1. **Conceptualizing Planned Relocation**

Statistics show that the number of disasters caused by natural hazards has been rising in recent decades and that many of those disasters have led to forced displacement. In 2015, more than 19 million persons affected by disasters were displaced by natural hazards, with an average of 26.4 million persons displaced every year since 2008.¹ Climate change is expected to exacerbate these human mobility impacts, by increasing the frequency and ferocity of hydro-meteorological sudden-onset disasters, exacerbating the negative effects of disasters, as well as through direct climate change impacts, eroding the habitability of certain areas through slow-onset effects such as sea-level rise, salinization and desertification.² Larger numbers of displaced persons are likely to be only one of the consequences of climate change. Research shows that it will also have other human mobility impacts in terms of changing scope and patterns of migration, creating the need for governments and other actors to support individuals and communities to relocate.³ The international community has acknowledged the challenges that climate change poses for human mobility, particularly through a call to enhance action on adaption under the Cancun Adaptation Framework:

“The Conference of Parties […] invites all Parties to enhance action on adaptation under the Cancun Adaptation Framework, taking into account their common but differentiated responsibilities and respective capabilities, and specific national and regional

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² See Christopher B Field and others (eds), ‘Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation: A Special Report of Working Groups I and II of the Intergovernmental Panel on Climate Change’ (Intergovernmental Panel on Climate Change, Cambridge University Press 2012). See also Walter Kälin, ‘Conceptualising Climate-Induced Displacement’ in Jane McAdam (ed), *Climate Change and Displacement: Multidisciplinary Perspectives* (Hart Publishing Ltd 2010)

development priorities, objectives and circumstances, by undertaking, inter alia, the following:

[…]
(f) Measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels.

As can be seen, the framework conceptualizes human mobility in terms of displacement, migration and planned relocation and as a form of climate change adaptation. It further can be interpreted to encourage States to engage more closely with issues of human mobility connected to climate change. So what is the difference between planned relocation and the other forms of human mobility? To answer this question, let me look at one recent definition of planned relocation. The ‘Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation’ (in the following: ‘Guidance’) defines planned relocation as:

“A planned process in which persons or groups of persons move or are assisted to move away from their homes or places of temporary residence, are settled in a new location, and provided with the conditions for rebuilding their lives. Planned Relocation is carried out under the authority of the State, takes place within national borders, and is undertaken to protect people from risks and impacts related to disasters and environmental change, including the effects of climate change. Such Planned Relocation may be carried out at the individual, household, and/or community levels.”

The conceptual distinction between planned relocation and displacement is not easy. Standard definitions of displacement highlight the element of coercion. While planned relocation from climate change involves at least an element of coercion caused by climate impacts, it is yet debated if people, who are subject to planned relocation, are also displaced, particularly in situations where communities voluntarily choose to relocate. In regards to differentiate planned relocation from migration, one can first argue with the element of coercion, which is absent in some definitions of migration. Second, the large role of state authorities in the planned relocation process might also be a distinction to the common conceptualization of labor migration. While a clear definitional boundary from other terms of

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4 UN Framework Convention on Climate Change, ‘Report of the Conference of the Parties on its sixteenth session, held in Cancun from 29 November to 10 December 2010’ (UNFCCC 15 March 2011) FCCC/CP/2010/7/Add.1:4
5 Brookings Institution and others, ‘Guidance on Protecting People From Disasters and Environmental Change Through Planned Relocations’ (Brookings Institution, Georgetown University, UNHCR 2015) 5
6 The Guiding Principles on Internal Displacement – UN Office for the Coordination of Humanitarian Affairs, ‘Guiding Principles on Internal Displacement’ (United Nations Publications 1998) E/CN.4/1998/53/Add.2.1 – define term internally displaced person as “Internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.”
8 There are many definition of migration. The Foresight Report on Migration and Global Environmental Change (n 3, 35) defines migration and displacement as: “[…] the term ‘migrant’ or ‘migration’ […] refer to individuals
human mobility is not clear-cut, it seems nonetheless sensible to conceptualize planned relocation as distinct from migration and displacement, as it poses a distinct set of challenges in regards to the relation and interaction between State authorities and affected persons and groups.

This inquiry will use the ‘Guidance’ definition provided above when discussing planned relocation. This has a number of reasons. First, it is one of the most fitting and comprehensive definitions currently available and second, as will be discussed in the following, it makes sense in terms of coherence to use this particular definition.

A number of specifics about the ‘Guidance’ definition have to be pointed out before proceeding. First, it defines planned relocation only as taking place within national borders and under the authority of the State. While it is likely that most cases of planned relocation will take place within the borders of a country, there clearly is a case to be made that planned relocation could also take place between countries. Given extra layers of complexity in terms of possible international relocation in terms of international law, politics, coordination or logistics, it seems a viable step to conceptualize the term planned relocation in terms of in-country relocation at this stage. Second, the definition does not only focus on climate change, but also on disasters and environmental change. I think this step is also sensitive, given the frequent overlap of these three causes in terms of triggering planned relocation and the difficulties we still face in clearly attributing single disasters to climate change. Third, the definition leaves very broad space in terms of determining the scope of planned relocations, including relocations of either individual, household and/or community levels, which makes sense given the many shapes that planned relocation has taken in the past.

