



# Making Arbitrary Displacement a Crime: Law and Practice

The findings, interpretations and conclusions expressed in this work are those of the author and do not necessarily reflect the views of the Office of the United Nations High Commissioner for Refugees and the Global Protection Cluster.

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## Forewords

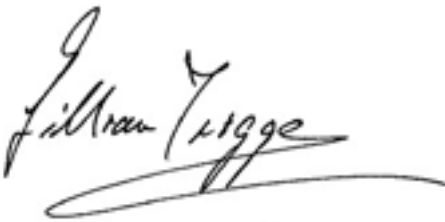
In a multitude of ways, arbitrary displacement affects the rights of people to freedom of movement and to live in their own communities. UNHCR's operational experience shows that arbitrary displacement is not just the inevitable consequence of other crimes, especially when it is used strategically to control territory and remove populations. Arbitrary displacement should be a crime to deter and punish those who violate fundamental international law prohibiting such acts. A healthy society cannot be sustained if some sectors of the population have been forcibly expelled from their place of residence. This is why it is important to end impunity for arbitrary displacement and to hold accountable those responsible.

UNHCR, in collaboration with the Global Protection Cluster, has developed this paper to support the efforts of States to prosecute arbitrary displacement. The paper explores law and practice and analyzes how some States are currently criminalizing acts of arbitrary displacement, some of which acts may breach existing international law. Additionally, this paper examines how States could criminalize other forms of arbitrary displacement in their national laws to both deter and end impunity. Critically, national laws criminalizing arbitrary displacement can promote access to justice and support durable solutions for those people who have been forcibly displaced.

As a leader of the Global Protection Cluster, UNHCR is stepping up our policy and programmatic work on arbitrary displacement as part of our broader support to States on all internal displacements. This paper provides guidance, practical examples, and concrete recommendations that we hope will be helpful to States and practitioners.

We are committed to supporting States to meet their international obligations to prevent and prohibit arbitrary displacement.

Gillian Triggs  
UNHCR Assistant High Commissioner for Protection

A handwritten signature in black ink, reading "Gillian Triggs". The signature is written in a cursive style with a long horizontal flourish at the bottom.

As UN Special Rapporteur on the human rights of IDPs, I have had multiple occasions to discuss the international obligations of States with officials, including within ministries responsible for the interior, foreign affairs, humanitarian action, human rights and justice, as well as with subnational authorities such as mayors, traditional leaders and councils of locally elected officials. Developing and implementing legal provisions to support conditions that prevent arbitrary displacement and to criminalize behaviours leading to arbitrary displacement is of high interest to authorities across ministries and at all levels of government. This publication can help States' endeavours to achieve these objectives with guidance on legal and technical questions, and considerations for tailoring measures to States' specific justice systems and displacement situations.

The need for timely action is evidenced by the ever-rising number of internally displaced children, women and men, and other affected communities of victims of gender-based violence and other human rights abuses occurring in the context of armed conflict and violence. The UN Secretary-General's focus on prevention, his Call to Action for Human Rights, the report of his High-Level Panel on Internal Displacement, the 2030 Agenda for Sustainable Development, and the twin resolutions of the Security Council and General Assembly on peacebuilding reflect the critical need to address arbitrary displacement as a priority.

In my report to the UN General Assembly on the prevention of arbitrary displacement in situations of armed conflict and generalized violence, I provide an analysis of international legal standards on the prohibition of, and obligation to prevent, arbitrary displacement and their relevance to the response to internal displacement across the displacement cycle. Measures to prevent arbitrary displacement can be less costly and easier than responding to displacement once it has occurred. Well-designed and well-implemented laws, policies, programmes and durable solutions processes, grounded in human rights, can effectively prevent arbitrary displacement. Preventing arbitrary displacement is not, however, about preventing human mobility or hindering people from seeking safety, as displacement can be a protective measure, a protective choice. Preventive measures must focus on addressing the conditions that lead to displacement and on protecting people from being forced to leave their homes, in line with international standards.

I commend the UNHCR and the Global Protection Cluster (GPC) Task Team on Law and Policy for developing this paper. It is timely and important guidance for State officials as well as UNHCR staff, protection clusters and their partners. Grounded in the Guiding Principles on Internal Displacement and relevant international law norms, it helpfully expands on the notion of arbitrary displacement and outlines examples and approaches taken by States to prohibit and criminalize acts of arbitrary displacement. It highlights a range of practical considerations and legislative options for consideration by State authorities for the development of new and amended legal provisions to address arbitrary displacement. I encourage international partners to use this as a reference and a resource to raise awareness, including among IDPs and host communities, about the importance of making arbitrary displacement a crime, and to collaboratively engage the support of key national, regional and international stakeholders across the humanitarian, development and peacebuilding spheres of action.

Cecilia Jimenez-Damary

Special Rapporteur on the human rights of internally displaced persons





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## List of acronyms

<b>ASEAN</b>	Association of Southeast Asian Nations
<b>CERD</b>	Convention on the Elimination of All Forms of Racial Discrimination
<b>ECCC</b>	Extraordinary Chambers in the Courts of Cambodia
<b>ECHR</b>	European Convention on Human Rights
<b>GPC</b>	Global Protection Cluster
<b>ICC</b>	International Criminal Court
<b>ICL</b>	international criminal law
<b>ICTR</b>	International Criminal Tribunal for Rwanda
<b>ICTY</b>	International Criminal Tribunal for the former Yugoslavia
<b>IDP</b>	internally displaced person
<b>IHRL</b>	international human rights law
<b>IHL</b>	international humanitarian law
<b>ILO</b>	International Labour Organization
<b>IMT</b>	International Military Tribunal at Nuremberg
<b>IMTFE</b>	International Military Tribunal for the Far East
<b>UNHCR</b>	United Nations High Commissioner for Refugees





## Summary

This research aims to contribute to the effective prosecution of, and punishment for, arbitrary displacement. While arbitrary displacement is still often considered a less serious crime or a consequence of other crimes rather than a crime in itself, it is often used as a strategy to take control of a territory and remove populations from it for different purposes. As a result, it is particularly important to support efforts to end impunity for it and to hold those responsible accountable.

Developed for the United Nations High Commissioner for Refugees (UNHCR) and the Task Team on Law and Policy of the Global Protection Cluster (GPC), this paper provides guidance and concrete recommendations for States as well as for practitioners supporting States in discharging their responsibilities in this particular area.

More specifically, States need to criminalize arbitrary displacement in order to:

- (i) clearly reject it as illegal conduct, in line with international and regional obligations and standards;
- (ii) contribute to the prevention of arbitrary displacement; and
- (iii) support the achievement of durable solutions for internally displaced persons (IDPs).

Under international law, States have an obligation to prevent and prohibit arbitrary displacement. This obligation entails, among other things, the criminalization of some acts of arbitrary displacement that amount to international crimes. In line with their obligations under international treaties and standards (including the Geneva Conventions and their Additional Protocols, the Rome Statute of the International Criminal Court and customary international law), States have an obligation to define international crimes as criminal acts in domestic legislation. In addition, States can further fulfil their international obligations to prevent arbitrary displacement by establishing criminal offences for instances of arbitrary displacement that do not amount to international crimes, yet are prohibited under international law. In so doing, criminal law provisions may address a broader scope of behaviours, include parameters that are easier to satisfy than international crimes, and be tailored to the domestic displacement and legal contexts.

States can criminalize arbitrary displacement by inserting specific criminal offences into existing legislation or by developing stand-alone legislation, according to their national context and legal system. Once the legislation is adopted, it is important to support its dissemination and build the capacity of relevant actors to encourage the prosecution of acts of arbitrary displacement and ultimately, to foster the achievement of durable solutions for IDPs and the prevention of new arbitrary displacements. Indeed, the purpose of a judicial process in the context of arbitrary displacement is to ensure justice, repair damages, generate and promote social sanction for acts of arbitrary displacement, contribute to alleviating the suffering and eliminating the stigmatization that victims often endure, and last but not least, restore their dignity. The criminal process is not an end in itself, but it is essential for achieving these goals.

The paper concludes by presenting other mechanisms that exist at the international, regional and national level and contribute to hold perpetrators of arbitrary displacement accountable when the criminalization of arbitrary displacement itself is not sufficient.

# Introduction: Why should States criminalize arbitrary displacement?

Every year, millions of people have to abandon their homes to protect themselves and their families, facing the impact of armed conflicts, human rights violations or disasters. Besides the experience of being forcibly displaced being extremely distressing, living in internal displacement is often associated with a high level of vulnerability for the people displaced.

**Arbitrary displacement constitutes a specific form of forced displacement.**<sup>1</sup> To be characterized as “arbitrary” in line with international standards, forced displacement needs to present some specific elements. As recalled in the recent report of the Special Rapporteur on the human rights of internally displaced persons (IDPs) on the prevention of arbitrary displacement in situations of armed conflict and generalized violence, **“arbitrariness” has to be understood as opposed to permissible**, rather than strictly lawful displacement.<sup>2</sup> Accordingly, arbitrary displacement refers to situations as diverse as related to the attack of civilians or specific cases of forced eviction and land grabbing. Moreover, “arbitrary” characterizes acts that contain “elements of injustice, unpredictability and unreasonableness”. As a result, these acts should not be in line with domestic or international law and its purposes should appear illegitimate.<sup>3</sup> Based on international standards, the Special Rapporteur has identified three criteria to determine whether displacement is arbitrary or permissible, which relate to: (1) the grounds for displacement; (2) the due process and related safeguards that must be respected during displacement; and (3) the duration of displacement.<sup>4</sup> While arbitrary displacement is not necessarily conditioned by the destination of the person displaced, the focus of this paper is on arbitrary displacement within internationally recognized State borders.

Drawing from international human rights law (IHRL) and international humanitarian law (IHL), the Guiding Principles on Internal Displacement (1998) restated and clarified international legal obligations applicable in situations of internal displacement by explicitly stating a general prohibition against arbitrary displacement, and provide a non-exhaustive list of situations in which displacement would be arbitrary.

## Principle 6:

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.
2. The prohibition of arbitrary displacement includes displacement: (a) When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population; (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand; (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests; (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and (e) When it is used as a collective punishment.
3. Displacement shall last no longer than required by the circumstances.

This paper focuses on the **criminalization of arbitrary displacement**, meaning the transformation of acts of arbitrary displacement into a criminal offence for which specific sanctions or punishment are provided under domestic legislation. As a result, an individual can be found liable for the criminal offences related to acts of arbitrary displacement if the prosecution proves that the person breached a law by forcibly displacing people without any legally grounded justification.

Since the main subjects of international law are States, they have the responsibility to comply with their own commitments at the international level by incorporating international provisions into domestic legislation and policy. This includes the responsibility to effectively prohibit and criminalize some forms of arbitrary displacement. States are also the main actors able to guarantee that individuals be held criminally responsible for arbitrary displacement and punished accordingly. How this is effected is usually up to the discretion of States themselves. This is particularly the case for criminal justice, as it was – and still is – often conceived as an exclusive prerogative of States due to its state-core nature. International crimes are an exception to this, since States have the obligation to translate, prosecute and punish these crimes in accordance with international law.

There is no such thing as an internationally recognized crime of arbitrary displacement. Yet, as presented hereafter, **several acts of arbitrary displacement can amount to or constitute criminal offences under domestic and international law.** In fact, some acts of arbitrary displacement can amount to specific international crimes, as defined and criminalized under international law, be it under a treaty or customary international law. Other forms of arbitrary displacement can also constitute an ordinary crime under specific domestic legislation.

**States need to criminalize arbitrary displacement** in order to:

- (i) clearly reject it as illegal conduct, in line with international and regional obligations and standards;
- (ii) contribute to the prevention of arbitrary displacement; and
- (iii) support the achievement of durable solutions for IDPs.

States ought to criminalize arbitrary displacement because first, **by doing so, they would clearly show their rejection of this as illegal conduct**, countering the recurrent assumption that arbitrary displacement is merely the consequence of other acts such as murders or attacks against civilians. This would acknowledge that in many situations, arbitrary displacement is in itself a tactic used to take control of a territory and remove certain groups from it for different purposes, such as political cleansing of a territory and grabbing of natural resources.<sup>5</sup> In simple terms, a society cannot be built in the knowledge that some sectors of the population, through power or force, expel others from their place of residence. Arbitrary displacement, in its different forms, not only affects the exercise of freedom of movement and choice of residence, which are basic norms for life in society, but also the life project of individuals and the communities to which they belong. Acts of arbitrary displacement demand a reproach from society, and this reproach is materialized in the punishment defined in the penalty once a crime of arbitrary displacement is established. This is particularly important, for example, in societies that have accepted and internalized both violence and displacement caused by violence as “normal”.

In addition, based on the *pacta sunt servanda* principle, the application of international law depends on States' compliance with their international commitments. States must respect and ensure respect for their obligations under international law. Since arbitrary displacement is prohibited and some of its forms are even criminalized under international law, **States have an obligation to prevent and avoid conditions that might lead to the arbitrary displacement of people, which includes the translation of international obligations into domestic criminal law.** It is also in their interest, as part of the community of States, to enact and comply domestically with the principles they commit to internationally.

**The criminalization of arbitrary displacement may also support other legal measures or policy actions and provide internal coherence**, which is particularly important in situations of mass displacement and/or (post-)conflict contexts.<sup>6</sup> In many contexts, effectively addressing internal displacement in a country requires the establishment of comprehensive normative frameworks on internal displacement, clear identification of roles and responsibilities of all the stakeholders involved in preventing and responding to displacement, establishment of appropriate coordination mechanisms and allocation of adequate resources, among other things. The criminalization of arbitrary displacement is one important element of that picture. The development, adoption and implementation of an adequate legal and policy framework on internal displacement requires collective awareness, institutional knowledge and clarity about its objectives, which highlights the importance of developing a participatory process, including around the need to criminalize arbitrary displacement.

Second, by criminalizing arbitrary displacement, States may help prevent it. **The criminalization of arbitrary displacement may have a deterrent effect and help achieve its non-repetition.** This, too, is in the interest of States, as preventing arbitrary displacement may be less complex and resource-intensive than responding to internal displacement once it has occurred. In addition, **the criminalization of arbitrary displacement and the criminal policy that results from such action can also be seen as a structural prevention tool.** This is because often, arbitrary displacement is not an isolated act committed by one person alone (a single event), but rather it is based on behaviours that are repeated over time and have an impact on a group of people. In contexts where there may be a link between arbitrary displacement and existing criminal structures, the criminalization of that conduct and the ensuing criminal policy would be an important mechanism towards dismantling groups that cause arbitrary displacement.

Third, the criminalization of arbitrary displacement gives States the possibility to hold individuals accountable, thereby helping to ensure that arbitrary displacement does not go unpunished. In this way, criminalizing arbitrary

displacement contributes to fighting impunity for acts (or omissions) that affect society overall, given the economic, social and cultural impact of arbitrary displacement. Most importantly, this may allow **IDPs to access effective remedy and reparation for the violations they have suffered, which may have a major impact on their chances of achieving durable solutions, while at the same time contributing to reconciliation processes.** All victims of gross violations of IHRL and serious violations of IHL have a right to an effective remedy and reparation, and IDPs are no different.<sup>7</sup> Access to effective remedies for displacement-related violations, including access to justice, reparations and information about the causes of violations, as well as access to effective mechanisms that restore their housing, land and property or provide compensation, are essential components of durable solutions for IDPs. Acknowledging both the victims of arbitrary displacement and the capacity of judiciary institutions to sanction those who are acting against society's interest may also foster trust and reconciliation in society, and promote the rule of law in general.<sup>8</sup> Indeed, the purpose of a judicial process in the context of arbitrary displacement is to ensure justice, repair damages, generate and promote social sanction for acts of arbitrary displacement, help alleviate the suffering and eliminate the stigmatization that victims often endure, and, last but not least, restore their dignity. The criminal process is not an end in itself, but it is essential for achieving these goals.

In this way, the criminalization and punishment of arbitrary displacement respond to both States' legal obligations and their interests. In the last decades, a growing number of countries have enacted domestic criminal legislation on arbitrary displacement. This paper analyses some of these experiences, focusing on **how States can actively contribute to the effective prosecution and punishment of individuals responsible for arbitrary displacement.**

This paper does not purport to be a comprehensive review of all existing national legal provisions on arbitrary displacement worldwide, but it aims to present different ways to criminalize arbitrary displacement, including their respective challenges and opportunities, keeping policymakers and lawmakers as well as legal practitioners in mind. The analysis presented here is based on a desk review of primary sources such as institutional reports and legal databases, as well as academic literature on the issue.

The paper is divided into four parts. The first part presents States' obligations regarding arbitrary displacement in international law. The second and third parts introduce different elements to consider in the process of legislating and implementing the criminal provisions on arbitrary displacement, based on existing cases. Since national legislation on arbitrary displacement may not always be sufficient, the fourth part presents complementary mechanisms to guarantee the effective prosecution and punishment of arbitrary displacement.

## I. Arbitrary displacement under international law

There are currently several international instruments that address arbitrary displacement and place obligations on States to prevent and even criminalize arbitrary displacement. These instruments can be organized according to their legal field such as international human rights or, in situations of armed conflict, humanitarian law, as well as international criminal law. The international instruments can be categorized according to their geographical scope of application,<sup>9</sup> or classified depending on whether they are legally binding or not for a given State. All these criteria ultimately delineate the conditions of applicability of the instruments. Moreover, all these instruments introduce obligations related to protection against forced displacement<sup>10</sup> and the prohibition or even the criminalization of certain acts of arbitrary displacement. This paper focuses on the main treaties and recognized international obligations and standards that address arbitrary displacement, as presented in Table 1.<sup>11</sup>

**Table 1. Main treaties and international obligations and standards that address arbitrary displacement<sup>12</sup>**

		Geographic scope of application	
		International	Regional
Legal obligations	Binding	Indigenous and Tribal Peoples Convention, International Labour Organization (ILO) No. 169 (IHRL) Geneva Convention IV; Additional Protocols I and II; customary international humanitarian law (IHL)* Rome Statute of the International Criminal Court (ICL)* Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) (IHRL)* International Covenant on Civil and Political Rights; Committee on the Elimination of Racial Discrimination (IHRL)**	African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (IDP) Protocol on the Protection and Assistance to Internally Displaced Persons, International Conference on the Great Lakes Region (IDP) American Convention on Human Rights; Arab Charter on Human Rights; African Charter on Human and Peoples' Rights; Convention on Human Rights and Fundamental Freedoms of the Commonwealth of Independent States; European Convention on Human Rights (IHRL)**
	Non-binding <sup>13</sup>	Guiding Principles on Internal Displacement (IDP) Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles) (IDP) Universal Declaration of Human Rights (IHRL)**	Association of Southeast Asian Nations (ASEAN) Human Rights Declaration (IHRL)** Council of Europe Parliamentary Assembly Resolution 2367

Note: \* instruments that provide for the criminalization of arbitrary displacement

\*\* instruments that provide for the rights to freedom of movement and residence

While the content of the obligations varies, relevant provisions in the international instruments listed in Table 1 are based on the assumption that forced displacement is unfortunate, but can be unavoidable and even sometimes

permissible or required under very specific conditions. Therefore, the prohibition of arbitrary displacement concerns specific forms of forced displacement that are not legally justified and constitute a breach of international law.<sup>14</sup> In turn, the prohibition of arbitrary displacement contains specific exceptions in particular circumstances. Ultimately, the consequences for breaching the prohibition of arbitrary displacement as well as States' obligation in terms of penal repression vary from one instrument to another.

