, eg Michael M. Cernea, 'Internal Refugee Flows and Development-induced Population Displacement' (1990) 3(4) *Journal of Refugee Studies* 320; Michael Cernea and Christopher McDowell (eds), *Risks and Reconstruction: Experiences of Resettlers and Refugees* (World Bank 2000); Robert Muggah, 'A Tale of Two Solitudes: Comparing Conflict and Development-induced Internal Displacement and Involuntary Resettlement' (2003) 41(5) *International Migration* 5.

15 Cernea (n 14) 325.

16 Muggah (n 14) 15–16.

17 Exceptions include McAdam and Ferris (n 4); Bruce Burson et al, 'The Duty to Move People Out of Harm's Way in the Context of Climate Change and Disasters' (2018) 37 *Refugee Survey Quarterly* 379.

As most documented processes of relocation take place within countries,<sup>18</sup> the legal analysis focuses on that ‘internal’ scenario,<sup>19</sup> illustrating the particular relevance of the international frameworks on internal displacement.

## 2 Understanding ‘Relocation’ as a General Concept

This article argues for relocation as a concept of general application. Undoubtedly, the term features in international frameworks on disaster risk reduction and climate change adaptation.<sup>20</sup> But it is not limited to the disaster and climate change fields alone. It also appears in international frameworks on development projects, where it is sometimes called ‘resettlement’,<sup>21</sup> as well as in international institutional guidance on armed conflict.<sup>22</sup> The fact that scholarship addresses relocations in relation to each of these fields further supports the notion that the concept is not restricted only to one or other of them.<sup>23</sup> International frameworks relating to internally displaced persons (‘IDPs’) also refer to the concept in general terms,<sup>24</sup> as does the 1989

18 For example, see the cases in Bower and Weerasinghe, (n 5); Mokhnacheva, *Leaving Place, Restoring Home II* (n 5); Piggott-McKellar et al (n 12).

19 Thus, for example, the article does not consider relocations of refugees across borders through so-called ‘third country resettlement’ programmes. It also does not address the separate legal concept in international refugee law of an ‘internal flight alternative’, sometimes referred to as an ‘internal relocation alternative’.

20 2010 Cancun Agreements (n 2), para 14(f); 2015 Sendai Framework (n 1), para 27(k).

21 World Bank, ‘Operational Policy 4.12: Involuntary Resettlement’ (December 2001) (‘World Bank OP 4.12’); World Bank, ‘OP 4.12 – Annex A: Involuntary Resettlement Instruments’ (December 2001, revised February 2011) (‘World Bank OP 4.12 Annex’); OECD Development Assistance Committee, ‘Guidelines on Aid and Environment No. 3: Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects’ (Paris 1992) (‘OECD 1992 Guidelines’); Human Rights Council (‘HRC’), ‘Basic Principles and Guidelines on Development-based Evictions and Displacement, Annex 1 to the report of the Special Rapporteur on Adequate Housing’ (5 February 2007) (‘HRC 2007 Development Evictions Principles’) UN doc A/HRC/4/18.

22 GPC Mozambique 2022 SOPs (n 9); UNHCR 2022 South Sudan Relocation Checklist (n 9).

23 See footnotes 5, 7, 8, 10–14.

24 United Nations Commission on Human Rights (UNCHR), ‘Guiding Principles on Internal Displacement’, (11 February 1998) UN doc E/CN.4/1998/53/Add.2, Annex, Principle 7(3) (b) and (d). The Guiding Principles, including that provision, are given hard effect under international law through the two IDP treaties in Africa: African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (adopted 23 October 2009, entered into force 6 December 2012) 49 ILM 86 (‘Kampala Convention’), preamble; International Conference of the Great Lakes Region Protocol to the Pact on Security, Stability and Development in the Great Lakes Region on the Protection and Assistance

International Labour Organisation treaty relating to indigenous and tribal peoples.<sup>25</sup>

But what is 'relocation'? Unhelpfully, many of these international frameworks use the term without defining it further. Even so, certain features of relocation can be inferred from the way in which the term is used therein. Moreover, others international instruments do expressly define the concept;<sup>26</sup> and the bodies of scholarship on relocation in the development field and in disaster and climate change contexts also aid in its conceptualisation.<sup>27</sup> Certainly, there is not complete unanimity on its meaning among all these sources. But, even so, the broad outline of a general concept of relocation can be elucidated from across these varied contexts and diverse policy and scholarly sources.

### 2.1 *Defining Relocation*

The first distinguishing feature of relocation is that it is a *planned process* of moving people from one location to another, rather than a sudden unilateral decision to leave by the persons concerned. The 2010 Cancun Agreements refer specifically to 'planned' relocation;<sup>28</sup> and that adjective is added by most of the expert guidance on relocation in the context of disasters and climate change, which describe it also as a 'planned process'.<sup>29</sup> International guidance relating to development projects likewise makes clear its planned character,<sup>30</sup> as does some of the scholarship in that field.<sup>31</sup> In armed conflict, international humanitarian law ('IHL') does not use the terms 'relocation' or 'resettlement',

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to Internally Displaced Persons (adopted 30 November 2006, entered into force 21 June 2008) ('ICGLR Protocol'), art 6.

25 International Labour Organization Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries (adopted 27 June 1989, entered into force 5 September 1991) 1650 UNTS 383 ('ILO Convention 169'), art 16.

26 For instance, 'permanent relocation' is defined by IASC 2011 Disasters Guidance (n 6) 58; whilst 'planned relocation' is defined by UNHCR 2015 Guidance (n 6), para 2(a); Nansen 2015 Protection Agenda (n 6), para 21; ILA 2018 Declaration (n 6), definition (f); as well as Intergovernmental Panel on Climate Change, 'Special Report on the Ocean and Cryosphere in a Changing Climate' (2019), 694 ('IPCC 2019 Report').

27 See footnotes 5, 7, 8, 10–14.

28 2010 Cancun Agreements (n 2), para 14(f).

29 UNHCR 2015 Guidance (n 6), para 2(a); Nansen 2015 Protection Agenda (n 6), para 21; ILA 2018 Declaration (n 6), definition (f). Meanwhile, the IPCC 2019 Report (n 26), 694 refers to it as 'typically initiated, supervised and implemented from national to local level'.

30 World Bank OP 4.12 and Annex (n 21); OECD Guidelines (n 21); HRC 2007 Development Evictions Principles (n 21).

31 For example, Muggah, (n 14) 10.

although it does regulate certain planned or organised forms of movement.<sup>32</sup> But, in conflict settings, guidance from international agencies clearly treats the ‘relocations’ in which they are involved as planned processes.<sup>33</sup> Overall, this suggests that the use of ‘planned’ as an adjective in front of the term ‘relocation’ is superfluous, since its planned character is essential to the concept.

A second distinguishing feature of relocation is the *intention of permanent or long-term settlement at a specific location elsewhere*. International guidance in the disaster and climate change context usually speaks of relocated people being ‘settled in a new location’.<sup>34</sup> One source expressly equates relocation with ‘resettlement’ (or, in the particular context of sea level rise, ‘managed retreat’).<sup>35</sup> Indeed, in general, the concept of ‘relocation’ appears synonymous with everyday understandings of ‘resettlement’, as both imply an intention of permanent or long-term settlement in a new location. International guidance on development projects expressly refers to such planned permanent movement of people to a new location as ‘resettlement’ and often uses the two terms interchangeably,<sup>36</sup> as does scholarship in this area.<sup>37</sup> In conflict and disaster settings, this feature of relocations distinguishes them from ‘evacuations’, which involve planned movements of persons that are intended to be temporary (and which have an emergency character).<sup>38</sup> This is particularly evident in IHL, which treats ‘evacuations’ as a strictly temporary

32 For instance, ‘forced transfers’, ‘deportations’ and ‘evacuations’ are planned forms of movement specifically regulated by Geneva Convention relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 287 (Geneva Convention IV), art 49.

