

BOOK REVIEW

INTERNAL DISPLACEMENT AND THE LAW BY WALTER KÄLIN (OXFORD UNIVERSITY PRESS, 2023) 384 PAGES. PRICE GBP110.00 (HARDBACK) ISBN 9780192899316.

Well into the 20th century, the fact of people being uprooted from their homes was largely viewed as an unfortunate consequence of war and other affairs of state. While the field of international refugee law developed rapidly after the Second World War to address the situation of people forced to flee across borders, the situation of those who had to leave their homes but remained within the borders of their own country — namely, internally displaced persons (‘IDPs’) — was mostly neglected by international law until the 1990s.¹ Amid a growing recognition that the global phenomenon of internal displacement could no longer simply be viewed as an internal matter for states, the *Guiding Principles on Internal Displacement* — a seminal soft law document which effectively acts as an international bill of rights for IDPs — was adopted in 1998.² This influential instrument provided inspiration for numerous domestic laws in countries affected by internal displacement, as well as several progressive decisions by regional human rights courts and the development of binding regional and subregional treaties on displacement in Africa.³

Twenty-five years later, *Internal Displacement and the Law* by Professor Walter Kälin — one of the architects of the *Guiding Principles on Internal Displacement* — is as timely and relevant as ever.⁴ With the global numbers of IDPs continuing to break records in recent years, the number of those who have not yet found a durable solution to their situation has only continued to grow.⁵ This state of affairs has significant impacts not only on IDPs themselves but on entire societies worldwide. Addressing internal displacement therefore remains as pressing an issue as when the *Guiding Principles on Internal Displacement* were adopted, if not more. This book outlines and assesses the often understated role of law in addressing various phases and aspects of internal displacement. It encompasses both introductory and in-depth thematic chapters, interspersing primarily legal discussions with practice-oriented insights drawn from the author’s vast experience, most notably as representative of the United Nations Secretary-General on the human rights of IDPs from 2004 to 2010.⁶ As such, this book will have broad appeal to researchers, practitioners, lecturers and students

¹ Walter Kälin, *Internal Displacement and the Law* (Oxford University Press, 2023) 10.

² Commission on Human Rights, *Report of the Representative of the Secretary-General, Mr Francis M Deng, Submitted Pursuant to Commission Resolution 1997/39 — Addendum: Guiding Principles on Internal Displacement*, 54th sess, Provisional Agenda Item 9(d), UN Doc E/CN.4/1998/53/Add.2 (11 February 1998). See also *ibid* 5–6.

³ Kälin (n 1) 79, 83.

⁴ ‘Mr Walter Kälin, Representative of the Secretary General (2004–2010)’, *Office of the United Nations High Commissioner for Human Rights* (Web Page) <<https://www.ohchr.org/en/special-procedures/sr-internally-displaced-persons/mr-walter-kalin-representative-secretary-general-2004-2010>>, archived at <<https://perma.cc/9RTW-5JLX>> (‘Mr Walter Kälin’).

⁵ Kälin (n 1) 3.

⁶ *Ibid* 17; ‘Mr Walter Kälin’ (n 4).

seeking an introduction to internal displacement from a legal perspective, as well as specialists in a range of fields who are already active in internal displacement research, practice and/or policy.

The central problem highlighted by the book is termed as the ‘[f]ourfold [c]risis’⁷ of internal displacement outlined by the UN Secretary-General’s High-Level Panel on Internal Displacement (which Professor Kälin supported as a member of the expert advisory group).⁸ This crisis entails: (1) the rapidly increasing numbers of internally displaced people; (2) a humanitarian and human rights crisis characterised by high levels of suffering; (3) the exacerbated fragility of affected communities and countries; and (4) the inadequate response by states and the international community.⁹

The main questions addressed by the book are centred around the role and potential of law in addressing this fourfold crisis. In Professor Kälin’s words, the book seeks to investigate the following:

To what extent does law contribute to more effective action to prevent, respond to, and resolve internal displacement? What are the weaknesses of the present legal regime governing internal displacement and what can be done to improve it?¹⁰