## 1. The prohibition of arbitrary displacement

As already mentioned, arbitrary displacement is prohibited under international law. This prohibition concerns certain circumstances,<sup>15</sup> particular people,<sup>16</sup> displacement by specific actors,<sup>17</sup> or the particular conditions of the displacement.<sup>18</sup>

Under **IHRL**, the prohibition of arbitrary displacement is implicitly made in the provisions about the rights to the freedom of movement and residence,<sup>19</sup> the right to freedom from arbitrary interference with one's own home,<sup>20</sup> and the right to adequate housing.<sup>21</sup> When ratifying international human rights treaties, States commit to putting in place domestic measures and legislation that are compatible with their international obligations and duties. If they fail to do so, there are human rights mechanisms at the international and regional level to ensure that human rights standards are respected and enforced.<sup>22</sup> The Indigenous and Tribal Peoples Convention is exceptional in that it expressly prohibits arbitrary displacement (art. 16). Yet, the prohibition refers specifically to the "peoples concerned" defined in article 1. Ratifying States are obliged to implement the Convention in law and practice and to guarantee that indigenous peoples are consulted and can participate in the process (art. 2(1) and 33 (1, 2)).

In situations of armed conflict, while under **IHL** many of the acts that commonly force people to flee are the subject of prohibitions (such as attacks against civilians, acts or threats of violence with the primary purpose of spreading terror among the civilian population, or starvation of the civilian population as a method of warfare), the prohibition of "forced displacement"<sup>23</sup> is applicable only to a relatively limited number of circumstances.<sup>24</sup> Only certain forms of forced displacement fall under the IHL prohibition, in recognition that forced displacement is an unfortunate yet at times inevitable consequence of armed conflicts. In particular, parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory except when an "evacuation" is required for the security of the civilians involved or imperative military reasons (Geneva Convention IV, art. 49; International Committee of the Red Cross [ICRC] study on customary international humanitarian law, Rule 129 A).<sup>25</sup> In non-international armed conflicts, parties may not order the displacement of the civilian population for conflict-related reasons unless the security of the civilians involved or imperative military reasons so demand (Additional Protocol II, art. 17; ICRC study on customary international humanitarian law, Rule 129 B). Furthermore, in the event of displacement in situations of armed conflict, all possible measures must be taken so that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated (Geneva Convention IV, art. 49; Additional Protocol II, art. 17; ICRC study on customary international humanitarian law, Rule 131). Finally, displaced persons have a right to safe voluntary return to their homes and places of habitual residence as soon as the reasons for their displacement cease to exist (Geneva Convention IV, art. 49; ICRC study on customary international humanitarian law, Rule 132).<sup>26</sup>

Drawing both from IHRL and IHL, the **Guiding Principles on Internal Displacement** explicitly and coherently articulate a right not to be arbitrarily displaced, and spell out the exceptional circumstances under which displacement may be permissible.<sup>27</sup> Principle 6 states that "Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence" (Principle 6(1)). The second paragraph gives a non-exhaustive list of situations in which displacement is arbitrary. The same paragraph also includes a few exceptions to prohibition in situations of armed conflict, when "the security of the civilians involved or imperative military reasons so demand" and in situations of disasters, if "the safety and health of those affected requires their evacuation" (Principle 6(2)). These exceptions are conditioned by other factors, such as the fact that the "displacement shall last no longer than required by the circumstances" (Principle 6(3)).

Adapted to the African context, the **African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)** goes even further by including other prohibited categories of arbitrary displacement such as "harmful practices" (art. 4(4)). The Kampala Convention is the first regional legally binding instrument on internal displacement. As such, the ratifying countries are obliged "to respect and ensure respect for the present Convention. In particular, States Parties shall: "...Ensure individual responsibility for acts of



• • • •

arbitrary displacement, in accordance with applicable domestic and international criminal law” (art. 3(1)(g)) and “... Incorporate their obligations under this Convention into domestic law by enacting or amending relevant legislation on the protection of, and assistance to, internally displaced persons in conformity with their obligations under international law” (art. 3 (2)(a)). Moreover, in line with IHL (see next section), the Kampala Convention also states that “States Parties shall declare as offences punishable by law acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity” (art. 4(6)).<sup>28</sup>

## 2. From prohibition to criminalization

While not all prohibited forms of arbitrary displacement can be qualified as international crimes, some acts – those that are clearly defined and criminalized under international law as war crimes, crimes against humanity or genocide – can. This is because it is recognized that these violations are so severe and important that it is in the interest of the entire community of States to guarantee that these crimes do not go unpunished. This distinction is important, as it also has an impact on the obligations and duties of individual States under international law.

**Under IHL**, in situations of armed conflict, deportation and transfers can amount to war crimes (Geneva Convention IV, art. 147; Additional Protocol I, art. 85 (4)(a); ICRC study on customary international humanitarian law, Rule 156). Moreover, States must investigate serious violations of IHL, and if appropriate, prosecute the suspects.<sup>29</sup> This requires adopting and implementing legislation to institute penal sanctions for war crimes. For instance, Geneva Convention IV requires that States enact any legislation necessary to provide effective penal sanctions for persons who have committed, or ordered to be committed, “grave breaches” (art. 146), which includes the “unlawful deportation or transfer...of a protected person” (art. 147). Furthermore, Additional Protocol I, which supplements the provisions of Geneva Convention IV relating to the repression of grave breaches, provides that the “deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of article 49 of the Fourth Convention” amounts to a grave breach “when committed wilfully and in violations of the Conventions or the Protocol” (art. 85). It also requires that States and parties to the conflict repress such grave breaches (art. 86). Moreover, customary IHL Rule 139 states the obligation to enact legislation necessary to enact effective penal sanctions and to take measures necessary to suppress all acts contrary to the Geneva Conventions of 1949 and the 1977 Additional Protocol I (Geneva Convention IV, art. 146; Additional Protocol I, art. 85 and 86).

Furthermore, “forcibly transferring children of the group to another group” can be qualified as genocide according to art. 2 of the **Genocide Convention**.<sup>30</sup> State parties to the Genocide Convention have an obligation to prevent and punish genocide (art. 1); enact the necessary legislation to give effect to the provisions of the Convention, particularly the effective penalties for persons found guilty (art. 5); and try persons charged with genocide by a competent tribunal (art. 6), among others.

The jurisprudence of international tribunals over the twentieth century has played an important role in the criminalization of forced displacement.<sup>31</sup> The **1998 Rome Statute** further developed and recognized the criminal nature of arbitrary displacement. Depending on the circumstances, **arbitrary displacement can amount to a crime against humanity (art. 7), a war crime (art. 8)** and, in certain specific cases, **genocide (art. 6)**.<sup>32,33</sup> Because of the nature of international criminal justice, parties have the obligation to incorporate the provisions contained in the Rome Statute, and to investigate and, if appropriate, prosecute these crimes.<sup>34</sup> The Rome Statute also established that the ICC “shall be complementary to national criminal jurisdictions” (art. 1), and therefore can intervene in the event that States are unable or unwilling to do so.

**In sum**, arbitrary displacement is prohibited under international law and, under certain circumstances, can even amount to an international crime. Given that States have to comply with their international commitments, they have the obligation to prevent and prohibit arbitrary displacement as well as prosecute and punish those responsible for international crimes, some of which include acts of arbitrary displacement. In addition to this, States can further fulfil their international obligations on arbitrary displacement by establishing criminal offences for instances of arbitrary displacement which do not amount to international crimes but are prohibited under international law.

## II. Domestic legislation criminalizing arbitrary displacement

Because there is no crime or sanction without law, according to the principle of legality, **the first step for States to comply with their international commitment is to enact criminal laws that provide a clear definition of acts of arbitrary displacement as a crime, and the potential punishment incurred if the law is violated.** Moreover, once a country has ratified or acceded to an international treaty,<sup>35</sup> a range of measures must be taken, among them enacting the international obligations into domestic law, including the adoption of relevant criminal legislation.<sup>36</sup> To do so, legislators have to make a series of decisions, notably regarding the definition of the crime, the form of the legal provisions to be enacted, and when to adopt new legislation.

### 1. The qualification of the crime

The first question to address concerns the specific criminal provisions on arbitrary displacement, or, to put it differently, how to define the crimes associated with different acts of arbitrary displacement as well as their potential sanction or punishment.

- **Acts of arbitrary displacement that constitute a criminal offence**

As seen earlier, under international law, specific acts of arbitrary displacement can amount to **international crimes – war crimes, crimes against humanity and genocide.**<sup>37</sup> Moreover, according to certain specific criminal legislation, other acts of arbitrary displacement can also constitute an **ordinary crime.**

First, national legislators have to incorporate the definition of international crimes into their domestic legislation, in line with international law. The incorporation into national law of crimes as defined in international law is easy for the legislator, and allows the State to comply with its international obligations. **Much of the existing domestic criminal legislation on arbitrary displacement results from the implementation of IHL and international criminal law.**

As a result, the legislator may prefer to detail the offence or refer only to the international instrument in question. The latter is both simpler for the legislator and more flexible in case the international instrument is modified. However, a general reference to the crime may not be sufficiently specific, and hence insufficient in view of the principle of legality. Indeed, by referring to a crime only as defined in an international treaty, the law does not necessarily clearly specify the crime, nor would a general reference to the crime in international law allow for any differentiation of the penalty in accordance with the gravity of the act. For example, the International Criminal Court Act of Uganda explicitly refers to the relevant provisions of the Rome Statute to define acts which constitute “genocide”, “crimes against humanity” and “war crimes”, which under Ugandan law are punishable by “imprisonment for life or a lesser term” (arts. 7–9). By doing so, it requires the judges of national courts to clarify and interpret the law as well as to appreciate international jurisprudence, and leaves more room for interpretation.<sup>38</sup> These tasks may be particularly complex, especially if there is a lack of familiarity with the crime of arbitrary displacement in national criminal justice systems;<sup>39</sup> this may disincentive the utilization of this offence even further. That said, by referring to the Rome Statute, the legislator also allows national courts to use the ICC’s interpretations of arbitrary displacement, particularly relevant since the Ntaganda decision.<sup>40</sup>

To be characterized as an international crime, arbitrary displacement must meet a number of criteria. Among them, the act must be related to a conflict to be considered a “war crime”, which excludes a number of arbitrary displacement situations in post-conflict or peacetime. Similarly, to amount to “crimes against humanity”, there needs to be an “underlying crime”<sup>41</sup> and overall, arbitrary displacement should result from “systematic or widespread” attack against the civilian population.<sup>42</sup> Finally, acts of arbitrary displacement must concern children to amount to “genocide”.<sup>43</sup> However, **specific forms of arbitrary displacement can also be included in domestic legislation as ordinary crimes.** While defining such ordinary crimes requires particular effort from the legislator in reviewing existing criminal legislation and drafting, by establishing a new criminal offence, **the scope of the criminalization of acts of arbitrary displacement may be wider than under the relevant provisions in international law, and the definition of acts of arbitrary displacement which constitute an ordinary crime may address situations that are specific to the domestic context, while including parameters that are easier to meet than international crimes.** As a consequence, the definition of certain acts of arbitrary displacement as an ordinary crime may contribute to broadening the scope of situations that are criminalized, hence contributing to fulfilling States’ international obligation to prevent arbitrary displacement. While international crimes are defined by international law, arbitrary displacement as an ordinary crime leaves a greater margin within the limits provided by international law.



**Different elements need to be legally defined when characterizing arbitrary displacement as an ordinary crime.** The crime needs to define the act that is not permitted by law, by specifying for example the people displaced (e.g. individuals or groups), the persons committing the displacement (e.g. state actors, armed groups), their possible intention and/or knowledge of the situation, the relation of the conduct to the displacement (e.g. whether the act is ordered or committed), the process of displacement itself and its consequences (conditions – coercive or minimizing its impact and its duration), or the context in which the displacement happened (whether it is related to an armed conflict or not).

**Colombia** and **Honduras** are noteworthy: these countries have enacted two different types of crimes to cover arbitrary displacement in their Criminal Code (see Table 2). On the one hand, they have incorporated acts of arbitrary displacement as crimes defined in IHL (see art. 159 of Colombia’s Criminal Code, and arts. 139, 143, 144 and 146 in Honduras’ Criminal Code).<sup>44</sup> On the other hand, they have created a new criminal offence to address other situations of arbitrary displacement. In Colombia, “forced displacement” is characterized as a crime against personal autonomy. Similarly, in Honduras, it is considered a crime against freedom of determination. Moreover, in Colombia, the act needs to be against “a sector of the population”, thereby reflecting the specificity of mass forced displacement experienced in the country at the time. While this may exclude cases in which “violence or other coercive acts” target a single individual or isolated person, the act still needs to cause the displacement of “one or more” persons. The reference to the displacement of “one person or his/her family” in Honduras is similar. As regards the definition of displacement itself, it is limited in Colombia to the change of “place of residence”. In Honduras, in turn, the definition of “displacement” encompasses situations in which some persons have been forcibly removed from their “place of residence, of commercial or work activity, the educational establishment or any location over which the person has property rights”. Furthermore, in both cases, “anyone” can be responsible for arbitrary displacement, which allows for a broad application of the relevant provision. In Colombia, the perpetrator of the offence is related to the displacement via the use of violence or other coercive means that has caused forced displacement, which does not necessarily imply a direct link between these acts and the forced displacement. In Honduras, however, displacement needs to directly result from the person’s action.

**Table 2. Criminalization of arbitrary displacement in Colombia and Honduras<sup>45</sup>**

	International crime	Ordinary crime
Colombia	<b>Criminal Code (Law 599 of 2000)</b> – Title III: Crimes against persons and property protected by international humanitarian law – Chapter I – <b>Art. 159. Deportation, expulsion, transfer or forced displacement of the civilian population.</b> <i>Anyone who, on the occasion and during the development of an armed conflict and without any military justification, deports, expels, transfers or forcibly displaces civilian population from their settlement site, will incur shall incur a prison sentence from 10 to 20 years, a fine of 1,000 to 2,000 current legal monthly minimum wages, and the prohibition of the exercise of rights and public functions for 10 to 20 years.</i>	<b>Criminal Code (Law 599 of 2000)</b> – Title III: Crimes against individual freedom and other guarantees – Chapter V: Crimes against personal autonomy – <b>Art. 180. Forced Displacement.</b> <i>Anyone who arbitrarily, through violence or other coercive acts directed against a sector of the population causes one or more of its members to change their place of residence, shall incur a prison sentence from 6 to 12 years, a fine of 600 to 1,500 current legal monthly minimum wages, and the prohibition of the exercise of rights and public functions for 6 to 12 years. The movement of the population carried out by the public force when its objective is the security of the population, or in development of imperative military reasons, in accordance with international law, shall not be deemed to constitute forced displacement.</i>

<p><b>Honduras</b></p>	<p><b>Criminal Code (Decree No. 130-2017)</b> – Title I: Crimes against international community – Chapter I: Crime against humanity – <b>Art. 139: Crime against humanity:</b> <i>Anyone who commits a crime against humanity as part of a generalized or systematic attack against civilian populations, with knowledge of said attack, in any of the following acts, must be punished with a prison sentence of 30 years to life imprisonment, loss of nationality and absolute disqualification for the same duration as the prison sentence: (...) 4) Deportation or forced transfer of population;</i></p> <p>Chapter II: Genocide – <b>Art. 143. Genocide.</b> <i>Anyone who, with the purpose of totally or partially destroying a national, ethnical, racial, ideological or religious group, commits any of the following acts must be punished with a prison sentence of 30 years to life imprisonment, and absolute disqualification for the same duration as the prison sentence, in addition to loss of nationality: (...) 5) Forcibly transferring children from one group to another group. The conspiracy, proposition or provocation for the commission of the crime of genocide must be punished with a prison sentence of 10 to 15 years.</i></p> <p>Chapter III: War crimes – <b>Art. 144: Grave breaches of the Geneva Conventions.</b> <i>Anyone who commits a serious violation of the Geneva Conventions in a situation of declared war or any other armed conflict, recognized or not, that arises between two or several States in a situation of total or partial occupation of a State, even if such occupation does not encounter any military resistance or in a situation of internal conflict, acts against persons or properties protected in the event of an armed conflict; and anyone who commits any of the following acts, must be punished with a prison sentence of 30 to 40 years, and absolute disqualification for the same duration as the prison sentence, in addition to loss of nationality: (...) 7) Deportation, transfer or deprivation of liberty.</i></p> <p><b>Art. 146: Prohibited means and methods of war.</b> <i>Anyone who, in an internal or international armed conflict, uses methods or means of war that are prohibited within the framework of international law, must be punished with a prison sentence of 30 years to life imprisonment, and absolute disqualification with the same duration that the prison sentence, in addition to loss of nationality. Anyone who commits any of the following acts shall be punished with the same penalty: (...) 4) The transfer, directly or indirectly, by the occupying force, of part of its civilian population to the territory it occupies, or the deportation or transfer of the entire or part of the population of the occupied territory, inside or outside that territory.</i></p>	<p><b>Criminal Code (Decree No. 130-2017)</b> – Title VIII: Crimes against freedom – Chapter II: Crimes against freedom of determination – <b>Art. 248: Forced displacement.</b> <i>Anyone who with violence or intimidation forces or tries to force a person or his/her family to change or abandon the place of residence, of commercial or work activity, the educational establishment or any location over which the person has property rights, shall be sentenced to imprisonment for six to nine years. The penalty provided for in this article must be imposed without prejudice to those that correspond, as the case may be, for other crimes committed.</i></p>
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That said, the characterization of arbitrary displacement as an ordinary crime represents more work for the legislator as it needs to establish a new offence and related sanction.<sup>46</sup> Yet, it is important to underline once more that **while the incorporation of international crimes in domestic criminal legislation responds to an obligation under international law, the criminalization of other acts of arbitrary displacement also contribute to compliance with the international obligation to prohibit arbitrary displacement**, as illustrated in Colombia and Honduras, as well as Kenya and Niger.<sup>47</sup> Ultimately, because they may address different cases and situations, the qualification of acts of arbitrary displacement as crimes under either category can help tackle impunity more efficiently.

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- **What penalties?**

In addition to the characterization of the crime, the clear and specific enunciation of the sanction incurred if the law is violated is the other side of the principle of legality that needs to be guaranteed. In that sense, international law, and particularly **the 1998 Rome Statute, represents a benchmark for the establishment of penalties for international crimes.**<sup>48</sup>

**Rome Statute of the International Criminal Court (1998):**

**PART 7. Penalties – Article 77: Applicable penalties**

1. Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute:

- (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or
- (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.

2. In addition to imprisonment, the Court may order:

- (a) A fine under the criteria provided for in the Rules of Procedure and Evidence;
- (b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

In turn, ordinary crimes have to be punished following some principles, such as exemplarity and proportionality. Since international crimes are considered the gravest crimes of concern to the international community, the **penalties provided for arbitrary displacement as an ordinary crime should consequently not exceed those for international crimes.**<sup>49</sup>

## 2. The form of the legal provisions to be enacted

Enacting new legal provisions can take different forms, which imply different efforts, particularly from legislators and judicial actors.

- **New legal provisions?**

States are often described as either predominantly “monist” or “dualist”, based on the position conferred to international instruments in their national legal order. More specifically, in monist States, once ratified – often through an act by the legislator – international treaties usually take direct effect in domestic law, as they are considered part of the same legal order. Meanwhile, in dualist States, treaties have no direct effect in domestic law and therefore always require implementing legislation.

Yet, provisions which allow individuals to be held accountable **require the legal establishment of both a crime and its penalties.** Therefore, while new legal provisions are clearly necessary in dualist States, they are also needed in monist States because the precedence of international law does not necessarily provide enough guidance to interpret the law accordingly. Moreover, the crime and the procedures under domestic law may be inconsistent with international obligations. Hence, **in both monist and dualist States, the insertion in national legislation of criminal offences to reflect the acts defined as crimes in these treaties and in customary international law will necessarily facilitate the effective prosecution of and punishment for arbitrary displacement.**<sup>50</sup>

- **Stand-alone legislation and/or incorporating offences into existing legislation?**

The adoption of criminal provisions can take two non-exclusive forms:

- the adoption of separate stand-alone legislation; and/or
- the modification of existing laws or codes.

