

An examination of the protection of the rights of internally displaced persons in Europe: From the Kampala Convention and the UN Guiding Principles on Internal Displacement to a European convention.

Zoi Aliozi,^{*} Stav Dor,^{**} Anne Sophie Gscheidlen,^{***}
Chiara Passuello^{****} and Adam Drnovsky^{*****}

Abstract: *At a time when violence and climate change are causing the displacement of millions of individuals globally, this article argues that the protection of the human rights of internally displaced persons (IDPs) should be put at the top of the European agenda. In light of Russia's invasion of Ukraine, it is more important than ever that Europe creates its own legal protection framework. This article addresses the two major drivers of internal displacement, climate and conflict, and their impact on the rights of IDPs. It examines the existing framework of IDP protection in humanitarian law, the UN Guiding Principles on Internal Displacement, the African Union's Kampala Convention, and the existing case law of the European Court of Human Rights (ECtHR) pertaining to IDPs' rights. Through a human rights lens this article analyses both the merits and gaps of existing frameworks from which a European convention must learn. Using climate justice, intersectionality and*

* LLB Law (University of Bedfordshire); MA in Human Rights and Democratisation (Global Campus of Human Rights, University of Padua & University of Seville); PhD in Political Theory (LUSS University & Georgetown University); EMA Teaching Fellow, Global Campus Headquarters, Venice; zoi.aliozi@gchumanrights.org

** BA in Psychology (Concordia University); MA in Human Rights and Democratisation (Global Campus Europe); Community Director; stavdor9@gmail.com

*** BA in International Relations (Rhine-Waal University of Applied Sciences); MA in Human Rights and Democratisation (Global Campus Europe); Intern at the Delegation of the European Union to the United Nations in Geneva; annegscheidlen@web.de

**** BA/MA in Law (Università degli Studi di Verona); MA in Human Rights and Democratisation (Global Campus Europe); Human Rights Specialist & Legal Assistant; chiara.passuello93@gmail.com

***** MA in Political Science (Masaryk University); MA in Human Rights and Democratisation (Global Campus Europe); PhD Student in International Law (Bundeswehr University); adam.drnovsky@unibw.de

psychological approaches, inter alia, it elaborates on various shortcomings identified in the areas of climate-induced displacement, mental health and the protection of vulnerable groups of IDPs, on which a European framework on IDP protection must expand. The goal of this article is to examine the above-mentioned issues not only in the context of current challenges but also in relation to future developments, since we will see further increases in internal displacement due to both armed conflict and climate change.

Key words: *internal displacement; IDPs; climate justice; Europe; human rights*

1. Introduction

Russia's invasion of Ukraine has so far caused the displacement of over seven million individuals within the borders of Ukraine alone (IOM 2022a). Similar trends of internal displacement can be observed around the globe where armed conflicts are happening. Additionally, climate change induced displacement has drastically grown over recent decades and climate change experts agree that it will continue to grow dramatically. The 1951 Convention and Protocol Relating to the Status of Refugees protects those who flock to neighbouring countries, seeking the comforts of safety and a better life.

But what happens to those left behind? Internally Displaced Persons (IDPs) are those individuals who have remained within the borders of their country because of: conflict, human rights violations, or various forms of disasters (OCHA 1998, Introduction (1)). According to the Internal Displacement Monitoring Centre (IDMC), over 330,000 people in Europe and Central Asia were internally displaced in 2021. This number has since drastically increased due to Russia's invasion of Ukraine.

In reality, IDPs are often ignored by the international community, thereby leaving them vulnerable to global exclusion. One example of how this disregard is manifested in Europe can be seen through the lack of a legally binding regional framework. By turning a blind eye to the marginalisation of IDPs, society enables the violation of their human rights. This article argues that these continued injustices must be addressed, and therefore examines the existing legal protection framework concerning IDPs both internationally and in Europe to learn how to incorporate good practice legislation and close gaps in a European convention on the protection of IDPs. IDP protection is defined in terms of state obligations concerning the prevention of internal displacement, the mitigation of the effects of internal displacement on those affected and their host communities, and long-term solutions for IDPs. This article pays particular attention to some of the most neglected consequences and vulnerabilities caused by internal displacement.

Firstly, the sources of displacement will be mapped out, followed by an analysis of the existing framework for IDP protection on the regional and international level. The article then presents the gaps that exist in said protection, concerning the right to mental health and the protection of vulnerable groups such as women, girls and the LGBTQI+ community. It concludes by arguing in favour of improving the framework for the protection of IDPs by adopting a European Convention on Internal Displacement, and it offers recommendations for what should be included in such a treaty.

2. Sources of displacement

2.1. Climate change and natural disasters

Research shows that one of the major causes of the proliferation of internal displacement is the climate crisis, which is becoming a serious driver of displacement for current and future generations. According to IOM, climate change, natural disasters and environmental degradation are profoundly changing global migration, with their effect on mobility being complex, multicausal and stratified (IOM 2021, 6–8).

According to the principles of climate justice (Aliozi 2021, 4), the primary result of climate change is social injustice, given that climate-related disasters predominantly target already vulnerable people. The countries most affected by climate change tend to be the ones contributing the least to the phenomenon's emergence (Levy and Patz 2015, 311). As in the reasoning behind the Vulnerability Principle (Aliozi 2021, 7–10), in the climate justice field it is the poorest and most marginalised communities in a country, among them women, girls and members of the LGBTQI+ community, who are among the ones suffering the most. They hence require the greatest protection.

