

# **Implementing International Laws for Internally Displaced Persons in Situation of Natural Disasters**

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## **Abstract**

Internal displacement has raised serious concerns and problems in Taiwan and other countries around the world. To better protect rights of displaced persons, this paper discusses two international norms regarding displacement and their implementation. While the traditional refugee law has protected people fleeing from their countries for political, cultural, and religious reasons, the law cannot assist people displaced by natural disasters and remaining in their home countries. Thus, many countries incorporate a more recent international norm targeting at internal displacement, the Guiding Principles on Internal Displacement, into their domestic legislation and policy. The laws and policies are classified into five models, many of which suffer problems of insufficient consultation with and participation of the displaced persons. Learning from the experience, Taiwan shall adopt the principles to establish a comprehensive legal framework addressing all stages of the process of internal displacement, with special attention and support to the displaced persons.

## **I. Introduction**

In August 2009, Typhoon Morakot brought record-breaking amount of rainfalls that triggered enormous mudslides and flooding throughout southern Taiwan. Roads to indigenous villages in the mountains were blocked or washed away by landslides. The Taiwanese indigenous peoples were trapped in the remote areas, running out of food and water. Many indigenous villages were severely destroyed.<sup>1</sup> The disaster caused not only urgent needs but also medium- and long-term problems of displacement. After Typhoon Morakot, the Taiwanese government investigated the affected areas and requested more than ten thousand people in the dangerous lands to resettle.<sup>2</sup> The relocated people have faced social, cultural, and economic difficulties associated with displacement, such as unemployment and cultural conflicts.<sup>3</sup>

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<sup>1</sup> See CHEN I-CHUN & LIU HUAN-YUEH, NEIYOU TRIBES STANDING IN THE STORM: HLA'ALUA, KANAKANAVU AND LOWER THREE COMMUNITIES OF RUKAI TRIBE BEFORE AND AFTER TYPHOON MOLAK, 223-227, 249-254 (2011).

<sup>2</sup> TYPHOON MORAKOT POST-DISASTER RECONSTRUCTION COUNCIL, EXECUTIVE YUAN, LOVE AND HOPE BURSTING WITH VITALITY: ACHIEVEMENTS ON THE THIRD ANNIVERSARY OF POST TYPHOON MORAKOT RECONSTRUCTION, 210 (2012).

<sup>3</sup> See INDEPENDENT NEWS NET OF MORAKOT, MISSING HOMES IN PERMANENT HOUSES: STORIES ABOUT PEOPLE AND PERMANENT HOUSES, THREE YEARS SINCE THE DISASTER OF TYPHOON MORAKOT, 198-223 (2013).

Internal displacement has been an significant issue in Taiwan, as well as other countries throughout the world. Millions of people are displaced by armed conflicts, disasters, development projects, and other situations.<sup>4</sup> These people were displaced from their residences; nevertheless, they remained in the territory of their home countries. Thus, they are called internally displaced persons (IDPs). To shed lights on how to better protect rights of the IDPs, this paper examines two international norms regarding displacement and the implementation of the norms into domestic realms. This article aims to know: while domestic laws cannot sufficiently protect the rights of people displaced by natural disasters, whether and how to incorporate international laws into domestic legislation and policy to address internal displacement issues?

After the introduction, Part Two introduces the disaster laws in Taiwan and their insufficiency to protect people displaced by natural disasters. Part Three discusses two international norms that may guide and facilitate countries to take actions on protecting IDPs. Part Four analyzes the practice of incorporating the international norms to domestic laws and policies on internal displacement, categorizing the laws and policies into five models. Based on the analysis, Part Five suggests that Taiwan shall learn from the experience to adopt the international norm to establish legal and policy frameworks to handle displacement due to natural disasters. Part Six concludes the paper.

## **II. Disaster Laws and Displacement Issues in Taiwan**

While typhoons and earthquakes have usually struck Taiwan, disaster laws in Taiwan have developed slowly and lately. During the twentieth century, Taiwan had no national disaster statutes aimed at disaster prevention and post-disaster recovery. When disasters occurred, Presidents would issue Emergency Orders to temporarily exempt the government from legal restraints to flexibly conduct rescue services and reconstruction works.<sup>5</sup> It was not until a massive earthquake occurred in Taiwan in 1999 that the legislators became aware of the significance of a reliable disaster management legal framework. In 2000, the Legislative Yuan enacted the “Disaster Prevention and Protection Act” to regulate the structure of disaster management government departments and the procedures of responding to disasters.

