

Discussion Paper

Human rights, migration, and displacement related to the adverse impacts of climate change

30 September 2016

This paper was drafted by the Mary Robinson Foundation – Climate Justice in consultation with a core drafting group organised by the Office of the High Commissioner for Human Rights (OHCHR). The paper is designed to generate discussion on the rights of people displaced by climate change as part of the OHCHR Expert Meeting on Climate Change and Human Rights on 6 – 7 October 2016. It is not intended as a complete examination of the legal and political situation of mobility and displacement caused substantially by climate change or climate actions.

Problem Statement

Displacement and migration related to the adverse impacts of climate change and climate actions is already a reality, and one that will become more acute as the effects of climate change increase. As the Intergovernmental Panel on Climate Change (IPCC) has put it, climate change is a “threat multiplier”. Since 2008, an average of 21.5 million people have been displaced from their homes each year by the impact of rapid-onset climate-related hazards¹ - and the frequency and intensity of such events is expected to increase. Meanwhile, slow-onset events and gradual processes of environmental degradation, in combination with other socio-economic and political drivers of displacement, are also pushing people to seek safer and more secure homes and livelihoods elsewhere.

Climate change increases pressure on already exposed and vulnerable communities by contributing to multiple drivers of migration and displacement. These include the increasing frequency and intensity of extreme weather events, such as floods, heatwaves and drought; sea level rise; the spread of tropical and vector-borne diseases; ecosystem damage; poverty; food, water and livelihood insecurity; and, more indirectly, communal unrest and conflict.

¹ IDMC, Global Report on Internal Displacement 2016, May 2016. pp 20-21. <http://www.internal-displacement.org/assets/publications/2016/2016-global-report-internal-displacement-IDMC.pdf>

Development projects undertaken to adapt to and mitigate climate change, can also be a driver of displacement. Mitigation or adaptation projects, such as large-scale land acquisitions for the production of biofuels, forest conservation or government-led planned community relocations, have also led to evictions and the displacement of former residents, without full respect for their human rights.

Climate justice requires us to respect and protect the human rights of people displaced or who face the risk of becoming so in the context of climate change. This includes ensuring that responses to climate change are participatory, transparent and accountable and pay particular attention to the specific needs for protection among women and girls, indigenous peoples, older persons, persons with disabilities, and other persons who may be disproportionately impacted by climate change.

While displacement and migration issues in relation to climate change have received increasing attention from a number of international bodies and policy processes, there has been a lack of convergence across international fora. In particular, apart from two Special Procedures reports², there has been relatively little focus on this issue from a rights perspective, and in the principal human rights bodies.³

Context

Climate Change and climate-related disasters have been recognised as globally significant drivers of displacement and migration in a number of international policy agreements and fora, including those under the United Nations Framework Convention on Climate Change (UNFCCC) system, the Sendai Framework for Disaster Risk Reduction, and the Sustainable Development Agenda. Most recently, this includes The New York Declaration for Refugees and Migrants, the Outcome Document from the 19th September 2016 High-Level Meeting to Address Large Movements of Refugees and Migrants, where climate change is explicitly recognised in the first substantive paragraph:

Some people move... in response to the adverse effects of climate change, natural disasters (some of which may be linked to climate change) or other environmental factors. Many move, indeed, for a combination of these reasons.

However, this reference to climate change holds a peripheral place in the document as the high-level meeting and its outcome focused largely on international migration and

² General Assembly (2011), Report of the Special Rapporteur on the human rights of internally displaced people, A/66/285; General Assembly (2012), Report of the Special Rapporteur on the human rights of migrants, A/67/299

³ Although note a recent recommendation 12/9/2016; 'That the Advisory Committee undertake to prepare guidelines ('soft guidelines') on climate displacement and human rights' in Report of the Advisory Committee on its seventeenth session, A/HRC/AC/17/2

refugee movement. Since most climate-related displacement takes place within national borders, the New York Declaration may not adequately address climate displacement. Under these circumstances, other processes such as that of the World Humanitarian Summit may provide further guidance relating to the rights of internally displaced persons..

The most fundamental action that countries can take to protect the rights of people at risk of being displaced by the impacts of climate change is to limit the impacts of climate change by working to limit warming to 1.5 °C thereby reducing the threat to the most vulnerable populations. This is the responsibility of all countries, and was affirmed in the Paris Agreement’s commitment to keeping temperatures well below 2°C above preindustrial levels and pursuing efforts to limit the temperature increase to 1.5°C.

Under the UNFCCC Cancun Adaptation Framework, both displacement and migration are recognised as forms of adaptation, together with “planned relocation.”⁴ The IOM has defined this further as follows:

In simple terms, adaptation refers to any human response taken to cope with changes in the external environment in order to survive these impacts with minimal damage and improve living conditions in a given habitat. When people decide or are forced to move due to environmental and climatic changes – whether sudden or slow – their mobility is an adaptation strategy that allows them to minimize harm for themselves and/or improve their overall lives⁵

Many vulnerable communities face recurrent displacement and increasing impoverishment because of climate-related disasters and face the prospect of their home areas becoming permanently unsafe and uninhabitable. Where efforts to adapt *in situ* are inadequate to reduce the risks they face, planned and voluntary migration that protects their dignity and respects their human rights can be a positive strategy for adapting to climate change. Movement related to the adverse effects of climate change may be motivated by complex and interconnected drivers including an inability to cope with the continued stresses of increased climatic variability, planned adaptation measures,⁶ and natural disasters.