Over the years, Europe has undoubtedly emerged as a leader in industrial expansion, which has given little room for consideration of climate issues and has in fact contributed to them. Although the effects of the climate problem are only slowly being felt on the old continent, there was an increase in the frequency of extreme weather events there between 2016 and 2019. Moreover, around 276,000 persons were internally displaced in Europe in 2021 as a result of climatic events, more than twice the number of new cases of climate-induced displacement as had appeared in 2019 (IDMC 2022b). This shows a worrying trend of increasing climate displacement, with flooding being the primary cause. The nations most impacted by these occurrences are geographically disparate, including among others Spain, Italy, France and Germany (Kron, Löw and Kundzewicz 2019, 74–83).

The European Environment Agency (EEA) warns that southern Europe should anticipate warmer summers, more frequent droughts, and a higher incidence of wildfires. Additionally, heavy annual rainfall is expected to

increase across northern Europe. Central Europe is to see decreased summer rainfall, but more frequent and severe weather conditions, such as heavy rain, river flooding, drought, and fire dangers (EEA 2021). In all European regional seas, sea surface temperature, heatwaves and water acidity are anticipated to rise. Additionally, sea-level rise is quickening, and this might endanger cities such as Venice and Thessaloniki, and coastal areas in the Mediterranean basin. This impacts the forty-two million people residing along the lowest 37 percent of the Mediterranean coastline.

Furthermore, heatwaves in Europe endanger people's health by increasing mortality as well as fire frequency and size. Desertification will diminish the amount of land available for agriculture, amplified by water constraints, particularly in southern Europe. Overheating drastically diminishes land and marine habitats, permanently altering the ecology. Water scarcity will affect more than a third of the population of southern Europe if left unaddressed, posing an extreme threat to countries such as Italy, Greece, Malta, Spain and Portugal.

The effects of climate change will presumably become the main cause of internal displacement in Europe. Consequently, the region is compelled to adopt an ad hoc regulatory instrument taking into account the prominence of climate change as a cause of displacement and the resulting needs of those affected.

2.2. Conflict and violence

In addition to climatic concerns, roughly sixty million people worldwide were displaced by war and violence in 2021 (IDMC 2022a, 12). Due to Russia's invasion of Ukraine, Europe is currently experiencing unprecedented levels of internal displacement of millions of people (OCHA 2022). Moreover, in 2021 there were 3.3 million IDPs in Europe due to conflict and violence, with more than half of them in Turkey, Azerbaijan and Ukraine (IDMC 2022a).

Forcible relocation during a war often results from breaches of international humanitarian law or human rights. Attacks on people and civilian property are prevalent in armed conflict, as are famine and reprisals (OHCHR 2022). In Ukraine, thousands of civilian injuries and deaths have been recorded, largely from wide-area explosives. Many civilians have fled following residential bombardments and alleged war crimes (Human Rights Watch 2022). Under these conditions, IDPs require their fundamental human rights and humanitarian aid.

Even when wars end, displacement persists. There are hundreds of thousands of people still registered as IDPs in Cyprus and Bosnia and Herzegovina after conflicts that took place decades ago (IDMC 2009, 2014). These examples demonstrate that finding sustainable solutions is

an arduous undertaking. Additionally, governments favour repatriation of IDPs over their local integration or resettlement. This impedes long-term solutions, such as the enfranchisement of IDPs in their *de facto* place of residence (IDMC 2011, 2). IDPs therefore find themselves marginalised and lacking protection (see chapter 3.3). In addition to preventing the root causes of displacement and safeguarding IDP rights in the short term, a European convention must specify permanent solutions to the protracted displacement caused by conflict and violence.

3. Existing framework for IDP protection

3.1. Legal protection of IDPs at the international level

3.1.1. International human rights and humanitarian law

Owing to the universal nature of international human rights law, every individual regardless of displacement or residence status is entitled to the rights conferred under the ICCPR and ICESCR. IDPs are hence protected by international human rights law on the same basis as every non-displaced individual. Nonetheless, since the international human rights framework applies to everyone equally, it evidently neglects the heightened vulnerabilities and challenges faced by IDPs because of their displacement. For instance, when IDPs wish to resettle to their old home after the reason for their displacement has subsided, they may be confronted with obstacles when it comes to the freedom of choosing one's residence under Article 12(1) ICCPR. Or, in violation of Article 24(2) ICCPR, they may not be able to register their children after birth if their country requires them to do so in their municipality of habitual residence. Some such cases of human rights violations of IDPs, specifically of rights under the European Convention on Human Rights (ECHR), have been reviewed by the ECtHR, and will be analysed in chapter 3.3. Furthermore, some human rights instruments leave room for significant discretion in their implementation, such as the right to mental health under Article 12 of the ICESCR (see chapter 4.2) which does not specify any actions to be taken by states in this regard. However, mental health care is a crucial factor in the well-being of IDPs and their communities. Moreover, while the ICESCR recognises and safeguards the equality of men and women, it does not account for the gender-specific vulnerabilities of internally displaced women and members of the LGBTQI+ community which call for greater state action (see chapter 4.1).

Like human rights, international humanitarian law (IHL) is not primarily concerned with IDP rights (ICRC 2022), but Geneva Convention IV pertains to "non-military individuals" in conflicts generally (ICRC n.d., Rule 5), thus including any civilian IDP affected by armed conflict. It therefore applies to all conflict-induced IDPs in Europe, such as those affected by Russia's war against Ukraine.