As hinted at in the title, the book does not limit itself to any one branch of law, whether international or domestic. It rather examines the norms applicable to internal displacement as an ‘emerging legal regime’ which encompasses both international and domestic legal orders and entails their interaction.¹¹ This regime is not strictly limited to binding legal instruments but covers all international and domestic norms which may influence the behaviour of the actors involved.¹² It draws from areas such as human rights law, humanitarian law and criminal law, as well as other norms from fields intersecting with internal displacement issues, such as development, peacebuilding, disaster management, climate change and international institutional law.¹³ As such, the scope of the analysis is impressive, as it aims to examine the established and emerging norms at different levels which address the issue of internal displacement. Although the legal regime in question is not presented in these terms, this approach to examining applicable norms makes a highly pertinent contribution to discussions on the development of a body of ‘IDP law’.¹⁴ The holistic approach to the legal regime also ensures that the book goes beyond an account of positive law, as it also examines the role of the processes and institutions involved in implementing legal norms.¹⁵ In particular, attention is paid to the operational aspects of international humanitarian action and durable solutions in two more practice-oriented chapters.¹⁶

⁷ Kälin (n 1) 3.

⁸ Ibid 302 n 122.

⁹ Ibid 3–5.

¹⁰ Ibid 2 (emphasis omitted).

¹¹ Ibid 8–16.

¹² Ibid 2.

¹³ Ibid.

¹⁴ See, eg, David James Cantor, “‘The IDP in International Law?’” Developments, Debates, Prospects’ (2018) 30(2) *International Journal of Refugee Law* 191.

¹⁵ See Kälin (n 1) 9.

¹⁶ Ibid chs 7, 9.

The ten chapters of the book are structured as such: an introductory chapter (Chapter 1) is followed by three overview chapters (Chapters 2–4), which outline the legal and conceptual landscape around internal displacement. Five core chapters (Chapters 5–9) then delve into further detail on the legal regime applicable to internal displacement situations in the various stages of the displacement cycle, as well as related operational questions. The primarily legal chapters focus on protection from displacement (Chapter 5), protection during displacement (Chapter 6) and resolving displacement or durable solutions (Chapter 8). In order to ground the legal and conceptual discussions in practice-oriented perspectives, the chapter on protection during displacement is complemented by a chapter on international humanitarian assistance (Chapter 7), while the chapter on the concept of durable solutions is enriched by a companion chapter on the practice of durable solutions (Chapter 9). The final chapter (Chapter 10) sets out the conclusions of the book.

The first chapter, ‘Internal Displacement and the Role of Law’, sets out the central question and objectives of the book, as well as the context of the fourfold crisis.¹⁷ It also outlines key concepts such as the notion of displacement, categories of displacement and the displacement cycle.¹⁸ In line with the legal focus of the book, and crucially for readers who are not already familiar with international legal norms on internal displacement, this chapter also offers background on ‘the emerging international legal regime’ relating to internal displacement,¹⁹ including its origins and recent normative and institutional developments.

The second chapter, ‘The Primary Responsibility of the State’, focuses on and outlines the state’s primary responsibility for addressing and resolving internal displacement, especially in terms of international human rights law.²⁰ This primary responsibility is based on the premise that IDPs — unlike refugees — are habitual residents and often citizens of the state in which they have been displaced.²¹ Therefore, in principle, they have the same rights as the rest of the population. This chapter further examines the implications of this traditional focus on the primary role of the state in IDP situations.

The third chapter, ‘A Category of Special Concern?’, explores arguments over whether it is justified for IDPs to be viewed as a particular category of people of concern, who require the protection of a specific legal regime.²² Their situation is juxtaposed with that of other people who may also be impacted by the situation causing displacement, eg a conflict or disaster.²³ The chapter argues that considering IDPs as a special category of concern is indeed warranted, as IDPs have specific needs and vulnerabilities based on their situation of internal displacement.²⁴

The fourth chapter, ‘Treaties, Laws, and Other Standards’, identifies and analyses the relevant legal sources that guide action aimed at preventing,

¹⁷ Ibid 1–5.

¹⁸ Ibid 5–8.

¹⁹ Ibid 8–16.

²⁰ Ibid 17–20.

²¹ Ibid 34.

²² Ibid 38–9.

²³ Ibid 47–50.