33 Mozambique 2022 Relocation SOPs (n 9); UNHCR 2022 South Sudan Relocation Checklist (n 9).

34 UNHCR 2015 Guidance (n 6), para 2(a); Nansen 2015 Protection Agenda (n 6), para 21; ILA 2018 Declaration (n 6), definition (f). The IASC 2011 Disasters Guidance (n 6), 58, reflects this concept too.

35 IPCC 2019 Report (n 26), 694.

36 OECD 1992 Guidelines (n 21); World Bank 2001 OP 4.12 and Annex (n 21).

37 Eg, Muggah (n 14), 16.

38 Humanitarian evacuations in conflict are ‘a temporary measure, and do not constitute a permanent solution under any scenario’ (UNHCR, ‘Humanitarian Evacuations in Violence and Armed Conflict’ (2018) *International Journal of Refugee Law* 30(2) 355, 360). For a similar approach in the disaster context, see Global Camp Coordination and Camp Management (CCCM) Cluster, ‘The MEND Guide: Comprehensive Guide for Planning Mass Evacuations in Natural Disasters’ (2014), 16–17 <<https://www.cccmcluster.org/resources/mend-guide>>. The planned and temporary nature of evacuations is noted in the literature, eg Philip Buckle, ‘Preparedness, Warning and Evacuation’ in Ben Wisner et al (eds), *Handbook of Hazards and Disaster Risk Reduction* (Taylor and Francis 2011).



measure.<sup>39</sup> Regional IDP treaty law in Africa likewise frames ‘relocations’ and ‘evacuations’ as separate concepts.<sup>40</sup> Crucially, the intention to settle the person(s) *in a specific location elsewhere* also serves to distinguish relocations from merely expulsive processes such as evictions, expulsions or removals.

A third defining feature of relocation is that it is *seen primarily as a solution to a specific problem*. In the disaster and climate change context, it is treated as a form of adaptation ‘undertaken to protect people from risks and impacts’.<sup>41</sup> However, in practice, relocations take place both in response to the past impacts of disasters and in anticipation of future harms, such that responsive and preventative relocations are often hard to distinguish.<sup>42</sup> Yet, even as a preventative measure, relocation tends to be framed as a solution to the risk of unplanned spontaneous displacement in the future.<sup>43</sup> In the development context, relocation is treated as a solution to a different kind of problem: the need for national, regional or local development. That necessity is a background assumption for most of the international instruments addressing development-related relocations.<sup>44</sup> As such, reacting to the established body of scholarship on the negative impacts on the people relocated,<sup>45</sup> these instruments instead set out mitigating measures where such resettlement is imposed involuntarily.<sup>46</sup> In contrast to disaster and climate change contexts, protection of the people being relocated by development projects is not the specific problem that relocation seeks to resolve. Rather, their forced relocation is justified primarily by development benefits to wider society in which they may or may not share. Of course, a similar rationale could equally apply in the disaster or climate change context where a government relocates people in order to better protect *other people* from disaster or climate impacts or risks.

On this point, international instruments on internal displacement confirm that – whether in the context of armed conflict, disasters or development projects – displacing people, including through *forced* relocations, can be a

39 Evacuated persons must be ‘transferred back to their homes as soon as hostilities in the area in question have ceased’ (Geneva Convention IV, art 49 para 2).

40 Kampala Convention, art 1(1).

41 UNHCR 2015 Guidance (n 6), para 2(a). Similar formulations are advanced by other institutional and expert guidance in this field (Nansen 2015 Protection Agenda (n 6), para 21; ILA 2018 Declaration (n 6), definition (f)).

42 Bower and Weerasinghe (n 5).

43 Nansen 2015 Protection Agenda (n 6), para 96.

44 World Bank OP 4.12 and Annex (n 21); OECD 1992 Guidelines (n 21); HRC 2007 Development Evictions Principles (n 21); Kampala Convention, art x. It is expressly stated in ICGLR Protocol, art 5(1).

45 See footnotes 5, 11, 14.

46 See section 3.2 below.

(lawful) solution to distinct kinds of problems in each context.<sup>47</sup> Yet these IDP instruments also frame displacement as the primary problem to be addressed by their rules. As a corollary, they recognise that the *voluntary* relocation of IDPs can be a solution to this specific problem of displacement. The Kampala Convention affirms ‘voluntary return, local integration or *relocation*’ as the three ‘lasting solutions’ to internal displacement.<sup>48</sup> By contrast, the third of these ‘durable solutions’ are described by global policy as ‘settlement elsewhere’<sup>49</sup> or ‘resettlement’ (although the latter term apparently covers settlement by the IDP in the place of refuge or some third location).<sup>50</sup> This diverse terminology is not helpful – indeed, ‘settlement elsewhere’ probably best captures the overall idea, i.e. that solutions to internal displacement require an IDP to settle and reintegrate in a specific location, whether at the site of return, refuge or some third location.<sup>51</sup> This third solution would thus encompass ‘relocation’ as we define it here, but also other forms of ‘settlement elsewhere’ (for example, those that are not planned processes). The key point here, though, is that the IDP regime recognises that relocation can serve also as a solution to the problem of displacement.

Finally, relocations are often *carried out or facilitated by a State or some other authority*. This is sometimes treated as a fourth definitional element. In the disaster and climate change fields, for example, the 2015 UNHCR guidance states that ‘Planned Relocation is carried out under the authority of the State.’<sup>52</sup> Guidance in the development context likewise assumes State involvement.<sup>53</sup> The African regional IDP treaties also both assume relocations are carried out by the State.<sup>54</sup> However, for definitional purposes, there are questions about whether it is a strictly required element. The reason is that it risks confusing two quite separate questions: what is relocation, and who can lawfully impose *forced* relocations? The former does not depend on the latter.<sup>55</sup> Moreover,

47 See section 3.1 below.

48 Kampala Convention, art XI (emphasis added).

49 Inter-Agency Standing Committee (‘IASC’), ‘Framework on Durable Solutions for Internally Displaced Persons’ (Project on Internal Displacement 2010) A-1.

50 Guiding Principles (n 24), Principle 28(1).

51 IASC (n 49).

52 UNHCR 2015 Guidance (n 6), para 2(a). An identical formulation appears in ILA 2018 Declaration (n 6), definition (f), and the IPCC 2019 Report (n 26), 694 refers to planned relocation as ‘typically initiated, supervised and implemented from national to local level’.

53 OECD 1992 Guidelines (n 21); World Bank 2001 OP 4.12 and Annex. This is implicit also in the scholarship characterising resettlement in the development context as usually carried out through legal procedures (eg, Muggah (n 14), 15).

54 Kampala Convention, arts X and XI; ICGLR Protocol, art 5.

55 On the latter, see section 3.1 below.

whether the involvement of any kind of authority at all is needed in order to turn a process into 'relocation' is itself debateable. In principle, one could speak of a community or person relocating without the involvement of any kind of authority. However, even if not strictly a necessary definitional element, most of the legal and policy issues involved in debates over relocation turn on the relationship of a State or other authority to the process. As such, retaining this element can be helpful for distinguishing these processes from just any decision to move long-term to another location (also known as 'relocation' in common parlance).