Geneva Convention IV's Article 49 protects IDPs against forced displacement unless necessary for the population's security or "imperative military reasons" (Fourth Geneva Convention 1949, Art. 49). In principle, this restricts internal displacement during armed conflict to these two exceptions and non-forcible displacement. The responsible party must nonetheless guarantee appropriate housing, respect for family unity, and "satisfactory conditions of hygiene, health, safety and nutrition" for displaced individuals regardless of the legality or illegality of their displacement (Fourth Geneva Convention 1949, Art. 49).

Geneva Convention IV Articles 38 to 46 moreover codify the rights of non-repatriated people, who according to the International Committee of the Red Cross (ICRC) are "protected persons who have remained or been retained in the territory of a Party to the conflict" (ICRC 1958). This definition resembles the IDP definition. Consequently, IDPs benefit from the protection of these articles. Thereunder they are entitled to humanitarian help, medical care, religious practice, and to travel for their safety (Fourth Geneva Convention 1949 Art. 38). Pregnant women, mothers with small children, and children under the age of fifteen must receive the same preferential treatment as citizens of the respective state (Fourth Geneva Convention 1949 Art. 38), hence acknowledging their exceptional protection needs.

Customary IHL (CIHL) expands the Geneva Conventions and Additional Protocols by catering *inter alia* to the special needs of IDPs (ICRC 2010). For instance, Rule 132 gives displaced people the right to return home voluntarily after the cessation of the causes of their displacement. Rule 133 safeguards their rights vis-à-vis the property they left behind, an issue that has been adjudicated by the ECtHR (ICRC n.d., Rules 132 and 133). CIHL Rule 134 observes that, in addition to conferring upon them the same rights as men, IHL must cater to women's exceptional vulnerabilities in terms of their health, protection and other needs (ICRC n.d., Rule 134) (see chapter 4.1.1.).

In summary, the aforementioned legislative bodies grant IDPs the same protection as non-displaced individuals or refugees. Nevertheless, by failing to detail state obligations concerning IDP issues, human rights instruments leave significant scope for the exercising of discretion. As far as IHL and CIHL are concerned, it is also important to highlight that they do not apply to IDPs displaced by environmental causes. This is where a European legal instrument protecting IDPs regardless of displacement cause must restore the inadequacy of the current legal framework. It would take up existing provisions of human rights, elaborate on the circumstances and hurdles of internal displacement, and extend IHL and CIHL safeguards (such as the protection of the right to property and the right to return) to all IDPs.

3.1.2. The UN Guiding Principles on Internal Displacement

The non-binding provisions of the UN Guiding Principles on Internal Displacement (Guiding Principles) restate existing, binding international human rights and humanitarian law, and fill in some of the gaps in IDP protection (OHCHR 2002). For instance, they define IDPs as individuals displaced within one state for various reasons (OCHA 1998, Introduction para 2). In contrast to the 1951 Refugee Convention's refugee definition, the Guiding Principles acknowledge environmental causes of displacement (Zetter 2011, 20). Since this recognition is not binding, however, a European convention including a comprehensive IDP definition in line with the UN Guiding Principles would be a legal novelty in the region.

Another significant contribution to IDP protection, in Principles 28 to 30, is the right to choose between integration, relocation, or resettlement. They stress that any of these actions may only be undertaken with the affected individual's cooperation and consultation. Furthermore, these Principles underline IDPs' civil and political rights such as the right to political participation under ICCPR Article 25. Stressing these rights vis-à-vis IDPs is essential, since they are likely to face barriers to exercising these rights while living outside their own communities, if for example the state only allows people to vote in their place of habitual residence. Principle 19(2) addresses their entitlement to property, which should be restored upon their return to their communities or adequately compensated, thereby reaffirming CIHL Rule 133.

Another fundamental contribution to human rights and IHL is Principle 4(2)'s acknowledgement of the "unique needs" of internally displaced women. Its recognition of the heightened vulnerability and different needs of displaced women not only reflects Geneva Convention IV Article 38(5) and Additional Protocol I Article 76, but it goes beyond IHL by incorporating "female heads of household" because women may be put in charge of their family and communities due to conflict or displacement. They are therefore to be included in relocation and relief distribution processes under Principles 7(3)(d) and 18(3). Additionally, women must be protected from forms of violence that are more likely to occur in displacement circumstances and disproportionately impact them, such as gender-specific violence and rape, as highlighted by Principle 11(2a), CIHL Rule 93, Geneva Convention IV Article 27 and Additional Protocol I Article 76(1). As for the health needs of women, the Guiding Principles' spotlight on the "access to female health care practitioners and services, such as reproductive health care, as well as appropriate counselling for victims" is a crucial contribution to IDP protection that must inform a European convention (OCHA 1998, Principle 19(2)), as it is neglected by human rights and humanitarian law.

Lastly, Principle 19(1) provides IDPs with the right to psychological and social support. The Additional Protocols only prohibit violence against the mental wellbeing of individuals, but do not provide for a right to psychological treatment. As chapter 4 will argue, however, mental health is crucial for an individual's and society's overall well-being, and for the individual's ability to avail themselves of their other rights. Owing to the heightened mental health needs of displaced persons, a European convention must incorporate their right to mental health and adequate support, even more extensively than the UN Guiding Principles.

3.2. The Kampala Convention

The Kampala Convention, the first regional, legally enforceable treaty codifying IDP rights and protection, not only mimics the Guiding Principles in, for example, prioritising women's health, but also expands them by applying a climate justice lens. For instance, Article V (4) holds that states must safeguard and support IDPs displaced because of climate change or other environmental disasters, while Article IX (2)(j) requires states to avoid environmental damage in IDP areas. If they fail to assist IDPs in these circumstances, they may be held accountable under Article XII (3). Considering the growing number of individuals displaced by environmental factors in Europe, a European convention can learn from the respective provisions in the Kampala Convention and the urgent need to satisfy the requirements of climate justice by offering human rights protection to climate-driven IDPs.