Domestic legal tradition may influence this choice. Indeed, legal systems are also often described as either “**common law**” or “**continental (or civil) law**”.<sup>51</sup> While these two categories are ideal types, they have some practical differences.

Many common-law jurisdictions tend to adopt separate legislation for obligations deriving from international instruments, while continental-law jurisdictions often insert changes in pre-existing legal instruments, laws and (criminal) codes.

**Stand-alone legislation** can take the form of specific acts that explicitly incorporate specific provisions of IHL, such as the Act defining and penalizing crimes against international humanitarian law, genocide and other crimes against humanity, organizing jurisdiction, designating special courts, and for related purposes, adopted by **the Philippines** in 2009. International criminal law standards may also be domesticated through separate legislation such as the International Criminal Court Act adopted in **Uganda** in 2010.<sup>52</sup> Additionally, stand-alone legislation can take the form of a specific law on internal displacement. There are at least two countries in which IDP laws include criminal offences for arbitrary displacement: **Kenya (2012)** and **Niger (2018)**.<sup>53</sup> The case of **Kenya** is particularly interesting as the country adopted two separate laws that include criminal responsibility for arbitrary displacement: the International Crimes Act (2008) and The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (2012). These laws complement each other as they cover different situations of arbitrary displacement: the first criminalizes different acts in line with IHL, while the second criminalizes acts as defined in Guiding Principle 6(2). An assessment of the GPC Global Database on IDP Laws and Policies shows that various IDP laws provide for the right not to be arbitrarily displaced but without establishing any punishable offence.<sup>54</sup> This is the case of the Law on Internal Displacement (No. 28223) in Peru (art. 7).

Stand-alone legislation may facilitate the work of legal practitioners by bringing together the crimes and general principles of criminal law into one separate legislation. At the same time, it may go against the trend in certain countries to unify criminal provisions into one body of law. Moreover, the scarcity of parliamentary slots for passing primary legislation can be a challenge for their adoption.

On the other hand, the **modification of existing laws or codes** may entail new challenges for the legislator, who will need to make a number of choices, including on how to incorporate the new offences (as a section, a chapter etc.); and in which previous legislation the offences are going to be incorporated, particularly between ordinary or civilian criminal law and special (often military) criminal law. The latter choice is particularly important because it implies that different jurisdictions will be competent to judge cases, in which different persons – military personnel or civilians – can be held responsible for the violation. This choice depends ultimately on the relationship between civilian and military criminal law in the State in question.<sup>55</sup> For example, the **Democratic Republic of Congo** first included some specific provisions in its Military Penal Code in 2002, through Law No. 024-2002.<sup>56</sup> In 2015, the law was modified<sup>57</sup> and new provisions criminalizing international crimes were incorporated into the Penal Code.<sup>58</sup> Similarly, at the subnational level, the **states of Sinaloa (2020)** and **Guerrero (2021) in Mexico** also decided to incorporate specific provisions on arbitrary displacement as an ordinary crime into their criminal codes.<sup>59</sup>

Finally, **some countries may decide to combine both approaches, incorporating criminal provisions into existing legislation and also adopting separate additional legislation**. For example, **Niger** added a chapter on “Crimes against Humanity and War Crimes” (art. 208) including arbitrary displacement (art. 208) to its Criminal Code in 2003<sup>60</sup> and later included additional acts of arbitrary displacement in the IDP Act<sup>61</sup> which it adopted in December 2018 (see arts. 30–32), extending the scope of application of arbitrary displacement to a broader range of acts and situations.<sup>62</sup>

### 3. Timing for adoption

Last but not least, another element to be considered when criminalizing arbitrary displacement is the timing for the adoption of new legal provisions, as **some moments can be particularly favourable to adopting new legislation, depending on the country’s judicial and political agenda**. Such timing may also contribute to the effective criminalization of arbitrary displacement in the long term.

For example, in **Senegal**, Law N°2007-05, which amended the Criminal Code and integrated international crimes (including genocide, war crimes and crimes against humanity), was adopted in February 2007, after Senegal had failed to prosecute former Chadian President, Hissène Habré. While Habré was indicted in 2000 for torture and crimes against humanity committed in Chad between 1982 and 1990, the indictment was quashed on the grounds that Senegal’s courts had no jurisdiction on the matter. Indeed, despite being the first country to have signed the Rome Statute, Senegal had not yet domesticated international criminal law at the time. It was only after the setback in the



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adjudication of the Habré case, and to give effect to the concept of complementarity in the Rome Statute, that the Criminal Code was revised. The Habré case also led to the modification of other provisions, including the Constitution.<sup>63</sup>

In **Colombia**, several bills on the qualification of forced disappearance as a separate crime had been proposed unsuccessfully since 1988.<sup>64</sup> In 1998, the then Public Prosecutor of the Nation took the legal initiative to separate the crime of forced displacement from torture and genocide, in response to the net increase in forced displacement in the country. While this qualification of forced displacement came after Colombia had ratified Additional Protocol II to the Geneva Conventions in 1994, it was argued that the national crisis of forced displacement required specific legislation to specify and complement the international normative framework.<sup>65</sup> The draft law faced many obstacles – including a presidential objection, but was ultimately adopted as Law N°589 of 2000 and later integrated into the new Criminal Code (Law N°599 of 2000). This was made possible notably because of the need for legal tools to prosecute members of the People’s Alternative Revolutionary Force (FARC) at the time of the peace talks, as well as to bring the Criminal Code into line with the 1991 Constitution.<sup>66</sup>

Finally, it is also important to underline that just as new legislation can be enacted, it can also be modified or even withdrawn, depending on the judiciary and political context. For example in **Kenya**, following numerous criticisms against the prosecution initiated by the ICC, the Parliament threatened to withdraw the International Crimes Act – which is the act that incorporates international crimes into domestic legislation, and even voted in favour of a motion to withdraw from the ICC in September 2013.<sup>67</sup> Consequently, it is important to remember that legislating never takes place in a vacuum. Interestingly, all three cases also illustrate the **links that may exist between criminalization of arbitrary displacement and transitional justice processes**, and how these two processes can feed into each other.<sup>68</sup>

**In sum**, in order to increase the chances for new legislation to contribute to the effective prosecution and punishment of individuals for arbitrary displacement, **it is important to be sensitive and adapt the criminal provisions to the national context, including the legal system**. While there is no single good way to proceed, it is also important to **balance the needs and capacities of both the legislator and the judiciary, as they will have to clarify and interpret the new legislation**.

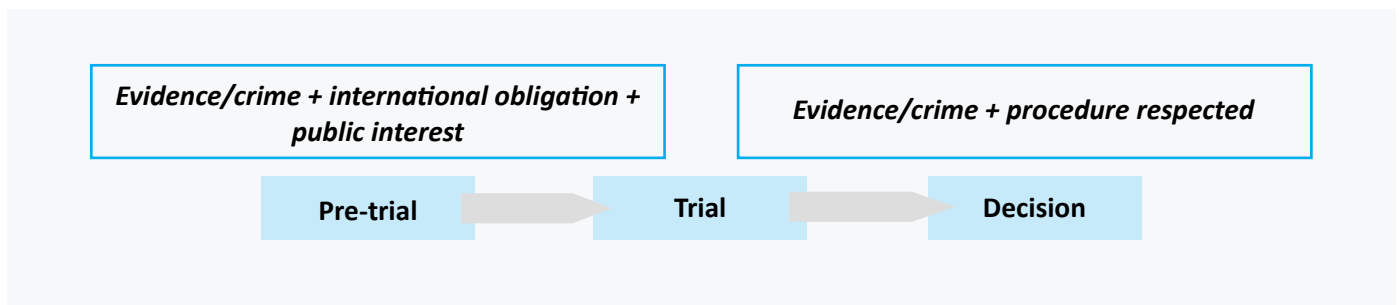


Azerbaijan, 2020. One of the most severely damaged houses in Guzanly IDP settlement. © UNHCR/Elsevar Aghayev

### III. Domestic criminal justice in practice

Once adopted, laws need to be enforced by domestic courts in order to ensure that individuals are held accountable for arbitrary displacement, and justice needs to be delivered by a criminal justice system to any individual who may have committed a crime. The concrete steps and institutions involved in a criminal procedure vary significantly across national jurisdictions. However, broadly speaking, the process in many countries foresees that after some pretrial investigation, the prosecution usually starts with the formal announcement of criminal charges against a suspect, followed by court proceedings, and results in the conviction or acquittal of the defendant. All these steps may present challenges for the actual prosecution of arbitrary displacement, notably due to procedural obstacles and/or the lack of institutional capacities. The public authority in charge of prosecuting (generally the prosecutor) must decide whether, according to the pretrial investigation led by an investigative agency (for example the police), there is sufficient evidence to provide a realistic prospect of conviction. In addition to assessing whether starting a prosecution would respond to any international obligation, the prosecuting authority also has to determine whether it is in the public interest to do so.<sup>69</sup> Only if all these questions have positive answers can criminal charges formally be brought against an individual, who is due to appear and defend him- or herself in the competent court. Then, depending on the evidence and respecting all other rules of procedure, a decision is made to either i) acquit or ii) convict – sometimes partially – and punish the individual (including potential reparations).<sup>70</sup>

**Figure 1. Main standard steps in criminal prosecution**



Among the many factors that can have an impact on the effectiveness of criminal prosecution for arbitrary displacement, **three interrelated elements** seem particularly relevant:

1. An effective investigation
2. An adequate qualification of a crime
3. A fair judicial process.

#### 1. Ensuring a successful criminal investigation

The first critical element is to ensure a successful criminal investigation that collects sufficient and adequate evidence throughout the process. A successful criminal investigation depends on many factors, often interrelated. Some of them are particularly relevant and should be underlined. Firstly, the investigation will depend on the **human and material capacity** of the different stakeholders involved in the criminal investigation, who need to be identified on a case-by-case basis and coordinate their work. Secondly, such capacity is conditioned by the **context** in which the investigation takes place (for example, armed conflict situations or an authoritarian regime). In turn, a good analysis of the context at the time when forced displacement took place is important to establish the criminal nature of the displacement, its patterns and risk profiles, particularly given that, as previously highlighted, arbitrary displacement tends to be based on permanent behaviours that are repeated over time and have an impact on a group of people.

This need to adequately analyse and understand the context when investigating the crime of arbitrary displacement has been recognized, in particular, by Colombia within its application of the transitional justice mechanism, where arbitrary displacement has been referred to as a “contextual crime” precisely for this reason.<sup>71</sup> Thirdly, the development of **specific knowledge on how to conduct the investigation**, capitalizing on past experiences (i.e. investigative methodology), can considerably improve the quality of an investigation. This last element is particularly critical for arbitrary displacement:

since arbitrary displacement as a criminal offence has been rarely prosecuted in practice, knowledge about how to find evidence on this crime remains limited. This in turn limits prosecution for arbitrary displacement even further. **There is thus a vicious circle that needs to be broken between the lack of criminal prosecution experience and the lack of knowledge on how to prosecute arbitrary displacement.**<sup>72</sup>

In **Colombia**, for example, there was an attempt to consolidate such institutional knowledge with the establishment of the Unidad Nacional de Fiscalías contra el Delito de la Desaparición y el Desplazamiento Forzado [National Unit of Prosecutors for Crimes of Forced Disappearance and Forced Displacement] in 2010.<sup>73</sup> Despite these efforts, the criminal investigation of arbitrary displacement was still fragmented among multiple investigating authorities with unequal capacities and different criminal jurisdictions (the criminal ordinary jurisdiction, the “justice and peace” jurisdiction or “the special jurisdiction for peace”).<sup>74</sup> Ongoing conflict and violence can make the investigation even more complicated. When investigations take place in a highly complex security environment, the investigating authorities can be at serious risk, and it can affect their relationship with potential collaborators, including civil society organizations and the victims themselves. In Colombia, no specific methodology has been developed for investigating the crime of arbitrary displacement, particularly given its connection to other crimes. The investigation of arbitrary displacement as an autonomous crime has been limited, and prosecution for arbitrary displacement has often been based on people’s confessions rather than other evidence.<sup>75</sup> This highlights the importance of focusing on harmonizing and supporting cooperation among the various investigating authorities. Investigation can also be supported through the creation of an investigation road map, to guide the investigation at all stages: the identification of facts and judiciary information, the formulation of hypotheses, investigation interviews and protection of witnesses, among others.

Through the process, **victim protection** – including in cases where victim testimonies are the main source of information – is particularly important. As stated in the 2005 **Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law** (para. 10), “victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.” Consideration should also be given to the fact that IDPs are often among the most vulnerable and may be in need of special protection, as recognized in the 2008 **Brasilia Regulations Regarding Access to Justice for Vulnerable People**. These rules also state that States shall encourage the adoption of appropriate measures to mitigate the negative effects of the crime (primary victimization). They shall also ensure that the harm suffered by the victim is not worsened as a result of his or her contact with the justice system (secondary victimization), and shall endeavour to guarantee, at all stages of criminal proceedings, the protection of the physical and psychological integrity of victims, in particular for those who are at the highest risk of intimidation, reprisal or reiterated or repeated victimization (the same person being a victim of more than one crime over a certain period of time) (Rule 5(12)).<sup>76</sup>

## 2. Charging with the adequate criminal offence(s)

The second element that can have an important impact on the criminal prosecution of arbitrary displacement is the choice of the criminal offence. As seen earlier in the cases of Honduras and Colombia, national criminal legislation may contain different crimes that address arbitrary displacement as international or ordinary crimes. Each crime has its own definitional elements and can be applied to different contexts (for example to a situation of armed conflict). Therefore, different evidence needs to be presented to prove the guilt of the suspect(s).<sup>77</sup> Moreover, the choice made by the prosecuting authority in defining what criminal offence(s) the alleged act may constitute is fundamental, as it also defines which domestic jurisdiction is competent to deal with the case. Ultimately, this choice affects the ability of the judicial authority, and particularly the judges, to take the appropriate decision. As previously argued, if the crime is not sufficiently detailed in the law, the judges have more room to clarify and interpret the law, and vice versa. Therefore, it is very important that all actors involved in the criminal prosecution **are fully aware of the different crimes and their implications – particularly in relation to States’ international obligations, as well as to be sufficiently independent, in order to make the most adequate decision.**

Just as in **Colombia, Honduras and Niger**, there are two different crimes that refer to arbitrary displacement in **Kenya**.

In this country, arbitrary displacement can be considered as an international crime, according to the **International Crimes Act of 2008**, or as an ordinary crime according to the **Internally Displaced Persons and Affected Communities Act (hereafter IDP Act) of 2012** (see Table 3).

The definition of the relevant crime not only affects the punishment, but also the pieces of evidence needed to prove the guilt of the accused person. For example, while a “war crime” may only take place in a situation of armed conflict, arbitrary displacement can also take place in peacetime, for example in the context of large-scale development projects or disasters, in line with Principle 6(2) of the Guiding Principles on Internal Displacement.

**Table 3. Criminalization of arbitrary displacement in Kenya**

<p><b>Kenya</b></p>	<p><b>International Crimes Act, 2008 (Act N°16 of 2008)</b> - PART II – INTERNATIONAL CRIMES AND OFFENCES AGAINST ADMINISTRATION OF JUSTICE – Art. 6. Genocide, etc.</p> <p>(1) A person who, in Kenya or elsewhere, commits (a) genocide; (b) a crime against humanity; or (c) a war crime, is guilty of an offence;</p> <p>(2) A person who, in Kenya or elsewhere, conspires or attempts to commit, or is an accessory after the fact in relation to, or who counsels in relation to, an offence mentioned in subsection (1) is guilty of an offence;</p> <p>(3) A person who commits an offence under subsection (1) or (2) shall on conviction be liable (a) to be punished as for murder,<sup>78</sup> if an intentional killing forms the basis of the offence; or (b) to imprisonment for life or for a lesser term, in any other case.</p> <p>(4) In this section “<b>crime against humanity</b>” has the meaning ascribed to it in article 7 of the Rome Statute and includes an act defined as a crime against humanity in conventional international law or customary international law that is not otherwise dealt with in the Rome Statute or in this Act”; “<b>genocide</b>” has the meaning ascribed to it in article 6 of the Rome Statute; “<b>war crime</b>” has the meaning ascribed to it in paragraph 2 of article 8 of the Rome Statute. [cf. Rome Statute, articles 6 to 8]</p> <p><b>IDP Act (Act N°56 of 2012) – PART VI – MISCELLANEOUS PROVISIONS – Article 23.</b></p> <p>(1) No person shall cause, aid or abet arbitrary displacement through acts that amount to genocide, a crime against humanity or a war crime in accordance with international law and shall be punished in accordance with the International Crimes Act, 2008.</p>	<p><b>IDP Act (Act N°56 of 2012) – PART VI – MISCELLANEOUS PROVISIONS – Art. 23.</b></p> <p>(2) No person shall intentionally (a) <b>cause the arbitrary displacement of other persons as provided for in section 6 of this Act;</b><sup>79</sup> (b) impede access to internally displaced persons; (c) cause harm to internally displaced persons; (d) cause harm to humanitarian personnel; (e) impede the work of humanitarian personnel; (f) obstruct the provision of humanitarian assistance to internally displaced persons; (g) steal, or loot, or destroy humanitarian supplies for internally displaced persons; and (h) misuse or abuse the use of humanitarian assistance for internally displaced persons; (i) aid or abet the commission of any of the acts or omissions specified in paragraphs (a) to (h).</p> <p>(3) Any person who contravenes the provisions of subsection (2) commits an offence and is liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding 10 years or to both such fine and imprisonment.</p>
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Nevertheless, it seems that almost no prosecution for arbitrary displacement has been conducted in Kenya to date. This may be linked to the fact that **arbitrary displacement is still often considered a less serious crime, or even a mere**



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**consequence of other crimes, rather than a crime in its own right. The resulting lack of jurisprudence contributes to arbitrary displacement being invisible.**

Other elements related to the choice of criminal offence may challenge the prosecution for arbitrary displacement, notably in relation with its application over time. The general principle of non-retroactivity of criminal law prohibits the prosecution of acts committed prior to the entry into force of the law criminalizing such an act. In the absence of any domestic legislation, charges could be brought based on international crimes only if the acts in question constituted crimes under international law at the time, and provided that national legislation allows for the application of the relevant international treaty or customary international law. As illustrated in the case of **Senegal**, exceptions to the *nullum crimen sin lege* principle in line with international law can be integrated into domestic legislation (e.g. Penal Code and/or Constitution).<sup>80</sup> Statutory limitations may also represent an obstacle to the effective prosecution and punishment of arbitrary displacement.<sup>81</sup> Statutes of limitations vary from one crime to another and are also integrated into domestic legislation (e.g. Criminal Procedure Code). Although under customary international law there can be no statute of limitation for war crimes (ICRC Customary IHL Study, Rule 160), statutory limitations may be particularly important when it comes to arbitrary displacement, as trials may take some time, due to practical considerations and the lack of experience in relation to that specific crime.

In order to minimize the multiple challenges described, it is particularly important to keep a **coherent legal framework that goes beyond the strict definition of acts of arbitrary displacement as criminal offences but that is adapted to the legal and juridical national context**.<sup>82</sup> It is also important to make sure that the different actors involved in the prosecution of arbitrary displacement are aware of the different crimes that can apply, as well as their limitations.