## 2.2 *Limits of the Definition*

Other features proposed by international policy or by scholars appear less plausible as necessary elements of 'relocation'. For example, it is difficult to uphold the view that relocations should be defined by reference to the relocated people being 'provided with the conditions for rebuilding their lives', as suggested by international guidance in the disaster and climate change fields.<sup>56</sup> A similar idea is implicit in the suggestion in the climate change scholarship that 'relocation' refers only to 'the physical process of moving people' whereas 'resettlement' connotes 'also the process of restoring (and, where possible, improving) socio-economic conditions'.<sup>57</sup> This particular distinction is awkward, since the two terms are generally synonymous. Moreover, the idea that relocations (or resettlements) should be defined by reference to the provision of conditions by the State or other authority facilitating the process is equally problematic. It again confuses two questions, namely what is relocation and what obligations does a State or other authority possess in relation to such processes? The former is a definitional question. The latter is a consequential question about the extent of any ensuing legal obligations and their observance in practice,<sup>58</sup> which cannot serve to define the original concept itself. In practice, this approach would also make the identification of relocation processes dependent on an assessment in the particular instance of whether or not the State had in fact complied with those obligations, a question that is susceptible only to *post hoc* evaluation. For similar reasons, relocations cannot be defined by the legality of the procedures through which they are implemented,<sup>59</sup> as some scholars have suggested.<sup>60</sup>

56 UNHCR 2015 Guidance (n 6), para 2(a); Nansen 2015 Protection Agenda (n 6), para 21; ILA 2018 Declaration (n 6), definition (f).

57 McAdam and Ferris (n 4) 140–141.

58 See section 3 below.

59 See also section 3.1 below.

60 Muggah (n 14), 15–16.

Moreover, as another example of a debated feature, the UNHCR 2015 Guidance defines relocations in the context of disasters and climate change as taking place only ‘within national borders’.<sup>61</sup> By contrast, other international guidance disagrees, affirming instead that the new location can be ‘within their own *or another State*’;<sup>62</sup> or that, whilst it ‘usually takes place within the country’, relocation ‘may, in very exceptional cases, also occur across State borders’.<sup>63</sup> Outside the disaster context, it is clear that relocations can take place across State borders, as happens with voluntary relocations in the form of ‘third country resettlements’ for refugees. Conceptually, then, there is no good reason for supposing that relocations can take place only within countries. It is simply that the legal and practical complexities of relocation across State borders mean that these kinds of relocation are much less common than those that take place within a country.<sup>64</sup> As such, it seems unhelpful to limit the concept of relocation to processes that take place only within national borders.. However, given the limited scope of the article and the relative rarity and legal complexity of cross-border relocations, this paper will only address the international law aspects of relocations within a single country.

Finally, there is the issue of whether relocations are ‘voluntary’ or ‘forced’. Here, the sources take differing approaches. International guidance in the disaster and climate contexts treats relocation as a process that can be either voluntary or involuntary.<sup>65</sup> By contrast, the international frameworks and academic scholarship on relocations in the development context address only resettlement that is ‘involuntary’.<sup>66</sup> The same, as noted above, is true of international frameworks and scholarship on internal displacement; they primarily address displacement, and thus relocations, of a ‘forced’ character. For instance, the Guiding Principles describe IDPs as persons ‘forced or obliged to flee or to leave their homes or places of habitual residence’ but ‘who have not crossed an internationally recognized State border’;<sup>67</sup> and address relocations in particular as a form of ‘decision requiring the displacement

61 UNHCR 2015 Guidance (n 6), para 2(a).

62 ILA 2018 Declaration (n 6), definition (f).

63 Nansen 2015 Protection Agenda (n 6), para 21.

64 McAdam and Ferris (n 4), 162–163.

65 This is either stated explicitly (e.g. Nansen 2015 Protection Agenda (n 6), para 21; ILA 2018 Declaration (n 6), definition (f); IASC 2011 Disasters Guidance (n 6), 58) or left implicit when the definition does not specify whether the movement must be forced or not (UNHCR 2015 Guidance (n 6), para 2(a); IPCC 2019 Report (n 26), 694).

66 OECD 1992 Guidelines (n 21); World Bank 2001 OP 4.12 and Annex (n 21); see also footnotes 5, 11, 14.

67 Guiding Principles (n 24), Introductory para 2.

of persons'.<sup>68</sup> This UN definition is reflected in the African IDP treaties: the Kampala Convention also defines 'internal displacement' as including any 'involuntary or forced movement, evacuation or *relocation*';<sup>69</sup> whilst the International Conference on the Great Lakes Region Protocol treats relocation as a form of 'development-induced displacement'.<sup>70</sup> In armed conflict, IHL likewise regulates only involuntary movement, such as forced transfers and displacements.<sup>71</sup>

Clearly, the fact that some sources address only *forced* relocations does not mean that relocations cannot also take place voluntarily. It is not a definitional element. However, the fact that *forced* relocations are subject to such extensive international regulation as a form of displacement provokes two observations. Firstly, the scope of international legal rules applicable to relocations appears likely to depend on whether any specific instance of relocation is characterised as 'forced' or not. Indeed, as the remainder of this article argues, the voluntariness of the relocation is the primary factor determining the scope of the applicable rules, at least for relocations that take place within a country. Secondly, this implies the need for a firmer understanding of 'displacement' and the 'forced' nature of the movement or dislocation which that concept implies. Yet scholars have rightly raised questions about whether any instance of movement can definitively be labelled as voluntary or involuntary in practice, given the multiplicity of proximate and more distant intersecting causes that shape decisions to leave one's home behind.<sup>72</sup> As a result, some suggest that voluntary and involuntary forms of movement represent merely poles on a spectrum of mobility decision-making rather than a sharply distinguished duality.<sup>73</sup> Such debate illustrates the challenges of attempting to infer motives about human behaviour from complex social situations.

68 Guiding Principles (n 24), Principle 7.

69 Kampala Convention, art I(1).

70 ICGLR Protocol, art 5.

71 Geneva Convention IV, art 49; Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609 (Protocol II), art 17.

72 See, for example, David Turton, 'Conceptualising Forced Migration' (2003) RSC Working Paper 12 <<https://www.rsc.ox.ac.uk/files/files-1/wp12-conceptualising-forced-migration-2003.pdf>>; Roger Zetter, 'Conceptualising Forced Migration: Praxis, Scholarship and Empirics', in Alice Bloch and Giorgia Dona (eds), *Forced Migration: Current Issues and Debates* (Routledge 2018); Oliver Bakewell, 'Unsettling the Boundaries between Forced and Voluntary Migration', in Emma Carmel et al (eds), *Handbook on the Governance and Politics of Migration* (Elgar 2021).