While a step in the right direction, the Disaster Prevention and Protection Act revealed its limitations when typhoon Morakot caused severe damages in Taiwan. Within twenty days after the disaster, the Legislative Yuan passed the “Special Act For Post-Typhoon Morakot Disaster Reconstruction” [hereafter “Special Act”] to establish a reconstruction council and exempt post-

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<sup>4</sup> Brookings-Bern Project on Internal Displacement, “*Mapping the Response to Internal Displacement - The Evolution of Normative Developments*”, 1-2 (2014), <https://www.brookings.edu/wp-content/uploads/2016/06/Mapping-the-Resource-to-Internal-Displacement-The-Evolution-of-Normative-Developments-October-10-2014-FINAL.pdf>.

<sup>5</sup> See Chin-Tian Chen, *Research the Effect of “Disaster Prevention and Response Act” and the Best Timing to Issue “Emergency Order Power”*, 4:2 J. OF TOKO U. 5 (2010).

disaster reconstruction efforts from normal legal restraints.<sup>6</sup> Since the legislators had little time to contemplate predicament of the victims and carefully draft the bill, the articles of the Special Act were ambiguous and ineffective in protecting rights of people suffering from disaster impacts.

The ineffectiveness of the disaster laws has been particularly difficult for vulnerable groups like Taiwanese indigenous peoples. Specifically, the Special Act authorized the government to designate deeply-struck lands as “Special Zones” or “Safety Doubtful Zones”.<sup>7</sup> By claiming the lands as dangerous and uninhabitable, the government requested residents in the zones to relocate. The relocation policy caused thousands of Taiwanese indigenous peoples to leave their homes and resettle elsewhere.<sup>8</sup> Being away from their homelands, many indigenous peoples have lost connections with their old communities and unique lifestyles. Moreover, the displaced indigenous peoples were hard to continue farm works in their homelands or find new jobs in unfamiliar places.<sup>9</sup>

While the life of the indigenous peoples are highly affected by decisions of relocation or return, they have been provided limited information and legal protection against displacement. According to the Special Act, the government shall handle reconstruction in accordance with the “Basic Law for Indigenous Peoples” to preserve indigenous cultures and unique lifestyles, and the government shall respect plural cultures and promote community engagement.<sup>10</sup> In reality, although the indigenous peoples protested against the designation of Special Zones, the government and NGOs dominated the reconstruction process.<sup>11</sup> After the government had designated an area as Special Zone, the decision was almost impossible to be challenged or vacated in courts.<sup>12</sup>

### III. International Norms Regarding Displacement

When domestic laws do not sufficiently protect the rights of IDPs, like the case of Taiwan, international laws may facilitate national legislation and policy to better address internal displacement issues. Part Three discusses two international norms regarding displacement that may be adopted into domestic realms to assist and protect IDPs: the 1951 Convention relating to the Status Refugees [hereafter “Refugee Convention”] and the 1998 Guiding Principles on Internal Displacement [hereafter “Guiding Principles”]. The well-established refugee law has legally binding force for its party states, and the Guiding Principles is a non-legally binding instrument. Thus, before discussing the Guiding Principles, which target at internal displacement, the following part first discusses whether the international refugee law may be adopted by countries to help the IDPs within their territories.

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<sup>6</sup> Article 4, 6-8, 10-26, Special Act For Post-Typhoon Morakot Disaster Reconstruction (2009).

<sup>7</sup> Article 20, Special Act For Post-Typhoon Morakot Disaster Reconstruction.

<sup>8</sup> TYPHOON MORAKOT POST-DISASTER RECONSTRUCTION COUNCIL, EXECUTIVE YUAN, *supra* note 2.

<sup>9</sup> INDEPENDENT NEWS NET OF MORAKOT, *supra* note 3.

<sup>10</sup> Article 1-2, Special Act For Post-Typhoon Morakot Disaster Reconstruction.

<sup>11</sup> TYPHOON MORAKOT POST-DISASTER RECONSTRUCTION COUNCIL, EXECUTIVE YUAN, *supra* note 2, at 214-218.

<sup>12</sup> Zuigao Xingzheng Fayuan [Supreme Admin. Ct.], 101 Pan-Zi No. 1073 (2012) (Taiwan).

## 1. Convention relating to the Status Refugees

According to the Refugee Convention, its purpose is for helping individuals who have “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion”<sup>13</sup> and who are outside the country of their nationality or residence. The individuals must be citizens unable or unwilling to be protected by his home country or stateless persons unable or unwilling to return the country of their former habitual residence.<sup>14</sup> This definition of “refugee” makes the Convention apply only to persons displaced by racial, cultural, political, social, and religious reasons. It is difficult for countries and people to claim the Convention to address their displacement problems caused by natural disasters.<sup>15</sup> Moreover, since the Convention applies only to individuals who already crossed borders and fled to other countries, hardly can the refugee law assist the displaced persons who still stayed within their home countries.