One major distinction regarding planned relocation needs to be made in terms of at which point in time relocation takes place. While the distinction is often not clear-cut, one can distinguish two major modes of planned relocation: one in anticipation of disasters or climate change impacts, for example, as a preemptive response to rising sea levels, the other one in response to disaster or climate change impacts often when people cannot safely return to their previous homes or places of residence. This paper will use the terms ‘anticipatory’ and ‘reactive’ relocation to distinguish between these forms of planned relocation.

who have changed their place of residence either by crossing an international border [...] or by moving within their country of origin to another region, district or municipality [...]. People are normally considered to be ‘migrants’ if they remain outside their original place of residence for a period of at least 3 months. Displacement is a particular form of migration, in which individuals are forced to move against their will.” This is a very broad definition of migration. UNESCO based on the UN Commission on Human Rights – UN Commission of Human Rights, ‘Measures to Improve the Situation and Ensure the Human Rights and Dignity of all Migrant Workers’ (UNHCR 1998) E/CN.4/1998/76 – provides a definition of migrant that highlights the elements of voluntariness and missing coercion as part of the definition of migrant. “The term ‘migrant’ [...] should be understood as covering all cases where the decision to migrate is taken freely by the individual concerned, for reasons of ‘personal convenience’ and without intervention of an external compelling factor.”

This follows assessment about migration from environmental change and displacement from climate change. See United Kingdom Government Office for Science, ‘Foresight’ (n 3) 37; McAdam and Ferris, ‘Planned Relocations’ (n 7) 142


2. EXPLORING SOME OF THE CHALLENGES TO PLANNED RELOCATION

Planned relocation, while not necessarily used in this exact terminology, is not a new phenomenon, as governments in many countries have relocated at-risk populations before. Only in recent years has it begun to be framed in terms of climate change adaptation.\(^{12}\)

While, given the relatively small amount of research on planned relocation there is no conclusive evidence about the long-term outcomes of planned relocation (particularly when discussed in terms of climate change). There is enough evidence to claim that planned relocation is problematic in terms of the human rights of affected persons. The IPCC states that “most practice to date, learning from other resettlement programs, demonstrates negative social outcomes for those resettled, often analyzed as breaches in individual human rights.”\(^{13}\)

Evidence from the development-induced displacement and resettlement (DIDR) literature based on millions of people who have been resettled because of development projects and which have many similarities with planned relocation from climate change, shows a large number of negative consequences for resettled persons and communities. These consequences are described and discussed in detail in Cernea’s Impoverishment Risk and Reconstruction model, which identifies the common risks as landlessness, joblessness, homelessness, marginalization, food insecurity, increased morbidity and mortality, loss of access to common property, and social disintegration.\(^{14}\)

While a number of issues differ between planned relocation and DIDR, such as, particularly in terms of climate change, questions of at what time planned relocation should take place and likely different sources of funding, both areas share a number of contentious issues like questions of compensation, access to land, employment and livelihoods, and relations with host communities.\(^{15}\)

A recent literature review of the case studies literature on planned relocation provides a glimpse on what researchers and affected communities see as problematic in regards to planned

\(^{12}\) See Petz, ‘Planned Relocations’ (n 10)


\(^{15}\) Other major differences are that while DIDR projects are undertaken by private entities in planned relocation state authorities are likely responsible for planned relocation. As many DIDR projects are for-profit ventures there is also the likelihood that funds will be scarcer for planned relocations. Planned relocation (particularly reactive) will also take place on different time scales than DIDR projects, leaving less time for detailed planning. For additional discussion on the differences see UNHCR, Brookings Institution and Georgetown University, ‘ Planned Relocations, Disasters and Climate Change: Consolidating Good Practices and Preparing for the Future’ (Background Document, Sanremo Consultation, 12-14 March 2014); Daniel Petz, ‘Operational Guidance and Frameworks Relevant to Planned Relocations Caused by Natural Hazards, Environmental Change, and Climate Change’ (Brookings-LSE Project on Internal Displacement 2015) 22
relocation.16 A first set of issues are about the politics of planned relocation, emphasizing that planned relocations cannot be simple seen as a technical issue. In several cases, planned relocation are seen by affected persons as connected to previous relocation and/or resettlement attempts. Past experiences with or narratives of resettlement can be seen as precedents for people seeing authorities acting in good faith, really focusing on protecting lives and reducing risk or seeing relocation tied to ulterior political and economic motives. In addition, the debate is often also framed in terms of elite or scientific knowledge versus local knowledge.17

Another set of research studies focuses on legal and political issues. Particularly prevalent in case studies about planned relocation in the developed world, they concern themselves mainly on how government structures can assist relocated persons and how legal and policy gaps can be addressed, with land- and property rights being a frequently addressed sub-issue.

Human rights issues are also prevalent in research about planned relocation, with research focusing on which rights are impacted by planned relocations and if and how international human rights law and frameworks can assist with minimizing the possible negative effects of planned relocation.

