



# Climate Change and Migration

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**Summary:** There are a number of scenarios in which people could be displaced or forced to migrate due to climate change and extreme weather events. The movement of people in response to these climate-induced events implicates human rights and humanitarian law. Moreover, the potential indirect impacts from the implementation of disaster response strategies or climate adaptation programs can also raise human rights concerns, particularly if the government undertakes to resettle large numbers of people. Of growing concern are serious gaps in the protection schemes provided by existing law, including the extent to which persons adversely affected by climate change can cross international borders in search of jobs or otherwise engage in labor migration as a means of survival.

This paper discusses various ambiguities and gaps in human rights and humanitarian law which leave many climate change victims who are forced to migrate unprotected and vulnerable to abuse. It presents several policy approaches suggested by humanitarian experts to ensure the adequate protection of climate change migrants. The paper concludes that these gaps will need to be addressed either through the further clarification of humanitarian and human rights principles, or through new international standards related to host countries and countries of origin.

## Climate Change and Migration: Key Issues for Legal Protection of Migrants and Displaced Persons

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There are a number of scenarios in which people could be displaced or forced to migrate due to climate change and extreme weather events. Hurricanes and floods, generally rapid-onset events, may lead to temporary human displacement. Drought and desertification, slower-onset events, may not immediately threaten human life but can become serious environmental and human disasters over longer periods of time. Droughts already affect millions of people worldwide, threatening food security, sustainable development and human livelihoods. The competition over scarce water supplies, land and jobs that can result from prolonged drought could lead to social upheaval and an increased incidence of violence and ethnic tension, a situation that is already contributing to conflict in East Africa.

The movement of people in response to these climate-induced events implicates human rights and humanitarian law. Moreover, the potential impact from the implementation of disaster response strategies or climate adaptation programs may also raise human rights concerns, particularly if governments resettle large numbers

of people. Notwithstanding that some standards exist for internally displaced persons, there are uncertainties in the law and gaps in the legal protection of climate-affected populations, including the extent to which persons migrating away from flood or drought disaster areas can legally cross international borders in search of jobs or to otherwise engage in labor migration as a means of survival. The lack of clear standards in this area leaves many climate victims unprotected and vulnerable to abuse. As future climate disasters multiply, so too will the number of migrants or displaced who are unprotected.

This paper provides a brief overview of the human rights and humanitarian norms related to migrant protection, recognizing that a much more comprehensive, in-depth analysis may be warranted as policymakers engage in further dialogue. The paper begins by providing a brief analysis of the general human rights principles relevant to people displaced or who migrate internally and across borders in response to disaster, and the relevant government obligations of assistance. It then highlights the areas in which the law

<sup>1</sup>The author thanks Katherine Regan, Columbia University Law School, for her research assistance.

is less clear in its application to climate change migrants or where standards are absent in existing law. The paper identifies the groups that are consequently unprotected and, in the final part, discusses the policy considerations being advanced by humanitarian agencies and others to provide greater protection for displacees and migrants.

### International legal standards relevant to victims of climate disasters

Climate-induced displacement and migration implicate a number of human rights and humanitarian standards. The extent of the rights of victims and the corresponding obligations of states is dynamic and evolves as the international community gains more understanding and experience in addressing the needs of disaster victims. At present, the extent of government obligation and level of protection afforded victims depends on the context of the disaster and on whether victims are displaced temporarily, forced to migrate, or voluntarily move away from the disaster zone. It should be noted at the outset that widespread understanding of the impact of climate change is relatively recent and legal standards have not yet caught up with scientific predictions, leaving conclusions regarding the application of human rights law somewhat speculative.

In general, human rights norms are more protective of those who are displaced or who migrate within their country of origin than for those who migrate internationally. This is because governments have adopted certain baseline standards to protect the internally displaced, which govern the state's treatment of such persons in the course of natural disasters or armed conflict. However, governments have not adopted a similar set of standards for persons who migrate internationally in response to climate disasters, such as severe droughts. The rights of these persons and government obligations in this area have yet to be clarified.

This section first identifies the general government obligations with respect to disaster relief and cooperation. It then considers the situations of victims forced to migrate internationally and who are less protected, followed by a discussion of those displaced internally by disaster who would be entitled to greater protection by their country of origin.

Both rapid-onset and slow-onset disasters are discussed within the context of international migration and internal displacement.

### General obligations of states

International law is fundamentally concerned with the obligations that states owe to each other. The subset of human rights doctrine, however, comprises additional duties owed by states to individuals and groups. It also prescribes special responsibility for the protection of vulnerable populations and minorities, including women, children and indigenous groups.