The Kampala Convention also places an obligation on states to support host communities by compelling them to consider the latter's needs and vulnerabilities when formulating internal displacement policies and laws (Kampala Convention 2009, Articles III (2)(c) and V (5)). This is necessary as host communities themselves may have been touched by the incident that displaced the IDPs or may be enduring their own hardships. By keeping this in mind, a European convention may reduce communal disputes.

In short, the Kampala Convention unquestionably makes substantial contributions to the protection of IDPs, as it codifies issues that have not been adequately covered by international human rights and international law. It could therefore be used as a model for future IDP accords such as a European convention for IDPs. Still, the Kampala Convention has its flaws and has lessons to offer as to what works and what does not in a legal framework concerning IDP protection. While it was signed by most African Union countries, and many have adopted its terms (African Union 2022), its execution and practical implementation leaves much to be desired (ICRC 2020). Human rights abuses and other treaty requirements may go unpunished, eroding the legal environment (Kamungi 2010). Consequently, while a legislative framework on IDP protection is a

necessary first step in Europe, it must be followed by actions to realise its full potential, such as extending the jurisdiction of the ECtHR to IDP rights and state obligations in the European IDP convention.

3.3. The European regime of IDP protection

While the ECHR and other provisions apply to IDPs and should offer basic protection to them on an equal basis with non-displaced persons or refugees, Europe still lacks a legally binding treaty that would offer specialised protection to IDPs. This subchapter discusses the existing merits and shortcomings of European IDP-specific soft law that need to be taken into account in relation to a possible European convention on IDPs, similar to the Kampala Convention. For example, the Council of Europe (CoE) Parliamentary Assembly has urged governments to pursue sustainable solutions for IDPs' repatriation, local integration, or integration elsewhere. Referring to the UN Guiding Principles, the Assembly underlined the fact that sustainable solutions are needed to preserve IDP rights under applicable CoE treaties (CoE 2009a).

The Guiding Principles are also relevant to the Recommendation of the Committee of Ministers to IDPs (CoE 2006), which was approved by consensus and hence has substantial political weight (Paraskeva 2017, 13–14). The Recommendation translates the duties of CoE countries under the ECHR into concrete principles. The Preamble reminds CoE states of the prohibition of arbitrary displacement, although it admits that it is implicit. Meanwhile, Article IV (4) of the Kampala Convention forbids arbitrary displacement and provides an extensive but non-exhaustive list of examples thereof, thereby providing guidance as to the interpretation of the term. Article III (1) (a) furthermore creates a clear state obligation to prevent and prohibit arbitrary displacement, which puts states under a precise responsibility to act.

A European convention therefore needs to take note of the African provisions rather than European soft law for preventing arbitrary displacement — for instance, those concerning the accountability of non-state perpetrators of forced displacement (Kampala Convention 2009, Article III (1) (i-h)).

Referring to the UN Guiding Principles, the Recommendation explicitly recognises natural and human-made catastrophes as causes of internal displacement (Principle 1), thereby emphasising the urgency of addressing climate-induced displacement. Moreover, Principles 2 and 3 outlaw discrimination of IDPs, and advocate for affirmative actions to preserve their rights. The Recommendation further reminds states of their obligation to protect IDPs' rights and provide them with humanitarian aid (Principle 4). Additionally, it calls on governments to avoid actions that may infringe IDPs' rights to life, bodily integrity, liberty and security (Principle 5). It

also protects IDPs' rights to family reunion, property ownership, voting, and repatriation or resettlement (Principles 6, 8, 9 and 12). Nevertheless, unlike the Kampala Convention, the Recommendation fails to cover social, economic and cultural rights (Articles IX (2)(b)).

The Principles of the Recommendation are backed by procedural assurances, including measures to provide all documentation and education required for IDPs to exercise their rights (Principles 7, 10 and 11). The Committee of Ministers likewise appeals to states to explore developing new international instruments to address deficiencies in international law regarding IDP protection in Europe (Principle 13), opening the door for potential binding instruments expressly addressing IDP protection in Europe. In this context, the main merits of the soft law instruments lie in the explicit recognition of IDPs as a vulnerable group that needs protection and in the provision of a comprehensive overview of state obligations towards this group.

Yet, as this article will argue, in order to prevent future injustices and ensure that a European Convention for IDPs will succeed, it is of crucial importance to expose problems such as the failure to respect and include: climate justice considerations and requirements alongside social, economic and cultural rights; the physical and mental health of IDPs; and special protection of vulnerable groups (LGBTQI+, women and girls). Lastly, the non-binding nature of these instruments is another shortcoming which arguably can serve as an important justification for creating a comprehensive and legally binding treaty protecting the rights of IDPs in Europe.

In addition to soft law, European IDP protection is founded on human rights norms and the ECHR. All forty-six CoE members are obligated by the ECHR to safeguard IDPs within their authority. Each IDP is entitled to Article 1's protection of all ECHR rights and freedoms and may petition the ECtHR. The ECtHR has adjudicated on a considerable number of instances involving IDPs' rights and made numerous landmark judgements.