73 Oliver-Smith and Hansen (n 11).

Evidently the distinction between the voluntary and forced movement of people remains central to analytical efforts in this field and to determining the scope of international legal rules that govern different forms of internal movement. But then, how do we decide whether any instance of movement is forced or not? Crucially, it seems that the 'forced' character of movement can be inferred from one or more of several different points of reference. Firstly, it is often deduced from risks or dangers inherent in the contexts that serve as the drivers or triggers for a decision to flee (conflicts, disasters etc.). They are sometimes termed 'push factors' to distinguish the resulting movement from that undertaken on a presumably voluntary basis due to the attraction of 'pull factors' elsewhere. Secondly, the 'forced' element may also be inferred from the nature of the process itself; for example, where a person is physically controlled and transferred by some authority (such as the State) or given an order to displace by such an authority. In the latter instance, although the person is not physically moved by the pertinent authority, the imperative to move reflects the potential for that entity to exercise power to enforce its will. Thirdly, displacement might also be seen as 'forced' when risks or dangers that have appeared after a person voluntarily left their home mean that they can no longer return there. These 'forced' scenarios are important to bear in mind as we move to consider how international law regulates relocation processes.

### 3 Regulating Relocation under International Law

This article has advanced a general concept of 'relocation', defined as a planned process of moving persons to a new location with the intention of permanent or long-term settlement, ostensibly as a solution to some specific problem. In practice, that process is also normally carried out or facilitated by a State or other authority. How, though, does international law regulate such processes of relocation? As a starting point, we have seen that there are many international frameworks that purport to address relocation, but that each raises certain difficult legal questions. Instruments in the disaster and climate change contexts, for example, tend to be ambiguous as to whether their rules reflect binding international law, with most couched in exhortatory ('should') rather than mandatory ('shall') language.<sup>74</sup> Frameworks in the development context

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74 Except when restating general obligations or addressing forced relocation – see, for example, UNHCR 2015 Guidance (n 6), paras 6, 7 and 17. By contrast, although the ILA 2018 Declaration purports to be 'based on and derived from relevant international legal provisions, principles, and frameworks' ('purpose'), its rendering of the rules on planned relocation do not always accurately reflect the law (see below).

present their rules as mandatory, but address only 'involuntary' relocations and mostly take a soft law form.<sup>75</sup> IDP instruments also primarily address forced relocations, but it is not clear that all IDP rules are binding. For example, the two African IDP treaties do create standalone binding international law rules. By contrast, the Guiding Principles are soft law. However, they claim their standards reflect hard rules of international human rights law ('IHRL') or IHL.<sup>76</sup> Moreover, those standards are becoming ever harder due to incorporation by the African IDP treaties<sup>77</sup> and the tendency of treaty bodies to use them to interpret human rights treaty law in IDP situations.<sup>78</sup>

This patchwork of diverse sources, approaches and rules complicates the issue of whether a single set of international law standards regulate relocation across the different contexts. But, if a general concept of relocation can be identified analytically, then surely a common understanding of how international law governs such processes in practice can also be developed? As a framework of rules that applies regardless of the specific context, IHRL certainly offers a crucial reference point in this enquiry. However, it will be seen that international law otherwise has relatively little to say about voluntary relocations. By contrast, a range of rules and guarantees are articulated for involuntary relocations, as one might expect given the documented frequently detrimental impacts that accompany such displacements in practice. For forced relocations within a country, the international frameworks relevant to internal displacement are another crucial point of reference for elucidating the essential rules applicable to (forced) relocations. Even so, complex questions arise about how this disparate body of rules governs specific aspects of relocation processes.

### 3.1 *When is Relocation Permitted (or Required)*

Relocation, as defined by this article, can be either voluntary or involuntary. This distinction, irrelevant to whether a process is defined as 'relocation', takes on crucial importance for understanding how relocations are legally regulated by international law. This starts with the foundational issue of whether relocations are permitted and on what grounds. For voluntary relocations, the matter is legally straightforward. People can voluntarily relocate on any

75 OECD 1992 Guidelines (n 21); World Bank 2001 OP 4.12 and Annex (n 21); HRC 2007 Development Evictions Principles (n 21). By contrast, ILO Convention 169 is a treaty.

76 Walter Kälin, *Guiding Principles on Internal Displacement: Annotations* (rev edn, American Society of International Law 2008).

77 Kampala Convention, preamble; ICGLR Protocol, art 6.

78 David Cantor, 'The IDP in International Law: Developments, Debates, Prospects' (2018) 30(2) *International Journal of Refugee Law* 191.

grounds, based on the international human rights to freedom of movement and choice of residence.<sup>79</sup> It is simply an exercise of the freedoms inherent in those rights. Thus, voluntary relocation can take place on any grounds, with the reasons for deciding to relocate being immaterial to its lawfulness. Here, the State's only legal interest is to ensure that the exercise of these rights through voluntary relocation is balanced against any legitimate restrictions permitted by treaty law, such as infringing the rights of others.<sup>80</sup> Only on such grounds could a State (or potentially a non-State authority in armed conflict acting under IHL) forbid a specific instance of voluntary relocation; and then only for so long as the limitation remained necessary.

Involuntary relocation, conversely, can be imposed only where necessary. Necessity is the mother of legality. For instance, ILO Convention 169 permits relocation when 'necessary as an exceptional measure'.<sup>81</sup> International institutional tools on development-led forced resettlement take a similar approach.<sup>82</sup> Other international frameworks specify particular grounds against which this necessity must be made out. For instance, guidance in the disaster and climate change fields tends to march in line with the 2015 UNHCR Guidance, which states that relocations are undertaken 'for the benefit of Relocated Persons'<sup>83</sup> and 'to protect [them] from risks and impacts'.<sup>84</sup> By contrast, human rights-based guidance on development relocations states they must be 'undertaken solely for the purpose of promoting the general welfare'.<sup>85</sup> Such attempts to specify the reasons for which relocations can be lawfully imposed in different contexts are not inherently objectionable. But we must be careful not to treat them as exclusive. For instance, in the development context, can people never be relocated for their own safety as opposed to national development goals; and, in the climate change context,

79 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 ('ICCPR') art 12(1). For regional instruments, see American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 36 Organization of American States Treaty Series 1 ('ACHR'), art 22(1); Protocol No 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 16 September 1963, entered into force 2 May 1968) 46 ETS 1 ('ECHR4'), art 2(1); African Charter on Human and Peoples' Rights (adopted 17 June 1981, entered into force 21 October 1986) 21 ILM 58 ('ACHPR') art 12(1); Arab Charter on Human Rights (adopted 23 May 2004, entered into force 15 March 2008), art 26(1).

80 ICCPR, art 12(3). For regional treaties, see ACHR, art 22(3); ECHR4, art 2(3)–(4); ACHPR, art 12(2); ArCHR, art 26(1).

81 ILO Convention 169, art 16.

82 OECD 1992 Guidelines (n 21); World Bank 2001 OP 4.12 and Annex (n 21).

83 UNHCR 2015 Guidance (n 6), para 5.

84 Ibid, para 2(a). See, likewise, ILA 2018 Declaration (n 6), definition (f) and Principle 6(2).

85 HRC 2007 Development Evictions Principles (n 21), para 21.



can relocations never take place for the benefit of society or other specific individuals but only for the benefit of the people being relocated?

This risk of confusion is arguably heightened by international instruments on IDPs. The IDP regime does not directly address the grounds on which relocation can be imposed. But it does define the legality of any displacement, including any forced relocation, according to whether or not it is 'arbitrary'. This concept of 'arbitrariness' is substantiated by two tests. The first asks whether, regardless of the legality of any purported grounds, other general limiting factors are present. On the one hand, these are concerned with situations where displacement is done with an intention to harm the people involved. Thus, displacement used as a collective punishment will always be 'arbitrary'.<sup>86</sup> In the Kampala Convention, displacement is also 'arbitrary' where 'intentionally used as a method of warfare', caused by 'generalized violence', 'as a result of harmful practices',<sup>87</sup> or caused by any 'violations of human rights' or, in armed conflicts, of IHL.<sup>88</sup> On the other hand, displacement will be 'arbitrary' where it is based on practices altering the ethnic, religious or racial composition of the affected population.<sup>89</sup> Similarly, the injunction to apply the Guiding Principles 'without discrimination of any kind' suggests that displacement will not be lawful if it discriminates in relation to characteristics protected in IHRL.<sup>90</sup> In essence, this test reflects wider absolute prohibitions imposed by international law.