### 3. Guaranteeing a fair trial

The third interrelated element that has an important impact on the entire prosecution is the course of the proceedings. As for some of the principles mentioned earlier, the proceedings through which substantive criminal law is applied and enforced are governed by a set of rules, often referred to as “criminal procedural law”. By regulating the actors involved and the modes of apprehending, charging or trying suspected offenders, criminal procedural law is ultimately aimed at guaranteeing that the criminal legal system as a whole operates efficiently and fairly. **Guaranteeing a fair and impartial trial is crucial as it can minimize the risks of undermining other related processes, such as finding durable solutions for IDPs or promoting reconciliation in transitional settings.**

Indeed, while having the legal tools to hold individuals accountable for arbitrary displacement can act as a deterrent, it can also generate resistance and even tension if the rights of all participants to the trial are not guaranteed. While it could be argued that there may be tension between prosecuting arbitrary displacement and efforts to achieve durable solutions for internal displacement, such tension often derives from the disrespect for fair trial guarantees.<sup>83</sup> Indeed, the absence of such guarantees may lead the prosecuting authority to decide not to charge someone with the criminal offence. More concretely, it is important to make sure that the rights of the accused person, when arrested, in detention or at the trial, are respected. Similarly, it is crucial to ensure the effective participation of the victims and witnesses, including guaranteeing their protection and security. For example, it may be decided to create a special court with a specific jurisdiction to handle arbitrary displacement in general or specific cases in particular. In Colombia, the Juzgado Adjunto al Juzgado Quinto Penal del Circuito Especializado de Medellín was created in 2011, due to the complexity of the facts and the significant number of people involved. Yet, the challenges facing this court – including limitations to its mandate – affected the rights of the people involved.<sup>84</sup>

Moreover, in Colombia, two different codes of criminal proceedings may be applied, depending on whether the crime was committed before or after 1 January 2005.<sup>85</sup> This has various implications: for example, these two codes differ in how they address the participation of the victims and their relatives in criminal proceedings, which has negatively affected the right to equal protection under the law and the courts.<sup>86</sup> Similarly, measures taken during the process of paramilitary demobilization such as Decree N°128 of 2003 came into tension with the exclusion of amnesty foreseen in the case of forced displacement.<sup>87</sup>

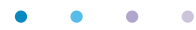
In many countries, major delays in the proceedings are a recurrent problem. These delays are notably due to the possibility of adjournment provided in the legislation, for example, in the absence of one of the parties. Absences can be accidental, yet they can also be used strategically as a disincentive to the prosecution and can even lead to its

discontinuation.

**In sum**, it is crucial to have **the jurisdictional, material and knowledge capacity to guarantee a fair trial**, for example sufficient free courtrooms or the necessary infrastructure to conduct declarations by videoconference (for security or logistical reasons), as well as coherent and balanced substantive and procedural legislation, depending on these logistical issues. If criminal justice were perceived to be partial or inadequate, prosecution may hinder other related efforts, such as those to achieve durable solutions to displacement. Indeed, tackling impunity for past abuses may sometimes be perceived as being at odds with the objectives of peaceful coexistence and reconciliation, may contribute to generate political resistance or could even hinder the return of some people who fear that they may be criminally implicated in cases of arbitrary displacement.<sup>88</sup> This is why it is particularly important to ensure that criminal justice processes are conducted in the fairest manner possible



Colombia, 2021. IDPs in Bajo Atrato. © UNHCR/Catalina Betancur



## IV. Complementary accountability mechanisms for arbitrary displacement

It is the responsibility and obligation of States to criminalize certain acts of arbitrary displacement. Yet, as seen in the previous section, adopting the adequate legislation to do so and enforcing it once in place may not always be an easy task. Therefore, in order to support the effective prosecution and punishment for arbitrary displacement, other mechanisms exist at the domestic, regional and international levels.

### 1. The International Criminal Court

The International Criminal Court (ICC) was established by the 1998 Rome Statute, which entered into force in 2002. This court consolidated a practice to establish mechanisms to hold individuals accountable for international crimes as set out in the Rome Statute. International crimes are violations of international customary rules or treaty provisions that protect values considered important for the entire international community and for which a universal interest exists in repressing these crimes. This is why these crimes are directly criminalized under international law and an individual can incur criminal responsibility and be held to account for these acts, even if they were not crimes under the legislation of the country where they took place at the time they were committed, provided the acts in question were defined as crimes in relevant international instruments or in customary international law at the time. Since the nineteenth century, the definitions of international crimes have varied, as reflected in the statutes and jurisprudence of the international mechanisms established to hold individuals accountable: from the statutes of the International Military Tribunal at Nuremberg (IMT) in 1945, to the International Military Tribunal for the Far East (IMTFE) in 1946 and, more recently, the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTR) in 1995, as well as a number of “hybrid” courts or tribunals combining national and international elements, such as the Extraordinary Chambers in the Courts of Cambodia (ECCC) in 2003.<sup>89</sup>

- **The ICC’s jurisdiction**

The ICC is the first and only permanent international criminal tribunal. Yet, as stated in the first article of its statute, **the ICC “shall be complementary to national criminal jurisdiction.”** As such, States have the first responsibility and right to prosecute international crimes, meaning the ICC may exercise jurisdiction only where national legal systems fail to do so.

The ICC has jurisdiction to prosecute individuals for the “most serious crimes of concern to the international community as a whole”: the crime of genocide, crimes against humanity, war crimes, and the crime of aggression (see arts. 5–8bis of the Rome Statute). Three of these crimes include acts of arbitrary displacement (see Table 4).<sup>90</sup>

Table 4. The ICC's jurisdiction over arbitrary displacement

Crime	Genocide (art. 6)	Crimes against humanity (art. 7)	War crimes (art.8)
<b>Qualification</b>	<p>For the purpose of this Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:</p> <p>[...](e) Forcibly transferring children of the group to another group.</p>	<p>(1) For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:</p> <p>[...](d) <b>Deportation or forcible transfer of population [...];</b></p> <p>(2) For the purpose of paragraph 1:</p> <p>[...] (d) "<b>Deportation or forcible transfer of population</b>" means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.</p>	<p>(1) The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.</p> <p>(2) For the purpose of this Statute, "war crimes" means:</p> <p>(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:</p> <p>[...](vii) <b>Unlawful deportation or transfer or unlawful confinement;</b></p> <p>(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:</p> <p>[...](viii) The <b>transfer</b>, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the <b>deportation or transfer</b> of all or parts of the population of the occupied territory within or outside this territory;</p> <p>(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:</p> <p>[...](viii) <b>Ordering the displacement of the civilian population for reasons related to the conflict</b>, unless the security of the civilians involved or imperative military reasons so demand.</p>
<b>Applicable penalties</b>	<p><b>(Art.77)</b> 1. Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute:</p> <p>(a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or</p> <p>(b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.</p> <p>2. In addition to imprisonment, the Court may order:</p> <p>(a) A fine under the criteria provided for in the Rules of Procedure and Evidence;</p> <p>(b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.</p>		

More precisely, the ICC has jurisdiction over the previously cited international crimes (arts. 5–8bis), committed after

the entry into force of the Rome Statute (art. 11), in the territory (or vessel or aircraft) of one of the State parties or by a national of a State party (art. 12(2)), or of a non-State party that nonetheless accepted the court's jurisdiction (art.12(3)).

So far, only eight of the 30 cases brought to the ICC have contained charges for arbitrary displacement (as crimes against humanity – deportation or forcible transfer of population (seven cases); or as war crimes – displacement of the civilian population (two cases)) in the Central African Republic, the Democratic Republic of the Congo, Kenya and Sudan. Out of these eight cases, four are still in the pretrial stage,<sup>91</sup> one is currently at trial<sup>92</sup> and two are closed.<sup>93</sup> Only one was successfully prosecuted: Mr. Bosco Ntaganda, from the Democratic Republic of the Congo, was found guilty in 2019 of crimes against humanity (including forcible transfer and deportation) and war crimes (including ordering the displacement of the civilian population). An order for reparations to victims was issued against Mr. Ntaganda, who is currently in the ICC detention centre in The Hague.<sup>94</sup>

**Some have argued that greater consideration of forced displacement is needed at the ICC in terms of prosecutorial selection, not only to ensure accountability but also to deter perpetrators and encourage States to afford IDPs greater attention.** Recently, the United Nations Secretary-General's High-Level Panel on Internal Displacement noted in its report that “catalysing action requires ending cultures of impunity and holding States accountable for their actions. [...] Domestic courts and mechanisms such as the International Criminal Court can and should be used to prosecute the most egregious cases of abuse by States and non-State armed actors, including for forced displacement itself and for other crimes that contribute to displacement.”<sup>95</sup> Indeed, though the prosecution of forced displacement is often part of other charges such as murder, attacks against a civilian population or pillaging – which can amount to war crimes and crimes against humanity – displacement is often a tool in itself at the service of a larger policy to politically cleanse a territory or to grab land for economic or political reasons.<sup>96</sup>

#### ● Bringing cases to the ICC

With over 900 staff and an annual budget in 2020 of less than EUR 150 million,<sup>97</sup> the ICC is dependent on external cooperation, particularly from States. Such cooperation is based on three types of request: procedural and evidentiary cooperation, jurisdictional cooperation, and cooperation with indictments and arrests.<sup>98</sup> Ideally, such cooperation should come from the State where the alleged crimes occurred, as it is best suited to supporting the process of arresting the accused person or to gathering witnesses and evidence. Yet, it usually comes from third countries, which are more likely to cooperate. Other actors – including civil society actors, international organizations, or even peacekeeping missions – can also collaborate with the ICC.<sup>99</sup> However, their collaboration is often conditioned by the attitude of the target State. Collaboration by States is hence key to the proper functioning of the ICC.

Several factors can have an impact on the level of cooperation by States, including the referral procedure. Indeed, in addition to the above-mentioned limitations, the ICC can only apply its jurisdiction to cases that were referred by a State party, by the United Nations Security Council acting under chapter VII of the United Nations Charter, or directly by the ICC General Prosecutor (arts. 13–16). Some evidence tends to suggest that effective prosecution depends, at least partly, on who referred the case in question.<sup>100</sup> For example, the Yekatom and Ngaissona Case, currently under trial, and overall the Ntaganda Case, were initially brought respectively by the Central African Republic and the Democratic Republic of the Congo themselves, who sought the help of the ICC in bringing the perpetrators of international crimes to justice. In turn, the successful prosecution of cases that were referred by the United Nations Security Council is more mitigated, as illustrated by the cases related to the situation in Darfur, Sudan: out of the six cases launched and five arrest warrants issued (including four for, among other things, arbitrary displacement), only Mr. Abd-Al-Rahman is before the ICC, after surrendering himself. Finally, the two cases that have been closed (the Ruto and Sang Case and the Kenyatta Case) were opened via the ICC Prosecutor Moreno-Ocampo's *motu proprio* powers and targeted top political figures.

As a result, while the ICC can be considered as an important remedial mechanism, it faces additional challenges compared to domestic courts due to its international nature. Interestingly, the Office of the Prosecutor (OTP) of the ICC also stated that it would publicize its prosecution of certain conduct, including forced displacement. So far, however, beyond several policy papers on issues such as victims' participation or case selection and prioritization, the OTP has developed a prosecutorial strategy for sexual and gender-based crimes but not yet for forced displacement.<sup>101</sup> Because of these challenges, some authors suggest the increasing importance of other mechanisms to hold individuals accountable for international crimes (including arbitrary displacement), including the regionalization of international





criminal law. The Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (also called the Malabo Protocol), adopted by the African Union in 2014, is a good illustration of this process of regionalization of criminal justice, though still embryonic.<sup>102</sup>

## 2. Other regional and domestic provisions to tackle impunity

Beyond international criminal justice, the limitations at the international level to hold individuals accountable make it necessary to seek other existing complementary mechanisms, notably at the regional and domestic levels.<sup>103</sup>

- **Beyond the State: universal jurisdiction**

Domestic criminal law can contain provisions enabling States to exercise jurisdiction over crimes committed outside its borders under certain conditions (for example that the crime was committed by its citizen or against its citizen abroad, or that it affects the State's vital interests). In addition to this international component in criminal legislation, there are certain crimes that are considered to be so severe that they affect the entire international community. For this reason, by virtue of the principle of universal jurisdiction, States are entitled to prosecute offenders in their domestic courts even in the absence of any link between the crime committed and the prosecuting State. The basis for the assertion of universal jurisdiction over certain crimes is found in both treaty law and customary international law. More specifically, according to some treaties, States have an obligation to enact provisions recognizing relevant crimes and enabling criminal prosecution based on universal jurisdiction in their national legislation.

For example, the Geneva Conventions and their Additional Protocols provide the basis for the assertion of universal jurisdiction, in relation to those violations of the Conventions defined as "grave breaches". **Art. 147 of the Fourth Geneva Convention** defines the "unlawful deportation or transfer [...] of a protected person" as a grave breach. Since grave breaches are the most serious violations, the Geneva Conventions impose different obligations on States on the basis of the mandatory universal jurisdiction: the duty to (1) enact specific criminal legislation, (2) search for and bring before its courts any person alleged to have committed or to have ordered to be committed grave breaches, or alternatively (3) hand such persons over for trial to another country.<sup>104</sup> Rule 157 of ICRC's study on customary international humanitarian law also states that "States have the right to vest universal jurisdiction in their national courts over war crimes."<sup>105</sup>

Universal jurisdiction primarily builds upon the idea that any domestic courts can prosecute crimes when the State in which they have been committed is unable or unwilling to do so itself. Based on the principle of complementarity, the ICC envisions the option for States to exercise jurisdiction at the domestic level over crimes within the jurisdiction of the Court,<sup>106</sup> while in past transitional justice processes, States have exercised universal jurisdiction alongside ad hoc criminal tribunals, such as the ICTR and the ICTY, to provide a legal forum in order to prosecute beyond the limitation of the tribunals' mandates. Numerous General Assembly and Human Rights Council resolutions, and reports by UN fact-finding missions and commissions of inquiry addressing situations of severe human rights violations have, alongside an ICC referral, called on States to make use of their right to exercise universal jurisdiction in their domestic courts in order to investigate and prosecute crimes under international law.<sup>107</sup>

Today, a total of 163 UN member States have included provisions in their domestic legislation to exercise universal jurisdiction over one or more crimes under international law, whether defined as an international or as an ordinary crime. For States to be able to exercise universal jurisdiction over arbitrary displacement, they need to have defined arbitrary displacement as a crime in their domestic legislation and explicitly provided for universal jurisdiction to be exercised over this crime. For example, in **Senegal**, the 2007 law that typified arbitrary displacement as a crime against humanity and a war crime<sup>108</sup> also provided for universal jurisdiction over these crimes. It is on the basis of this principle that former Chadian President Hissène Habré was eventually tried by the Extraordinary African Chambers (EAC), a tribunal created by an agreement between the African Union and Senegal to try international crimes committed in Chad from 1982 to 1990.<sup>109</sup> Habré was accused, among other offences, of unlawful transfer as a war crime. While being acquitted of this crime, he was found guilty of other crimes against humanity and war crimes, as well as the autonomous crime of torture, for which he was sentenced to life imprisonment.<sup>110</sup>

Universal jurisdiction is less dependent on certain applicability criteria than international criminal tribunals or courts such as the ICC, whose jurisdiction is limited by a UN mandate or the signing and ratification of its founding statute by State parties. Yet, States may choose to specifically limit their courts' right to claim universal jurisdiction to a set

of preconditions (e.g. the presence or even residence of perpetrators in the prosecuting State, or the definition of the committed act as a crime in both the prosecuting State and the State of origin of the perpetrator or the State of commission). Moreover, while the application of the principle of universal jurisdiction tends to have similar weaknesses to the ICC (e.g. distance from the places in which the crimes were committed, and obstacles to obtain evidence necessary to meet the legal requirements to pursue criminal proceedings), national investigating and prosecuting authorities may have access to other resources and sources of information-gathering and information-sharing (e.g. cross-national and supranational investigation units, data networks).

- **Other related crimes and rights**

Considering there is still little accountability for arbitrary displacement, at both the domestic and international levels, another way of tackling impunity is to look for alternative related crimes and/or rights protected by domestic or regional authorities.

Arbitrary displacement is often connected to other crimes, such as murder, rape or kidnapping. Holding individuals accountable for these other violations allows States to build on extensive jurisprudence and, more generally, on experience in prosecuting these related crimes. However, because criminal justice may be more familiar with these crimes, and given that arbitrary displacement is often seen as a side effect of other violations or even inherent to some situations, criminal justice systems tend to focus exclusively on these other crimes. This in turn tends to limit the criminal prosecution of persons involved in arbitrary displacement. Moreover, criminal legislation is there to protect some fundamental rights. However, not all rights are equally addressed under criminal law. This does not mean that rights associated with arbitrary displacement, such as the rights to freedom of movement or residence, as well as the rights to life and property, are not protected. However, the violation of these rights may not be equally punishable. That being said, some established mechanisms exist at both the domestic and regional levels to address the violation of these rights,<sup>111</sup> and hence contribute towards holding States – rather than individuals – responsible for arbitrary displacement.

For example at the national level, the Penal Code of **El Salvador** provides for the crime of “**illegal limitation to the freedom of movement,**” which even includes harsher penalties (i.e. eight to 12 years of imprisonment) if the “violence, intimidation or threat against people or property are carried out to force another to leave his/her place of domicile, residence, work, studies or of any lawful activity”(see art. 152-A).<sup>112</sup> Considering less recent but equally relevant examples, Section 1 of the Protection of the Person and Property Act (**Northern Ireland**) from 1969 on “**intimidation**” also focused on the act, intent and consequence of forcing people to leave their homes: “A person shall be guilty of an offence under this section if he unlawfully causes, by force, threats or menaces, or in any way whatsoever, any other person (a) to leave any place where that other person is for the time being resident or in occupation”.<sup>113</sup>

Under regional mechanisms, only States may be held accountable for human rights violations, as guaranteed by the regional human rights treaties. In Africa, the Americas and Europe, there exists a complaints mechanism through which individuals can seek justice and reparation for human rights violations committed by a State party. After the regional human rights commissions and courts have determined the State’s responsibility for the alleged violation, the regional bodies have several means of promoting the government’s reparation of the damage. For example, regional human rights treaty bodies can issue advisory opinions on what the government should do, or in some cases, they can even give orders to the State in question to avoid irreparable harm to the complainant (often referred to as “interim measures” or “provisional measures”). Among these actions, the regional human rights body can ask a State to initiate or progress criminal investigations at the domestic level, as the **Inter-American Court of Human Rights** did on several occasions.<sup>114</sup>

Moreover, the **Inter-American Court of Human Rights** has rendered several decisions on the violation of the right of free movement.<sup>115</sup> The *Masacre de Mapiripán Vs. Colombia* Case refers to the international responsibility of the State for the death, injuries and abuses committed by paramilitary agents against residents of Mapiripán, as well as the lack of investigation and punishment of those responsible for these crimes. More particularly, the court referred to the obligation to respect the right of free movement in relation to the rights to life, personal integrity and children in a context of widespread internal displacement.<sup>116</sup>

Similarly, the **African Court on Human and Peoples’ Rights** (ACHPR), in its Case N°006/2012 ACHPR Vs. Republic

of Kenya, made a decision regarding the persistent eviction of the Ogiek community from the Mau Forest. More specifically, the court found that the Kenyan Government had violated seven separate articles of the ACHPR, with the violations amounting to a persistent denial of Ogiek land rights and their religious, cultural and hunter-gatherer practices.<sup>117</sup>

While the **European Court of Human Rights** has not ruled specifically on the issue of arbitrary displacement, it has well-developed jurisprudence on the protection of property rights of IDPs.<sup>118</sup> Moreover, in line with the European Convention on Human Rights,<sup>119</sup> the Committee of Ministers of the Council of Europe has adopted several recommendations, including the Council of Europe Parliamentary Assembly's Recommendation 2367 (2021) on the Protection of Victims of Arbitrary Displacement which specifically calls on its Member States to: "6.2. consider creating specific international criminal tribunals for prosecuting and punishing arbitrary displacement where action by the ICC cannot be pursued;" and "6.3. introduce in their national law the principle of universal jurisdiction of national courts regarding war crimes and crimes against humanity involving forms of arbitrary displacement."<sup>120,121</sup>

**In sum**, as for the creation of new criminal legislation on acts of arbitrary displacement, addressing arbitrary displacement through related crimes or rights may, in some circumstances, allow situations that do not meet the definition of international crimes to be addressed. However, by focusing on other crimes or rights, there is a risk that the focus on arbitrary displacement will be lost and, with it, the opportunity to effectively prosecute and punish individuals for it. In turn, it may further undermine a criminal offence for which there has been limited accountability so far.