²⁴ Ibid 55–62.

addressing and resolving internal displacement at the international and domestic levels.²⁵

The fifth chapter, 'Protection from Displacement', discusses the legal norms applicable to the prevention of displacement in further detail.²⁶

The sixth chapter, 'Protection During Displacement: The Law', conducts a similar analysis of the legal norms relating to the protection and assistance of displaced persons during their displacement.²⁷

The seventh chapter, 'International Humanitarian Action', follows on from the chapter on protection and assistance by exploring how these concepts are operationalised in practice.²⁸

The eighth chapter, 'Durable Solutions: The Concept' returns to an examination of the legal norms applicable to various phases of the displacement cycle, by covering the conceptual and normative aspects of the resolution of internal displacement.²⁹

The ninth chapter, 'Durable Solutions in Practice', adds to the previous corresponding conceptual chapter by examining some of the operational issues, which come to the fore in efforts to resolve displacement by working towards durable solutions for IDPs.³⁰

Finally, the tenth chapter, 'Conclusions: Adequate Norms but Weak Governance', responds to the central questions posed in the book by giving an overall assessment of the role of law in preventing, responding to and resolving internal displacement, as well as appraising the existing legal regime and recommending improvements.³¹ The key message is that while there has been significant normative development on internal displacement at various levels, the implementation of these norms in practice is hindered by weaknesses in the governance of internal displacement issues.³²

The main problems are diagnosed as coordination difficulties among various governance levels; a continuing humanitarian focus despite growing recognition of the need for a development-oriented approach; the lack of a clear institutional 'home' for matters of internal displacement among international organisations; and weak systems to ensure accountability of actors causing forced displacement, as well as of humanitarian organisations towards the displaced people they are meant to serve.³³ Recommendations include strengthening the capacities of national authorities to fulfil their primary responsibilities towards IDPs; reinforcement of international governance structures on internal displacement and the nexus between actions in different sectors, as well as re-orientation towards an overall development approach; greater internalisation and operationalisation of IDPs' rights as citizens/habitual residents of the state where they live; and stepping up action to ensure accountability of actors at any level which fail in their

²⁵ Ibid 69–70.

²⁶ Ibid 104–6.

²⁷ Ibid 141–3.

²⁸ Ibid 194–5.

²⁹ Ibid 236–7.

³⁰ Ibid 285–6.

³¹ Ibid 314.

³² Ibid 320–2.

³³ Ibid.

responsibilities towards IDPs.³⁴ These diagnostics and detailed recommendations, rooted in the book's comprehensive analysis, will no doubt make a crucial, agenda-setting contribution to policy debates, research and action on addressing internal displacement in the years to come.

Overall, this book offers a wide-ranging and nuanced view of the legal aspects of preventing displacement, protecting and assisting IDPs, and resolving displacement, as well as a more practical view of the operation of related processes and institutions. The examination of internal displacement beyond the traditional focus on situations of conflict and violence to explicitly consider situations of displacement related to environmental factors and the negative impacts of climate change is much needed. It also aligns with the broad promise of the *Guiding Principles on Internal Displacement*, which aims to set out the rights of people forced or obliged to leave their homes by a range of factors. In this sense, if there is one aspect which could be developed in future editions, it would be the inclusion of at least some further discussion of development-induced displacement. There is an explicit acknowledgement in the first chapter that development-induced displacement falls beyond the scope of the book 'given its legal and institutional peculiarities'.³⁵ Nevertheless, similar arguments may be made about the complexity of examining conflict-related internal displacement alongside environmental displacement. Greater acknowledgement and examination of development-induced displacement as one of the situations addressed by the *Guiding Principles on Internal Displacement* (and the internal displacement legal regime more broadly) would be more than welcome and necessary. However, this is only a minor point in a book of otherwise magisterial scope, in which difficult choices certainly had to be made.

Internal Displacement and the Law sets out a comprehensive picture of how far the legal regime on internal displacement has come in the past quarter-century, as well as questions, challenges and recommendations in relation to its role going forward. As such, it makes an invaluable contribution to a range of current discussions and reflections in the fields of internal displacement research, practice and policy. It is likely to become an indispensable legal reference for specialists already engaged in these endeavours and will also be of great benefit to those encountering the issue of internal displacement through other thematic and disciplinary lenses. At the same time, the first few chapters in particular are still very accessible to readers in the legal field making a first acquaintance with the topic of internal displacement. Law lecturers developing courses on this subject will find that the introductory chapters offer a user-friendly basis for teaching on internal displacement, while students embarking on independent research will be inspired by the engaging combination of legal and practical insights.

DEBORAH CASALIN*

³⁴ Ibid 322–3.

³⁵ Ibid 16.

* Principal Research Fellow, Law and Development Research Group, Faculty of Law, University of Antwerp (Belgium).