Another set of issues concern planning and technical issues. In terms of anticipatory relocations, questions of community participation get more importance, as on average those cases have a longer planning horizon, while case studies on reactive relocation often have an evaluative character, identifying good practices and problematic areas. The main areas of analysis are participation of the affected population, as well as planning and execution (housing, land and property, livelihood, etc.) of the relocation process. Other issues of importance in the literature are socio-cultural aspects of planned relocation. Existing literature shows that planned relocations can have severe impacts on the social fabric of families and communities, particular if socio-cultural issues are not taken into account in the planning process, with those effects often compounded by changes in livelihoods.18

3. PLANNED RELOCATION AND A HUMAN RIGHTS-BASED APPROACH (HRBA)

There are many ways of conceptualizing human rights, among others, in terms of their philosophical foundations, as a frame of analysis, in terms of their status as international or domestic legal rights, and in terms of their operationalization through a rights-based approach. This contribution focuses on a rights-based approach. Given the numerous risks of rights violations planned relocations pose for affected persons, this paper looks at one recent international attempt to devise human rights-based guidance on planned relocation. Before analyzing the guidance document based on a number of critical issues for planned relocation, first, merits and problems of rights-based approaches are discussed. It is argued that notwithstanding some challenges, a rights-based frame and approach are likely to be helpful in minimizing negative effects of planned relocation.

16 Petz, ‘Planned Relocations’ (n 10)
17 Jane McAdam, ‘Relocation and Resettlement from Colonisation to Climate Change: The Perennial Solution to “Danger Zones”’ (2015) 3(1) London Review of International Law 93 provides a good overview about some of the historical conceptual and political debates in regards to relocation and resettlement.
18 Petz, ‘Planned Relocations’ (n 10) 8
The human rights-based approach has grown out of shortcomings of the pre-eminent needs-based approach that was used by international development and humanitarian actors after World War II and has been promoted and mainstreamed by the United Nations (UN) since the late 1990’s as part of its reform agenda. In a needs-based approach people were often seen as passive recipients of aid and assistance, lacking agency and also a lack of identification of duty-bearers for needs-fulfillment. A shift from needs to rights led to an important change of perspective, while needs can be fulfilled through charity, rights are based on legal and moral obligations, as rights claims are addressed to certain identifiable duty-bearers. Moreover, the rights-perspective furthers people’s agency making them active participants in the process, thereby empowering them in the process. With the UN as one of the leading proponents of such an approach, the orientation of the HRBA focuses on international human rights treaties and conventions. These treaties and conventions are the cornerstones within a rather broad array of different interpretations and implementations of the HRBA.

Facing the impacts of climate change, a HRBA, based on the normative strength of human rights can particularly help in providing a comprehensive framework for dealing with human mobility issues. It allows for a clear conceptualization of different vulnerabilities based on cultural, social, economic or any other status and focuses on the agency of affected persons. Gromilova highlights that the Office of the High Commissioner of Human Rights in 2009 “has called for increased state action on adaptation and has emphasized the importance of applying a human rights-based approach in guiding policies and measures of climate change mitigation and adaptation.”

While, as discussed, a HRBA has a number of merits, the approach also faces some challenges. First, particularly among non-democratic countries human rights-language is often viewed critically and at times connected to the possible interference into the sovereignty of States. Second, even for the most developed countries in the world the fulfillment of their human rights obligations has proven to be difficult. There might therefore be an argument to be made that a HRBA is overly demanding, particularly for less developed countries. Third, a HRBA could also be affected by some general criticisms of human rights, such as doubts on their universality, particularly regarding cultural specifics, or the claim that they are too individualistic and do not sufficiently represent group rights. Fourth, there is the problem of conflicts of rights, e.g. there might be either disagreement of which right or group of rights has priority in a genuine conflict of rights (for example socio-economic vs. political rights) or

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19 For a discussion, see eg Urban Jonsson, Human Rights Approach to Development Programming (UNICEF 2003)
20 They can provide guidance in both humanitarian crisis as well as in regards to more long-term, developmental processes.
21 Mariya Gromilova, ‘Revisiting Planned Relocation as a Climate Change Adaptation Strategy: The Added Value of a Human Rights-Based Approach’ (2014) 10(1) Utrecht Law Review, 76, 91. As a more recent example of the importance that the United Nations gives a rights-based approach is the ‘Rights up Front’ Initiative, which was launched by the Secretary General of the United Nations in 2013. It aims at making human rights and the protection of civilians a system-wide core responsibility of the UN System. See United Nations, “‘Human Rights up Front’ Initiative’ (Secretary-General Ban Ki-Moon, 2014) <www.un.org/sg/humanrightsupfront/>
22 For a detailed debate on some of the criticisms towards human rights see Peter Jones, Rights (Palgrave Macmillan 1994)
23 The case of Typhoon Nargis and Myanmar might count as an example (See eg Alan Collins, Building a People-Oriented Security Community the ASEAN Way (Routledge 2003); Julie Belanger and Richard Horsey, ‘Negotiating Humanitarian Access to Cyclone-Affected Areas of Myanmar: a Review’ (2008) 41 Humanitarian Exchange 2
24 In terms of human rights law, not all countries have ratified all UN conventions. Further there are regional and national differences in applying human rights law.
While this paper lacks the space to comprehensively argue each point, I nonetheless want to comment on a number of them. Regarding the first point, while some countries are critical towards human rights language, the fact remains that almost all countries have signed and ratified at least a number of human rights treaties and conventions. Further, a rights-based approach clearly states that the main responsibility of protecting human rights lies with the affected state. While the approach implores states to seek outside assistance, particularly if their capacities are insufficient, it does not promote coerced intervention except in cases of genocide and egregious human rights violations. It is highly unlikely that these questions will ever arise in regards to planned relocation.