## Conclusion

Based on the previous examples and discussion, several points should be stressed in conclusion. In addition to ratifying international treaties addressing arbitrary displacement, States should criminalize arbitrary displacement to (i) clearly reject it as an illegal conduct, in line with international and regional obligations and standards; (ii) contribute to the prevention of arbitrary displacement; and (iii) support the achievement of durable solutions for IDPs. Where necessary, States should receive technical advice to support them in doing so.

The enactment of domestic criminal law should be in line with international law and adapted to the national context and legislation. As such, it is important to remember that specific acts of arbitrary displacement amount to international crimes under international law. Others can also constitute ordinary crimes: the definition of certain acts of arbitrary displacement as an ordinary crime may help broaden the scope of situations that are criminalized, particularly to address violations that are specific to the domestic context while including parameters that are easier to satisfy than international crimes, and hence contribute to fulfilling States' international obligation to prevent arbitrary displacement. Depending on the national context, the criminalization of arbitrary displacement can be set out in stand-alone legislation and/or incorporated into existing legislation. It is indeed crucial to ensure that all States have adequate criminal legislation to ensure the effective prosecution and punishment of individuals for arbitrary displacement.

In that sense, it is important to underline once more that the investigation and prosecution of international crimes – including addressing specific acts of arbitrary displacement – is an international obligation for States, particularly under IHL. Except in the case of international crimes, the decision to indict a suspect also has to take into consideration the general interest (for example, that it would not jeopardize the success of humanitarian action or peacebuilding processes). This being said, these concerns should never call into question the validity of having adequate legislation in place. On the contrary, criminal accountability for acts of arbitrary displacement in particular may help achieve durable solutions for internal displacement because it can recognize past suffering, contribute to justice and reparation, and ultimately support reconciliation.

Once criminal legislation on arbitrary displacement has been adopted, the cases presented in the paper show the importance of supporting a **virtuous circle related to the effective enforcement** of this legislation. More concretely, three interrelated components should be promoted:

- **Capacity:** It is important to strengthen the capacity of judicial actors, both materially and technically (notably in terms of jurisprudence and investigation). This can be achieved by developing specific trainings, methodologies or peer exchanges between different groups of actors in the country, or similar actors across countries.
- **Independence:** It is also necessary to guarantee the autonomy and independence of judicial actors (notably the public prosecuting authority) from external pressure, particularly legally, financially or politically.
- **Coherence:** Finally, it is crucial to ensure coherence between substantive and procedural criminal law, as well as with other related legislation (in the case of amnesty laws, for example).<sup>122</sup> To do so, detailed legal review of national legislation is required before and after adopting criminal legislation on arbitrary displacement.

Additionally, **supporting international cooperation** – notably in terms of jurisprudence, arrest and/or investigation in relation to the prosecution and punishment of arbitrary displacement – should be further promoted.

Similarly, domestic actors involved in the **monitoring and the investigation of arbitrary displacement** such as national human rights institutions, civil society actors and parliamentarians should be encouraged and supported in their tasks as appropriate, while being sensitive to the domestic and specific context. This can be done through financial or technical support, as well as by providing spaces where they can raise their voices nationally and internationally. Raising public awareness – and the awareness of relevant authorities, as well as the affected communities themselves – on arbitrary displacement and how it can be prevented and addressed will also be essential.

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# Annex 1: Relevant international instruments on arbitrary displacement (non-exhaustive list)

## I. Prohibition of arbitrary displacement (treaties and principles)

### 1. Binding instruments<sup>123</sup>

- **Convention on the Prevention and Punishment of the Crime of Genocide (1948)**

**Article 2:** In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (...) (e) Forcibly transferring children of the group to another group.

**Article 3:** The following acts shall be punishable:(a) Genocide;(b) Conspiracy to commit genocide;(c) Direct and public incitement to commit genocide; (d) Attempt to commit genocide; (e) Complicity in genocide.

**Article 4:** Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals.

**Article 5:** The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention and, in particular, to provide effective penalties for persons guilty of genocide or of any of the other acts enumerated in article III.

- **Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949**

PART I - Section III: Occupied Territories - **Article 49: Deportation, transfers, evacuation.** — Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive. Nevertheless, the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand. Such evacuations may not involve the displacement of protected persons outside the bounds of the occupied territory except when for material reasons it is impossible to avoid such displacement. Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased. The Occupying Power undertaking such transfers or evacuations shall ensure, to the greatest practicable extent, that proper accommodation is provided to receive the protected persons, that the removals are effected in satisfactory conditions of hygiene, health, safety and nutrition, and that members of the same family are not separated.

The Protecting Power shall be informed of any transfers and evacuations as soon as they have taken place. The Occupying Power shall not detain protected persons in an area particularly exposed to the dangers of war unless the security of the population or imperative military reasons so demand.

The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

PART IV Execution of the Convention - Section 1 - **Article 146** - The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article. Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case. Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article. In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

**Article 147.** — **Grave breaches** to which the preceding Article relates shall be those involving any of the following

acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

- **Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), 8 June 1977**

**Article 85:** Repression of breaches of this Protocol

1. The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by this Section, shall apply to the repression of breaches and grave breaches of this Protocol.

2. Acts described as grave breaches in the Conventions are grave breaches of this Protocol if committed against persons in the power of an adverse Party protected by Articles 44, 45 and 73 of this Protocol, or against the wounded, sick and shipwrecked of the adverse Party who are protected by this Protocol, or against those medical or religious personnel, medical units or medical transports which are under the control of the adverse Party and are protected by this Protocol.

(...) 4. In addition to the grave breaches defined in the preceding paragraphs and in the Conventions, the following shall be regarded as grave breaches of this Protocol, when committed wilfully and in violation of the Conventions or the Protocol: (a) the transfer by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory, in violation of Article 49 of the Fourth Convention; (...)

5. Without prejudice to the application of the Conventions and of this Protocol, grave breaches of these instruments shall be regarded as war crimes.

**Article 86:** Failure to act

1. The High Contracting Parties and the Parties to the conflict shall re-press grave breaches, and take measures necessary to suppress all other breaches, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.

2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach

- **Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II), 8 June 1977**

Part IV: Civilian Population - **Article 17:** Prohibition of forced movement of civilians

1. The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.

2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict.

- **Indigenous and Tribal Peoples Convention (ILO N°169), 1989**

**Article 16:** 1. Subject to the following paragraphs of this Article, the peoples concerned shall not be removed from the lands which they occupy.

2. Where the relocation of these peoples is considered necessary as an exceptional measure, such relocation shall take place only with their free and informed consent. Where their consent cannot be obtained, such relocation shall take place only following appropriate procedures established by national laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

3. Whenever possible, these peoples shall have the right to return to their traditional lands, as soon as the grounds for relocation cease to exist.

4. When such return is not possible, as determined by agreement or, in the absence of such agreement, through appropriate procedures, these peoples shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development. Where the peoples concerned express a preference for compensation in money or in kind, they shall be so compensated under appropriate guarantees.

5. Persons thus relocated shall be fully compensated for any resulting loss or injury.

- **Rome Statute of the International Criminal Court, 1998**

**Article 5:** Crimes within the jurisdiction of the Court. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes: (a) The crime of genocide; (b) Crimes against humanity; (c) War crimes; (d) The crime of aggression

**Article 6: Genocide:** For the purpose of this Statute, “genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (...) (e) Forcibly transferring children of the group to another group.

**Article 7: Crimes against humanity:** 1. For the purpose of this Statute, “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (...) (d) Deportation or forcible transfer of population; (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; (...) (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1: (...) (d) “Deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law; (...) (g) “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;

**Article 8: War crimes:** 1. The Court shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.

2. For the purpose of this Statute, “war crimes” means: (a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (...) (vii) Unlawful deportation or transfer or unlawful confinement; (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts: (...) (viii) The transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory; (...) (e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts: (...) (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;

**PART 7. PENALTIES : Article 77: Applicable penalties:** 1. Subject to article 110, the Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute: (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person. 2. In addition to imprisonment, the Court may order: (a) A fine under the criteria provided for in the Rules of Procedure and Evidence; (b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

- **ICRC's study on customary international humanitarian law (IHL), 2005**

## **[V. Treatment of civilians and persons hors combat]**

### ***Rule 129. The act of displacement***

A. Parties to an international armed conflict may not deport or forcibly transfer the civilian population of an occupied territory, in whole or in part, unless the security of the civilians involved or imperative military reasons so demand.

B. Parties to a non-international armed conflict may not order the displacement of the civilian population, in whole or in part, for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand.

### ***Rule 130. Transfer of Own Civilian Population into Occupied Territory***

States may not deport or transfer parts of their own civilian population into a territory they occupy.

### ***Rule 131. Treatment of Displaced Persons***

In case of displacement, all possible measures must be taken in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated.

### ***Rule 132. Return of Displaced Persons***

Displaced persons have a right to voluntary return in safety to their homes or places of habitual residence as soon as the reasons for their displacement cease to exist.

### ***Rule 133. Property Rights of Displaced Persons***

The property rights of displaced persons must be respected.

## **[VI. Implementation]**

### ***Rule 139. Respect for International Humanitarian Law***

Each party to the conflict must respect and ensure respect for international humanitarian law by its armed forces and other persons or groups acting in fact on its instructions, or under its direction or control.

### ***Rule 156. Definition of War Crimes***

Serious violations of international humanitarian law constitute war crimes.

### ***Rule 157. Jurisdiction over War Crimes***

States have the right to vest universal jurisdiction in their national courts over war crimes.

### ***Rule 158. Prosecution of War Crimes***

States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.

### ***Rule 159. Amnesty***

At the end of hostilities, the authorities in power must endeavour to grant the broadest possible amnesty to persons who have participated in a non-international armed conflict, or those deprived of their liberty for reasons related to the armed conflict, with the exception of persons suspected of, accused of or sentenced for war crimes.

### ***Rule 160. Statutes of Limitation***

Statutes of limitation may not apply to war crimes.

### ***Rule 161. International Cooperation in Criminal Proceedings***



States must make every effort to cooperate, to the extent possible, with each other in order to facilitate the investigation of war crimes and the prosecution of the suspects.

- **Protocol on the Prevention and Assistance to Internally Displaced Persons, International Conference on the Great Lakes Region, 2006**

Section II. Principles relating to Protection from Displacement : **Principle 5:** All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

**Principle 6:** 1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

2. The prohibition of arbitrary displacement includes displacement: (a) When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population; (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand; (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests; (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and (e) When it is used as a collective punishment. 3. Displacement shall last no longer than required by the circumstances.

**Principle 7:** 1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.

2. The authorities undertaking such displacement shall 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.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with: (a) A specific decision shall be taken by a State authority empowered by law to order such measures; (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation; (c) The free and informed consent of those to be displaced shall be sought; (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation; (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

**Principle 8:** Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected. Principle 9 States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands

- **African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 2009**

**Article 3 - General Obligations Relating to State Parties:**

1. State parties undertake to respect and ensure respect for the present Convention. In particular, States Parties shall:  
a. Refrain from, prohibit and prevent arbitrary displacement of populations; b. Prevent political, social, cultural and economic exclusion and marginalisation, that are likely to cause displacement of populations or persons by virtue of their social identity, region or political opinion; (...) e. Respect and ensure respect for international humanitarian law regarding the protection of internally displaced persons; (...) g. Ensure individual responsibility for acts of arbitrary displacement, in accordance with applicable domestic and international criminal law; h. Ensure the accountability of non-State actors concerned, including multinational companies and private military or security companies, for acts of arbitrary displacement or complicity in such acts.

**Article 4 - Obligations of States Parties relating to Protection from Internal Displacement:**

1. States parties shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, so as to prevent and avoid conditions that might lead to the arbitrary displacement of persons; (...)

4. All persons have a right to be protected against arbitrary displacement. The prohibited categories of arbitrary displacement include but are not limited to: a. Displacement based on policies of racial discrimination or other similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the population; b. Individual or mass displacement of civilians in situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand, in accordance with international humanitarian law; c. Displacement intentionally used as a method of warfare or due to other violations of international humanitarian law in situations of armed conflict; d. Displacement caused by generalized violence or violations of human rights; e. Displacement as a result of harmful practices; f. Forced evacuations in cases of natural or human made disasters or other causes if the evacuations are not required by the safety and health of those affected; g. Displacement used as a collective punishment; h. Displacement caused by any act, event, factor, or phenomenon of comparable gravity to all of the above and which is not justified under international law, including human rights and international humanitarian law. (...)

6. State Parties shall declare as offences punishable by law acts of arbitrary displacement that amount to genocide, war crimes or crimes against humanity.

**Article 7:** Protection and Assistance to Internally Displaced Persons in Situations of Armed Conflict. (...) 4. Members of armed groups shall be held criminally responsible for their acts which violate the rights of internally displaced persons under international law and national law;

5. Members of armed groups shall be prohibited from: a. Carrying out arbitrary displacement.

## 2. Non-binding instruments

### ● Guiding Principles on Internal Displacement, 1998

#### SECTION II. PRINCIPLES RELATING TO PROTECTION FROM DISPLACEMENT

**Principle 5:** All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

**Principle 6:** 1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

2. The prohibition of arbitrary displacement includes displacement: (a) When it is based on policies of apartheid, “ethnic cleansing” or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population; (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand; (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests; (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and (e) When it is used as a collective punishment.

3. Displacement shall last no longer than required by the circumstances.

**Principle 7.** 1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.

2. The authorities undertaking such displacement shall 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.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with: (a) A specific decision shall be taken by a State authority empowered



by law to order such measures; (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation; (c) The free and informed consent of those to be displaced shall be sought; (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation; (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

**Principle 8.** Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

**Principle 9.** States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

- [Principles on housing and property restitution for refugees and displaced persons \(Pinheiro Principles\), 2005](#)

## 5. The right to be protected from displacement

5.1 Everyone has the right to be protected against being arbitrarily displaced from his or her home, land or place of habitual residence.

5.2 States should incorporate protections against displacement into domestic legislation, consistent with international human rights and humanitarian law and related standards, and should extend these protections to everyone within their legal jurisdiction or effective control.

5.3 States shall prohibit forced eviction, demolition of houses and destruction of agricultural areas and the arbitrary confiscation or expropriation of land as a punitive measure or as a means or method of war.

5.4 States shall take steps to ensure that no one is subjected to displacement by either State or non-State actors. States shall also ensure that individuals, corporations, and other entities within their legal jurisdiction or effective control refrain from carrying out or otherwise participating in displacement.

## II. The rights to freedom of movement and residence (treaties and principles)

### 1. Binding instruments

- [Protocol N°4 to the Convention for the Protection of Human Rights and Fundamental Freedom \(European Convention on Human Rights, 1960\) securing certain rights and freedoms other than those already in the Convention and the First Protocol thereto, 1963](#)

**Article 2: Freedom of movement.** 1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. 2. Everyone shall be free to leave any country, including his own. 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of *ordre public*, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. 4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society.

- [Convention on the Elimination of All Forms of Racial Discrimination, 1965](#)

**Article 5.** In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (...) (d) Other civil rights, in particular: (i) The right to freedom of movement and residence within the border of the State;

- [International Covenant on Civil and Political Rights, 1966](#)

**Article 12 -1.** Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are

necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

- [American Convention on Human Rights « Pact of San José, Costa Rica” \(B-32\), 1969](#)

#### **Article 22. Freedom of Movement and Residence:**

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.

(...) 3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.

4. The exercise of the rights recognized in paragraph 1 may also be restricted by law in designated zones for reasons of public interest.

- [African Charter on Human and Peoples’ Rights \(Banjul Charter\), 1981](#)

**Article 12- 1.** Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law.

- [Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms \(1995\)](#)

**Article 22 -1.** Everyone who is lawfully within the territory of any Contracting Party shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

- [Arab Charter on Human Rights, 2004](#)

**Article 20.** Everyone residing on the territory of a State shall have freedom of movement and freedom to choose the place of residence in any part of the territory, within the limits of the law.

## **2. Non-binding instrument**

- [Universal Declaration of Human Rights, 1948](#)

**Article 13 - 1.** Everyone has the right to freedom of movement and residence within the borders of each State.

- [ASEAN Human Rights Declaration](#)

**15.** Every person has the right to freedom of movement and residence within the borders of each State. Every person has the right to leave any country including his or her own, and to return to his or her country.

- [Council of Europe Parliamentary Assembly Resolution 2367 \(2021\)](#)

#### **The protection of victims of arbitrary displacement**

**6.** In this context, the Assembly reminds member States of the Council of Europe of the relevant legal standards and obligations protecting civilian populations against arbitrary displacement, which have been recognised as general principles of public international law in the statutes of the International Military Tribunal at Nuremberg, the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda. In addition, the Statute of the International Criminal Court (ICC) spells out the prohibition to arbitrarily displace civilian populations and qualifies such acts as war crimes and crimes against humanity. Therefore, the Assembly calls on member States to:

- 6.1 sign and ratify the Statute of the ICC, if they have not yet done so, and closely co-operate with the ICC in prosecuting and punishing arbitrary displacement of civilian populations;
- 6.2 consider creating specific international criminal tribunals for prosecuting and punishing arbitrary displacement where action by the ICC cannot be pursued;
- 6.3 introduce in their national law the principle of universal jurisdiction of national courts regarding war crimes and crimes against humanity involving forms of arbitrary displacement;
- 6.4 establish truth commissions in accordance with Resolution 1613 (2008) “Use of experience of the ‘truth commissions’”.

7. Recalling the United Nations Guiding Principles on Internal Displacement of 1998 and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), the Assembly calls on member States to:

7.1 co-operate closely with the African Union in the framework of the Kampala Convention in the prosecution and punishment of arbitrary displacement of civilian populations in Africa;

7.2 implement the United Nations Guiding Principles on Internal Displacement in their national law.

8. Recalling the European Convention on Human Rights (ETS No. 5, the Convention), the Assembly calls on each member State to prosecute and punish, using all avenues available under national and international law, any violations of human rights committed by third parties abroad against persons who have subsequently received international protection status in the respective member State. Member States should also assist victims in seeking legal redress where violations have occurred. Arbitrary displacement and other related war crimes and crimes against humanity could typically violate:

8.1 the right to life under Article 2 of the Convention;

8.2 the prohibition of torture under Article 3 of the Convention;

8.3 the right to liberty and security under Article 5 of the Convention;

8.4 the protection of private and family life under Article 8 of the Convention;

8.5 the protection of property under Article 1 of the first Protocol to the Convention (ETS No. 9).

9. Aware that arbitrary displacement has the objective of generating financial benefits for those perpetrating such displacement, the Assembly calls on member States to increase their efforts in the search and seizure of proceeds from crimes committed in the wake of armed conflicts, in accordance with:

9.1 the United Nations Convention against Transnational Organized Crime;

9.2 the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198);

9.3 the Council of Europe Convention on Offences relating to Cultural Property (CETS No. 221).

10. Given that the prosecution and punishment of arbitrary displacement requires effective law-enforcement co-operation at international level, the Assembly calls on member States to:

10.1 respect their obligations under the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30);

10.2 respond to requests for extradition under the European Convention on Extradition (ETS No. 24);

10.3 closely co-operate with other member States in identifying and combating terrorist organisations which commit arbitrary displacement.

11. Aware of the serious personal impact of arbitrary displacement upon victims, the Assembly calls on member States to provide assistance to victims of such displacement through:

11.1 accelerated asylum procedures in accordance with its [Resolution 1471 \(2005\)](#) "Accelerated asylum procedures in Council of Europe member States";

11.2 special medical and psychological care;

11.3 action for family tracing and the enabling of family reunification;

11.4 the prosecution of crimes committed against victims.