A useful example can be found in the "Cyprus instances", where the Court decided on IDPs' right to belongings. In *Loizidou v. Turkey*, the Court determined that displaced Greek Cypriots who were refused access to their homes during Turkey's invasion of Cyprus remained legal owners of their properties but lost all control over and all capacity to utilise and enjoy it. The ECtHR ruled that they were entitled to compensation directly related to the violation of their rights under Article 1 of Protocol 1 (Protection of property) (ECtHR 1996, para 31).

In comparable instances, the Court has also established violations of applicants' right to their home, even though they weren't homeowners, as in *Doğan and Others v. Turkey* (ECtHR 2004, para 139). Article 8 has

also been cited in circumstances of multi-generational IDP families with tight links and interdependencies ingrained in cultural norms disturbed by forced relocation (ECtHR 1997, para 73).

A good number of ECtHR cases concern missing individuals during armed conflicts and persecution, where IDPs are particularly vulnerable. In judgements about enforced disappearances the Court has established infringements of IDPs' right to life (Article 2), to prohibition of torture (Article 3) (ECtHR 2001, paras 157–158), to liberty and security (Article 5) (ECtHR 2014, para 58), and to an effective remedy (Article 13) (ECtHR 2012). These cases concern persons who vanished and were never discovered or were proclaimed or assumed dead under questionable circumstances, particularly in Russia and Turkey.

Several of the foregoing rights have been infringed along with IDPs' freedom of movement (Article 2 of Protocol 4). In *Cyprus v. Turkey*, the Court stated that unrestricted movement is important to fulfil the right to return home and/or the right to property restoration (Article 8 and Article 1 of Protocol 1) (ECtHR 2001, para 283). In this instance, the Court also refers to IDP discrimination. However, Article 14's ban on discrimination may only be applied when other ECHR rights are violated and thus it solely protects the Convention's rights against discrimination.

In *Šekerović and Pašalić v. Bosnia and Herzegovina*, the Court found a violation of Article 14 in conjunction with Article 1 of Protocol 1 in the case of a pensioner returning to her place of origin after the war who was discriminated against as a former IDP (ECtHR 2011, paras 36–37). Similar application has been applied by the Court also to discrimination of IDPs based on their sex (ECtHR 2015).

Unlike Article 14, Article 1 of Protocol 12 to the ECHR forbids discrimination for the enjoyment of any domestic right. In *Selygenenko and Others v. Ukraine*, the Court decided that IDPs were discriminatorily barred from participating in municipal elections (ECtHR 2022).

The ECtHR's case law illustrates that, although IDPs in Europe lack a binding treaty addressing their needs, they are not wholly excluded from European human rights protection. Some of their rights are legally enforceable based on general protection provided by the ECHR, which is a clear merit of the European regime of human rights.

Yet the protection of IDP rights in Europe is inadequate and confined to specific rights which have historically been at risk in conflict-affected regions, a reality which fails to acknowledge climate-justice rules. Thus, a more comprehensive protection of IDPs' rights in Europe is warranted, acknowledging that our world is under a climate emergency. Existence of soft law mechanisms demonstrates the European governments'

political commitment to safeguard the rights of IDPs, but the lack of a comprehensive and legally enforceable treaty exposes the shortcomings of IDP protection. This is crucial in the face of the proliferation of wars and climate-change-induced internal displacement in Europe.

In light of these problems, more must be done to address natural disaster-caused relocation, specific protection for vulnerable people, and general protection of human rights. In resolving some gaps, the Kampala Convention and the UN Guiding Principles can serve as architectural blueprints.

Nonetheless, as this article will show, other gaps such as the right to mental health are an opportunity for a European convention on IDP protection to become a pioneer in the international human rights sphere.

4. Gaps in IDP protection

4.1. Vulnerable groups

4.1.1 Women and girls

To have a clearer picture of internal displacement and the factors that differentiate the experience of certain social groups, it is necessary to be able to distinguish between the singular elements within the same phenomenon, to recognise the peculiarities which characterise certain categories of IDP and individual types of experience, and to identify constants within these vulnerable groups. When individuals are displaced, they suffer far more harm than just the loss and destruction of their belongings; their lives and their social fabric are torn apart.

Displacement also perpetuates socioeconomic disadvantages and accelerates inequalities by reinforcing detrimental pre-existing gender stereotypes. In this sense, displacement affects women differently and in a more negative way than it does men, with diverging effects varying at various stages of a crisis (IDMC 2019, 3–4). On a continental scale, the armed conflict between Russia and Ukraine has already had a major impact on the situation of IDPs in Europe: IOM estimates that more than seven million people have been displaced since the beginning of the conflict (IOM 2022b, 3). At least 59 percent of these IDPs are women, which underlines the need for additional safeguards to be put in place to address the heightened vulnerability of women (IOM 2022b, 4).

Firstly, women are less involved in formal employment than men and, once displaced, they are even less so. This may have long-term implications for the development of women and girls, as well as for their families and communities. These consequences are both a human rights and a development issue that the European region must address (IDMC 2020, 12).

Secondly, women in Europe are disproportionately represented among the poorest and oldest members of society, making them more susceptible to negative effects and without the resources to adapt in the event of natural disaster. Women typically have a harder time finding well-paying professions and exit the job market earlier, leaving them with fewer resources for recovery from natural calamities. The burden of care work typically falls on women, so even in this scenario they are responsible for the effects of a climate-related calamity. According to the vulnerability principle, the most fragile people suffer the most from climate events, and this is the case for women in Europe too. Despite this, the European Green Deal, which was introduced simultaneously with the new Gender Equality Strategy, remains gender-blind despite the EU's commitment to climate policies (Allwood 2022, 4).