It is the second test for 'arbitrariness' in IDP instruments that creates the potential for confusion. At base, this is a 'necessity' test that weighs up the interests of the people to be displaced against some wider interest of the entity that wishes to displace them. The Guiding Principles, for instance, set out an illustrative list of 'arbitrary' grounds for displacement in different contexts: in armed conflict, 'unless the security of the civilians involved or imperative military reasons so demand'; in disasters, 'unless the safety and health of those affected requires their evacuation'; and in 'large-scale development projects', which are not 'justified by compelling and overriding public interests'.<sup>91</sup> These factors are partly reflected in the list of arbitrary grounds for displacement in

86 Guiding Principles (n 24), Principle 6(2)(e); Kampala Convention, art IV(4)(g).

87 Kampala Convention, arts IV(4)(c), (d) and (e).

88 Kampala Convention, arts IV(4)(d) and (c).

89 Guiding Principles (n 24), Principle 6(2)(a); Kampala Convention, art IV(4)(a).

90 Guiding Principles (n 24), Principle 4.

91 Guiding Principles (n 24), Principle 6(2)(b), (d) and (e) respectively. These are reflected in the ICGLR Protocol, which also reiterates the need for 'compelling and overriding public interest and development' for displacement due to 'large-scale development projects' (art 5(1)).

the Kampala Convention.<sup>92</sup> This approach illustrates how ‘necessity’ can be variously interpreted in distinct displacement contexts, rightly recognising that the imperative grounds for relocation in one context need not be identical to those in another. The problem, though, is that these provisions are drafted in such a way as to imply that all displacement in these contexts is unlawful, save for the limited exception set out for each one. Again, this might wrongly give the impression that displacement or forced relocation can only lawfully be imposed in, for example, situations of armed conflict except on the narrow grounds specified in relation to that context. However, this misrepresents the stance in international humanitarian law, where the prohibition on displacements on those grounds expressly relates only to that carried out ‘for reasons related to the conflict’. During conflict, displacements or relocations for reasons unrelated to the conflict can still be carried out lawfully in pursuance of other legitimate objectives.

In short, the grounds set out for each context are illustrative rather than exhaustive. This is confirmed by the fact that such considerations of ‘necessity’ must be determined primarily by reference to the underlying IHRL in conformity with which provisions of these instruments will usually need to be interpreted.<sup>93</sup> That is certainly the case for soft law and guidance instruments that purport to reflect existing rules of international law such as the Guiding Principles. Yet even the African IDP treaties need to be interpreted so that they do not directly conflict with wider pre-existing standards of IHRL. The key issue is that these existing IHRL rules allow a State to interfere on a much broader range of grounds with the non-absolute rights that protect a person from being displaced involuntarily (or forcibly relocated). For instance, under the International Covenant on Civil and Political Rights (‘ICCPR’), States can interfere with the rights to freedom of movement and choice of residence wherever necessary ‘to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others.’<sup>94</sup> Thus, the underlying IHRL shows that the grounds on which a State may lawfully assert a legitimate interest in forcibly relocating people are quite expansive and not restricted only to those narrow reasons listed in either relocation or IDP instruments.

92 Kampala Convention, art IV(4)(b) and (f).

93 The exceptions are those situations in which displacement is for reasons related to the conflict, in which applicable IHL rules governing displacements will usually prevail (e.g. Protocol II, art 17, for non-international armed conflicts).

94 ICCPR, art 12(3). Compare with similar provisions in AHCR, art 22(3); ECHRP4, art 2(3)–(4); ACHPR, art 12(2); ArCHR, art 26(1).

The breadth of these grounds in the underlying IHRL means that the legality of forced relocation decisions will usually turn not on the acceptability of the objectives pursued (except where clearly contrary to wider international law prohibitions, as per the limitations test),<sup>95</sup> but on the necessity or proportionality of the measure in relation to those specified ends. Certain empirical features of relocations are likely to be highly pertinent to that assessment. For instance, given that it is defined as a long-term or permanent resettlement process, relocation will require greater justification of its necessity than would be the case for avowedly temporary displacements, such as evacuations. Conversely, where relocation is directly for the benefit of the people being relocated, then its proportionality may be easier to justify than where other interests benefit to their detriment. Given the planned nature of the measure, the adequacy of the arranged transfer and resettlement conditions, including any compensation,<sup>96</sup> is also highly pertinent to proportionality. Where the people to be relocated are not the ones initiating the process, then the degree of consent evidenced through consultations will be relevant too.<sup>97</sup> The degree of risk involved in staying put will also be a factor relevant to the necessity of relocation.

The same cautionary note applies to the widespread idea of relocation as a measure of last resort. Disaster and climate change guidance, for example, see it as 'a measure of last resort, after other risk reduction and/or adaptation options have been considered ... and reasonably exhausted'.<sup>98</sup> This approach is equally reflected in development instruments.<sup>99</sup> The IDP regime frames the decision to displace people in similar terms. For instance, the Guiding Principles stipulate that 'all feasible alternatives are explored in order to avoid displacement altogether [and] [w]here no alternatives exist, all measures shall be taken to minimize displacement'.<sup>100</sup> The African IDP treaties expressly reiterate this notion for development-induced displacement.<sup>101</sup> Yet, whilst the

95 This does not include only the general limitations identified in IDP instruments. In conflict contexts, where the displacement is ordered 'for reasons related to the conflict', then the only justifiable objectives will be 'the security of the civilians involved or imperative military reasons' (Protocol II, art 17(1)).

96 See the guarantees applicable to relocation in section 3.2 below.

97 For a discussion of the requirement for consultation, see section 3.2 below.

98 UNHCR 2015 Guidance (n 6), para 10; Nansen 2015 Protection Agenda (n 6), para 94; ILA 2018 Declaration (n 6), Principle 6(2).

99 See, for example, World Bank 2001 OP 4.12 Annex (n 21), para 2(a); HRC 2007 Development Evictions Principles (n 21), para 38. The OECD 1992 Guidelines (n 21), 6 require only that the 'non-action' alternative 'should be seriously considered'.