12. An effective protection of civilian populations against arbitrary displacement through an armed conflict may require the multilateral provision of security through the deployment of police or military forces. Therefore, the Assembly invites member States to contribute to such deployment through:

12.1 a mandate of the United Nations Security Council;

12.2 co-operation with the internationally recognised government of a State affected by an armed conflict;

12.3 bilateral or multilateral co-operation agreements, such as the North Atlantic Treaty or the Common Foreign and Security Policy of the European Union.

## Annex 2: Examples of national legislation on criminal responsibility for arbitrary displacement<sup>124</sup>

- **Colombia**

- **Penal Code (Law 599 of 2000):**<sup>125</sup>

TITULO II: DELITOS CONTRA PERSONAS Y BIENES PROTEGIDOS POR EL DERECHO INTERNACIONAL HUMANITARIO  
CAPITULO UNICO - **Artículo 159. Deportación, expulsión, traslado o desplazamiento forzado de población civil.** El que, con ocasión y en desarrollo de conflicto armado y sin que medie justificación militar, deporte, expulse, traslade o desplace forzadamente de su sitio de asentamiento a la población civil, incurrirá en prisión de diez (10) a veinte (20) años, multa de mil (1.000) a dos mil (2.000) salarios mínimos legales mensuales vigentes, e inhabilitación para el ejercicio de derechos y funciones públicas de diez (10) a veinte (20) años.

TITULO III DELITOS CONTRA LA LIBERTAD INDIVIDUAL Y OTRAS GARANTIAS - CAPITULO QUINTO De los delitos contra la autonomía personal - **Artículo 180. Desplazamiento forzado.** El que de manera arbitraria, mediante violencia u otros actos coactivos dirigidos contra un sector de la población, ocasione que uno o varios de sus miembros cambie el lugar de su residencia, incurrirá en prisión de seis (6) a doce (12), o multa de seiscientos (600) a mil quinientos (1.500) salarios mínimos legales mensuales vigentes y en interdicción de derechos y funciones públicas de seis (6) a doce (12) años. No se entenderá por desplazamiento forzado, el movimiento de población que realice la fuerza pública cuando tenga por objeto la seguridad de la población, o en desarrollo de imperiosas razones militares, de acuerdo con el derecho internacional.

- **Military Penal Code (Ley 1407 de 2010):**<sup>126</sup>

TÍTULO II: DELITOS CONTRA PERSONAS Y BIENES PROTEGIDOS POR EL DERECHO INTERNACIONAL HUMANITARIO  
CAPÍTULO ÚNICO - **Artículo 159.** Deportación, expulsión, traslado o desplazamiento forzado de población civil. El que, con ocasión y en desarrollo de conflicto armado y sin que medie justificación militar, deporte, expulse, traslade o desplace forzadamente de su sitio de asentamiento a la población civil, incurrirá en prisión de diez (10) a veinte (20) años, multa de mil (1,000) a dos mil (2,000) salarios mínimos legales mensuales vigentes, e inhabilitación para el ejercicio de derechos y funciones publicas de diez (10) a veinte (20) años.

- **Democratic Republic of Congo**

- **Penal Code (Decree of 1940):**<sup>127</sup>

Titre IX : Des crimes contre la paix et la sécurité de l'humanité

Section 1: **Du crime de génocide Article 221** : Aux fins de la présente loi, on entend par « crime de génocide » l'un quelconque des actes ci-après commis dans l'intention de détruire en tout ou en partie un groupe national, racial, religieux ou ethnique, comme tel : (...) 5.le transfert forcé d'enfants du groupe à un autre groupe. Le crime de génocide est puni de mort.

Section 2 : **Des crimes contre l'humanité. Article 222** Aux fins de la présente loi, on entend par « crime contre l'humanité » l'un quelconque des actes ci-après lorsqu'il est commis dans le cadre d'une attaque généralisée ou systématique lancée contre toute population civile et en connaissance de cette attaque : (...) 4.la déportation ou le transfert forcé de population, entendu comme le fait de déplacer de force de personnes, en les expulsant ou par d'autres moyens coercitifs, de la région où elles se trouvent légalement, sans motifs admis en droit international; (...) Le crime contre l'humanité est puni de mort.

Section 3 : **Des crimes de guerre. Article 223** Aux fins de la présente loi, on entend par « crimes de guerre » : 1.les infractions graves aux Conventions de Genève du 12 août 1949, à savoir l'un quelconque des actes ci-après lorsqu'ils visent des personnes ou des biens protégés par des dispositions des Conventions de Genève : (...) g)la déportation ou le transfert illégal ou la détention illégale; (...) 2.les autres violations graves des lois et coutumes applicables aux conflits armés internationaux dans le cadre établi du droit international, à savoir, quelconque des actes ci-après : (...)

h)le transfert, direct ou indirect, par une puissance occupante d'une partie de la population civile, dans le territoire qu'elle occupe, ou la déportation ou le transfert à l'intérieur ou hors du territoire occupé de la totalité ou d'une partie de la population de ce territoire; (...) 5.les autres violations graves des lois et coutumes applicables aux conflits armés ne présentant pas un caractère international, dans le cadre établi du droit international, à savoir l'un quelconque des actes ci-après : (...) h)le fait d'ordonner le déplacement de la population civile pour des raisons ayant trait au conflit, sauf dans les cas où la sécurité des civils ou des impératifs militaires l'exigent; (...) Le crime de guerre est puni de mort.

- **Honduras**

- **Penal Code (Decree N°130-2017 of 2019):**<sup>128</sup>

## TÍTULO I DELITOS CONTRA LA COMUNIDAD INTERNACIONAL

CAPÍTULO I - CRIMEN DE LESA HUMANIDAD – **Artículo 139. Crimen de lesa humanidad.** Debe ser castigado con la pena de prisión de treinta (30) años a prisión a perpetuidad, pérdida de la nacionalidad e inhabilitación absoluta con la misma duración que la pena de prisión, quien comete un crimen de lesa humanidad como parte de un ataque generalizado o sistemático contra la población civil y con conocimiento de dicho ataque, en cualquiera de los actos siguientes: (...)4)Deportación o traslado forzoso de población;

CAPÍTULO II – GENOCIDIO - **Artículo 143. Genocidio.** Debe ser castigado con prisión de treinta (30) años a prisión a perpetuidad, e inhabilitación absoluta con la misma duración que la pena de prisión, además de la pérdida de la nacionalidad, quien con el propósito de destruir total o parcialmente un grupo nacional, étnico, racial, ideológico o religioso, realiza alguno de los hechos siguientes: 5)Trasladar por la fuerza niños de un grupo a otro grupo. La conspiración, proposición o provocación para la comisión del delito de genocidio se debe castigar con la pena de prisión de diez (10) a quince (15) años.

CAPÍTULO III - CRÍMENES DE GUERRA - **Artículo 144. Infracciones Graves a los Convenios de Ginebra.** Debe ser castigado con las penas de prisión de treinta (30) a cuarenta (40) años, e inhabilitación absoluta con la misma duración que la pena de prisión, además de la pérdida de la nacionalidad, quien comete infracción grave a los convenios de Ginebra en situación de guerra declarada o cualquier otro conflicto armado, reconocido o no, que surja entre dos(2) o varios Estados en situación de ocupación total o parcial del territorio de un Estado, aunque tal ocupación no encuentre resistencia militar o en situación de conflicto interno, actos contra personas o bienes protegidos en caso de conflicto armado, realice alguno de los actos siguientes: (...) 7) Deportación, traslado o privación de libertad;

**Artículo 146. Medios y métodos prohibidos de guerra.** Quien durante un conflicto armado interno o internacional, utiliza métodos o medios de guerra prohibidos dentro del marco establecido en el Derecho Internacional, debe ser castigado con la pena de prisión de treinta (30) años a prisión a perpetuidad, e inhabilitación absoluta con la misma duración que la pena de prisión, además de la pérdida de la nacionalidad. Con la misma pena se castigará al que realiza cualquiera de los actos siguientes: (...) 4)El traslado, directa o indirectamente, por la fuerza ocupante, de parte de su población civil al territorio que ocupa o,la deportación o traslado de la totalidad o parte de la población del territorio ocupado, dentro o fuera de ese territorio;

TÍTULO VIII - DELITOS CONTRA LA LIBERTAD (...) CAPÍTULO II- DELITOS CONTRA LA LIBERTAD DE DETERMINACIÓN - **Artículo 248. Desplazamiento forzado.** Quien con violencia o intimidación obliga o trata de obligar a otro o su familia a cambiar o abandonar el lugar de su residencia, de actividad mercantil o laboral, su establecimiento educativo o cualquier ubicación sobre la que tenga derechos de propiedad, debe ser castigado con la pena de prisión de seis (6) a nueve (9) años. La pena prevista en este artículo se debe imponer sin perjuicio de las que correspondan, en su caso, por otros delitos cometidos.

- **Kenya<sup>129</sup>**

- **International Crimes Act, 2008 (Act N°16 of 2008):<sup>130</sup>**

PART II – INTERNATIONAL CRIMES AND OFFENCES AGAINST ADMINISTRATION OF JUSTICE – **Article 6. Genocide, etc.** (1) a person who, in Kenya or elsewhere, commits (a) genocide; (b) a crime against humanity; or (c) a war crime, is guilty of an offence; (2) A person who, in Kenya or elsewhere, conspires or attempts to commit, or is an accessory after the fact in relation to, or who counsels in relation to, an offence mentioned in subsection (1) is guilty of an offence; (3) A person who commits an offence under subsection (1) or (2) shall on conviction be liable (a) to be punished as for murder,<sup>131</sup> if an intentional killing forms the basis of the offence; or (b) to imprisonment for life or for a lesser term, in any other case. (4) In this section - **“crime against humanity”** has the meaning ascribed to it in article 7 of the Rome Statute and includes an act defined as a crime against humanity in conventional international law or customary international law that is not otherwise dealt with in the Rome Statute or in this Act”; **“genocide”** has the meaning ascribed to it in article 6 of the Rome statute; **“war crime”** has the meaning ascribed to it in paragraph 2 of article 8 of the Rome Statute. [cf. Rome statute, articles 6 to 8]

- **IDP Act (Act N°56 of 2012):<sup>132</sup>**

PART VI—MISCELLANEOUS PROVISIONS - **Article 23.** (1) No person shall cause, aid or abet arbitrary displacement through acts that amount to genocide, a crime against humanity or a war crime in accordance with international law and shall be punished in accordance with the International Crimes Act, 2008. 2) No person shall intentionally- (a) cause the arbitrary displacement of other persons as provided for in section 6 of this Act;<sup>133</sup> (b) impede access to internally displaced persons; (c) cause harm to internally displaced persons; (d) cause harm to humanitarian personnel; (e) impede the work of humanitarian personnel; (f) obstruct the provision of humanitarian assistance to internally displaced persons; (g) steal, or loot, or destroy humanitarian supplies for internally displaced persons; and (h) misuse or abuse the use of humanitarian assistance for internally displaced persons; (i) aid or abet the commission of any of the acts or omissions specified in paragraphs (a) to (h). (3) Any person who contravenes the provisions of subsection (2) commits an offence and is liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding ten years or to both such fine and imprisonment.

- **Mexico (Estado de Sinaloa, Estado de Guerrero)**

- **Federal State Penal Code (1931):<sup>134</sup>**

TITULO TERCERO Delitos Contra la Humanidad - CAPITULO II **Genocidio** [Capítulo adicionado DOF 20-01-1967] **Artículo 149-Bis.** Comete el delito de genocidio el que con el propósito de destruir, total o parcialmente a uno o más grupos nacionales o de carácter étnico, racial o religioso, perpetrarse por cualquier medio, delitos contra la vida de miembros de aquellos, o impusiese la esterilización masiva con el fin de impedir la reproducción del grupo. Por tal delito se impondrán de veinte a cuarenta años de prisión y multa de quince mil a veinte mil pesos. Si con idéntico propósito se llevaren a cabo ataques a la integridad corporal o a la salud de los miembros de dichas comunidades o se trasladaren de ellas a otros grupos menores de dieciocho años, empleando para ello la violencia física o moral, la sanción será de cinco a veinte años de prisión y multa de dos mil a siete mil pesos.

Se aplicarán las mismas sanciones señaladas en el párrafo anterior, a quien con igual propósito someta intencionalmente al grupo a condiciones de existencia que hayan de acarrear su destrucción física, total o parcial. En caso de que los responsables de dichos delitos fueran gobernantes, funcionarios o empleados públicos y las cometieren en ejercicio de sus funciones o con motivo de ellas, además de las sanciones establecidas en este artículo se les aplicarán las penas señaladas en el artículo 15 de la Ley de Responsabilidades de los Funcionarios y Empleados de la Federación. [Artículo adicionado DOF 20-01-1967]

- **Sinaloa Penal Code (Decree N°539 of 1992):<sup>135</sup>**

TÍTULO QUINTO: DELITOS CONTRA LA PAZ Y LA SEGURIDAD DE LAS PERSONAS – **CAPÍTULO III. DESPLAZAMIENTO FORZADO INTERNO** (Adic. Según Decreto No. 481 de fecha 9 de julio de 2020 y publicado en el P.O. No. 101 de fecha 21 de agosto de 2020.) – **Artículo 175 Bis.** Comete el delito de desplazamiento forzado interno quien, de manera individual o colectiva, mediante violencia o cualquier otro medio o acto coactivo, realizado contra una persona o



grupo de personas, ocasione que abandonen su lugar de residencia. Se impondrá pena de seis a doce años de prisión y trescientos a seiscientos días multa, a quien incurra en la conducta prevista en el párrafo anterior. La pena aumentará hasta una mitad cuando el delito se cometa en contra de una niña, niño, adolescente, persona defensora de los derechos humanos y periodistas. No se entenderá por desplazamiento forzado interno el movimiento de población que realice la autoridad, cuando tenga por objeto la seguridad de la misma o por mandamiento judicial. (Adic. Según Decreto No. 481 de fecha 9 de julio de 2020 y publicado en el P.O. No. 101 de fecha 21 de agosto de 2020.)

- **Guerrero Penal Code (N°499):**<sup>136</sup>

**Capítulo III Delito de desplazamiento interno forzado- Artículo 220 Bis.** Se impondrán de seis a doce años de prisión y de tres mil a nueve mil quinientos días de multa de la Unidad de Medida y Actualización, a quien sin derecho ni fundamento, de manera individual o colectiva, pretenda poseer, usar, ocupar u otra modalidad, de forma temporal o permanente, mediante el uso de la violencia de cualquier tipo o por cualquier medio o acto o acciones coactivas e intimidatorias, con portación y uso de armas de fuego o sin ellas, planifique, promueva organice, realicen, ejecute u otra actividad relacionada, en contra de una persona o grupo de personas, que ocasione que abandonen su lugar de residencia, domicilio, patrimonio, posesiones, vivienda causando con ello agravio en sus derechos humanos forzando su desplazamiento en el territorio del Estado de Guerrero o fuera de él, como efecto del temor fundado provocado por el activo. Aumentará al doble de la pena cuando este delito se comenta contra grupos vulnerables, entre ellos niñas, niños, adolescentes, adultos mayores, personas con capacidades diferentes, periodistas y defensores de los derechos humanos. Este delito y su comprobación requerirá de querrela y deberá ser perseguido por la autoridad ministerial respectiva por ser un asunto de orden público e interés social. No se entenderá por desplazamiento interno forzado el movimiento de población que realice la autoridad cuando tenga por objeto la seguridad de la población.

● **Niger**

- **Penal Code (Law N° 61-27 of 1961):**<sup>137</sup>

Chapitre Préliminaire - (Loi n°2003-25 du 13 juin 2003). -DES CRIMES CONTRE L'HUMANITE ET DES CRIMES DE GUERRE  
SECTION I : **Du génocide. Art. 208-1.** -Constitue un génocide le fait, en exécution d'un plan concerté tendant à la destruction totale ou partielle d'un groupe national, ethnique, racial ou religieux ou d'un groupe déterminé à partir de tout autre critère arbitraire, de commettre ou de faire commettre à l'endroit de ce groupe l'un des actes suivants :-atteinte volontaire à la vie;-atteinte grave à l'intégrité physique ou psychique;-soumission à des conditions d'existence de nature à entraîner la destruction totale ou partielle du groupe;-mesure visant à entraver les naissances;-transfert forcé d'enfants;Le génocide est puni de la peine de mort.

SECTION II : **Crime contre l'humanité Art. 208.2.** -Constituent des crimes contre l'humanité, la déportation, la réduction en esclavage ou la pratique massive et systématique d'exécutions sommaires, d'enlèvement de personnes suivis de leur disparition, de la torture ou d'actes inhumains, inspirés par des motifs politiques, philosophiques, raciaux ou religieux et organisés en exécution d'un plan concerté à l'encontre d'un groupe de population civile. Les crimes contre l'humanité sont punis de la peine de mort.

SECTION III : **Des crimes de guerre Art. 208.3.** -Constituent des crimes de guerre et réprimés conformément aux dispositions du présent chapitre, les infractions graves énumérées ci-après, portant atteinte, par action ou omission, aux personnes et aux biens protégés par les conventions signées à Genève le 12 août 1949, par les protocoles 1 et 2 additionnels à ces conventions, adoptés à Genève le 8 juin 1977 : (...) (6) La déportation, le transfert ou le déplacement illicites, la détention illicite d'une personne civile protégée par la convention sur la protection des personnes civiles en temps de guerre ou une personne protégée à ces mêmes égards par les protocoles 1 et 2 additionnels aux conventions internationales de Genève du 12 août 1949; (...) (17) Le transfert dans un territoire occupé d'une partie de la population civile de la puissance occupante, dans le cas d'un conflit armé international ou de l'autorité occupante dans le cas d'un conflit armé non international. (...) L'infraction visée au 8ème de l'article 208-3 est punie de la peine d'emprisonnement de quinze à vingt ans. La même infraction ainsi que celle visée au 16ème du même article sont punies de la peine d'emprisonnement de quinze à vingt ans si elles ont eu pour conséquence soit une maladie paraissant incurable, soit une incapacité permanente de travail, soit la perte de l'usage absolu d'un organe, soit une mutilation grave. Elles sont punies de l'emprisonnement à perpétuité si elles ont eu pour conséquence la mort d'une ou plusieurs personnes. Les infractions énumérées aux 4è à 7è et au 17è de l'article 208.3 sont punies de la peine d'emprisonnement



de quinze à vingt ans. Dans le cas de circonstances aggravées prévues à l'alinéa précédent, elles sont punies, selon les cas des peines prévues à cet alinéa.

- **Military Justice Code (Law N°2003-010 of 2003):**<sup>138</sup>

Chapitre V : Les infractions au droit international humanitaire Section I: **Du génocide Art. 317** - Constitue un génocide le fait, en exécution d'un plan concerté tendant à la destruction totale ou partielle d'un groupe national, ethnique, racial ou religieux ou d'un groupe déterminé à partir de tout autre critère arbitraire, de commettre, ou de faire commettre à l'endroit de ce groupe l'un des actes suivants :1) atteinte volontaire à la vie;2) atteinte grave à l'intégrité physique ou psychique;3) soumission à des conditions d'existence de nature à entraîner la destruction totale ou partielle du groupe;4) mesures visant à entraver les naissances;5) transfert forcé d'enfants Art. 318 - Le génocide est puni de la peine de mort.

Section II; **Des crimes contre l'humanité Art. 319** - Constituent des crimes contre l'humanité, la déportation, la réduction en esclavage ou la pratique massive et systématique d'exécutions sommaires, d'enlèvements de personnes suivis de leur disparition, de la torture ou d'actes inhumains, inspirées par des motifs politiques, philosophiques, raciaux ou religieux et organisés en exécution d'un plan concerté à rencontre d'un groupe de population civile. Art. 320 - Les crimes contre l'humanité sont punis de la peine de mort.