Human rights law, as a general matter, obligates states to safeguard the life and property of those within a state's territory against threats of disaster and foreseeable harm. It requires states to mitigate the negative impacts of disaster when these occur, including through legal and administrative mechanisms, evacuation and possible temporary or permanent relocation of affected persons consonant with the right of freedom of movement.<sup>2</sup> It further obligates governments to be particularly sensitive to the needs of vulnerable groups, such as women, children, minorities and indigenous peoples. These groups may be especially vulnerable to climate shocks if they are already suffering from poverty, discrimination or other adverse socio-economic and political impacts.

The legal framework governing international aid and assistance in times of disaster victims has emerged from a myriad set of multilateral instruments and has been distilled, in part, within the 2005 Hyogo Framework for Action.<sup>3</sup> Under this Framework, governments recognize that developing countries are more vulnerable to disasters and need to undertake preventative measures to reduce vulnerability programs within disaster risk reduction programs, early warning systems, and public safety awareness and preparedness.

Specifically, governments are to adopt legal measures at the local and national levels to coordinate disaster response, and must ensure that programs for displaced persons do not increase risk and vulnerability to hazards. Though the gov-

<sup>2</sup> Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced persons, Walter Kalin, Addendum: Protection of Internally Displaced Persons in Situations of Natural Disasters at 6, A/HRC/10/13/Add.1 (2009).

<sup>3</sup> See, Final Report of the World Conference on Disaster Reduction, U.N. Doc. A/CONF.206/6 (2005).

ernment in whose territory disaster occurs has the primary obligation to protect its citizens, international agencies and the international community of nations share obligations of humanitarian assistance.

Though not express, the duty to cooperate among nations on disaster reduction and response could presumably include an obligation of receiving states to provide some level of assistance to victims of disasters that move into or remain in the state's territory after a disaster, at least on a temporary basis. The Framework emphasizes more strategic coordination among states. Its principles have been supported by the 2006 Operational Guidelines on Human Rights and Natural Disasters,<sup>4</sup> adopted by the Inter-Agency Standing Committee of humanitarian agencies established by the United Nations to help countries coordinate disaster reduction and relief, and the International Committee of the Red Cross (ICRC) Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance.<sup>5</sup>

International human rights law reinforces the humanitarian obligation of states to cooperate and assist governments less able to fulfill and protect the human rights of those displaced by a disaster. For example, the treaty body established to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights has stated that "States parties have a joint and individual responsibility, in accordance with the Charter of the United Nations and relevant resolutions of the United Nations General Assembly and of the World Health Assembly, to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons."<sup>6</sup>

While international law relating to refugees is generally inapplicable to climate change, certain refugee related principles and humanitarian norms convey government obligations that are relevant. Moreover, some governments have adopted voluntary discretionary mechanisms that could apply temporarily to protect international migrants

displaced by extreme weather events or by conflict related to such events. However, as will be discussed, longer-term legal protection is quite limited for international migrants.

### *Rights and obligations related to international migrants*

As a general rule, people who move voluntarily or who are forced to move across an international border are entitled to all of their fundamental human rights guarantees that protect human dignity.<sup>7</sup> These include civil, political, economic, social and cultural rights such as the right of freedom of movement; to choose their place of residence; to engage in religion or cultural practice; the right to life, privacy and to health; the right to seek employment; and the right not to be discriminated. With few exceptions, however, this does not include a right to enter another country, to work or remain there, or to receive the same legal protection as a refugee under international law.

This poses a serious concern for disaster victims who face little alternative to survival than to cross into another country because international migration may afford them greater human security. Many victims of slow-onset drought disasters view themselves in this light. A prolonged drought event may not appear as urgent as a tsunami or flood which attracts immediate international attention, but the need for protection, for a new survival strategy, for jobs outside the drought-affected area, e.g., via labor migration, may be just as compelling a humanitarian issue.

Humanitarian agencies are increasingly occupied with drought concerns in the Horn of Africa where, for example, a severe drought is entering its fifth year in the region.<sup>8</sup> Millions of people are suffering food insecurity, water scarcity and loss of employment. This has led to increased migration throughout the region. The International Organization for Migration (IOM) recently reported that the border of Liboi into Kenya has become a major border crossing for drought-affected Somalis who are undocumented but searching for better livelihood or work in Kenya.<sup>9</sup> The Norwegian Refugee Council also reported similar interna-

<sup>4</sup> Protecting Persons Affected by Natural Disasters, IASC Guidelines (June 9, 2006).

<sup>5</sup> Developed by the International Federation of the Red Cross and Red Crescent Societies, 30IC/07/R4 annex (2007).

<sup>6</sup> General Comment 14, Right to Health, International Committee on Economic, Social and Cultural Rights.

<sup>7</sup> Report of the United Nations High Commissioner for Human Rights, *supra* note 11, at 20.

<sup>8</sup> The UN Office for the Coordination of Humanitarian Affairs (OCHA), Reliefweb database, has documented the crises, and its findings and related research can be found at: <http://www.reliefweb.int/rw/rwb.nsf/db900sid/HH00-7YZUNM?OpenDocument&rc=1&emid=ACOS-635NZE>.