Moreover, internal displacement increases the danger of gender-based violence for women and girls, by separating them from their communities and in some cases their families who may otherwise protect them. Some studies suggest that relocation increases domestic violence, which may be linked to stress and trauma. Women may be compelled to participate in transactional sex to live, increasing their risk of violence and abuse (Plan International 2018, 15). Insecurity often forces females to remain home rather than attend school, lowering their future earning potential. It is challenging for girls and women to avail themselves of basic services and to engage in community life (Plan International 2018, 15).

When it comes to the phenomenon of internal displacement, the female category does not represent a single block characterised by the same issues affecting all women equally: in the face of this occurrence, an intersectional approach can identify the most disadvantaged categories of women (Crenshaw 1989, 1991). Among them are internally displaced women with disabilities, migrant women, religious minorities, Roma women, women from a disadvantaged socioeconomic class, transgender and queer women, etc., each category requiring specific protection according to their particular vulnerability (Agbonifo 2020, 30–32). It is vital to collect sufficient data on the various groups of IDP women and their living circumstances and needs, so as to design more adequate policies and provide sufficient resources to assist them and their communities.

4.1.2 LGBTQI+ people

Similar to IDP women, members of the LGBTQI+ community are confronted with exceptional vulnerability as the discrimination faced outside of displacement is exacerbated by forcible displacement (IDMC 2019, 5). Internal displacement disrupts social life, which is especially problematic for persons from sexual minorities, who rely largely on the community for support, knowledge, and access to livelihoods or homes. It can push individuals into severe hardship and vulnerability to abuse and violence, on top of losing their home and livelihood (IDMC 2019, 5).

The situation is undoubtedly more stable in Europe than elsewhere, despite the fact that several European countries continue to exhibit a tremendous lack of protection of the LGBTQI+ community. For instance, Italy has yet to adopt a specific law that protects a person from hate crimes perpetrated on the basis of their sexual orientation or gender identity (Schillaci 2022), and in countries such as Poland and Hungary governments are the protagonists of anti-LGBTQI+ propaganda (Reid 2021). Consequently, the protection of the LGBTQI+ community in Europe leaves much to be desired, especially in light of ongoing conflicts and looming climate-induced displacement.

For instance, Russia's war against Ukraine is worsening the vulnerability and marginalisation of LGBTQI+ people in Ukraine. Before the invasion, LGBTQI+ persons faced stigma and were negatively perceived by a large portion of Ukrainian society, despite the fact that sexual diversity is not illegal in the country. As in many other European countries, LGBTQI+ people in Ukraine were experiencing hate speech, discrimination, harassment and abuse due to their actual or perceived sexual orientation, gender identity, gender expression, and/or sex characteristics (SOGIESC) prior to the war. This made the community more prone to rejection and isolation as they avoided making public appearances or participating in related advocacy initiatives (UNHCR 2022).

After the start of the war, LGBTQI+ NGOs in the area built up special shelters for internally displaced queer people to shield them from prejudice, violence and discrimination based on sexual orientation and gender identity. As an example of such discrimination, some transgender women were prevented from leaving Ukraine because they had not yet gone through the legal process of legalising their gender identification, and martial rule mandates all men between the ages of eighteen and sixty to remain in Ukraine to fight. These factors combined to raise the number of IDPs (CoE 2022).

In light of ongoing conflicts in Europe, such as Russia's invasion of Ukraine, and increasingly severe climatic conditions, the unique circumstances in which some social groups live highlight the need for specific ad hoc protection. A separate convention on IDPs including special protection for the most vulnerable groups is therefore urgently needed in Europe.

4.2. The right to mental health

Another aspect to be considered regarding individuals facing internal displacement, whether through natural catastrophe or conflict, relates to their vulnerability to violations of their right to health (Rae 2011, 33).

Most health-related concerns of persons on the move are physical, including infectious or transmittable illnesses, inadequate nourishment, and sexual well-being and safety (Brolan et al. 2017, 2). Article 12 of

the International Covenant on Economic, Social and Cultural Rights (ICESCR) is said to be the most “comprehensive article on the right to health in international human rights law” (ECOSOC 2000), highlighting the obligation of States Parties to protect both the physical and mental health of individuals (ICESCR 1966).

In addition, the Committee on Economic, Social and Cultural Rights (CESCR) has further acknowledged that “health is a fundamental human right indispensable for the exercise of other human rights” (ECOSOC 2000). This reiterates how human rights are “interdependent, indivisible and interrelated” (Vienna Declaration and Programme of Action 1993), emphasising that violating the right to health can interfere with other human rights (OHCHR 2008, 6). Failure to acknowledge the indivisibility of the right to health from other human rights is dangerous in that neglecting the interconnectivity of all human rights is thought to be a major hurdle to their implementation (De Beco 2019, 158).

Regarding the European perspective, the European Social Charter (ESC) is believed to supplement the ECHR as it relates to the right to health (CoE 2009b, 1). More specifically, Article 11 of the ESC imposes a “range of positive obligations designed to secure the effective exercise of that right” throughout Europe (CoE 2009b, 2). As such, states must take “measures that enable and assist individuals and communities to enjoy the right to health” (ECOSOC 2000).

In order to properly and thoroughly explore the right to health of IDPs, it is necessary to recognise that there is “no health without mental health” (WHO 2005, 11). Mental health is vital to the well-being of both individuals and societies (WHO 2005, 11). As such, mental health should be emphasised in current discussions about IDPs and incorporated into existing and future policies, but most importantly should be included in legislation within the European context. This is particularly pressing, as the right to health of IDPs, including the right to mental health, has not been codified in European soft law instruments nor ECtHR case law, thereby neglecting IDPs’ heightened health vulnerabilities. Furthermore, a European convention could pioneer the field of binding mental health legislation, both for the sake of the individual in question as well as their community.