The international organizations do distinguish refugees from IDPs, giving different mandates to governments and organizations to assist the two types of sufferers. For people who fled from their home countries due to arm conflicts, the U.N. General Assembly recognized the Refugee Convention as the foundation of international refugee protection and called upon the international community to take concrete actions to help refugees and asylums.<sup>16</sup> In contrast, for the IDPs, the General Assembly called upon actions of effected states and international communities to preempt internal displacement and protect the IDPs based on the Guiding Principles on Internal Displacement.<sup>17</sup>

## 2. Guiding Principles on Internal Displacement

In the situation of displacement, most displaced persons have remained in their home countries because they do not have enough financial resources and supports to migrant across broader to seek a better life.<sup>18</sup> However, for a long period of time, there were no rules specific for internal displacement in the international realm. By definition, IDPs are people who left their homes but do not cross borders, subject to the control of their governments and under state sovereign. Because of the sensibility of sovereign, international intervention is allowed only in exceptional or emergent circumstances to address domestic affairs. The international community was hard to apply international laws and properly approach internal displacement issues.<sup>19</sup>

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<sup>13</sup> Article 1 A (2), Convention relating to the Status Refugees (1951, modified by the 1967 Protocol).

<sup>14</sup> *Id.*

<sup>15</sup> See Claire De Witte, *At the Water's Edge: Legal Protections and Funding for a New Generation of Climate Change Refugees*, 16 OCEAN & COASTAL L.J. 211, 219-221 (2010).

<sup>16</sup> See G.A. Res.59/172, U.N. Doc. A/RES/59/172 (Dec. 20, 2004); G.A. Res.60/128, U.N. Doc. A/RES/60/128 (Dec. 16, 2005); G.A. Res.61/139, U.N. Doc. A/RES/61/139 (Dec. 19, 2006).

<sup>17</sup> See *id.*

<sup>18</sup> See Claire De Witte, *supra* note 15, at 223.

<sup>19</sup> See Francis Mading Deng, *The Global Challenge of Internal Displacement*, 5 WASH. U. J.L. & POL'Y 141, 144 (2001).

As the population of IDPs reached an alarmingly high number in the 1990s, international organizations and countries called for more attention on problems relating to internal displacement and sought a new legal framework.<sup>20</sup> In 1998, the United Nations issued the Guiding Principles on Internal Displacement, which consist of international human rights and humanitarian laws pertinent of internal displacement. The principles fill the legal gaps and clarify the rules of internal displacement.<sup>21</sup> The object of the principles is to protect people who have been forced to flee or leave their homes because of armed conflict, generalized violence, violations of human rights, natural or man-made disasters and “who have not crossed an internationally recognized state border.”<sup>22</sup>

To avoid controversies of state sovereign and encourage actions of states, the Guiding Principles focus on the responsibility and capacity of the effected countries to protect and assist their own people.<sup>23</sup> The Guiding Principles adopt the basic principle on natural disaster management in the U.N. bodies: each state has the primary responsibility for taking effective measures to reduce disaster risk and for initiating, organizing, coordinating, and implementing humanitarian assistance to the victims within its territory.<sup>24</sup> Thus, to understand the practice of the Guiding Principles, it is important to examine what actions states have taken—making national legislation and/or policy—to address needs of their IDPs.

## **IV. Incorporating the Guiding Principles into Domestic Legislation and Policy**

### **1. Models of Implementing the Guiding Principles**

Although the Guiding Principles have no legally-binding force, the principles have been widely-used and serve as the sole and important international norm that addresses the unique issues of internal displacement.<sup>25</sup> The U.N. bodies have repeatedly cited the Guiding Principle in particular as a normative framework of protecting the rights of IDPs. The Guiding Principles are regarded as a crucial tool for governments to initiate domestic legislation and public policies for providing protection, assistance, reintegration, and development support for the IDPs.<sup>26</sup> Regional and non-governmental organizations also have incorporated the principles into their agreements

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<sup>20</sup> See INTERNAL DISPLACEMENT MONITORING CENTRE: <http://www.internal-displacement.org/internal-displacement/what-is-internal-displacement/guiding-principles-on-internal-displacement/> (last visited: October 22nd, 2017).

<sup>21</sup> See Francis Mading Deng, *supra* note 19, at 146-147.

<sup>22</sup> United Nations, *Guiding Principles on Internal Displacement*, U.N. Doc. /CN.4/1998/53/Add.2 (Feb. 11, 1998).

<sup>23</sup> Principle 3, Guiding Principles on Internal Displacement; Francis Mading Deng, *supra* note 19, at 144-145.