100 Guiding Principles (n 24), Principle 7(1).

101 In order to avoid unnecessary displacement due to development, the ICGLR Protocol requires that 'all feasible alternatives of development' be explored (art 5(2)), whilst the Kampala Convention requires merely that 'feasible alternatives' be explored (art X(2)).

idea of displacement as ‘last resort’ has significant merit as a good practice, the absolute character of this rule is difficult to locate under international law. Pragmatically, for emergency displacements or evacuations, it may not be a reasonable expectation when the need to displace people is urgent. Even for permanent relocations, it is difficult to infer such an absolute rule from underlying human rights law. Rather, the issue of other alternatives is likely to be legally relevant as simply one further (important) factor to be taken into account when assessing, in the round, the necessity of forced relocation. For the same reason, the claim in the Guiding Principles that displacement shall ‘last no longer than required by the circumstances’ does not prevent permanent relocation from being imposed where strictly needed.<sup>102</sup>

Finally, there is the question of who can lawfully impose forced relocations? IDP instruments shed light on this issue. The Guiding Principles rightly state that ‘decision[s] requiring displacement’ can be taken by a range of ‘authorities’, i.e. entities other than just a State.<sup>103</sup> This acknowledges, for example, that IHL permits non-State parties to a non-international conflict lawfully to displace civilians on certain grounds.<sup>104</sup> However, the Guiding Principles impose additional safeguards where such decisions are taken ‘in situations other than during the emergency stages of armed conflicts and disasters’. Referring to such measures expressly as ‘relocations’,<sup>105</sup> The Guiding Principles affirm that they can be ordered only by ‘a State authority empowered by law’.<sup>106</sup> This makes sense since, in practice, many of the ensuing guarantees could be fully implemented only by a State (or a State-like entity).<sup>107</sup> Thus, whilst the Guiding Principles do not define ‘relocation’ as requiring State involvement, they do suggest that State authority is likely to be a precondition for lawfully carrying out forcible relocations. It is as a consequence that, whilst a range of authorities may lawfully force temporary evacuations due to imminent danger, only the sovereign territorial State is usually accorded the lawful power to forcibly relocate people away from their homes on what is intended to be a permanent basis.<sup>108</sup>

Thus, across the various empirical contexts, it seems possible to arrive at a unified understanding of when a State is permitted by international law

102 Guiding Principles (n 24), Principle 6(3).

103 Guiding Principles (n 24), Principle 7(1).

104 Protocol II, art 17(1).

105 Guiding Principles (n 24), Principle 7(3).

106 Guiding Principles (n 24), Principle 7(3)(a).

107 See section 3.2 below.

108 Geneva Convention IV, art 49 suggests that this power is not, for example, exercisable generally by occupying States.

to relocate people. The grounds espoused by instruments on relocation and those on displacement largely align; and the IDP instruments usefully identify limitations to those grounds, rooted in wider prohibitions of international law. However, both sets of instruments give only a shorthand explanation of the grounds for forced relocation that does not wholly reflect underlying rules of IHRL. In fact, IHRL permits a State to impose relocations for the benefit of the people to be relocated or for a range of other objectives. Indeed, the real legal issue is whether the measure can be justified as necessary in relation to the specified objective. Here, the particularities of relocation as a concept have allowed us to draw certain inferences about their implications for the proportionality of such measures. Similar issues would likewise arise in using derogation clauses in human rights treaties as a legal basis to impose permanent forced relocation or forever forbid voluntary return.<sup>109</sup> This suggests that, even for forced relocations that constitute a form of internal displacement, the existing IDP instruments will not provide all the answers. Rather, in some cases, it will be necessary to give closer attention to underlying rules of hard international law.

This applies equally to the distinct question of whether the authorities have an obligation to relocate people in particular scenarios. On this point, both the instruments on relocations and those on IDPs are vague. Only the 2015 UNHCR Guidance notes that, ‘[i]n some cases,’ State obligations under human rights law and ‘to prevent and reduce disaster risk and exposure to it, and to address the negative impacts of environmental change ... *may* require Planned Relocation’.<sup>110</sup> It also affirms that at-risk people ‘should have the right to request Planned Relocation’,<sup>111</sup> but offers little insight as to when a State is legally obliged to act in response to such requests for relocation. Here too, reference to underlying international legal standards is needed. Under IHRL, States do have an obligation to take reasonable steps to protect people in their jurisdiction from foreseeable third party violations of their human rights.<sup>112</sup> Similarly, parties to an armed conflict fall under a specific set of IHL duties to take reasonable measures to reduce the exposure of civilians to risks associated

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109 ICCPR, art 4; ACHR, art 27; ECHR, art 15; ArCHR, art 4. There are relatively few situations in which the specific exigencies of a public emergency posing a sufficient threat to the ‘life of the nation’ might necessarily require the suspension of obligations to allow the permanent, as opposed to temporary, displacement of persons from their homes. The permanence of the measures means that such issues are to be resolved principally by permissible restrictions of the rights themselves.

110 UNHCR 2015 Guidance (n 6), para 6 (emphasis added).

111 Ibid, para 9.

112 See, for example, UN Human Rights Committee, General Comment no. 31/80 (26 May 2004) CCPR/C/21/Rev.1/Add.13.

with the conduct of hostilities.<sup>113</sup> Clearly, neither body of law requires that such protective measures take the form of relocation. Even so, where this is the most appropriate response to the prevailing risks, then an obligation to consider and even to move people away may be inferred.<sup>114</sup> However, whether the measure should take the form of permanent relocation or temporary evacuation will depend intrinsically on the nature of the risks and the nature of the entities considering such measures.

### 3.2 *What Guarantees Apply to Relocation Processes?*

The distinction between voluntary and involuntary movement matters also for the international legal protections that apply in relocation processes. International guidance on relocations reiterates the general principle that human rights and similar legal guarantees must be respected;<sup>115</sup> and IDP instruments likewise require respect for essential underlying legal guarantees in IHRL and IHL. But many of those standards are applicable not only in the context of forced displacements, but also to voluntary movements. The Guiding Principles, for instance, stipulate that displacement ‘shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected’.<sup>116</sup> This legal guarantee is derived from IHRL (and IHL) and must be observed not only in forced relocations, but also more generally, including where a State or other authority is involved in facilitating voluntary relocations.

The general character of these guarantees derives primarily from the human dignity of the people involved. However, international law has articulated a set of additional guarantees that arise in situations of displacement specifically as a result of the forced character of that process. Where that movement is within a country, these standards find expression principally within the international instruments on internal displacement. They take the form of additional positive obligations where a State or other authority carries out, orders or facilitates displacement. These guarantees derive directly from the forced character of such displacement and, as such, the reasons behind the displacement and even its legality are irrelevant to the emergence of these obligations. The

<sup>113</sup> See Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 (Protocol I), arts 57 and 58; Pnina Sharvit Baruch and Noam Neuman, ‘Warning Civilians Prior to Attack under International Law: Theory and Practice’, in Raul A. Pedrozo and Daria P. Wollschlaeger (eds), *International Law and the Changing Character of War* (Naval War College Press 2011) 359–412.

<sup>114</sup> For relocations in the climate context, see Burson et al (n 17).

<sup>115</sup> UNHCR 2015 Guidance (n 6), paras 6 and 17–18; World Bank 2001 OP 4.12 Annex (n 6), para 7(c)–(d); HRC 2007 Development Evictions Principles (n 6), para 21.

<sup>116</sup> Guiding Principles (n 24), Principle 8.

Guiding Principles, for example, stipulate that the extra safeguards relating to ‘decision[s] requiring the displacement of persons’ apply regardless of ‘whether or not displacement is permissible.’<sup>117</sup> Plainly, that must be correct, since otherwise these protective obligations could be circumvented merely by carrying out the displacement unlawfully. Thus, in general, IDP protection standards serve as a principal source of legal guarantees in relation to forced relocations carried out or facilitated by a State or other authority.