For the issue of over demandingness particularly in terms of a HRBA one can see the approach as aspiring and action-guiding. This means that, while given the complex challenges of a planned relocation, it is unlikely that all human rights can be fulfilled. The authorities organizing a planned relocation should at least aspire to fulfill as many rights as possible. By conceptualizing the process through a human rights lens, they are hopefully able to guarantee more human rights than without having used a rights-based approach. A HRBA can be seen, to a certain extent, quite similar as the concept of disaster risk reduction, as by using the approach actors reduces the risk of rights violations. One might be enticed to call the approach ‘human rights violation risk reduction’ to highlight this similarity. There has been a wide debate about the third point in regards to cultural relativity and also the question of group rights, with some critique of human rights as supporting values coming from a particular Western tradition that are not suitable for other cultures.

Nonetheless, in arguing for human rights in regards to disaster risk management, there seem few issues that might be that contentious to override the basic usefulness of a HRBA. The fourth argument regarding rights-conflicts is indeed a difficult challenge. Still, without a HRBA we might not even realize that there are conflicting rights and cannot try to resolve such conflicts in the sphere of the political. I would see it as a particular advantage of a HRBA that it can make such conflicts visible and engage the affected persons in having a stake and say in resolving such rights conflicts. In planned relocation scenarios risks to the right to life or health are often pitted versus risks to a whole range of other rights. There is however not a patented way to resolve these possible conflicts once and for all for all possible cases - which further

25 See eg Roger Zetter and James Morrissye, ‘Environmental Stress, Displacement and the Challenge of Rights Protection’ (2014) 45 Forced Migration Review 67, who for the case of resettlement in Vietnam highlight that while the government focuses on the restoration of the economic basis of the resettled population, the more political rights regarding participation and decision-making of relocated persons are not addressed.


27 For a discussion of the issue see Cecil A J Coady, The Ethics of Armed Humanitarian Intervention (Peaceworks, United States Institute of Peace 2002)


29 See eg Alan J Milne, Human Rights and Human Diversity (Palgrave Macmillan 1986), for some of the discussions.
points towards the importance of case-to-case solutions based on inclusive dialogue of all impacted actors.

One way in which international actors have engaged with States and other actors involved in humanitarian and/or development to promote a HRBA was through the development of human-rights based guidance documents. Those documents, on the one hand, provide affected persons and their advocates with knowledge about human rights and their possible application in certain situations/fields and on the other hand engage States in developing laws, policies and projects based on human rights obligations and/or human rights considerations. One successful example for such a guidance are the UN Guiding Principles on Internal Displacement which are a collection of the human rights of persons who are displaced within their own country or country of residence based on international human rights law. The principles provide an important frame through which questions on internal displacement are discussed globally and have been incorporated into national laws and policies as well as into regional conventions (the African Union’s Kampala Convention).

Not dissimilar to the Guiding Principles, the ‘Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation’ was developed as the outcome of a multi-year consultative process including representatives of States, international organizations and experts from a wide range of disciplines (2011 and 2015). It was based on a wide array of background research, including an analysis of more than 30 guidance documents (most of which focusing on rights-based guidance) from related fields such as displacement, development-induced displacement and resettlement, evacuations, evictions, land, housing and property rights issues. The research showed that while many of those documents had something valuable to say in terms of planned relocation, no guidance existed that focused entirely and comprehensively on planned relocation and climate change issues. There has also been a blind-spot or reluctance of States to engage with the issue of planned relocation, which likely at least in part has to do with the many risks and difficulties connected to planned relocation. An analysis of National Adaptation Plans of Action from Pacific countries for example shows that there are almost no references to planned relocation in regards to climate change adaptation. Other research shows the difficulties that the United States, one of the most affluent countries in the world, faces in coordinating and funding the relocation of indigenous communities in Alaska. Given that planned relocation is very likely to be inevitable in a large number of countries if sea-level rise projections are correct, it might not bode well if States are not prepared to face the many challenges of planned relocation. Human rights-based guidance might therefore provide important input for State and non-state actors in regards to planned relocation.

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30 UN Office for the Coordination of Humanitarian Affairs, ‘Guiding Principles’ (n 6)
31 Another example for rights-based guidance are the Guiding Principles on Business and Human Rights, which were endorsed by the UN Human Rights council in 2011.
32 Disclosure: The author of this paper was involved as an expert in the drafting process of the Guidance.
33 For a discussion see Petz, ‘Operational Guidance’ (n 15)
34 Daniel Petz, ‘Neglected Displacement: Human Mobility in Pacific Disaster Risk Management and Climate Change Adaptation Mechanisms’ (Internal Displacement Monitoring Centre and Norwegian Refugee Council 2013)
35 Bronen, ‘Climate-Induced Community Relocations’ (n 11); Julie K Maldonado and others, ‘The Impact of Climate Change on Tribal Communities in the U.S.: Displacement, Relocation, and Human Rights’ (2013) 120 Climatic Change 601
4. The ‘Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation’

Having discussed the merits and challenges of a HRBA in the previous section, this section takes a closer look at the Guidance. The first aim is to see how the authors of the Guidance apply a rights-based approach as the normative framework in the guidance. I will discuss this by looking at how the Guidance ascribes rights and duties to different actors engaged in the planned relocation process, followed by a discussion on if and how the Guidance applies a justice-based approach and if a justice-based approach would provide some added benefit to rights-based guidance on planned relocation.