<sup>24</sup> See G.A. Res.59/212, U.N. Doc. A/RES/59/212 (Dec. 20, 2004); G.A. Res.60/125, U.N. Doc. A/RES/60/125 (Dec. 15, 2005); *International Strategy for Disaster Reduction*, G.A. Res 61/198, ¶ 8, U.N. Doc. A/RES/61/198 (Dec. 20, 2006); *Natural Disasters and Vulnerability*, G.A. Res.61/200, ¶ 3, U.N. Doc. A/RES/61/200 (Dec. 20, 2006).

<sup>25</sup> See Claire De Witte, *supra* note 15, at 223-225; *Protection and Assistance to Internally Displaced Persons*, U.N. GAOR, 56th Sess., U.N. Doc. A/RES/56/164 (2001).

<sup>26</sup> See G.A. Res.60/168, U.N. Doc. A/RES/60/168 (Dec. 16, 2005); *Official Reports of the Economical and Social Council, 2005, Supplement No. 3 (E/2005/23)*, chap. II, sect. A; *Protection of and Assistance to Internally Displaced Persons*, G.A. Res 66/165, ¶ 12, U.N. Doc. A/RES/66/165 (Dec. 19, 2011); UN Human Rights Council, *UN Human Rights Council: Report of the Special Rapporteur on the Human Rights of Internal Displaced Persons*, Addendum, A/HRC/26/33/Add.1 (June 4 2014).

and policies. The widespread acceptance indicates that the international community recognizes the Guiding Principles as an international norm, or even international customary law.<sup>27</sup>

An increasing number of countries have referred the Guiding Principles to issue policies and laws to address hardships associated with displacement in their countries.<sup>28</sup> This paper examines the database of domestic policies and laws regarding internal displacement on the *Brookings-Bern Project on Internal Displacement* website, classifying the policies and laws into five models and analyzing their characteristics.<sup>29</sup> The classification is based on and modified from the category created by Jessica Wyndham.<sup>30</sup> It is also worthy noting that a country may use multiple ways to incorporate the principles into their domestic laws and policies.

### **Model 1: Brief Instrument Adopting the Guiding Principles**

Countries of model 1 adopt the entire Guiding Principles as their domestic laws or policies, neither amending the principles nor creating new domestic laws or policies to interpret the principles. For example, Liberia used one page of the “Instruments of Adoption” to adopt the entire Guiding Principle as its domestic policy to address internal displacement. At first glance, adopting all principles seems to be a complete recognition and full support for the principles. The countries do not have to spend much time drafting bills and debating through the legislation procedure, so they can immediately have a law or policy to handle internal displacement.

However, the Guiding Principles are general guidelines to deal with internal displacement due to a variety of causes. While the principles highlight the severity of internal displacement and may “be helpful in asking the right questions, they are not likely to provide the same answers everywhere.”<sup>31</sup> To utilize the Guiding Principles to effectively address specific displacement problems within its territory, each country needs to transform the abstract principles into concrete rules and policies in accordance with its specific contexts in which disasters occur.<sup>32</sup> Moreover, when the governments skip the process of draft and discussion, relevant stakeholders—especially the IDPs—are deprived of an opportunity of expressing their concerns and forming the laws and policies.<sup>33</sup>

### **Model 2: Laws and Policies Addressing Specific Causes or Stages of Internal Displacement**

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<sup>27</sup> See Lolita Buckner Inniss, *A domestic Right of Return?: Race, Rights, and Residency in New Orleans in the Aftermath of Hurricane Katrina*, 27 B.C. THIRD WORLD L. J. 325, 368-370 (2007).

<sup>28</sup> See Hannah Entwisle, *Tracing Cascades: the Normative Development of the U.N. Guiding Principles on Internal Displacement*, 19 GEO. IMMIGR. L. J. 369, 382-383 (2005); Brookings-Bern Project on Internal Displacement, *supra* note 4, at 10.

<sup>29</sup> BROOKINGS-BERN PROJECT ON INTERNAL DISPLACEMENT: <http://www.internal-displacement.org/law-and-policy> (last visited: October 26th, 2017).

<sup>30</sup> See Jessica Wyndham, *A Developing Trend: Laws and Policies on Internal Displacement*, 14 NO. 1 HUM. RTS. BRIEF 7, 8-9 (2006).

<sup>31</sup> See United Nations, General Assembly Economic and Social Council, *Strengthening Emergency Relief, Rehabilitation, Reconstruction, Recovery and Prevention in the aftermath of the Indian Ocean Tsunami Disaster*, A/60/86-E/2005/77 (June 21 2005).

<sup>32</sup> See *id.*

<sup>33</sup> See Jessica Wyndham, *supra* note 30, at 8.