<sup>9</sup> *In Pursuit of the Southern Dream: Victims of Necessity*, April 2009 (IOM, Geneva).



tional border crossings during the 2004 drought in Burundi, where drought-affected migrants moved to Rwanda.<sup>10</sup>

### *Slow-onset and drought related disaster and migrants*

Yet, the protection of humanitarian law in the context of severe or prolonged droughts is uncertain. Refugee law is limited in large part because the legal definition of an international refugee under the 1951 Convention relating to the Status of Refugees does not include persons fleeing environmental harm.<sup>11</sup> Governments are therefore not generally required to protect or provide special legal status to the victims entering their territory from climate events. In narrow circumstances a case could be made that some drought-affected victims are entitled to protection by the host country under the principle of non-refoulement recognized in the 1951 Convention. The principle would prevent a government's return of a person in their country, regardless of legal status, where the person's life or integrity are at risk, or where return would subject the person to the risk of cruel, unusual or degrading treatment.<sup>12</sup> Whether a drought event would rise to this level of risk would have to be demonstrated on a case-by-case basis.

Under the 1969 OAU convention on Specific Aspects of Refugee Problems in Africa, the refugee definition includes those fleeing "events seriously disturbing public order in either part or the whole of his country of origin or nationality." A similar provision is contained in the Cartagena Declaration on Refugees.<sup>13</sup> While the victims of natural disasters (tsunamis, earthquakes, floods) might arguably be included in this definition, it is much less certain whether victims of protracted droughts, like the one ongoing in East Africa, would be included. If a country affected by a severe drought declared a national emergency or formally identified the disaster as one disrupting public order, an argument could be made that international migrants from that country should receive temporary asylum or refuge in the host country and/or international assistance.

More significant humanitarian protection arises for those fleeing serious conflicts that erupt in the wake of environmental scarcity or drought. Normally, these persons should be protected under international refugee law due to the presence of violent or serious conflict.<sup>14</sup> For example, drought, water scarcity and food insecurity are currently the most significant climate-related hazard contributing to conflict and mass displacement in the Horn of Africa. The competition for scarce land and water resources for pastoralists are increasing. Higher levels of cattle rustling incidents have been documented in the region recently as owners seek to restock herds badly affected by the prolonged drought that has swept across East Africa. Humanitarian agencies have reported that pastoralists living along the borders of Sudan, Kenya, Ethiopia, Tanzania and Uganda are losing their lives from increased cross-border resource-based armed conflicts.

A conflict refugee should receive the protection of a host government even if the cause of flight across the border was due to a combination of conflict and other causes, such as severe drought. The government's obligation to provide these persons with shelter, food, and security may not extend to the provision of employment or jobs. In this way, the designation of "refugee" status for those experiencing both conflict and drought may be of limited value for some victims. Depending on the level of conflict, those migrating due to combined conflict and environmental factors may cross an international border in search of both refuge and temporary employment. Since humanitarian law does not easily facilitate these mixed motives, conflict refugees may shun traditional host government protection in favor of seeking employment, even if it means they remain undocumented. For example, in East Africa the IOM has documented that many now crossing into Kenya due to the drought and resource conflicts are choosing not to seek status as "refugees" or to enter the refugee camps in Kenya because Kenyan law would prevent them from freely traveling or working.<sup>15</sup> This has led to an increase in undocumented migrants. Without clarification and perhaps new standards,

<sup>10</sup> Norwegian Refugee Council, *Climate Changed: People Displaced* (NRC Report, 2009).

<sup>11</sup> UNHCR, "Climate change, natural disasters and human displacement: a UNHCR perspective" at p. 8 (2009).

<sup>12</sup> See, e.g., OHCHR, *Forced Displacement in the Context of Climate Change: Challenges for States under International Law*, at p. 10, submitted to the UNFCCC ad-hoc working group on Long-term Cooperative Action under the Convention by the UNHCR in cooperation with the Norwegian Refugee Council, Representative of the Secretary General on the Human Rights of Internally Displaced Persons, and the United Nations University (May 20, 2009).

<sup>13</sup> Cartagena Declaration on Refugees, Section III(3), adopted 1984.

<sup>14</sup> UNHCR, "Climate change, natural disasters and human displacement: a UNHCR perspective" at p. 8 (2009).

<sup>15</sup> IRIN, UN Office for Coordination of Humanitarian Affairs, Feb. 2, 2009.

international refugee norms are of diminished utility in protecting persons forced to move because of combined humanitarian crises.

International agencies, such as the IOM and the Office for the Coordination of Humanitarian Affairs (OCHA), consider that effectively addressing these mixed humanitarian crises should include facilitating cross-border mobility for labor migration and access to water and pasturelands as a complement or alternative to traditional refugee camps or asylum. Yet, there are no international or cross-border agreements for this type of economic migration. Hence, the agencies have identified the need to establish a regional normative framework to facilitate this regularized mobility.<sup>16</sup>

International migrants that have left drought or disaster areas are not otherwise wholly unprotected. As mentioned, each person carries fundamental human rights which governments must safeguard irrespective of their country of origin such as freedom from discrimination, freedom of thought and religion, and other rights related to the protection of human dignity.