Fully in line with being a rights-based guidance, the document highlights in its overarching principles that States have the primary responsibility to respect, protect and fulfill the rights of people within their territory and that in some cases these responsibilities might require planned relocation in order to protect persons or groups. It further notes that States need to have “compelling reasons, robust evidence, and a sound legal basis for undertaking planned relocation”. While States carry the main responsibility, the Guidance acknowledges that likely not all States will be able nor should undertake planned relocation on their own, highlighting that “States will normally need, and should accept, support and assistance from other actors throughout a Planned Relocation.” After pointing out the main responsibility, the Guidance develops a whole set of points on how States should develop comprehensive legal and policy frameworks for planned relocation. They also should provide the basis for when the States’ involvement and authority over a planned relocation has ended. The Guidance further discusses a whole range of obligations of States throughout the process of planned relocation. For example in regards to livelihood restoration, which often plays a crucial part in determining the success of planned relocation, the Guidance highlights the need to provide adequate support, resources and services to address the main impoverishment risks associated with settlement.

As can be seen from these parts of the Guidance, the document lays a lot of emphasis on the duties of the State as the main duty bearer for the planned relocation process. Still, it encourages the State to seek support with the planned relocation from other actors, if necessary. It discusses the role of the State comprehensively, in that it discusses the entire relocation process from the risk assessment, the development of laws, policies and institutions, technical

36 Brookings Institution and others, ‘Guidance’ (n 5) §6
37 Ibid §7
38 “Such actors may include other States; regional bodies; inter-governmental organizations; development banks; funders/funding mechanisms; community leaders; the private sectors; and other experts.”, ibid §26
39 As noted in McAdam and Ferris, ‘Planned Relocations’ (n 7) 159, planned relocation is likely to have impacts on a wide range of laws and policies. “Since relocation has implications for a whole range of rights—civil, political, economic, social and cultural—it necessarily concerns a wide range of domestic laws relating to such apparently disparate issues as land, housing, property, insurance, employment, anti-discrimination, minorities, restitution, and so on. Laws relating to evictions, for instance, may be highly relevant.”
40 In regards to this question the Guidance notes that planned relocation ends when “Relocated Persons no longer have needs or vulnerabilities related to the Planned Relocation and can enjoy their rights at least at the same level as pre-Planned Relocation, before the impacts of disaster sand environmental change affected the enjoyment of such rights, and at a level that is at least equal to that of Host Populations”. Brookings Institution and others, ‘Guidance’ (n 5) §57
41 Based for example on “landlessness, joblessness, homelessness, marginalization, food insecurity, morbidity and mortality, loss of access to common property and services and social and cultural disarticulation”, ibid §42
details within the relocation process such as compensation and livelihood restoration, as well as questions of monitoring and evaluation.

Aside from the State, at-risk or affected persons and groups feature prominently in the Guidance. Here, it also follows important premises of a rights-based approach, which seeks to engage affected persons as active and participative actors within the relocation process and also comprehensively speaks out to protect the rights of those affected. To that respect, one important cross-cutting statement of the Guidance is that planned relocations should be undertaken for the benefit of relocated persons and in a manner that respects and protects their rights and dignity.42 Further, the Guidance states in its overarching principles that planned relocation should be carried out within a rights-based framework that “safeguards both individual and collective civil, political, economic, social, and cultural rights of relocated persons and other affected persons throughout all phases.

The Guidance pays detailed attention to the question of participation in all stages of the relocation process, from deciding if and when a planned relocation is necessary to issues of livelihood restoration.43 It further highlights that the agency, resilience and empowerment of those relocated should be recognized, promoted and enhanced.44 Part of a participatory process of planned relocation is the provision of mechanisms to address grievances, as well as the provision of conflict resolution and redress mechanisms.45

Another important principle of the HRBA is a special focus on those who are particularly vulnerable because they are the most likely victims of rights violations throughout the relocation process. The Guidance takes this into account by highlighting that the specific needs, circumstances and vulnerabilities of those affected by planned relocation based on a broad range of criteria should be taken into consideration during all stages of the planned relocation.46

In laying out the rights of those affected by the planned relocation, the Guidance differentiates between different groups which are impacted differently during the relocation process. These are the persons that are actually relocated, host communities, those who choose not to take part in planned relocation and persons who live in close proximity.47 As those different groups might be differently affected by the planned relocation process the Guidance takes the position that they should be therefore entitled to different degrees of support, protection, but also participation, which according to a rights-based approach can be argued for in terms of differentiated vulnerabilities.48
Daniel Petz

As the previous paragraphs have shown, the Guidance does not only address the state and those persons or groups that are relocated, but also considers the rights of host communities and even other persons and groups that are affected by the relocation. It points out that regarding to different categories of persons States might have different obligations throughout the relocation process, based on how the planned relocation impacts the rights of each of those categories of persons. The Guidance however focuses almost exclusively on the state obligations, while leaving out possible duties of affected persons in the process. It addresses this point in the preamble, noting that,

“While this Guidance focuses on the obligations of States, it is important to recognize that individuals, households, and communities have responsibilities as well. They may be primary agents initiating Planned Relocation, and should be provided with the latitude to take charge of decisions and the process.” 49