What are these additional safeguards? Critically, where a decision requiring displacement is taken, the Guiding Principles require the State (or, for temporary displacements, other authority) to ensure ‘to the greatest practicable extent’ that ‘proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.’<sup>118</sup> This duty clearly reflects a specific responsibility that the State has assumed through the act of forcibly moving people. Given the non-emergency nature of relocation, one would expect this duty to be fully implemented in practice. More generally, for any displacements, the Guiding Principles also affirm an unqualified duty to ensure IDPs have ‘[a]t a minimum’ safe access to food and water, basic shelter and housing, clothing and essential medical services and sanitation.<sup>119</sup> Similarly unqualified duties are codified in the African IDP treaties.<sup>120</sup> Such positive obligations reflect a specific responsibility that falls upon the State for failing to prevent the involuntary uprooting of people. As they result from the involuntary character of displacement, they will apply equally to forced relocations.

IDP instruments also articulate a broad set of procedural guarantees for any displacements ordered or implemented ‘in situations other than during the

<sup>117</sup> Kälin (n 76), 37.

<sup>118</sup> Guiding Principles (n 24), Principle 7(2). In the ICGLR Protocol, which apply these provisions of the Guiding Principles on a general basis, a similarly qualified duty to fulfil these guarantees in the ‘adequate and habitable sites of relocation’ that States must provide for displaced persons is reiterated again in relation to displacement due to ‘large scale development projects’: ICGLR Protocol, art 5(2).

<sup>119</sup> Guiding Principles (n 24), Principle 18.

<sup>120</sup> A similarly unqualified duty to ensure ‘the safe location of [IDPs], in satisfactory conditions of dignity, hygiene, water, food and shelter, away from areas of armed conflict and danger’ is articulated by the ICGLR Protocol, art 4(1)(f). Meanwhile, the Kampala Convention affirms a duty to ensure IDPs ‘live in satisfactory conditions of safety, dignity and security’ (art IX(2)(a)), including a qualified duty to provide IDPs ‘to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance’, including food, water etc. (art IX(2)(b)).

emergency stages of armed conflicts and disasters'.<sup>121</sup> The Guiding Principles emphasise that such processes must follow due process of law, emphasising again that only States are allowed to forcibly displace or relocate people in non-emergency situations.<sup>122</sup> But they also derive from underlying international law standards other procedural requirements applicable specifically to such processes. These positive legal duties include: providing full information on the reasons and procedures for displacement and, as applicable, on compensation and relocation; involving those affected, including women, in planning and managing their relocation; and seeking the 'free and informed consent of those to be displaced'.<sup>123</sup> The African IDP treaties impose similar duties directly as treaty obligations, particularly in relation to displacements in development contexts.<sup>124</sup> It is notable that the parallel instruments on relocation in different contexts express similar standards.<sup>125</sup> But whilst the frameworks addressing

121 Guiding Principles (n 24), Principle 7(3). In fact, a better way of expressing the legal position is that underlying international human rights law sees these standards as applicable to displacement in general, but that emergency situations will allow for these broader protections not to be observed. Legally, this would be result from either a shift in the 'necessity' balance for aspects grounded in non-absolute rights or, more likely, the temporary suspension of obligations towards those aspects of derogable rights under derogation provisions.

122 Guiding Principles (n 24), Principle 7(3)(a), (e) and (f).

123 Guiding Principles (n 24), Principles 7(3)(b), d) and (c).

124 Similar duties are reiterated by the ICGLR Protocol in relation to development-induced displacements (art 5(4)–(6)). The Kampala Convention imposes a general duty to 'consult and allow [IDPs] to participate in decisions relating to their protection and assistance' (art IX(2)(k)), and reiterates the duty to provide 'full information and consultation' for persons likely to be displaced by development projects (art X(2)).

125 They address, *inter alia*: the need to inform and consult affected people about their options and facilitate their participation in the decision-making process (UNHCR 2015 Guidance (n 6), paras 31–35; World Bank 2001 OP 4.12 (n 6), para 6(a)(i)–(ii); HRC 2007 Development Evictions Principles (n 6), paras 37 and 39; ILO Convention 169, art 16(1)); the need for due process of law and respect for the right to an effective remedy, including a review of the decision to relocate or displace people (UNHCR 2015 Guidance (n 6), para 21(h); World Bank 2001 OP 4.12 Annex (n 6), para 7(b); HRC 2007 Development Evictions Principles (n 6), paras 17 and 59); the need for attention to be paid to the needs of specific profiles of affected persons, such as women, and efforts made to include them in decision-making and programmes (UNHCR 2015 Guidance (n 6), para 14 [referring to a range of 'needs, circumstances and vulnerabilities' rather than women in particular]; World Bank 2001 OP 4.12 Annex (n 6), paras 6(a)(iv) and 15(d); HRC 2007 Development Evictions Principles (n 6), paras 26 and 33); the need for compensation, particularly where people have lost property or possessions as a result of the relocation measure (UNHCR 2015 Guidance (n 6), paras 47–48; World Bank 2001 OP 4.12 Annex (n 6), para 7(a), 7(c) and 9–11; HRC 2007 Development Evictions Principles (n 6), paras 60–63).



relocation in the development context treat them as having an obligatory character, those in the disaster/climate context tend to frame them as mere recommendations, probably because they treat relocation as a measure that can be voluntary as well as forced. This reinforces the point that such procedural safeguards will be relevant only where relocation is imposed, thus functioning as a legal check and balance on the prerogative power of the State enforcing its will against the interests of affected persons.

Finally, it might be objected that, where people provide their consent to be relocated, the relocation measure is no longer 'forced' and the legal basis for these positive State obligations disappears. However, this argument is unconvincing for two reasons. Firstly, in many cases of forced relocation taken for the benefit of the people relocated (ie, for their own safety), the wider circumstances of danger that they face as a result of staying put are likely to give the relocation a forcible element of sufficient gravity to produce these positive obligations as a matter of law. Secondly, where the relocation is imposed by the State using its own sovereign prerogative, then we should be cautious of ascribing the measure a voluntary character, even where people apparently consent to being moved. This is in order to avoid the risk of disguised displacements based on illusory consent. Rather, because this is a measure taken by a State to the potential detriment of the people concerned, it must offer the same level of guarantees as those provided to IDPs, otherwise the consent risks being null. A different way of arriving at this same point is to say that a State cannot negotiate away the displacement-related legal protections of the people concerned when it wishes to move them for its own interests through a measure that it enforces. Of course, where people voluntarily relocate in empirical circumstances that do not sufficiently engage the forcible element, then the ensuing positive State obligations will be minimal.

### 3.3 *Solutions – When Does Relocation End?*

Relocation, whether voluntary or involuntary, is justified conceptually and legally as a (frequently non-ideal) solution to some wider problem. But at what point is it realised as a 'solution'? In other words, when does relocation come to an end? Relocation instruments are clear that the process ends not with the movement of people from one location to another, but when they are properly settled in the new site. Thus, guidance on relocation in the disaster context sees this threshold as met only when any needs created by relocation are overcome and the people are able to enjoy their rights at the same level as prior to relocation (and at no less a level than the host population).<sup>126</sup> As such, it

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<sup>126</sup> UNHCR 2015 Guidance (n 6), para 57.

affirms that people will need livelihood restoration and other support to ‘build a sustainable life of dignity’ post-relocation.<sup>127</sup> Instruments in the development context likewise affirm a need for support to ensure reintegration following involuntary resettlement.<sup>128</sup> Indeed, some of the soft law guidance stipulates that, if the authorities do not fulfil the guarantees for ‘adequate resettlement’ to occur, they fall under a new duty to ‘establish conditions and provide the means, including financial, for voluntary return in safety and security, and with dignity, to homes or places of habitual residence.’<sup>129</sup> This suggests that, whilst relocation is conceived as a solution to a problem, where the guarantees for reintegration remain unfulfilled it is left merely as a form of displacement and a problem that requires new solutions which, in substance, largely parallel those described by IDP instruments.