Of the second model, countries make domestic laws or policies that incorporate the Guiding Principles to deal with specific causes or stages of internal displacement. The domestic laws or policies set concrete standards and responsibilities for governments on addressing problems of internal displacement events. For example, Georgia enacted the “Law of Georgia on Forcibly Displaced Persons-Persecuted Persons” to set rules of recognition, suspension, termination and deprivation of the legal status of IDPs and to recognize their rights and obligations.<sup>34</sup> In Russia, the “Federal Law on Forced Migrants” protects the rights and lawful interests of people who were forced to migrant because of their racial or national affiliation, religion or language, social group, or political convictions.<sup>35</sup> Bosnian enacted the “Law on Displaced Persons, Returnees and Refugees in the Republika Srpska” to help citizens displaced by civil conflicts return to their former place of permanent residence.<sup>36</sup>

Most laws and policies of this model share two common characteristics. First, most of them focus on resettlement and return procedure, especially in situations of conflict-induced displacement, while internal displacement is a long and complex process. For instance, in addition to the above Georgian, Russian, and Bosnian statutes, the purposes of the “Arusha Peace and Reconciliation Agreement, Protocol IV” in Burundi are rehabilitation and resettlement of people displaced by state violence, bloodshed, insecurity, political instability, genocide, and exclusion. In Sierra Leone, the “Resettlement Strategy” and the “Recovery Strategy for Newly Accessible Areas” emphasize on the return and rehabilitation process, with the hope for reconciliation, peace, and human rights protection.<sup>37</sup>

Second, most laws and policies of this model are developed specifically in response to already existing displacement, not to mitigate future displacement. The laws and policies are not created in advance to guide the countries to prepare for and prevent from displacement. While prevention is better than cure, the post-event laws and policies are usually unable to reduce the risk or limit the scope of internal displacement, not to mention eliminating the root causes of internal displacement, such as armed conflicts and environmental hazards.

In recent years, some countries amended their existing laws or approved new legislations to aligns their legal frameworks with the Guiding Principles to advance human rights protection of IDPs. For example, Georgia abrogated its 1996 “Law of Georgia on Forcibly Displaced Persons” in 2014 and enacted a new code, the “Law of Georgia on Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia” to expand protection of the IDPs within its jurisdiction. Compared to the 1996 law, which granted legal protection only to citizens and permanent residents of Georgia, the 2014 law aims to comprehensively protect every person living in Georgia against forceful displacement.<sup>38</sup> Moreover, while the 1996 law assisted people after they had been displaced, the 2014 statute requires the government to not only take remedial

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<sup>34</sup> Law of Georgia on Forcibly Displaced Persons-Persecuted Persons (1996) (amended 2001, 2005, and 2006).

<sup>35</sup> Federal Law on Forced Migrants (1993) (amended 1995 and 2003).

<sup>36</sup> Law on Displaced Persons, Returnees and Refugees in the Republika Srpska (2005).

<sup>37</sup> Sierra Leone Resettlement Strategy (2001); the Recovery Strategy for Newly Accessible Areas (2002).

<sup>38</sup> Article 1, Law of Georgia on Forcibly Displaced Persons-Persecuted Persons (1996) (last amended 2006); Article 5, paragraph 1, and Article 6, Law of Georgia on Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia (2014).

measures of helping the IDPs but also undertake preventive actions of “all appropriate measures to avoid situations that may cause displacement.”<sup>39 40</sup> Yet, both laws are designed to provide legal protection and life assistance to the IDPs as a result of internal armed conflicts or foreign aggression, excluding people displaced by natural disasters from the legal protection.<sup>41</sup>

### **Model 3: Laws or Policies Protecting Specific Rights of IDPs**

In model 3, countries incorporate the Guiding Principles into their domestic laws and policies to regulate internal displacement based on a specific right of IDPs, such as the right to food, water, housing, and other fundamental needs. For example, in 2005, Hurricane Katrina and Hurricane Rita struck the United State Gulf Coast, destroying 700 schools and displacing 37, 200 students. The displaced students had to enroll in schools outside of the areas that they used to reside. To protect the educational rights of the displaced students, the U.S. Congress enacted the “Hurricane Education Recovery Act” to reopen the schools and assist the displaced students to attend the schools.<sup>42</sup>

In addition to the one-time legislation to protect a specific right of IDPs, countries may enact a series of laws or policies based on specific rights, such as property rights and health care. Turkey is an example that the government enacted laws to repair property damages caused by internal conflicts. Between 1984 to 1998, Turkey and its people had suffered from huge chaos due to separatist terrorist attacks and activities against the terrorism, which caused more than thirty millions of people displaced from their home villages. At the end of the civil strife, the government started the “Return to Village and Rehabilitation Project” to assist the IDPs to return to their villages through legislation.<sup>43</sup>