While some more detailed discussion on obligations of affected persons might have certainly enriched the document, it is within the tradition of rights-based guidance that those documents are mainly addressed towards the state, as the state has the primary responsibility to uphold human rights and is therefore the main duty bearer. Moreover, the definition of the relevant duties or responsibilities of affected persons should probably be part of the political process surrounding the development of laws, policies and plans for planned relocation because than those responsibilities can be tailored to the problem at hand. Human rights documents have largely refrained from formulating duties of individuals as there is open debate if such duties exist and/or about what those duties would entail (one notable exception is the 1981 African (Banjul) Charter on Human and People’s Rights) and therefore one can argue that the Guidance stays within the mainstream of rights-based documents by leaving out that discussion.50

In respect to how detailed the Guidance discusses rights and duties a close reading of the document shows a certain vagueness in a number of areas. One could contest that this weakens the document as a rights-based guidance. A contrary opinion though could state that by laying out more general principles and suggestions, the document provides guidance on the one hand, while on the other hand allowing enough space for States and affected people to tailor the process to local needs and circumstances (and to allow for a political process to decide on the specific criteria). As can also be seen with the detailed discussion of legal, policy and institutional frameworks, the Guidance puts a strong focus on the development of the right procedural enabling environment for planned relocation based on human rights obligations, rather than prescribing ready-made solutions. Given the inherent complexity in planned relocation, as well as sensitivities regarding human rights approaches, this paper is critical that such a paternalistic approach based on ready-made solutions could succeed.

Further, in terms of comprehensiveness, one might argue that the Guidance is not very explicit in regards to the protection of rights of vulnerable groups. While it highlights them clearly among the overarching principles, there are only few provisions regarding rights protection for specific persons or groups based on vulnerabilities throughout the document.

49 Brookings Institution and others, ‘Guidance’ (n 5) 6
50 It is debatable if citizens have duties. See eg Dimitry Kochenov, ‘EU Citizenship Without Duties’ (2014) 20(4) European Law Journal 482
Here, likely the goal to keep the document short and legible collided with the goal to highlight this issue stronger. To address this issue, the authors are planning to develop more operational guidance based on real-world examples and best practices, which would allow discussing these issues in the amount of detail they deserve.

On the question of demandingness, already discussed earlier, the Guidance does not demand anything from states that is not based on already existing international human rights obligations. While also advocating for the implementation of specific redress mechanisms, the Guidance is a proactive instrument in terms of preventing human rights violations before they occur. It further takes a clear normative stance that states should seek assistance from other actors, if needed.

5. **IS A JUSTICE PERSPECTIVE COMPLEMENTING A RIGHTS-BASED APPROACH TO PLANNED RELOCATION?**

While there is an emerging human rights discourse surrounding planned relocation, questions of justice regarding planned relocation have so far received relatively little systematic attention. Justice considerations however might be important when conceptualizing and implementing planned relocations. Next, and possibly even complementary, to a human rights perspective, a justice perspective can provide important inputs. I particularly want to look at issues of distributive justice. 51

Theories of distributive justice concern themselves with the question what a just distribution of a certain currency (resources, capabilities, welfare) is and which distributive rules it should follow. While I do not have the space to develop a comprehensive theory of distributive justice in this paper, it is, in my view of interest to raise a number of distributive justice issues that are posed by planned relocation. Let me start with considering a quote by McAdam and Ferris, who are one of the few authors writing about planned relocation and climate change that directly allude to (distributive) justice, noting that planned relocations also raise questions of justice:

“Finally, planned relocation is an issue of justice. Those who are able to migrate will likely do so before the situation becomes desperate, while those without the necessary financial or social means will be dependent on governmental assistance to support their relocation. If that is not forthcoming, then they will be stuck.” 52

As this quote alludes, moving out of the way will be easier for those who have enough means rather than for the less and least well-off, who might even get stuck without outside assistance. Even if we don’t assume that the majority of those relocated will be the less or least well-off, planned relocation poses a number of distributive justice issues. Key among the questions is to what level of a metric of justice (well-being, wealth, resources, capabilities, etc.) those relocated are entitled to and how that level relates to the entitlements of other person’s or groups (those left behind, host communities, the wider population). The positions to this

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51 There are also issues of intergenerational justice that are worthy discussing surrounding the issue of planned relocation, but have to be left out due to space constraints.

52 McAdam and Ferris, ‘Planned Relocations’ (n 7) 166
question could range from ‘nothing much as relocated persons should be happy that they receive some help and survive’ to ‘they should be much better off after the relocation.’ Most persons (and most philosophers too, no matter if following egalitarian, prioritarian or sufficientarian conceptions) would intuitively subscribe to some notion that people should at least be entitled to certain minimum standards and if they are not well off or even among the least well-off that they should be entitled to an improvement of their conditions or at the very least not be worse off than before. While those principles are easy to defend under ideal circumstances, once we get to real relocation cases it might be more difficult to fulfill circumstances of justice as those responsible for planned relocation might have to deal with limited resources which might not allow for fulfilling such ideals for everybody involved in the relocation process. Nonetheless, this is not a reason to discard discussion about justice, because the setting of standards based on considerations of justice might set important benchmarks for the relocation process and a process based on justice considerations might also have a larger chance of success than one that does not take such considerations in concern. As this paper discusses rights-based guidance to planned relocation it might be interesting to see if and if yes how the Guidance incorporates issues of distributive justice.