Section III:- **Des crimes de guerre Art. 321** - Constituent des crimes de guerre et réprimés conformément aux dispositions de la présente section, les infractions graves énumérées ci-après, portant atteinte, par action ou omission, aux personnes et aux biens protégés par les conventions signées à Genève le 12 août 1949 ainsi que par les protocoles I et II additionnels à ces conventions, adoptés à Genève le 8 juin 1977 : (...) 6) la déportation, le transfert ou le déplacement illicites, la détention illicite d'une personne civile protégée par la convention sur la protection des personnes civiles en temps de guerre ou une personne protégée à ces mêmes égards par les protocoles I et II additionnels aux conventions internationales de Genève du 12 Août 1949; (...) 17) le transfert dans un territoire occupé d'une partie de la population civile de la puissance occupante, dans le cas d'un conflit armé international, ou de l'autorité occupante dans le cas d'un conflit armé non international;

- **Loi relative à la protection et à l'assistance aux personnes déplacées internes (2018):**<sup>139</sup>

Chapitre VII : **DES INFRACTIONS COMMISES À L'ENCONTRE DES PERSONNES DÉPLACÉES INTERNES - Article 30.** Est passible d'une peine de quinze (15) à trente (30) ans d'emprisonnement et d'une amende de deux (2) à cinq (5) millions de FCFA quiconque : 1) restreint le droit à la libre circulation des personnes déplacées internes à l'intérieur et à l'extérieur de leurs zones de résidence ; 2) recrute des enfants en situation de déplacement interne, les oblige ou leur permet de prendre part aux hostilités ; 3) abuse et exploite les enfants déplacés ; 4) recrute de force des personnes déplacées internes, kidnappe, enlève ou prend en otage, se livre à l'esclavage sexuel ou toutes autres formes d'exploitation sexuelle et à la traite des personnes, notamment des femmes et des enfants déplacés internes.

**Article 31.** Est passible d'une peine de quinze (15) à trente (30) ans d'emprisonnement et d'une amende de trois (3) à sept (7) millions de FCFA quiconque : 1) déplace des personnes sur la base des politiques de discrimination raciale ou d'autres pratiques analogues visant à/ou résultant en la modification de la composition ethnique, religieuse ou raciale de la population ; 2) déplace des civils individuellement ou en masse dans les situations de conflit armé, à moins que la sécurité des personnes civiles ou des raisons militaires impératives l'exigent, conformément au droit international humanitaire ; 3) cause des évacuations forcées en cas de catastrophes d'origine naturelle ou humanitaire ou pour d'autres causes, si les évacuations ne sont pas exigées par la sécurité et la santé des personnes touchées.

**Article 32.** Lorsque des actes de déplacement arbitraire sont constitutifs de génocide, de crimes de guerre ou de crimes contre l'humanité et autres violations du droit international humanitaire, les auteurs sont passibles de peines prévues par le code pénal.

- Philippines

- **An act defining and penalizing crimes against international humanitarian law, genocide and other crimes against humanity, organizing jurisdiction, designating special courts, and for related purposes (Act N°9851 of 2009)<sup>140</sup>**

## CHAPTER II - DEFINITION OF TERMS

SEC. 3. For purposes of this Act, the term: (...) (b) “Arbitrary deportation or forcible transfer of population” means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under domestic or international law.

## CHAPTER III CRIMES AGAINST INTERNATIONAL HUMANITARIAN LAW - GENOCIDE AND OTHER CRIMES AGAINST HUMANITY

**SEC. 4. War Crimes.** – For the purpose of this Act, “war crimes” or “crimes against International Humanitarian Law” means: (a) In case of an international armed conflict, grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (...) (6) Arbitrary deportation or forcible transfer of population or unlawful confinement; (...) (c) Other serious violations of the laws and customs applicable in armed conflict, within the established framework of international law, namely: (...) (17) Transferring, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory; (...) Any person found guilty of committing any of the acts specified herein shall suffer the penalty provided under Section 7 of this Act

**SEC. 5. Genocide.** – (a) For the purpose of this Act, “genocide” means any of the following acts with intent to destroy, in whole or in part, a national, ethnic, racial, religious, social or any other similar stable and permanent group as such : (...) (5) Forcibly transferring children of the group to another group. (b) It shall be unlawful for any person to directly and publicly incite others to commit genocide. Any person found guilty of committing any of the acts specified in paragraphs (a) and (b) of this section shall suffer the penalty provided under Section 7 of this Act.

**SEC. 6. Other Crimes Against Humanity.** – For the purpose of this Act, “other crimes against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (...) (d) Arbitrary deportation or forcible transfer of population; (...) Any person found guilty of committing any of the acts specified herein shall suffer the penalty provided under Section 7 of this Act.

CHAPTER IV - PENAL PROVISIONS SEC. 7. *Penalties.* – Any person found guilty of committing any of the acts provided under Sections 4, 5 and 6 of this Act shall suffer the penalty of *reclusion temporal* in its medium to maximum period and a fine ranging from One hundred thousand pesos (Php100,000.00) to Five hundred thousand pesos (Php500,000.00). When justified by the extreme gravity of the crime, especially where the commission of any of the crimes specified herein results in death or serious physical injury, or constitutes rape, and considering the individual circumstances of the accused, the penalty of *reclusion perpetua* and a fine ranging from Five hundred thousand pesos (Php500,000.00) to One million pesos (Php1,000,000.00) shall be imposed.

Any person found guilty of inciting others to commit genocide referred to in Section 5(b) of this Act shall suffer the penalty of *prision mayor* in its minimum period and a fine ranging from Ten thousand pesos (Php10,000.00) to Twenty thousand pesos (Php20,000.00).

In addition, the court shall order the forfeiture of proceeds, property and assets derived, directly or indirectly, from that crime, without prejudice to the rights of *bona fide* third (3<sup>rd</sup>) parties. The court shall also impose the corresponding accessory penalties under the Revised Penal Code, especially where the offender is a public officer.

- **Uganda**<sup>141</sup>

- **The international Criminal Court Art, 2010**<sup>142</sup>

PARTII—INTERNATIONAL CRIMES AND OFFENCES AGAINST THE ADMINISTRATION OF JUSTICE - International Crimes.

**7. Genocide.** (1) A person is liable on conviction on indictment to the penalty specified in subsection (3) who, in Uganda or elsewhere—(a) commits genocide; or (b) conspires or agrees with any person to commit genocide, whether that genocide is to take place in Uganda or elsewhere.(2) For the purposes of this section, “genocide” is an act referred to in article 6 of the Statute.(3) The penalty for genocide, or conspiring with, or agreeing with any person to commit genocide is imprisonment for life or a lesser term.

**8.Crimes against humanity.**(1) A person is liable on conviction on indictment to the penalty specified in subsection (3) who, in Uganda or elsewhere, commits a crime against humanity.(2) For the purposes of this section, a “crime against humanity” is an act specified in article 7 of the Statute.(3) The penalty for a crime against humanity is imprisonment for life or a lesser term.

**9.War crimes.**(1) A person is liable on conviction on indictment to the penalty specified in subsection (3) who, in Uganda or elsewhere, commits a war crime. (2) For the purposes of this section, a “war crime” is an act specified in—(a) article 8(2)(a) of the Statute (which relates to grave breaches of the First, Second, Third, and Fourth Geneva Conventions); or (b) article 8(2)(b) of the Statute (which relates to other serious violations of the laws and customs applicable in international armed conflict); or (c) article 8(2)(c) of the Statute (which relates to armed conflict not of an international character involving serious violations of article 3 common to the four Geneva Conventions of 12August 1949); or (d) article 8(2)(e) of the Statute (which relates to other serious violations of the laws and customs applicable in armed conflict not of an international character).(3) The penalty for a war crime is imprisonment for life or a lesser term.(4) Nothing in this section affects or limits the operation of section(2) of the Geneva Conventions Act (which makes a grave breach of the Geneva Conventions an offence under Uganda law).

## Endnotes

1 In this paper, “forced displacement” is used in a generic sense (i.e. individuals forcibly displaced as a result of persecution, armed conflict, generalized violence or human rights violations). In turn, “arbitrary displacement” here also includes the international humanitarian law (IHL) prohibition generically referred to as “forced displacement”.

2 A/76/169, p. 5.

3 Nowak (2005: art. 17, para. 12) in Walter Kälin, *Guiding Principles on Internal Displacement: Annotations, Studies in International Legal Policy*, No. 38. (Washington, D.C., The American Society of International Law, 2008).

4 For more information, please see A/76/169, pp. 6–8.

5 See for example: Ana María Ibáñez and Carlos Eduardo Vélez, “Civil Conflict and Forced Migration: The Micro Determinants and Welfare Losses of Displacement in Colombia”, *World Development*, vol. 36, No. 4 (April 2008); Prisca Mbura Kamungi, “The politics of displacement in multiparty Kenya”, *Journal of Contemporary African Studies*, vol. 27, No. 3 (2009); or Abbey Steele, *Democracy and Displacement in Colombia’s Civil War* (New York, Cornell University Press, 2017).

6 See Federico Andreu-Guzmán, *Research Brief. Criminal Justice and Forced Displacement: International and National Perspectives* (International Center for Transitional Justice [ICTJ] and Brookings-LSE Project on Internal Displacement, 2013); and Federico Andreu-Guzmán, *Criminal Justice and Forced Displacement in Colombia. Case Studies on Transitional Justice and Displacement* (Brookings-LSE Project on Internal Displacement, 2012).

7 See United Nations General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (2005); the *Guiding Principles on Internal Displacement* (Principle 7.3: right to effective remedy; Principle 16.1: right to know fate and whereabouts of missing relatives; Principle 29.2: restoration of housing, land and property); and the *Principles on Housing and Property Restitution for Refugees and Displaced Persons* (Pinheiro Principles).

8 Access to effective remedies and justice is one of the eight criteria proposed to determine to what extent a durable solution has been achieved by the IASC Framework on Durable Solutions for Internally Displaced Persons: Inter-Agency Standing Committee, *IASC Framework on Durable Solutions for Internally Displaced Persons* (Washington, D.C., Brookings Institution–University of Bern Project on Internal Displacement, 2010). Available at <https://www.brookings.edu/research/iasc-framework-on-durable-solutions-for-internally-displaced-persons-2/> (accessed on 1 March 2022).

9 Even when geographically limited, international instruments may still provide relevant guidance elsewhere.

10 Other rights such as the rights to life, human dignity and property are also relevant for protection from forced displacement, but for the sake of the paper, it was decided to focus specifically on the rights to freedom of movement and residence which are more directly related to forced displacement.

11 Please see Annex 1 for the specific rules that address arbitrary displacement. For the sake of this paper, it was decided not to include instruments and provisions that exclusively address external forced displacement, such as the 1951 Convention Relating to the Status of Refugees (1951 Convention).

12 Though relevant, statutes of international tribunals such as the International Criminal Tribunal for the former Yugoslavia (ICTY), International Criminal Tribunal for Rwanda (ICTR) and Extraordinary Chambers in the Courts of Cambodia (ECCC) were not included as the substantive law applied is customary international law, much of it also codified in international treaties (e.g. Geneva Conventions and their Additional Protocols, or the Convention on the Prevention and Punishment of the Crime of Genocide [Genocide Convention]), which are already contained in the table. All the provisions of the documents contained in the table are presented in Annex 1.

13 The table is an attempt to organize synthetically and present the main instruments that address arbitrary displacement. As such, it does not reflect all the complexity of the different instruments included. For example, the *Guiding Principles on Internal Displacement* draw from instruments already contained in the table. Yet, it was decided to include the *Guiding Principles* since they are the main international normative framework regarding internal displacement, which is the subject of the present paper (unlike for footnote 10). Moreover, for the sake of this paper, it was decided to include “IDP” as a legal field, even though it may be contested. For more details, see David James Cantor, “‘The IDP in International Law’? Developments, Debates, Prospects”, *International Journal of Refugee Law*, vol. 30, No. 2 (2018).

14 While more commonly referred to as “arbitrary displacement”, it is worth mentioning that these specific forms are referred to as “forced displacement” in the particular case of IHL.

15 For example, international or non-international armed conflicts.

16 For example, “protected persons” in Geneva Convention IV, indigenous and tribal people in the Indigenous

and Tribal Peoples Convention, or populations in general in the Kampala Convention.

17 For example, “occupying power” in Geneva Convention IV.

18 For more details, please see Annex 1.

19 See for example art. 13 of the Universal Declaration of Human Rights; art. 5(i) of the International Convention on the Elimination of All Forms of Racial Discrimination; and article 12 (1; 3) of the International Covenant on Civil and Political Rights.

20 See for example art. 12 of the Universal Declaration of Human Rights or art. 17 of the International Covenant on Civil and Political Rights.

21 See for example art. 25 the Universal Declaration of Human Rights or art. 11 of the International Covenant on Economic, Social and Cultural Rights.

22 See for example, Office of the High Commissioner for Human Rights, Human Rights Bodies, 2021. Available at <https://www.ohchr.org/En/HRBodies/Pages/HumanRightsBodies.aspx> (accessed on 1 October 2021). See also the role played by regional courts on human rights, and in particular the jurisprudence on arbitrary displacement developed by the Inter-American Court of Human Rights. For more details please see the section on “Other related crimes and rights” of this paper.

23 See footnote 1.

24 Please see David James Cantor, “Does IHL Prohibit the Forced Displacement of Civilians during War?” *International Journal of Refugee Law*, vol. 24, No. 4 (2013a) and David James Cantor, “Forced Displacement, the Law of International Armed Conflict and State Authority”, in *The Ashgate Research Companion to Migration Law, Theory and Policy*, Satvinder S. Juss, ed (London and New York, Routledge, 2013b).

25 Please see International Committee of the Red Cross, *Commentary of 1958 on Article 49 of the Convention (IV) relative to the Protection of Civilian Persons in Time of War*. Geneva, 12 August 1949 (1958). Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=523BA38706C71588C12563CD0042C407> (accessed on 4 January 2022). See also Jean-Marie Henckaerts, “Deportation and transfer of civilians in time of war”, *Vanderbilt Journal of Transnational Law*, vol. 26, No. 3 (1993); Alfred de Zayas, “Forced Population Transfer”, *Max Planck Encyclopedias of International Law* (2010); Mélanie Jacques, *Armed Conflict and Displacement: The Protection of Refugees and Displaced Persons under International Humanitarian Law* (Cambridge, Cambridge University Press, 2012a); Vincent Chetail, “The Transfer and Deportation of Civilians”, in *The Geneva Conventions: A Commentary*, A. Clapham, P. Gaeta, and M. Sassoli, eds. (Oxford, Oxford University Press, 2015).

26 As part of this, the competent authorities have a duty to take measures to facilitate the voluntary and safe return and reintegration of displaced persons. If a party to the conflict does not take measures to facilitate the return, for instance by failing to protect the property of displaced civilians, this might be indicative of an intent to forcibly displace and of the illegal nature of the evacuation.

27 See Kälin (2008), *op. cit.*

28 See also the Harare Plan of Action (2017) to facilitate implementation of the Kampala Convention.

29 See, for instance, ICRC study on customary international humanitarian law Rule 158. See also Rule 156 stating that “serious violations of international humanitarian law constitute war crimes”; the explanation of this rule refers to other serious violations of IHL committed during a non-international armed conflict, including “ordering the displacement of the civilian population for reasons related to the conflict and not required for the security of the civilians involved or imperative military necessity”. This is a violation of Additional Protocol II and customary international law, and has been listed as a war crime in the ICC Statute.

30 For more discussions on deportation as a crime of genocide, see for example: Vincent Chetail, “Is there any blood on my hands? Deportation as a crime of international law”, *Leiden Journal of International Law*, No. 29 (2016).

31 For more details about the development of the jurisprudence, please refer to Mélanie Jacques, ed., “Forced displacement as an international crime”, in *Armed Conflict and Displacement. The Protection of Refugees and Displaced Persons under International Law* (Cambridge, Cambridge University Press, 2012b); or Victoria Colvin and Phil Orchard, “A forgotten history: Forcible transfers and deportations in international criminal law”, *Criminal Law Forum*, vol. 32, No. 1 (2021).

32 This is not to say that there are no debates on how arbitrary displacement could be considered genocide. While the UN General Assembly has defended that the crime of genocide can take the form of forcible displacement outside the context of forcible transfer of children, both the ICTY and ICJ have ruled that deportations (or ethnic cleansing) by themselves are not sufficient to constitute genocide (for more information, please see pp. 56–57 of Colvin and Orchard (2021), *op. cit.*

33 Besides, the notion of “ethnic cleansing” that “[a]t the most general level [...] can be understood as the

expulsion of a population from a given territory” and therefore is closely linked to forced displacement, may be part of an international crime. As such, this notion is not in itself a sufficient legal basis for prosecution. However, it can be part of acts amounting to a crime against humanity or genocide. See Andrew Bell-Fialkoff, “A Brief History of Ethnic Cleansing”, *Foreign Affairs*, No. 72/3 (1993); Tamas Vince Adany, “Blurring the distinction between ethnic cleansing and genocide”, in *The concept of genocide in international criminal law: developments after Lemkin*, Marco Odello and Piotr Łubiński, eds. (New York, Routledge, 2020).

34 This flows from article 88 of the Rome Statute as well as the principles of complementarity. States which are not party to the Rome Statute can also incorporate the relevant provisions in their national legislation but are not bound to do so.

35 Meaning formally declared its consent to be bound – sometimes with some reservations, by the treaty in question. While the process of accession goes beyond the scope of this paper, for further practical details please see for example International Committee of the Red Cross, *The Domestic Implementation of International Humanitarian Law. A Manual* (2015). Available at [www.icrc.org/en/doc/assets/files/publications/icrc-002-4028.pdf](http://www.icrc.org/en/doc/assets/files/publications/icrc-002-4028.pdf), or International Committee of the Red Cross, *International Humanitarian Law. Handbook for Parliamentarians N°25*, 2016. Available at <https://shop.icrc.org/download/ebook?sku=1090/002-ebook>.

36 Examples of national criminal legislation related to arbitrary displacement can be found in Annex 2.

37 Other acts amounting to international crimes may result in displacement, but the focus here is on acts of arbitrary displacement that can directly amount to international crimes.

38 To learn more about the incorporation of international crimes into domestic law, please see pp. 31–32 of International Committee of the Red Cross (2015), *op. cit.*

39 See Andreu-Guzmán (2012), *op. cit.*

40 For more information regarding the ICC, please see section 4.1 of this paper.

41 Meaning one of the acts listed in art. 7(1) of the Rome Statute.

42 A crime against humanity can amount to “persecution” if it can be proven that the act was undertaken on discriminatory grounds. For further discussions on the concrete requirements and definitions established in international law, both treaty and customary law, please see Guido Acquaviva, *Forced Displacement and International Crimes. UNHCR Legal and Protection Policy Research Series, Division of International Protection* (2011). Available at [www.unhcr.org/4e0344b344.pdf](http://www.unhcr.org/4e0344b344.pdf); Jacques (2012b), *op. cit.*; Cantor (2013a) *op. cit.*; Cantor (2018), *op. cit.*; Colvin and Orchard (2021), *op. cit.*

43 See art. 6(e) of the Rome Statute.

44 As seen Table 2, the Colombian Criminal Code provides a broad definition of international crimes, while the Criminal Code of Honduras defines them more specifically. Interestingly, the usual terminology, “transfer”, was replaced by “forced displacement” in art. 159 of the Colombian Criminal Code.

45 Author’s translation. For the original Spanish version, please see Annex 2.

46 To learn more about the incorporation of international crimes into domestic law, please see pp. 31–32 of ICRC (2015), *op. cit.*

47 For more details of criminal offences in Kenya and Niger, please see Annex 2.

48 For more information regarding the specific question of the death penalty, please see Françoise Bouchet-Saulnier, “Death Penalty”, in *The Practical Guide to Humanitarian Law*, 3rd ed. (2013). Available at <https://guide-humanitarian-law.org/content/article/3/death-penalty/>.