These rights have been reinforced and clarified in the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Where governments have ratified the convention, it would generally apply to climate-related migrants who engage in international labor migration. The main concern with this treaty is that the United States and a number of other countries with high levels of immigration are not legal parties. Where the treaty codifies existing human rights norms and customary international law, such norms would be applicable. However, the treaty's mechanisms for accountability would not apply to non-party countries and international migrants would have limited recourse to remedies.

The European Convention on Migrant Workers contains similar provisions clarifying protection of labor migrants but includes that social and medical assistance to migrants be provided on a nondiscriminatory basis as other nationals. Its provisions would have broader reach among countries of Europe receiving migrants than the Migrant Workers Convention but similarly, the determination of

immigrant status is largely discretionary. Each country is authorized to determine which international migrants will be provided legal status to enter, remain and work in their territories.

### *Rapid-onset disaster and migrants*

The conditions facing rapid-onset disaster migrants and those confronted by slow-onset and drought-related disaster migrants are significantly different. Victims migrating from storms or floods most often seek to return home shortly after disasters occur or when it is safe to do so – as opposed to drought-related migrants who may seek to engage in international labor migration as a means of coping with longer-term or persistent drought situations. As such, rapid-onset disaster migrants have an immediate and temporary need for protection and, where return is delayed, may need to engage in short-term employment.

Rapid-onset disaster migrants who are forced to cross international borders are perhaps better protected under international law than drought victims. Major floods or storms, tsunamis and earthquakes related to climate change may cause serious disruptions to a country's infrastructure, housing, and food distribution systems and may disrupt public order. Such events could lead to mass displacement. Victims of these disasters may qualify as refugees and be entitled to asylum protection and government assistance under the 1969 OAU refugee convention referred to above or the Cartagena Declaration on Refugees.<sup>17</sup> In fact, general humanitarian assistance and temporary assistance has been provided to such victims crossing borders, as demonstrated by government action after the 2004 Asian tsunami.

For those not qualifying as refugees but who cannot return to their country of origin because of the impacts of a natural disaster, some countries provide for Temporary Protected Status (TPS). The United States Immigration Act of 1990 provides for discretionary grants of TPS in events such as earthquakes, floods, droughts, epidemics, other environmental disasters or disruptions to living conditions where the state of origin cannot adequately manage the return of its nationals. The status has been granted in a few circumstances when disasters occurred in Montserrat, Nicaragua

<sup>16</sup> IRIN, UN Office for Coordination of Humanitarian Affairs, Feb. 2, 2009.

<sup>17</sup> Cartagena Declaration on Refugees, Section III(3), adopted 1984.

and Honduras. It applies only to those in the United States at the time of disaster and allows for a six-month stay which can be extended to 18 months. During the stay, residents can work but cannot apply for admission of spouses or family members.

Countries in Europe have similar TPS exceptions, though criteria vary. The Finnish and Swedish Alien Acts provide for TPS when victims cannot return due to serious environmental disruption, and Denmark can provide even an expanded protection for victims and their families seeking humanitarian asylum from drought disaster.<sup>18</sup> Much more narrowly, the Council of Europe adopted a directive on TPS for situations of a mass influx due to armed conflict and where the disruption prevents return to the country of origin or the persons would be subject to serious human rights violations and would not qualify otherwise under the 1951 Convention. In such cases, the Council of Europe may decide to convey temporary status up to one year, which can be extended.<sup>19</sup>

Those who do not qualify for these narrow exceptions, such as slow-onset disaster migrants are not entitled to asylum or special status. As yet, there is no global migration agreement, nor known bi-national agreements that cover migration, voluntary or forced, due to environmental disasters. Each country determines the terms (e.g., visas) and the grounds for entry of migrants to enter and to work in its territory.

### *Sea-level rise and migrants*

Of the various categories of climate change migrants, persons expected to cross borders due to sea-level rise inundating part or all of small-island nations are in a particularly unique position. These persons are covered by the same human rights principles pertaining to migrant workers but are not as yet viewed as “refugees.” However these victims may become “stateless” persons and the provisions of various treaties and international instruments relevant to stateless

persons may apply. International law in this area does not require states to provide permanent refuge. The principle of non-refoulement discussed above would seemingly prevent return if the victims would risk human life but beyond that, international law is unclear about providing a stateless person with a new state. The European Directive on Subsidiary Protection might be most pertinent as it would convey at least temporary status to third country nationals or stateless persons not otherwise qualifying as a refugee where return would risk “serious and individual threat to a civilian’s life or person due to violent, armed conflict.”<sup>20</sup>

### **Rights and obligations related to internally displaced persons**

International standards of law are clearer in the protection of those internally displaced by conflict or disaster. Human rights doctrine now includes a set of Guiding Principles for the protection of internally displaced persons (IDPs). These 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.”<sup>21</sup> Victims of immediate-onset disasters, such as hurricanes and floods, would be covered by such protection. If situations of drought and desertification (environmental changes which occur more slowly over time) are considered disasters, then victims who are forced to migrate inside their country of origin should be covered by IDP principles. This may occur when climate change produces serious or prolonged drought.