The Turkish government adopted the principles of international law, especially the Guiding Principles, to approve a series of legislation to compensate the displaced persons for their material damages due to terrorist acts or activities undertaken during the fight against terror. In 2004, the Grand National Assembly of Turkey enacted the “Law on the Compensation of Damages that Occurred due to Terror and the Fight Against Terrorism” to recognize that the displaced persons have rights to ask compensation for their damages on property, injury, physical disability, death, and expense for medical treatments and/or funerals.<sup>44</sup> The Council of Ministers in Turkey then enforced regulations to specify the procedure of application,

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<sup>39</sup> Article 5, paragraph 2(a), Law of Georgia on Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia (2014).

<sup>40</sup> See U.N. Human Rights Council, *U.N. Human Rights Council: Report of the Special Rapporteur on the Human Rights of Internal Displaced Persons*, Addendum, ¶ 11, A/HRC/26/33/Add.1 (June 4 2014).

<sup>41</sup> Article 1, Law of Georgia on Forcibly Displaced Persons-Persecuted Persons (1996) (last amended 2006); Article 6, paragraph 1, Law of Georgia on Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia (2014).

<sup>42</sup> Section 101, Hurricane Education Recovery Act (2006).

<sup>43</sup> Integrated Strategy Document (2005).

<sup>44</sup> Article 1, Law No. 5233 - Law on the Compensation of Damages that Occurred due to Terror and the Fight Against Terrorism (2004).



measurement of damages, ways of payment, and methods of performance for the compensation.<sup>45</sup>

#### **Model 4: Comprehensive Laws and Policies Addressing Various Causes and Stages of Internal Displacement**

Of model 4, countries make domestic laws and/or policies aiming to address beyond one single cause and stage of internal displacement. For example, Colombia enacted the “Law 387 on Internal Displacement” to addresses stages of the whole process of internal displacement, from preventing further displacement to creating durable solutions for return, resettlement, and reintegration. The law broadly addresses a variety of causes of displacement, including armed conflict, civil tension, general violence, and violations of international humanitarian law. However, the law does not address displacement resulting from disasters.<sup>46</sup> In contrast, the “National Policy for Internally Displaced Persons” in Ugandan approximates a more comprehensive policy, addressing internal displacement caused by natural disasters and human-induced disasters, such as civil conflict and cattle rustling. Yet, the Ugandan policy does not specifically provide prevention or solutions aimed at long-term durability of return or resettlement.<sup>47</sup>

As time passed, more countries adopted the Guiding Principles into their domestic laws and/or policies to address all causes and stages of internal displacement. Contents and scopes of the laws and policies are also becoming more comprehensive and detailed. For instance, in Nepal, the “National Policies on Internally Displaced Persons” explicitly refers the Guiding Principles to ask the government to take preventive and curative measures in a long-term basis to help people displaced by armed conflict, violence or gross violation of human rights, man-made or natural disasters.<sup>48</sup> In Afghanistan, the “National Policy on Internal Displacement” covers issues of all stages of internal displacement caused by various reasons.<sup>49</sup>

In addition to the policies that set basic strategies and goals, some countries even enact legally-binding laws to regulate all stages and causes of internal displacement. The “Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act” in Kenya is a statute that aims to prevent from and respond to internal displacement in situations of armed conflict, generalized violence, human rights violations, natural or human-made disasters, and development projects.<sup>50</sup> The law requires the Kenya government to prepare for and prevent

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<sup>45</sup> Regulation No. 7955 on Compensation of Losses Resulting from Terrorist Acts and Measures Taken against Terrorism (2004).

<sup>46</sup> Law 387 on Internal Displacement (1997).

<sup>47</sup> National Policy for Internally Displaced Persons (2004).

<sup>48</sup> Article 3(a), 6.1, National Policy on Internally Displaced Persons, 2063 (2007).

<sup>49</sup> National Policy on Internal Displacement (2013).

<sup>50</sup> Article 5(2), Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (2012).

from potential displacement. If internal displacement occurs, the government must take actions to assist the IDPs and provide durable and sustainable solution in safety and dignity.<sup>51</sup>

### **Model 5: Regional Agreements Incorporating the Guiding Principles**

When one country could make its own domestic laws and policies on internal displacement, a developing trend is to enforce the Guiding Principles through regional treaties that mandate party states to better assist and protect IDPs. Incorporating the Guiding Principles, regional agreements set common goals and rules for the countries in that region to address problems about internal displacement. The legally-binding regional treaties require party states to take concrete actions to address displacement issues. In this way, the abstract principles of the Guiding Principles are transformed into concrete provisions of the regional agreements and policies that more fit the reality and specific problems in that region. By signing and ratifying regional agreements, party states not only acquire regulations to deal with internal displacement issues but also work under an unified framework. The countries may cooperate with their neighboring countries to better carry out their common goal of helping IDPs.