While the Guidance does not explicitly use justice-based language, it deals with issues of distributive justice. For example §44 of the Relocation Guidelines points out that “states should ensure at a minimum the restoration, but ideally the improvement of livelihoods of relocated persons”. The Guidance further highlights that States need to provide adequate support, resources and services to address the main impoverishment risks associated with settlement. Part of the distributive justice debate can also be framed in terms of compensatory issues, for example if the relocated persons are entitled for compensation for their land and possessions that remain behind. Here, the Guidance highlights that state resources, including compensation, services and/or financial assistance should be provided to those relocated and other affected persons. Should compensation be provided, the eligibility criteria should be equitable and address barriers that might limit certain people to receive fair compensation. If states acquire the land left behind by relocated persons, those persons should have the rights to equitable compensation. In this process also the particular needs of persons with non-formal land rights should be taken into consideration, as well as those of landless, or unlawful occupants.

53 On the other side of the scale of justice one might argue about the question whether people who are sufficiently wealthy and live in coastal areas should be entitled to assistance regarding relocation (for example in the case an entire community is relocated), here it is questionable if a government would find it reasonable to pay fully for the relocation of villas of very wealthy people.

54 Egalitarians in regards to distributive justice usually subscribe to measures that at least foster more equality in distribution. Prioritarians support the principle that those worse off should profit more from a distributive scheme than those already well off. Sufficientarians believe that those below the threshold of sufficiency should have strong priority until they reach the threshold and that priority ends once the threshold is reached. See eg Larry Temkin, ‘Equality, Priority or What?’ (2003) 19 Economics and Philosophy 61; Derek Parfit, ‘Equality or priority?’ (Lindley Lecture, University of Kansas 1991) reprinted in Matthew Clayton and Andrew Williams (eds), The Ideal of Equality (Palgrave Macmillan 2002). See also Harry Frankfurt, ‘Equality as a Moral Ideal’ (1987) 98 Ethics 21

55 Brookings Institution and others, ‘Guidance’ (n 5) §43

56 Based for example on “landlessness, joblessness, homelessness, marginalization, food insecurity, morbidity and mortality, loss of access to common property and services and social and cultural disarticulation”, ibid §42

57 ibid §47

58 ibid §48
Just Relocation? Planned Relocation From Climate Change, Human Rights and Justice

There are also further issues regarding distributive justice, for example, regarding how relocated communities fare compared to host communities and how differences between those communities might influence the distribution of assistance (who receives it and how much). Here, the Guidance notes that host communities should at least maintain their pre-existing standard or attain the standard of relocated persons, depending on which is higher. According to the Guidance, the planned relocation process should also mitigate negative effects on other people who may be affected by the relocation.\textsuperscript{59}

There is also a question if planned relocations should aim at making communities more equal, by for example providing ownership of housing for those who were landless or renters before the relocation or by providing livelihood opportunities and/or training for those who were un- or underemployed before the relocation. Here, the Guidance while acknowledging the need to address such questions, particularly in regards to land, property and compensation, does not take any explicit position. The Guidance though highlights that States should provide the necessary conditions to enable those who are relocated to “build a sustainable life of dignity” at the settlement sites.\textsuperscript{60} This seems an indicator that the authors suggest the facilitation of at least some basic threshold of welfare for those relocated.

Another set of questions arise in terms of global (distributive) justice. As many of those countries that will have to relocate the largest amount of people are among the less well-off countries in the world, considerations of justice might show that wealthier countries have duties of justice to support countries with planned relocation. The debate on global justice is much contested between those who argue that duties of justice only apply within a state and those that argue for global duties of justice.\textsuperscript{61} In terms of climate change, at least it seems that there is some political agreement based on the common but differentiated responsibilities, which countries have agreed under the UNFCCC process, that wealthier countries should provide a regular amount of adaptation funding for less well-off countries which might also be used for planned relocation. Still, commitments by rich countries have been less forthcoming than promised.\textsuperscript{62}

In addition, one can also connect planned relocation to questions of compensatory justice.\textsuperscript{63} Considerations of justice are likely to show that countries that bear more responsibility for climate change could be liable for compensating those countries that have to cope with negative climate change impacts, for example through the need to do planned relocation. If one accepts

\begin{itemize}
\item \textsuperscript{59} ibid §15
\item \textsuperscript{60} ibid §42
\item \textsuperscript{62} Developed countries have promised US$ 100 billion of climate finance for developing countries per year by 2020. Tracking of climate finance is difficult as often donor’s do not disclose if they pledge additional money or if former pledges gets ‘recycled’ from earlier pledges. In addition, only a small percentage of all climate funding goes to climate change adaptation. See for some discussions Maria Galucci, ‘UN Climate Summit: Countries Promise To Give Billions in Climate Change Financing, but Road from Promise to Project Uncertain’ (International Business Times, 24 September 2014) <www.ibtimes.com/un-climate-summit-countries-promise-give-billions-climate-change-financing-road-1694608>; Barbara Bucher and others, ‘The Global Landscape of Climate Finance 2014’ (Climate Policy Initiative Report 2014)
\item \textsuperscript{63} If and in how far this is the case is an open debate among philosophers. See eg Eric A Posner and Cass R Sunstein, ‘Climate Change Justice’ (2008) 96 Georgetown Law Journal 1565; Daniel A Farber, ‘The Case for Climate Compensation: Justice for Climate Change Victims in a Complex World’ (2008) Utah Law Review 377
\end{itemize}
this argument, a case might be made that planned relocation rather than being considered exclusively as an adaptation measure might fall under what is now discussed as loss and damage from climate change. Of course the issue of attribution of individual disasters to climate change is still problematic and legal claims for compensations have so far been rejected by courts. This does not mean though that such claims might not be successful in the future.