The IDP principles codify the state’s human rights obligations towards those displaced in its territory, including the right to life, dignity and security of persons displaced. IDPs have the right to move to other parts of the country or to leave their country, to have their family members remain together or be reunited if separated. They have the right to

<sup>18</sup> See discussion of country TPS provisions in OHCR, “Forced displacement in the context of climate change: challenges for states under international law” at p. 12, (May 2009), published at: <http://www.unhcr.org/4a1e4d8c2.html>.

<sup>19</sup> Council Directive 2001/55, 2001 O.J. (L.212) 12 E.C.

<sup>20</sup> Art 15(c), Council Directive 2004/83, 2004 O.J. (L.304) 12 E.C. For more detailed discussion see, A. Lopez, *The Protection of Environmentally-Displaced Persons in International Law*, 37, *Envtl. L.* 365 (2007).

<sup>21</sup> Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced persons, Francis Deng, on Guiding Principles on Internal Displacement, (“Guiding Principles on IDPs”), Feb. 11, 1998, U.N. Doc. E/CN.4/1998/53/Add.2.



an adequate standard of living, food, water, basic shelter and housing, property restitution, essential medical services and sanitation and they continue to enjoy the right to seek employment and participate in economic activities.<sup>22</sup> The principles reiterate that governments are prohibited from discriminating against IDPs in the distribution of aid or other treatment and must adhere to human rights protections in the resettlement and reintegration of IDPs.<sup>23</sup> Forced relocation is to be used only as a last resort to protect the health and safety of those affected and may not be arbitrary or discriminatory, nor harmful to the needs of indigenous or marginalized groups dependent or attached to their lands.<sup>24</sup>

Most governments appear to accept these principles and have confirmed their importance. These principles are reflected in the United Nations General Assembly Outcome Document, adopted by consensus after the 2005 World Summit on Development (recognizing the principles as “an important international framework for the protection of internally displaced persons” (U.N. Doc. A/RES/60/1, 2005)). They have been incorporated by governments in domestic policy and law and in international agreements adopted by governments in various regions. Most recently, they served as the foundation for the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (“Kampala Convention”), concluded in November 2009. The Kampala Convention recognizes that climate change may cause internal displacement and provides a detailed description of government obligations, including reparations for failure to act, and encourages non-governmental and other assistance in the region for IDPs when a state affected by disaster is unable to provide full assistance.

Furthermore, governments may be held accountable if they fail to act according to their human rights obligations in preventing disasters or impacts where such harm is foresee-

able. This principle has been reinforced by international human rights treaty bodies, including the Human Rights Committee (established to monitor implementation of the International Covenant on Civil and Political Rights), the Inter-American Commission and Court of Human Rights, and the European Court of Human Rights. These bodies have issued legal decisions regarding the state’s positive obligation to take precautions against foreseeable harm, including environmental harm, and to support persons forced to move away from high risk zones.<sup>25</sup> For example, after several storms led to devastating mudslides in the Central Caucasus region, the local government failed to repair infrastructure, prepare the public or take other public safety measures to prevent harm. The impact of storms subsequently led to death and harm to human life, and left many in the community displaced without homes. The European Court of Human Rights determined that Russia had violated its human rights obligations because it failed to take measures that could have reduced the damage to human life and property caused by the natural disasters.<sup>26</sup>

### Key issues concerning the legal gaps that leave migrants unprotected

As the discussion above suggests, human rights and humanitarian standards are more fully developed in their protection of the internally displaced than those displaced across borders or who migrate as a coping mechanism in response to prolonged droughts or other slow-onset climate impacts. Some standards lack specificity or clarity as to the applicability to climate change events, leading potentially to their ineffective or inconsistent application to climate victims. Moreover, many standards are voluntary and lack monitoring or accountability mechanisms, leaving migrants subject to potential abuse and the vagaries of politics at a given moment. This section highlights three key areas of concern regarding gaps in legal protection.

<sup>22</sup> See also, “Report of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights” at p. 19, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009).

<sup>23</sup> The Human Rights Committee and Committee on Elimination of Racial Discrimination have also commented on the key issues of concern related to a government’s discriminatory treatment of those displaced. See, e.g., Concluding Observations of these bodies relating to treatment of displaced persons after Hurricane Katrina in relation to the right of return, housing and other assistance by the United States (para 26, CCPR/C/USA/CO/3/Rev.1, Concluding Observations on United States, 2006) and Convention on Elimination of Racial Discrimination (para 31, CERD/C/USA/CO/6, Concluding Observations on United States, 2008).