Certainly, where relocation is forced in character (or the non-fulfilment of commitments removes the basis for consent in voluntary relocations facilitated by a State), the positive duties in IDP instruments to facilitate solutions to displacement should apply. The Guiding Principles establish that the ‘competent authorities’ have the ‘primary’ legal duty ‘to establish conditions, as well as provide the means, which allow [IDPs] to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country’,<sup>130</sup> and to ‘endeavour to facilitate the reintegration of returned or resettled [IDPs]’.<sup>131</sup> The Inter-Agency Standing Committee Framework states that these ‘durable solutions’ must be ‘sustainable’, such that IDPs ‘no longer have any specific assistance and protection needs that are linked to their displacement and can enjoy their human rights without discrimination on account of their displacement’.<sup>132</sup> African IDP treaties make the State duty to create conditions for ‘voluntary return, local integration or relocation’ binding as a matter of treaty law.<sup>133</sup> On the substance, then, there is considerable convergence between instruments on the conditions required to bring an end to internal displacement and those required to bring relocation to an end, with sustainable settlement and reintegration the ultimate objective. Moreover, where we are dealing with

127 Ibid, paras 42–46.

128 World Bank 2001 OP 4.12 (n 6), para 6(c); also Basic Principles on Development-based Evictions (albeit not to the same level, but as a legal requirement).

129 HRC 2007 Development Evictions Principles (n 6), para 65.

130 Guiding Principles (n 24), Principle 28(1).

131 Ibid.

132 IASC Durable Solutions Framework, A-1.

133 Kampala Convention, art XI(1).

displacements, including forced relocations, facilitating these solutions is seen as a legal duty for the State.

A knotty question arises, though, about the scope of State obligations where a forcibly relocated person seeks to resolve that situation of displacement by voluntarily settling in a location other than that to which the relocation is or was directed. This could include return to the site of their original home if that is physically possible. Legally, it is clear that a State can prevent such alternative or onward movement only within the scope of permissible restrictions to freedom of movement and choice of residence under IHRL (and IHL as applicable);<sup>134</sup> the longer that it seeks to prevent the movement, the greater the necessity that will need to be shown. Furthermore, the ‘solutions’ provisions of IDP instruments imply that the State is under a positive obligation to facilitate such alternative or onward ‘settlement elsewhere’ if it is voluntary and solutions-oriented. However, where that State obligation has already been discharged by offering a genuinely sustainable relocation package in one site, the extent of further legal obligations is likely to be minimal. By contrast, where a State fails to guarantee the conditions needed to make a forced relocation sustainable, then the obligation to facilitate solutions to that displacement will likely re-emerge. That duty will also arise where people are displaced on a temporary basis but later forbidden from ever returning – a decision which must also be justified against the substantive and procedural standards applicable to decisions to displace people.<sup>135</sup>

#### 4 Conclusions

Relocations are complex processes that take place across a wide range of humanitarian and other contexts. Despite their diverse manifestations in practice, this article has illustrated how a single unified concept of ‘relocation’ can usefully be distilled from the scholarship and various international instruments concerned with such processes. Synonymous with ‘resettlement’, this general concept of ‘relocation’ has application across contexts including armed conflict, disasters and exposure to the effects of climate change, and development projects. As essential features, it is a planned process of moving persons to a new location with the intention of permanent or long-term

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134 For everyone lawfully in the territory, such restrictions will operate only in relation to specified locations and the grounds for interference with those rights will need to be carefully made out.

135 See sections 3.1 and 3.2.

settlement, undertaken ostensibly as a solution to some specific problem. It is normally carried out or facilitated by a State or other authority. Scholarship has posed key questions about the relationship of relocation to the forced displacement that marks many of these empirical contexts. This article has shown that 'involuntary' movement, which underpins understandings of forced displacement, is not a necessary element in this general conception of relocation. Nonetheless, it argues that whether an instance of relocation is, in fact, voluntary or involuntary is crucial to determining the scope of international legal rules that govern the process.

International instruments in a variety of displacement contexts do address relocations. But, whilst many of them articulate best practices, the extent to which their rules reflect binding international law is less clear across the board. Rather, as the analysis here shows, that question depends principally on whether the particular instance of relocation is characterised as voluntary or not. This article suggests that for voluntary relocations, where people change their place of residence voluntarily, positive State obligations probably do not extend far beyond ensuring the rule of law, at least under IHRL. At the same time, it urges caution in deciding that any relocation process is primarily voluntary. Even apparently consensual relocations may possess a 'forced' character where (a) the people concerned will be exposed to real dangers in their home site if they stay put, or (b) a State or other authority instigates relocation as an exercise of its prerogative power.<sup>136</sup> This 'forcible' element, then, is often derived as much from the stated attitude of the specific individuals involved as from the wider context in which such decisions are made, as well as from the nature of the process through which resettlement is effected. Thus, in order to mitigate the risk that 'disguised' displacements are carried out as ostensibly 'voluntary' relocations, relocations in many typical displacement contexts will need to be treated, legally, as potentially 'forced'.

Forced relocations, by contrast, are regulated more extensively by international law. At least for relocations undertaken within a country, this article shows how international instruments on internal displacement serve to sharpen our understanding of where and when States and other authorities are permitted to forcibly relocate people, as well as the legal guarantees that must be observed in such processes, and how such relocations relate legally to 'solutions' for IDPs. Further, those instruments clarify that the rules that govern such forced relocations as forms of displacement are rooted in (i) the

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<sup>136</sup> In voluntary relocations facilitated by a State, the forced element could also emerge later if the guarantees agreed between the parties are not fulfilled and the consensual basis for the processes falls away.

underlying responsibility of the State for failing to ensure conditions that allow them to continue living in their homes and (ii), where it instigates relocation, from the potential for abuse of State prerogative power. However, there are also points at which the applicable rules expressed by the IDP regime either do not speak to specific relocation-related issues (such as the potential for an obligation to relocate people in certain circumstances) or raise concerns about the consistency of interpretation (such as the grounds on which relocation can lawfully be imposed). In those cases, this article has sought to elucidate how these complex situations can be legally resolved by reference to underlying legal rules, particularly those of IHRL and, for armed conflicts, IHL. Hence, international law rules do coherently regulate forced relocations that take place within a country as a form of internal displacement.

Ultimately, the universal concept of relocation proposed in this article has advantages over the siloed approaches to relocations (and displacement) in disaster, development and other contexts that have been pursued by much of the existing scholarship and many international instruments. As the examples from the range of displacement scenarios cited at the start of this paper make clear, the practice of relocation often raises questions not only about whether they are in fact displacements but also what this means for engagement by humanitarian, development and other actors. In practice, the diverse drivers of displacement are also often closely connected.<sup>137</sup> Even at a meta-level, disasters and the negative effects of climate change affect many countries experiencing armed conflicts; and development projects may be implemented there too, perhaps even as a strategy to mitigate or adapt to the effects of disasters or climate change. A general conceptual and legal understanding of relocation, and its relationship to forced displacement, opens the door to a more coherent response to these entwined challenges than that offered by the parallel development of diverse context-specific approaches.

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<sup>137</sup> See eg. David Cantor, 'Divergent Dynamics: Disasters and Conflict as "Drivers" of Internal Displacement?', *Disasters* (2023) DOI: <https://doi.org/10.1111/disa.12589>.