4.2.1. Mental health and the individual

To build on the international obligation of states to safeguard mental health, some key drivers of adverse consequences for the mental and overall health of IDPs must be recognised. To begin with, the WHO defines mental health as a “state of well-being in which the individual realises his or her own abilities, can cope with the normal stresses of life, can work productively and fruitfully, and is able to make a contribution to

his or her community” (WHO 2005, 49). In this regard, mental health can be seen as subjective well-being, where an individual’s “emotional vitality” and “positive functioning” reflect their psychological, emotional and social well-being (Snyder and Lopez 2002, 48).

Elements linking a person’s emotional vitality and positive versus negative functioning should also be considered. First, a connection has been found between mental disorders and other health conditions, thus leading to comorbidity (Prince et al. 2007, 862). This conclusion confirms that health cannot exist in a vacuum wherein mental health is excluded.

To better safeguard IDPs’ right to health, variables that correlate with poorer mental health, and therefore reduced general welfare, should be considered. Research has found that such factors often include age, sex and living areas (Porter and Haslam 2005, 608). More specifically, the older the individual is at the time of displacement, the worse the outcome on health was. In general, females indicated “poorer mental health outcomes” than males, as did rural residents when compared with city dwellers (Porter and Haslam 2005, 608). Furthermore, heightened and enduring stress has also been linked with lowered physical health (Sanderson 2013, 102).

In contrast, post-displacement variables that have been found to correlate positively with psychological functioning include proper resettlement conditions and economic prospects (Sanderson 2013, 102). In essence, enhanced mental health was observed in those living in stable, long-term and private accommodations whilst being provided with the right to work, which helped individuals maintain their socioeconomic standing (Sanderson 2013, 102). This stresses the need for a European convention to incorporate practical long-term solutions to ensure at the very least some degree of stability for IDPs.

In addition, there are also individual features that correlate with a beneficial effect on this group. It has been shown that certain personality traits (i.e., “extraversion, openness”) and coping abilities (i.e., “mindfulness skills, positive reframing”) are linked to enhanced mental health (Bucher et al. 2019, 58). Another important factor in mental well-being is resilience, a defence mechanism that helps people “thrive in the face of adversity” (Davydov et al. 2010, 479). It is vital to be mindful of such data, as efforts to implement policies and legislation with mitigating effects in Europe should target vulnerable groups. Moreover, being aware of environmental and individual characteristics that positively affect the mental health of IDPs might help states to establish programs centred on those features which are deemed beneficial to the individuals’ well-being. Here again, exchange between professionals exploring the resilience and psychological hardships of IDPs is crucial in identifying and disseminating good practice, so as to benefit as many affected individuals as possible.

4.2.2. Mental health and society

Having focused on mental health and the individual, it is important to understand that the mental health of people “is integral to shaping the health of communities and populations” (UNHRC 2017, 16). To further explore the social value of addressing individuals’ mental health, one must consider the ripple effects on wider communities, or, in other words, the cost to the social fabric of inaction.

According to the WHO, “a lack of positive mental health is a threat to public health, the quality of life and the stability of Europe” (WHO 2005, 49). Unpacking this sentence begins with grasping the meaning behind “ripple effect” and discussing the relationship between an individual’s mental health and the welfare of society.

To begin with, health, which (as has already been established) includes mental well-being, is an essential precondition for a sustainable and socially constructive European society (WHO 2005, 49), and is likewise important for communities of IDPs and those hosting them. It has been found that mental health improves social cohesion, or solidarity, whilst enhancing the overall security within any society (WHO 2005, 49). Specifically, optimum environments for mental health can be fostered by enhancing the “sense of belonging” amongst individuals, by embracing diversity, and by providing people with comparable life possibilities (Ratcliffe and Newman 2011, 28). Diminished mental health, on the other hand, especially that which results from exposure to trauma, has consistently been shown to correlate with augmented levels of serious and violent crime in communities (Hahn Fox et al. 2015, 164). Hence, the neglect of IDPs’ potential trauma, arising from their upheaval, losses, or experiences of mass atrocity, would imperil the stability of their community as a whole.

Additionally, the social capital of a society may deteriorate when the mental health of people is left neglected or ignored (WHO 2005, 49). For example, it has been established that diminished mental health impacts society via reduced productivity and employment (WHO 2005, 49). Thus, when the mental health of IDPs is ignored, it first and foremost diminishes their ability to avail themselves of their right to work, but it also affects their community at large. These economic and social impacts of poor mental health on society are not only significant, but also enduring (WHO 2005, 49). Analysing the impacts of mental health, both on the well-being of individuals and the welfare of society at large, must also be considered through a human rights lens. The reason for this is that it is not enough to address the ill-health of individuals and its adverse consequences on society solely from a psychosocial perspective. Rather, a comprehensive approach must also include a framework which emphasises the importance of justice, through legally and ethically binding principles (Yamin 2008, 46).

Essentially, a human rights framework complements the psychosocial one by noting that health is a product of “social, and inherently power, relations”. Human rights arose as an instrument to enable all people, “without distinction of any kind” (UDHR 1948, Article 1), to live a life of dignity and equality, and this should serve as a compass in highlighting that the right to health must also be considered in those terms. Therefore, maintaining that “health is a matter of human rights” implies that ignoring the mental health of IDPs does not only violate their right to health, but also breaches their other human rights, such as the right to live in dignity (Yamin 2008, 46).