<sup>24</sup> Id., Guiding Principles on IDPs; see also Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced persons, Walter Kalin, Addendum: High-Level Conference on Future Challenges,” para. 5 at 2, U.N. Doc. A/HRC/10/13/Add.3 (Feb. 11, 2009), listing states such as Georgia, Mozambique, Turkey, Uganda and the Great Lakes Region, Latin American and African regions and Europe.

<sup>25</sup> Report of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, at 24, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009).

<sup>26</sup> *Budayeva and others v. Russia*, Applications nos. 153339/02, 21166/02, 20058/02, European Court of Human Rights judgment of March 20, 2008.

### ***Laws may only protect some but not all potential victims***

Without further clarity, human rights and humanitarian norms leave a significant segment of the potentially displaced unprotected. These include:

- *Persons moving across international borders due to the sudden onset of natural disasters or because they are living in high-risk zones:* While the United Nations High Commissioner for Refugees (UNHCR) has a mandate to provide assistance in such cases where governments cannot, there is no requirement for host states to provide temporary or permanent status for those affected, leaving them possibly without refuge if their own countries are unable to assist. If they do cross borders or remain “undocumented,” they may be at risk of suffering criminal sanctions, discrimination or being sent back to an uncertain or dangerous environment. The current TPS designations are not only highly discretionary, but too narrow to apply to most cases of international migration.
- *Persons moving across international borders as a consequence of slow-onset climate disasters:* Those moving because of prolonged drought appear wholly unprotected by humanitarian or migration management regimes in most countries, including under TPS mechanisms.
- *Persons moving across international borders from islands threatened by or inundated from sea-level rise:* International human rights law does not provide clear requirements on the status of such persons, the legal protection that must be accorded them on a permanent basis, or how states are to address their potential “statelessness” should that arise. The current treaties on statelessness are insufficient to address the potential for these movements under predicted climate change scenarios.
- *Internally displaced persons who move voluntarily:* The IDP guidelines require that a victim be forced or obliged to move in order to avail themselves of

the standards under the IDP principles. It can be argued that those forced to migrate to other parts of the country due to drought, desertification or other slow-onset phenomenon would be covered, but this is much less clear if they move in anticipation of avoiding the impacts of another drought disaster.

### ***Standards are often voluntary***

Humanitarian laws, such as the 2005 Hyogo Framework for Action, and the human rights principles adopted for disaster victims, such as the IDP principles, may be viewed as “soft law” principles. These receive government support via their declarations or resolutions, but remain legally nonbinding. Without their codification in a treaty it may be suggested that the principles can be disregarded lawfully. States could also potentially view guidelines on forced relocation and resettlement as voluntary, leaving those affected open to abuse. Forced relocation and resettlement have historically led to abuses in a number of contexts, notwithstanding that soft-law standards have emerged in the environmental context. The Kampala convention, once in force, may remedy this for internally displaced persons on the continent but it would not apply elsewhere.

Where persons are forced to cross borders but do not qualify as refugees, the lack of clarity in legal obligation may leave victims wholly unprotected in some circumstances. As noted by the UNHCR, “[t]here are also cases in which displacement relates to a certain unwillingness to protect, or to prohibit discrimination. A normative gap could thus be considered to exist if both the country of origin and the host country obstruct or deny or are unable to ensure basic human rights. The international instruments that suggest all governments are to cooperate in providing disaster relief to other countries and to the victims who are displaced, may be viewed by countries as ‘soft law’ and nonbinding, though it has been argued that these principles emanate from the UN Charter, a binding treaty on all nations. If not clarified, governments could raise barriers to climate-related immigration while continuing to pursue policies that do not radically mitigate future climate change impact, exacerbating disasters that threaten human life and livelihoods and that spur migration as a coping strategy.



### *The mechanisms for accountability lack clarity*

Even if states agree to follow international guidelines, the lack of monitoring or accountability mechanisms allows states to violate the standards with impunity. There are no procedures by which victims can complain of abuse within the IDP guidelines, nor specifically for environment-related movements. There are regional and international bodies, courts and complaints procedures for general human rights violations, but these are not specifically tailored to the needs of disaster victims and in any case are likely to be beyond the effective access of such victims or international migrants without substantial legal assistance. There is presently no international disaster monitoring body or ombudsperson with a mandate to monitor or receive complaints. However, the Kampala convention may provide a foundation for a future model once implemented, particularly if African Union (AU) bodies become more centrally involved in these issues.

### **Filling the gaps: future policy considerations**

A number of commentators suggest that as climate disasters worsen, the need for greater clarity of government obligations and best practices is becoming more critical. Several responses have been suggested by policymakers, humanitarian agencies and advocacy groups. A few are identified here.