Incorporating the Guiding Principles, the “African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa” requires its party states to actively enacts laws or make policies to better address plights of the IDPs in Africa. On the one hand, the convention transformed the “soft law” of principles into the “hard law” of provisions, articulating rights and responsibilities.<sup>52</sup> On the other hand, the convention departs from the principles to some extent to fit the particular contexts of Africa and make the convention more agreeable to most countries.<sup>53</sup>

## **2. A General Concern: Insufficient Consultation with and Participation of IDPs**

When IDPs are removed away from their homelands, they usually lack resources and supports to settle down in new places. They also have little access to legal or other protection. Given their inherent vulnerability, the IDPs are entitled to special protections under the Guiding Principles. The IDPs have the right not to be “arbitrarily displaced from his or her home or place of habitual residence protection from forced eviction.”<sup>54</sup> In situations of natural disasters, forced evictions are prohibited except when it is necessary to protect the safety and health of the affected people. Even in such circumstance, the government must take due process to protect

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<sup>51</sup> Article 5(2), 5(4), 7, 8, 9, Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (2012).

<sup>52</sup> See Won Kidane, *Managing Forced Displacement by Law in Africa: the Role of the New African Union IDPs Convention*, 44 VAND. J. TRANSNAT'L L. 1, 53 (2011).

<sup>53</sup> See *id.*, at 62.

<sup>54</sup> Principle 6, Guiding Principles on Internal Displacement.

rights of the displaced persons, such as consultation and adequate notice of eviction, as well as appropriate alternate places to live.<sup>55</sup>

The Guiding Principles emphasize the importance of IDPs to participate in programs and decision-making processes that involve their interests. Because the displaced persons are highly effected by any decisions about displacement, settlement, or relocation, they shall have full information and determination about their own lives. The Guiding Principles requires that, except for situations of emergency, the authority shall take adequate measures to provide affected people with “full information on the reasons and procedures for their displacement and...on compensation and relocation.”<sup>56</sup> The authority must seek free and informed consent of the affected persons before making displacement decisions.<sup>57</sup>

Principle 28(2) also stipulates that “[s]pecial efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.” In accordance with the principles, U.N. bodies have underlined in the resolutions that it is important to consult IDPs, governments, and other relevant actors during each phase of displacement, as well as the involvement of the IDPs in every project and activity pertaining to them.<sup>58</sup>

Yet, only handful domestic laws and policies contain consultation and participation provisions to guarantee full information and self-determination of the IDPs. In most cases, the provisions provide weak and limited protection to the involvement of the IDPs. For example, in Angola, the “Standard Operational Procedures of the Norms on Resettlement of Displaced Populations” requires the government to ensure that the displaced populations are informed, actively participate, and voluntarily make decisions in the resettlement or return process.<sup>59</sup> However, the law does not elaborate on how such participation shall be facilitated and whether the displaced populations are able to participate in all, or only some, parts of resettlement and return process.<sup>60</sup>

The “Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act” in Kenya is a case of having better rules to make the IDPs well informed and able to make resettlement or return decision. The law declares that the government must respect and ensure the IDPs to make informed and voluntary decisions that may influence their own interests. The law further sets explicit rules about the procedures for displacement induced by

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<sup>55</sup> See Nicole Phillips, Kathleen Bergin, Jennifer Goldsmith, and Laura Carr, *Enforcing Remedies from the Inter-American Commission on Human Rights: Forced Evictions and Post-Earthquake Haiti*, 19 NO. 1 HUM. RTS. BRIEF 13, 14-15 (2011).

<sup>56</sup> Principle 7 (3) (b), Guiding Principles on Internal Displacement.

<sup>57</sup> Principle 7(3) (c), Guiding Principles on Internal Displacement.

<sup>58</sup> See *Protection of and Assistance to Internally Displaced Persons*, G.A. Res 66/165, ¶ 9, U.N. Doc. A/RES/66/165 (Dec. 19, 2011); Human Rights Council, *Human Rights of Internally Displaced Persons*, ¶ 8, A/HRC/20/L.14 (2012).

<sup>59</sup> Article 9(1)(b)&(c), Article 14(2)(a), Standard operational procedures of the Norms on Resettlement of Displaced Populations, Decree Number 79/02 (2002).