In summary, this research suggests that considering the issue of mental health is a vital starting point in better protecting the right to health of individuals facing displacement in Europe. Only when this occurs can the right to health comprehensively be explored. Future practices with a focus on mental health and psychological assistance can include those that address proper post-displacement conditions within European countries, as well as those providing tangible support programs and services. Lastly, European governments have a duty to collaborate on the respect for, protection of, and fulfilment of the human rights of IDPs, including their right to physical and mental health.

5. Conclusion and recommendations

The deficiencies in IDP protection on the European and international level leave the region’s IDPs in peril. In light of the ever-growing numbers of IDPs in the region, the CoE member states must urgently tackle the gaps and reinforce existing human rights law by acknowledging the challenges specific to IDPs.

In general terms, a European convention on the protection of IDPs must include:

1. A definition of internally displaced persons accounting for the various causes of internal displacement.
2. Financial, technical, logistical and other support for the UN Special Rapporteur on the human rights of IDPs, and for other UN entities that help IDPs.
3. A uniform data collection system, especially concerning:
 - climate-induced displacement, to map the issue in the area and notice new trends, and
 - the most vulnerable groups of IDPs, to ensure that the right aid reaches them in the correct quantity.

4. An obligation to prevent internal displacement. The convention may suggest that member states seek advice from the Special Rapporteur, NGOs and other organisations working with IDPs (the intersectionality approach), as well as countries and regions that have dealt with the issue and developed sustainable solutions (e.g., the national legislation in Fiji and Vanuatu, and the Kampala Convention, regarding climate-induced displacement).
5. A platform to exchange good practice on national IDP legislation and practice and to cooperate in building national capacities in addressing internal displacement.
6. The protection of all political, civil, economic, social and cultural rights on the same basis as those of non-displaced individuals, but also taking into account any challenges arising from displacement. In identifying these, the drafters of a European convention must consult with various IDP populations and members of subgroups, such as children, persons with disability, women, members of the LGBTIQ+ community, and so on.

Furthermore, as this paper has argued, any future European convention, policies or legislation (as well as their national equivalents) which relate to IDPs ought to focus not only on the human rights framework, but also incorporate relevant frameworks for the European context, such as climate-justice, psychosocial and intersectional perspectives. This requires awareness-raising among the CoE countries as well as training for members of governments and policymakers.

Concerning climate-induced displacement, a European convention must obligate CoE countries to:

1. Include the climate justice perspective into national IDP legislation.
2. Mitigate climate change. Many European countries are among those contributing proportionately most to climate change. If they fulfil their duties for climate action and do their share in combating climate change, this will also have an impact on reducing climate displacement.
3. Assist disproportionately affected regions and communities in building resilient infrastructures and establishing disaster management frameworks.
4. Help rebuild communities affected by environmental

disasters. In the EU and candidate countries the EU Solidarity Fund can be invoked in cases of natural disaster. Creating a similar program for the entire CoE community could be a potential solution for mitigating the effects of climate change disasters.

As far as the heightened vulnerability and special needs of some groups of IDPs such as women and the LGBTQI+ community are concerned, a European convention must:

1. Protect these groups from discrimination and guarantee the investigation of violations.
2. Consult these groups on their needs.
3. Apply a gendered perspective particularly to the right to health by guaranteeing, for instance, medical and psychological care for survivors of gender-based violence.
4. Provide protection from gender-based violence by, for example, advising states to establish shelters for survivors, and training authorities to identify and appropriately respond to such forms of violence.

As regards the right to health, a European convention must show that the right to mental health is intrinsically linked with the right to physical health as well as with the ability of the individual to make use of their other rights. It must draw attention to the fact that violations of the right to mental health of the individual have repercussions for the entire community, including its stability. It is therefore vital that state parties to a European convention agree to:

1. Guarantee the medical and psychological care and rehabilitation of IDPs particularly when they have witnessed atrocities and other traumatic events. This includes allocating sufficient funds to such programs.
2. Involve organisations such as the ICRC when they are unable to provide IDPs with medical care.

Provisions concerning long-term solutions for IDPs must include:

1. An obligation for states to consult IDPs on whether they wish to integrate, resettle or repatriate, and what they require to undertake any of these options.
2. Installing programs to bring together IDPs and their host community to support their integration, even if such integration is only for the short- to mid-term.

3. Listening to host communities regarding their needs when it comes to including IDPs.
4. Fighting discrimination and guaranteeing the human rights of IDPs, so they can become members of their communities.

Europe has the means and know-how to develop an IDP protection framework. The ECHR implicitly protects IDPs. The ECtHR may make binding ECHR decisions and has done so in IDP situations. Along with growing soft law, these elements may be utilised in formulating a comprehensive and binding framework stressing IDP challenges, while national IDP legislation should address the particular conditions of each country.

European countries have to date failed to see and acknowledge the urgent need for regional and national IDP protection, particularly when it comes to defining climate-induced displacement as a fundamental cause. Nevertheless, there are countless advocacy opportunities. With the growing frequency of environmental disasters followed by displacement, the debate will increasingly be drawn to climate-induced displacement and the urgency of codifying policies and measures to protect affected individuals. Moreover, the ongoing displacement in Ukraine has received considerable attention from policymakers, and willingness to cooperate in supporting those affected by Russia's invasion. By harnessing the momentum of the climate emergencies in some European regions and the displacement of Ukrainians, there is not only an urgency but also an opportunity to create a novel convention on IDP protection that engages various and diverse perspectives, from climate justice to psychology, gender issues and human rights.

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