UNHCR has suggested that states establish alternative forms of protection for those persons who do not qualify as refugees but whose return is neither feasible nor reasonable due to circumstances in their country of origin, and to otherwise identify and fill existing legal and operational gaps in protecting people vulnerable to climate displacement.<sup>27</sup> The Special Representative of the UN Secretary General on IDPs has similarly suggested that states should provide greater protection for international migrants affected by disaster

who are not able to return, possibly through their national migration management systems.<sup>28</sup> The Special Representative has also called for national legislation to incorporate the IDP Guiding Principles to expand implementation and increase accountability, and for governments to use the Principles as a “checklist” during a disaster to ensure proper response and protection.<sup>29</sup> The IOM has also recommended that governments address the normative gaps in protection of migrants, and facilitate a holistic approach to research and policy development.<sup>30</sup> None of the humanitarian agencies would recommend amending the 1951 Refugee Convention or perhaps even establishing a new treaty containing legal commitments.

International humanitarian agencies have also requested that the UN Framework Convention on Climate Change (UNFCCC) consider the issue in the climate negotiations leading up to an anticipated agreement in Copenhagen.<sup>31</sup> The High Commissioner for Human Rights has indicated that some of these issues may require long-term political solutions by governments, for example, to address the issue of those forced to leave islands due to sea-level rise.<sup>32</sup> It is unclear if this would include commitments via a legally binding instrument, but any negotiation on resettlement would require the consultation and participation of those affected in small-island states as a matter of international law.

The Council of Europe has further considered these issues, and at least one parliamentary committee has asked governments in the region to adopt standards for climate-related migrants within a migration agreement or as a protocol to the existing European Convention on Human Rights. Still others are calling for a full convention on the subject.<sup>33</sup>

In addition to the normative work, most experts suggest that further research within affected areas be conducted in tandem with the political debate. All of the suggested

<sup>27</sup> OHCHR, *Forced Displacement in the Context of Climate Change*, supra note 15.

<sup>28</sup> Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced persons, Walter Kalin, Addendum: Protection of Internally Displaced Persons in Situations of Natural Disasters at 6, A/HRC/10/13/Add.1 (2009).

<sup>29</sup> Report of the Representative of the Secretary General on Human Rights of Internally Displaced Persons, Walter Kalin, Addendum: High-Level Conference, at 4-5, supra note 8.

<sup>30</sup> International Organization for Migration, *Migration, Climate Change and the Environment*, IOM Policy Brief (IOM, Geneva, May 2009); see also discussion and publications at: <http://www.iom.int/jahia/Jahia/activities/by-theme/migration-climate-change-environmental-degradation>.

<sup>31</sup> See, e.g., supra note 11.

<sup>32</sup> See Report of High Commissioner of Human Rights, at 20, supra note 9.

<sup>33</sup> CRIDEAU (Centre recherches interdisciplinaire en droit de l'environnement, de l'aménagement et de l'urbanisme), together with scholars from Centre de recherches sur les droits de la personne, équipes thématiques de l'OMIJ (Observatoire des mutations institutionnelles et juridiques recently proposed and drafted the principles for a new convention on the topic with other human rights groups in Europe.

<sup>34</sup> Id. at 5. <http://www.irinnews.org/report.aspx?ReportID=82683>.

recommendations will require more political and financial support.

### Conclusions

The number of climate disasters is rising. It is now better understood that these climatic events will have, in some regions, very severe impact on human life, health and property. General human rights and humanitarian principles provide fundamental rights to all persons, and states have the duty to protect those in their territories from harm that is foreseeable. With the growing scientific evidence of more severe disasters to come, governments possibly have a more immediate obligation to take proactive, affirmative steps to identify and protect those most vulnerable, to help them adapt, and to cooperate with other states on assistance. This, in essence, requires precautionary measures to prevent further harm to communities where climate disasters are predicted to occur or likely to recur (e.g., storm surges, floods, and droughts).

The global community has yet to adopt specific standards related to climate change or to protect climate disaster victims. While some humanitarian standards exist for internally displaced persons, these are still largely voluntary. There are, moreover, great uncertainties in the law to protect persons migrating across an international border in response to climate disasters. Refugee laws provide little, if any, protection. Mixed climate and conflict crises may give rise to government obligations to provide temporary asylum to victims. However, drought victims are in a more precarious legal position, even if they view themselves as having little choice but to engage in labor migration as a means of survival. As disasters increase, the lack of clear standards and accountability mechanisms leaves many climate victims unprotected and more vulnerable to abuse.

To address the legal gaps in protection, humanitarian agencies and human rights advocates have called for the development of appropriate laws and policies to protect climate migrants. Approaches range from new migration management strategies to international treaties. In considering new standards, several issues are likely to become significant in

future policy dialogue: (1) whether migrant movements that are forced or voluntary are to be treated differently in the climate context from other development-related migration; (2) whether the treatment of migrants responding to the effects of prolonged drought should differ from the treatment of migrants of rapid-onset disasters; and (3) whether and how policies would treat some forms of migration as an appropriate adaptation strategy in response to climate change.