Looking at the Guidance, one can see that certain justice aspects are addressed (albeit not framed in justice terms), particularly regarding distributive justice for relocated persons, host communities and other affected person. One would expect a human rights based guidance to have certain egalitarian tendencies as it strives for the fulfillment of human rights of all affected persons, part of which will be the fulfillment of socio-economic rights of those persons and the above discussion about the Guidance shows that those elements can be found within the guidance. Nonetheless, one can argue that the Guidance is rather vague and cautious in arguing about distributive justice, not aiming at certain absolute levels (above a certain threshold as for example the poverty line, average income, etc.). Obviously, circumstances on the ground will vary significantly from planned relocation to planned relocation and hence a certain vagueness of language might have been seen as useful in terms of guaranteeing universality of the Guidance by the drafters. Nonetheless distributive justice aspects might have benefitted from clearer and particularly more comprehensive language. Still, where it argues about distributive justice, the Guidance makes the strong point that the planned relocation process should not be at the detriment of relocated persons, host communities and other affected persons and that there should be an aspiration to improve living standards. Much of the discussion about justice will need to take place at the country and/or local level and include those affected by the relocation process, here the Guidance puts an important focus on procedural justice. In terms of planned relocation questions of participation of affected persons play an important role in determining the outcomes of the planned relocation and while justice considerations might differ too much from one case of relocation to the next to come up with reliable principles of what a just planned relocation would entail, one could see the achievement of at least procedural justice as an important aim regarding planned relocation. The relocation Guidance, for example, seems to take elements related to procedural justice as important when discussing the necessity of developing legal and institutional frameworks and the participation of affected persons in detail.

While taking into account a number of justice-related issues on the micro-level, the Guidance largely fails to address justice issues on the macro level (national, global and intergenerational justice). Given that it is very focused on the scope of the relocation project as

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64 See for a discussion on loss and damage from climate change impacts Linta M Mathew and Sonia Akter, ‘Loss and Damage Associated with Climate Change Impacts’ (2015) in Wei-Yin Chen and others (eds), Handbook of Climate Change Mitigation and Adaptation (1st edition, Springer New York 2015)


66 The term procedural justice has been framed by John Rawls. It can be interpreted in the sense that in situations where there is no criterion for what constitutes a just outcome at least a just procedure should be followed (pure procedural justice). In John Rawls, A Theory of Justice (Harvard University Press 1971) 86, Rawls uses the term pure procedural justice which obtains “when there is no independent criterion for the right result: instead there is a correct or fair procedure such that the outcome is likewise correct or fair, whatever it is, provided that the procedure has been properly followed.” He then adds that pure procedural justice in terms of distributive shares need to be based on a just system of institutions.

67 See Brookings Institution and others, ‘Guidance’ (n 5) Section IV and §35 for more details.
such this does not necessarily mean that it has been an oversight, but that rather it is a question of choosing the scope of engagement with the issue. Nonetheless, a successful relocation policy will very likely need to engage with a wider set of justice-related issues than the Guidance offers.

This short analysis of several aspects related to considerations of distributive justice regarding planned relocation shows that such considerations are certainly relevant for the issue of planned relocation. The question however is if a justice perspective is beneficial to or even necessary for the ‘success’ of planned relocation. I believe that looking at planned relocation through the justice lens provides one with an angle that is not fully covered by a rights-based approach, as laid out in the Guidance, as justice questions can provide both a micro (justice consideration concerning the relocation project) and macro (national, global justice and intergenerational considerations) lens for evaluating planned relocation. Particularly on the macro level, justice can help to connect one relocation project to broader societal, global and even intergenerational questions of justice.

6. CONCLUDING THOUGHTS

Human rights guidance is an important part of a rights-based approach as it applies human rights to detailed real-world problems, contextualizing rights and so facilitating the application of human rights into laws, policies and actual on the ground projects. Given that planned relocation is likely to occur more frequently due to the negative effects of climate change and a large number States have so far been timid in engaging with the issue the Guidance on Protecting People from Disasters and Environmental Change Through Planned Relocation as the first comprehensive rights-based guidance document on planned relocation has the potential to provide important input to that process. Overall, a human rights-based approach seems to provide a valid frame to conceptualize planned relocation, particularly through comprehensively highlighting the wide array of considerations in regards to political, cultural and socio-economic rights of affected persons and through also highlighting the importance of agency of affected persons and groups. In addition, while discussing only cursory, this paper has shown that considerations of justice, particularly distributive justice, can play an important role regarding planned relocation and should therefore be considered to supplement a rights-based approach to planned relocation.

68 It is of course up for debate what success for a planned relocation means as definitions of enacting agencies and relocated persons might differ. I am inclined to follow the definition of the Guidance for when relocation ends, where it states that those relocated should have no more needs and vulnerabilities that are directly related to the relocation process and can enjoy their rights at least at the same level as before the planned relocation. ibid §57 To make the term of success broader, I would likely add some kind of satisfaction with the relocation process as such and some measure of satisfaction with life at the new location which can be expressed in many different terms (economically, socially, less fear, etc.).