49 See the examples of Colombia and Honduras presented earlier.

50 See for example Centre for International Law Research and Policy, *International Criminal Law Guidelines: Implementing the Rome Statute of the International Criminal Court, Case Matrix Network* (2017); or ICRC (2015), *op. cit.*

51 This distinction draws on the main inspiration and history of the national legal system – either English common law or Roman civil law.

52 More examples can be found in ICRC, *National Implementation of IHL Database* (n.d.). Available at <https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/vwLawsByCountry.xsp> (accessed in July 2021). The systematic analysis of all instruments and their respective provisions regarding arbitrary displacement is beyond the scope of this paper.

53 Based on the author’s assessment of the GPC Global Database on IDP Laws and Policies, available at <https://www.globalprotectioncluster.org/global-database-on-idp-laws-and-policies/> (accessed in August 2021).

54 *Ibid.*

55 For further discussion about the choice between stand-alone instrument or modification, please refer to ICRC (2015), *op. cit.*



56 See chapter II (art. 164 about genocide and art. 165 about crimes against humanity) and chapter III about war crimes (arts. 173–175).

57 See Law No. 15/023 of 31 December 2015 “modifiant la Loi n° 024-2002 du 18 novembre 2002 portant Code pénal militaire”.

58 See Law No. 15/022 of 31 December 2015 “modifiant et complétant le Décret du 30 janvier 1940 portant Code pénal”, which included “Titre IX : Des crimes contre la paix et la sécurité de l’humanité”.

59 This is possible if criminal justice falls at least partly within the competence of subnational governments.

60 See the amended Law No. 2003-25 of 13 June 2003.

61 See the Loi relative à la protection et à l’assistance aux personnes déplacées internes (2018).

62 For more details regarding the concrete characteristics of these crimes, please refer to the relevant section of the annex.

63 For more information regarding the legal and political dimensions of the Habré case, please see for example Mandiaye Niang, “The Senegalese legal framework for the prosecution of international crimes”, *Journal of Criminal Justice*, vol. 7, No. 7 (November 2009); Julien Seroussi, “L’affaire Hissène Habré. Une justice transitionnelle internationalisée”, *Mouvements*, vol. 1, No. 53 (2008); Valentina Spiga, “Non-retroactivity of criminal law. A new chapter in the Hissène Habré saga”, *Journal of International Criminal Justice*, vol. 9, No. 1 (March 2011).

64 For more information about these bills, please see for example: Consejo de Redacción, “Recuento histórico de la desaparición forzada en Colombia desde 1988 hasta la actualidad”, 21 February 2020. Available at <https://consejoderedaccion.org/formacion/recuento-historico-de-la-desaparicion-forzada-en-colombia-desde-1988-hasta-la-actualidad> (accessed July 2021).

65 See Colombia, Ponencia para Primer Debate al Proyecto de Ley Número 20 de 1998 Senado, *Gaceta del Congreso*, No. 185 (17 September 1998).

66 See, for example, Vanessa Rodríguez Sanabria, “Reforma al código penal y escenario político (1998-2000),” Thesis, Universidad Santo Tomás de Aquino, April 2015. For more details about the qualification of forced displacement in Colombia, see Alejandro Aponte Cardona, “El desplazamiento forzado como crimen internacional: Nuevas exigencias a la dogmática jurídico-penal”, *Universitas*, No. 125 (2012).

67 At the time of writing, Kenya is still a State party to the Rome Statute.

68 For more information, please see Roger Duthie, *Transitional Justice and Displacement*, International Center for Transitional Justice (ICTJ). Brookings-LSE Project on Internal Displacement (Columbia University Press, 2012).

69 For more details about public interest considerations, see for example Howard Varney, Shenali De Silva and Alexandra Raleigh, “Guiding and Protecting Prosecutors: Comparative Overview of Policies Guiding Decisions to Prosecute”, ICTJ Research Report (15 October 2019).

70 This phase can be followed by a phase in appeal. Moreover, the conviction is followed by the enforcement of the decision on sentencing and any reparations. However, this is beyond the scope of this paper.

71 See Luis Orlando Toro Garzón and Mónica María Bustamante Rúa, “La investigación y la prueba de contexto como elementos de política criminal para la persecución del crimen organizado”, *Revista Criminalidad*, vol. 62, No. 1 (2020).

72 See Andreu-Guzmán (2012), *op. cit.*

73 See Fiscalía General de la Nación, Resolución 0-2596 de 2010, *Diario Oficial* No. 47.8888 de 9 de noviembre de 2010 (November 2010).

74 Resulting respectively from the Peace and Justice Law (2005) and the Victims and Land Restitution Law (2011).

75 For more information, please see Andreu-Guzmán (2012), in Roger Duthie *op. cit.* and Fabien François Maitre-Muhl, “Persecución penal del delito de desplazamiento forzado en Colombia. Informe final de observación del proceso 2011-01799” (Abogados sin Fronteras Canadá, 2013).

76 See Ibero-American Judicial Summit Work Group, *Brasilia Regulations Regarding Access to Justice for Vulnerable People*, 2008. Available at <https://www.icj.org/wp-content/uploads/2018/11/Brasilia-rules-vulnerable-groups.pdf> (accessed in March 2022).

77 It is assumed here that the principle of innocence is respected, and hence that the legal burden of proof is on the prosecuting authority.

78 According to Kenya Penal Code, art. 204: “Punishment of murder. Any person convicted of murder shall be sentenced to death.” Available at <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2063&term=penal%20code> (accessed July 2021). However, Kenya has not carried out an execution since 1987. Moreover, in 2017, the Supreme Court declared the mandatory death penalty unconstitutional. For more information, please see

<https://www.deathpenaltyproject.org/knowledge/the-death-penalty-in-kenya/>.

79 See IDP Act, art. 6 (1) The Government shall protect every human being against arbitrary displacement. (2) Arbitrary displacement in the manner specified under principle 6(2) of the Guiding Principles is prohibited and shall constitute an offence punishable under this Act as specified in section 23.

80 See Valentina Spiga, “Non-retroactivity of criminal law. A new chapter in the Hissène Habré saga”, *Journal of International Criminal Justice*, vol. 9, No. 1 (March 2011).

81 See for example, States parties to the “Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity” adopted by the General Assembly Resolution of 26 November 1968. Available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-6&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-6&chapter=4&clang=_en) (accessed July 2021).

82 For example, for further details on Senegal, see Mandiaye Niang (2009), *op. cit.* and Valentina Spiga (2011), *op. cit.* For further details on Colombia, see Alejandro Aponte Cardona (2012), *op. cit.*

83 See for example Andreu-Gúzman (2013), *op. cit.*

84 For more details, please see Fabien François Maitre-Muhl (2013), *op. cit.*

85 See Law N°600 of 2000 for before 2005, or Law N°906 of 2004 for after.

86 For more details, please refer to Federico Andreu Gúzman (2012), *op. cit.*: 10.

87 *Ibid.*: 12.

88 Please see Andreu-Guzmán (2012), *op. cit.* and Andreu-Guzmán (2013), *op. cit.*

89 For further information on the relationship between the historical development of these international accountability mechanisms in relation to arbitrary displacement as an international crime, please see Guido Acquaviva (2011), *op. cit.*, Mélanie Jacques (2012b), *op. cit.* or Colvin and Orchard (2021), *op. cit.*

90 Cases of arbitrary displacement could be also be qualified as “persecution” (art. 7 (1)(h)) and “other inhumane acts” (art. 7 (1)(k)).

91 See Harun Case (arrest warrant since 2007, but still at large), Hussein Case (arrest warrant since 2012, but still at large), Al Bashir Case (second arrest warrant in 2010, but still at large) and Abd-Al-Rahman Case (surrendered and confirmation of charges in May 2021).

92 See Yekatom and Ngaïssona Case (trial opened in 2021 before Trial Chamber V).

93 Kenyatta Case (charges were withdrawn in 2015) and Ruto and Sang Case (terminated in 2016).

94 For more information, please refer to: <https://www.icc-cpi.int/drc/ntaganda>.

95 See <https://internaldisplacement-panel.org/wp-content/uploads/2021/09/HLP-report-WEB.pdf>.

96 See for example Luke Moffett, “Accountability for forced displacement in Democratic Republic of Congo and Uganda before the International Criminal Court”, *African Journal of International Criminal Justice*, No. 2 (2015). Available at <https://doi.org/10.5553/AJ/2352068X2015002002001>.

97 See <https://www.icc-cpi.int/about>.

98 Based on the categorization established in Courtney Hillebrecht and Scott Straus, “Who pursues the perpetrators? State cooperation with the ICC”, *Human Rights Quarterly*, vol. 39, No. 1 (February 2017).

99 For other actors’ cooperation, see for example Tom Buitelaar, “Blue helmets and black robes: The cooperation between peacekeepers and international criminal tribunals”, *St Antony’s International Review*, vol. 14, No. 1 (May 2018).

100 See Courtney Hillebrecht and Scott Straus (2017), *op. cit.*

101 See ICC, “Policies and strategies”, n.d. Available at <https://www.icc-cpi.int/about/otp/Pages/otp-policies.aspx> (accessed August 2021).

102 The Malabo Protocol provides for the inclusion of criminal jurisdiction within the African Court of Justice and Human Rights. However, an African International Crimes Court has not yet been established. For more information, please see for example Amnesty International, “Malabo Protocol: Legal and institutional implications of the merged and expanded African court – Snapshots”, 2 May 2017. Available at <https://www.amnesty.org/en/documents/afr01/6137/2017/en/> (accessed October 2021).

103 For further information on the mechanisms to enforce international criminal law, see for example Naomi Roht-Arriaza, “Just a ‘bubble’? Perspectives on the enforcement of international criminal law by national courts”, *Journal of International Criminal Justice*, vol. 11, No. 3 (1 January 2013).

104 For more details about this question, please refer to Mélanie Jacques (2012b), *op. cit.*

105 See [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule157](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule157). Other sources of universal jurisdiction include: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art 5(3), 10 December 1984, 1465 U.N.T.S. 85; Convention on the Prevention and Punishment of the Crime of Genocide,

art. 6, 9 December 1948, 78 U.N.T.S. 277; Rome Statute of the International Criminal Court, 17 July 1998, 2187 U.N.T.S. 3. Moreover, according to the Report of the International Law Commission in 2018, the complementarity principle in articles 17–20 of the Rome Statute of the International Criminal Court envisions the option for States to exercise jurisdiction at the domestic level over crimes within the jurisdiction of the ICC.

106 Rome Statute of the International Criminal Court, arts. 17–20 and 53.

107 For example, the Report of the detailed findings of the Independent International Fact-Finding Mission on Myanmar encouraged States “to actively pursue investigating and prosecuting crimes committed in Myanmar before their respective domestic courts, under the principle of universal jurisdiction for serious crimes under international law” (A/HRC/39/CRP.2: 454).

108 See Law No. 2007-02 of 2007 amending the Penal Code.

109 The court was established after the International Court of Justice emitted a decision which states that Senegal had failed to meet its obligations under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and ordered Senegal to prosecute Habré or extradite him. See for example <https://www.hrw.org/news/2016/05/03/qa-case-hissene-habre-extraordinary-african-chambers-senegal> (accessed October 2021).

110 For more information, please see <http://www.chambresafricaines.org/> (accessed July 2021).

111 In addition, some international human rights mechanisms such as the Universal Periodic Review (UPR), treaty bodies (for example the International Convention on the Elimination of All Forms of Racial Discrimination) or human rights committees (in regard to the International Covenant on Civil and Political Rights) could benefit from different tools (e.g. periodic reports, individual petitions, or inter-State communication) to support States’ criminalization of arbitrary displacement.

112 Author’s translation from Spanish to English. Similarly, the Bosnia and Herzegovina (BiH) Criminal Code includes that “an official or responsible person in the institutions of Bosnia and Herzegovina who unlawfully imprisons another person, keeps him imprisoned or otherwise restricts his freedom of movement, shall be punished by a fine or imprisonment for a term not exceeding three years”. Available at <https://www.refworld.org/pdfid/4d2dbb212.pdf>, see art. 147(1)).

113 Available at <https://www.legislation.gov.uk/apni/1969/29?view=plain>.

114 For more details, please refer for example to Alexandra Huneus, “International criminal law by other means: The quasi-criminal jurisdiction of the human rights courts”, *American Journal of International Law*, vol. 107, No. 1 (January 2013).

115 For more information, please refer to Corte Interamericana de Derechos Humanos y Cooperación Alemana (GIZ), “Cuadernillo de jurisprudencia de la Corte Interamericana de Derechos Humanos No. 3: Personas en situación de desplazamiento” (San José, Costa Rica, Corte IDH, 2020).

116 See Inter-American Court of Human Rights, “Technical data: Masacre de Mapiripán Vs. Colombia”, n.d. Available at [https://www.corteidh.or.cr/ver\\_ficha\\_tecnica.cfm?nId\\_Ficha=252&lang=en](https://www.corteidh.or.cr/ver_ficha_tecnica.cfm?nId_Ficha=252&lang=en) (accessed February 2022).

117 See African Court on Human and People’s Rights, African Commission on Human and People’s Rights V. Republic of Kenya, Case No. 006/2012, Judgment, 26 May 2017.

118 It has affirmed State jurisdiction over contested territory and required the controlling State to ensure all substantive rights be respected (e.g. in *Cyprus v. Turkey*, No. 25781/94 [GC], 10/05/2001, para. 77; in *Chiragov and Others v. Armenia*, No. 13216/05 [GC], 16/06/2015, para. 186, 201). In individual cases, it has also ordered a number of governments, including the Russian and Turkish Governments, to pay compensation to IDPs for violations of their property rights (see Council of Europe Parliamentary Assembly, “Europe’s forgotten people: protecting the human rights of long-term displaced persons,” 8 June 2009, Doc. 11942, 11). The court has also ruled against unlawful forced evictions of resettled IDPs (e.g. *Saghinadze and Others v. Georgia*, No. 18768/05, 27/05/2010, paras. 104-8, 160).

119 In particular European Convention on Human Rights, arts. 2(1), 3, 5, on the right to life, the right to liberty and security and the right to be free from torture or inhuman or degrading treatment or punishment.

120 Council of Europe Parliamentary Assembly Resolution 2367, “The protection of victims of arbitrary displacement,” 2021. Available at <https://pace.coe.int/en/files/29079/html>. See also Council of Europe, Committee of Ministers, Recommendation 2006(6) on internally displaced persons, 5 April 2006, article 5 that states that “member states shall [...] take appropriate measures, on the one hand, to prevent acts that may violate internally displaced persons’ right to life, to physical integrity and to liberty and security and, on the other, to effectively investigate alleged violations of these rights.”

121 For more information, please refer to Phil Orchard, “International, regional, and domestic mechanisms to hold states to account for the causes of forced displacement”, Reference Paper for the 70th Anniversary of the 1951

Refugee Convention, (UNHCR, 2020).

122 For more information regarding amnesty and, particularly, the crimes for which there can be no amnesty (e.g. war crimes, genocide, crimes against humanity) please see ICRC customary IHL study, Rule 159.

123 123 The following documents are presented in chronological order.

124 For more examples of legislation that implement international humanitarian law, please see ICRC's database: "National Implementation of IHL". URL: <https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/vwLawsByCountry.xsp>

125 Congreso de Colombia, Ley 599 de 2000 "Por la cual se expide el Código Penal" (24 July 2000), última modificación por Ley 2098 de 2021 (July 2021). URL : <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1663230>; See also: Congreso de Colombia, Ley 589 de 2000 "Por medio de la cual se tipifica el genocidio, la desaparición forzada, el desplazamiento forzado y la tortura; y se dictan otras disposiciones" (6 July 2000), última modificación por decreto 4218 de 2005. URL: <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1663059>

126 Congreso de Colombia, Ley 1407 de 2010 "Por la cual se expide el Código Penal Militar" (17/08/2010): <http://www.suin-juriscol.gov.co/viewDocument.asp?ruta=Leyes/1678866>

127 See also: Loi N°15/022 du 31 décembre 2015 modifiant et complétant le Décret du 30 janvier 1940 portant Code pénal : <http://www.leganet.cd/Legislation/DroitPenal/Loi.15.022.31.12.2015.html>

128 Congreso Nacional de Honduras, Decreto N°130-2017 (31 January 2019), última modificación por Decreto N°46-2020 (May 2020): <https://www.tsc.gob.hn/biblioteca/index.php/codigos/830-codigo-penal-2019>

129 See also the Geneva Conventions Act, 1968; arts. 49 and 147.

130 See: <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2016%20of%202008>

131 According to Kenya Penal Code, art. 204: Punishment of murder. Any person convicted of murder shall be sentenced to death. URL: <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2063&term=penal%20code>. However, Kenya has not carried out an execution since 1987. Moreover, in 2017, the Supreme Court declared the mandatory death penalty unconstitutional. For more information, please refer to: <https://www.deathpenaltyproject.org/knowledge/the-death-penalty-in-kenya/>

132 See: <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=No.%2056%20of%202012>

133 See : IDP Act, Art. 6. (1) The Government shall protect every human being against arbitrary displacement. (2) Arbitrary displacement in the manner specified under principle 6(2) of the Guiding Principles is prohibited and shall constitute an offence punishable under this Act as specified in section 23.

134 México, Código Penal Federal, Nuevo Código Publicado en el Diario Oficial de la Federación el 14 de Agosto de 1931, última reforma publicada DOF 01/06/2021: [http://www.diputados.gob.mx/LeyesBiblio/pdf\\_mov/Codigo\\_Penal\\_Federal.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf_mov/Codigo_Penal_Federal.pdf)

135 México, Estado de Sinaloa, Código Penal, Decreto N°539 (última reforma el 16 de abril de 2021). URL : <http://www.cobaes.edu.mx/wp-content/uploads/2021/04/Código-Penal-para-el-Estado-de-Sinaloa-2021-04-20.pdf>; See also: México, Estado de Sinaloa, Decreto N°481 (21 August 2020). URL: [https://www.globalprotectioncluster.org/wp-content/uploads/decreto\\_481.pdf](https://www.globalprotectioncluster.org/wp-content/uploads/decreto_481.pdf)

136 Decree N°843 of 3 September 2021;URL: <http://congresogro.gob.mx/legislacion/codigos/ARCHI/CODIGO-PENAL-PARA-EL-ESTADO-LIBRE-Y-SOBERANO-DE-GUERRERO-499-2021-09-21.pdf>

137 République du Niger, Code Pénal et Code de Procédure Pénale (January 2018). URL : [http://www.justice.gouv.ne/images/lois/pdfs/Code\\_penal\\_et\\_CPP\\_Edition\\_Janvier\\_2018.pdf](http://www.justice.gouv.ne/images/lois/pdfs/Code_penal_et_CPP_Edition_Janvier_2018.pdf); See also: Loi N°2003-25 du 12 juin 2003. URL : <https://www.ilo.org/dyn/natlex/docs/SERIAL/66128/62103/F1872754105/66218.pdf>

138 Loi N°2003-010 du 11 mars 2003, portant Code de justice militaire : <https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/xsp/.ibmmodes/domino/OpenAttachment/applic/ihl/ihl-nat.nsf/A77CAE9E7BFCFEC9C125708400334EDB/TEXT/Niger%20-%20Code%20of%20Military%20Justice%2C%202003.pdf>

139 See: <https://www.humanitarianresponse.info/fr/operations/niger/document/niger-loi-relative-%C3%A0-la-protection-et-%C3%A0-l'assistance-aux-personnes>

140 <https://www.officialgazette.gov.ph/2009/12/11/republic-act-no-9851/>

141 See also the Geneva Conventions Act, 1964, Article 49 and 147.

142 Uganda, The International Court Act (25/06/2010): <https://www.parliament.go.ug/cmis/views/79349d94-0912-45c3-b7d1-60dec4b6cd96%253B1.0>