Protecting victims displaced from sea-level rise presents yet a different challenge for governments. The likely inundation or loss of entire islands by the end of the century suggests that governments will need to clarify the international migration and resettlement policies applicable to island populations in the near-term, well before the eventual submergence of these island states. Human rights law would require that the affected populations participate in the negotiation of such measures that, quite literally, affect their fate as a community and a nation.

In sum, governments should begin to clarify the rights of affected climate migrants and the responsibilities of host countries and countries of origin in their treatment of both persons who move as an immediate response to natural disaster and persons who migrate in response to a prolonged drought disaster, where either movement is motivated by a need for basic survival. As policymakers seek to clarify existing human rights norms or to develop a new humanitarian framework, the important inquiry for international law should be whether persons who cross borders “have a need for international protection; and, if so, on what grounds this need may be considered an entitlement.”<sup>34</sup>

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PHOTO CREDIT: Floods in Ifo refugee camp, Dadaab, Kenya, UNHCR: B. Bannon, December 2006.

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<sup>34</sup> Id. at 5. <http://www.irinnews.org/report.aspx?ReportID=82683>.

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### List of papers

Developing Adequate Humanitarian Responses  
by Sarah Collinson

Migration, the Environment and Climate Change: Assessing the Evidence  
by Frank Laczko

Climate Change and Migration: Key Issues for Legal Protection of Migrants and Displaced Persons  
by Michelle Leighton

Climate Change, Agricultural Development, and Migration  
by Philip Martin

Climate Change and International Migration  
by Susan F. Martin

Climate Change, Migration and Adaptation  
by Susan F. Martin

Climate Change, Migration and Conflict: Receiving Communities under Pressure?  
by Andrea Warnecke, Dennis Tänzler and Ruth Vollmer

Assessing Institutional and Governance Needs Related to Environmental Change and Human Migration  
by Koko Warner





### Transatlantic Study Teams

The GMF Immigration and Integration Program's Transatlantic Study Teams link the transatlantic debate on international migration flows with its consequences for sending and receiving regions. Through compiling existing data, policy analysis, and dialogue with policymakers, selected study teams gather facts, convene leading opinion leaders on both sides of the Atlantic, promote open dialogue, and help to advance the policy debate. Study teams are chosen by a competitive selection process, based on the overall quality of their proposal, its policy relevance, institutional strength, sustainability, and potential for synergies. The Transatlantic Study Team 2009/2010 is investigating the impact of climate change on migration patterns. Environmental deterioration, including natural disasters, rising sea level, and drought problems in agricultural production, could cause millions of people to leave their homes in the coming decades. Led by Dr. Susan F. Martin, Georgetown University, and Dr. Koko Warner, UN University, the team consists of scholars, policymakers and practitioners from the migration and environmental communities.

The German Marshall Fund of the United States (GMF) is a non-partisan American public policy and grantmaking institution dedicated to promoting better understanding and cooperation between North America and Europe on transatlantic and global issues. GMF does this by supporting individuals and institutions working in the transatlantic sphere, by convening leaders and members of the policy and business communities, by contributing research and analysis on transatlantic topics, and by providing exchange opportunities to foster renewed commitment to the transatlantic relationship. In addition, GMF supports a number of initiatives to strengthen democracies. Founded in 1972 through a gift from Germany as a permanent memorial to Marshall Plan assistance, GMF maintains a strong presence on both sides of the Atlantic. In addition to its headquarters in Washington, DC, GMF has seven offices in Europe: Berlin, Bratislava, Paris, Brussels, Belgrade, Ankara, and Bucharest.

The Institute for the Study of International Migration is based in the School of Foreign Service at Georgetown University. Staffed by leading experts on immigration and refugee policy, the Institute draws upon the resources of Georgetown University faculty working on international migration and related issues on the main campus and in the law center. It conducts research and convenes workshops and conferences on immigration and refugee law and policies. In addition, the Institute seeks to stimulate more objective and well-documented migration research by convening research symposia and publishing an academic journal that provides an opportunity for the sharing of research in progress as well as finished projects.

The UN University established by the UN General Assembly in 1973, is an international community of scholars engaged in research, advanced training and the dissemination of knowledge related to pressing global problems. Activities focus mainly on peace and conflict resolution, sustainable development and the use of science and technology to advance human welfare. The University's Institute for Environment and Human Security addresses risks and vulnerabilities that are the consequence of complex environmental hazards, including climate change, which may affect sustainable development. It aims to improve the in-depth understanding of the cause effect relationships to find possible ways to reduce risks and vulnerabilities. The Institute is conceived to support policy and decision makers with authoritative research and information.