<sup>60</sup> See Jessica Wyndham, *supra* note 30, at 10.

development projects or reserve the environment.<sup>61</sup> The government must seek free and informed consent of the affected persons, hold public hearings on the project planning, and give reasonable time to the affected persons to review and challenge the displacement project before deciding and starting displacement and relocation processes.<sup>62</sup>

## **V. Applying the International Norm to Protect Taiwanese People Displaced by Natural Disasters**

As the domestic disaster laws in Taiwan provide weak legal protection for the indigenous peoples displaced by natural disasters, international laws may be a possible legal resource to force the Taiwanese government more concerned about the opinions and needs of the displaced indigenous peoples. Once the Taiwanese government adopts the international law about human rights, it is under obligation to promote such rights of the displaced persons. Since the Guiding Principles are non-legally binding instrument that inherently require domestic legislation to become effective, Taiwan may voluntarily and flexibly adopt the principles into its domestic realm.

Taiwan shall adopt the Guiding Principles to establish a comprehensive law or policy addressing all stages of internal displacement because displacement is a part of the “disaster cycle” that needs to be considered in context. The process of disaster is a cycle that starts from mitigation, to emergency response, followed by insurance and compensation, and then rebuilding, with the latter completing the circle by including or failing to include mitigation measures. Each stage will influence or even determine the next stage. All stages are highly connected with one another.<sup>63</sup> If governments well prepare for natural disasters, they will more efficiently react to disaster impacts and reduce the damages suffered by their people. In the context of displacement, the governments need to make laws and policies in consideration of how to prevent displacement before it happens, together with how to assist the displaced persons to return or resettle.

The U.N. General Assembly have emphasized that international community should not only devote to emergency relief, but also support medium- and long-term rehabilitation, reconstruction and risk reduction efforts in the affected countries. States and international organizations should develop sustainable disaster reduction plans beyond one-time or short-term disaster relief to more comprehensively and efficiently reduce disaster risks.<sup>64</sup> Therefore, Taiwan should not wait to make laws and policy after each disaster happens. Instead, the government

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<sup>61</sup> Section 9(1), 9(4), 21(3), 21(4), 22, Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (2001).

<sup>62</sup> Section 22, Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act (2001).

<sup>63</sup> See Daniel A. Farber, *Catastrophic Risk, Climate Change, and Disaster Law*, 16 ASIA PAC J. ENVTL. L. 37 (2013); Daniel A. Farber, *International Law and Disaster Cycle*, in *THE INTERNATIONAL LAW OF DISASTER RELIEF* 7 (David D. Caron et al. eds., 2014).

<sup>64</sup> See *Strengthening Emergency Relief, Rehabilitation, Reconstruction and Prevention in the Aftermath of the South Asian Earthquake Disaster – Pakistan*, G.A. Res 60/13, ¶ 3, U.N. Doc. A/RES/60/13 (Nov. 14, 2005); *International Strategy for Disaster Reduction*, G.A. Res 61/198, ¶ 24, U.N. Doc. A/RES/61/198 (Dec. 20, 2006).

shall manage disasters in the long run, not only handling displacement caused by one disaster but also reducing disaster risk to mitigate potential displacement.

The laws and policies on internal displacement in Taiwan shall pay special attention to the needs and opinions of the effected people by increasing consultation with and participation of the displaced indigenous peoples. According to the Guiding Principle, 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.<sup>65</sup> However, the Disaster Prevention and Protection Act in Taiwan focuses on the government organization and procedures of disaster management, not on legal protection of people suffering from disaster impacts. As the Special Act for Typhoon Morakot expired in 2014, it is urgent for Taiwan to incorporate the Guiding Principles to establish a comprehensive legal framework that guarantees the involvement of the displaced persons in their treatment.

## **VI. Conclusion**

Internal displacement has been an pressing issue in Taiwan and countries around the world. To enhance legal protection of the IDPs, this paper discusses whether and how countries may adopt the Refugee Convention and the Guiding Principles into their domestic legislation and policy to address internal displacement issues. The refugee law is inapplicable to people displaced by natural disasters and remaining in their home countries. Thus, many countries have incorporated the Guiding Principles on Internal Displacement to their domestic realms to promote assistance and protection to the IDPs.

This paper introduces five models of incorporating the Guiding Principles into domestic law and policies. While the domestic legislation and policy improve the legal protection of the IDPs, the laws and policies have none or limited protection to consultation with and participation of the IDPs. Learning from the experience, Taiwan may adopt the Guiding Principles to establish a comprehensive legal framework to address all stages of the process of internal displacement. The law shall also pay special attention and support to enhance the displaced persons' involvement in decision-making on law and policy.

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<sup>65</sup> Principle 9, Guiding Principles on Internal Displacement.