Individuals displaced across borders by the impacts of climate change or climate actions can fall through legal gaps, as currently there is no specific international legal instrument governing this kind of displacement.

⁴ UNFCCC Cancun Adaptation Framework, Paragraph 14(f). <http://unfccc.int/adaptation/items/5852.php>

⁵ <https://weblog.iom.int/migration-adaptation-strategy-climate-change> accessed 14/09/16

⁶ Adaptation based responses that induce voluntary climate displacement could include, moving a population from an island that is being threatened by rising sea levels, or a village that is moved due to encroaching desertification

Legal Status/Gaps

The Nansen Initiative's Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change summarises the legal gaps as follows:

*'persons who have moved across international borders in disaster contexts are protected by human rights law, and where applicable, refugee law. However, international law does not address critical issues such as admission, access to basic services during temporary or permanent stay, and conditions for return. While a small number of states have national laws or bilateral or (sub-)regional agreements that specifically address the admission or temporary stay of foreigners displaced by disasters, the vast majority of countries lack any normative framework.'*⁷

As suggested in the Protection Agenda, human rights law can go some way to delivering an international framework for the treatment and right to freedom of movement and choice of residence for climate displaced people, as has been done in the UN Guiding Principles on Internal Displacement. Human rights law is relevant to displacement, whether as a voluntary adaptation strategy, or as a forced movement in response to environmental calamity or mitigation or adaptation measures for three main reasons:

1. It sets out minimum standards of treatment that States must afford to individuals within their jurisdiction;
2. It may provide a legal basis on which protection may be sought in another State for the displaced, as well as the prohibition of return to serious harm
3. Where relocation occurs human rights law outlines minimum standards of treatment owed to the displaced⁸

From these we see that human rights allow for a better framework for the minimum treatment of those displaced by climate change both before and following a move (whether across borders or not) as well as some potential to deliver legal processes for international movement.

When looking at the minimum standard of treatment owed to those impacted by climate change both before and following movement, particularly pertinent rights that should be considered in this context include:

- loss of cultural and physical heritage⁹

⁷ The Nansen Initiative; Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change; Vol 1; 2015

⁸ McAdam, Jane, (2012) *Climate Change Forced Migration, and International Law* Oxford University Press, Oxford

⁹ Article 15(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) requires Parties to take steps to ensure the conservation of culture. A detailed argument about the role of Cultural Heritage in international human rights law can be found in the Report of the independent expert in the field of cultural rights, Farida Shaheed A/HRC/17/38

- the loss of the ability to work¹⁰ and make a decent living for themselves and their families¹¹
- loss of access to food, water, clothing and housing limiting their right to an adequate standard of living¹²
- diminished right to self determination¹³
- loss of access to land¹⁴
- freedom of movement and choice of residence¹⁵
- erosion of the protections on their rights to life, liberty and freedom from torture.¹⁶

Where displacement is across international borders, legal questions of entry can supersede the protection of rights of displaced people in the priorities of host nations. As stated previously, in general, a person displaced by climate change will not have a legal right of entry to a foreign jurisdiction. In this case we can see human rights law and legal norms as providing a possible avenue of ‘complementary protection’.¹⁷ Complementary protection applies when State have an obligation of *non-refoulement* which occurs when returning an individual would result in a violation of their right to life or right to be free from torture or cruel, inhuman or degrading treatment or punishment or other serious human rights violations.¹⁸

Finally there is the additional issue of displacement caused by mitigation or adaptation measures taken in response to current and forecasted adverse impacts of climate change. There is an increasing body of evidence that mitigation and adaptation measures taken by UNFCCC parties are not being enacted with an adequate understanding, adherence to or respect for human rights.¹⁹ This is particularly relevant to the negotiations on the new market mechanism under the Paris Agreement, the ‘Sustainable Development Mechanism’, which are currently ongoing and should reference human rights to ensure rights based approaches are incorporated to minimise displacement required for climate change mitigation and adaptation measures where it is unavoidable.

¹⁰ Article 6 ICESCR

¹¹ Article 7(a)(ii) ICESCR

¹² Article 11 ICESCR

¹³ Article 1 International Covenant on Civil and Political Rights (ICCPR)

¹⁴ This is an explicit right for indigenous peoples and women. Part II, Convention 169 on Indigenous and Tribal Peoples, 1989; Article 14(g) CEDAW

¹⁵ Article 12(1), ICCPR

¹⁶ Articles 6, 7 and 9, ICCPR

¹⁷ For a detailed discussion of this concept and its relationship to climate change and displacement see; McAdam, J, *Climate Change Displacement and International Law: Complementary Protection Standards*, UNHCR, Geneva, 2011 <http://www.unhcr.org/protection/globalconsult/4dff16e99/19-climate-change-displacement-international-law-complementary-protection.html>

¹⁸ This is an extensively discussed area of law. However McAdam, Jane, (2012) *Climate Change Forced Migration, and International Law* Oxford University Press, Oxford p55 provides a good overview.

¹⁹ See for example this report from Carbon Market Watch in the lead up to Paris <http://carbonmarketwatch.org/report-human-rights-implications-of-climate-change-mitigation-actions/>

As described, the displaced are not able to enjoy the full spectrum of their rights during and after movement, including their rights to housing, livelihood, education and development. However, few of the relevant processes take a rights-based approach to addressing the concerns of people displaced in relation to climate change impacts or make it a core component of their work.

International Processes

The issue of climate, migration and displacement has been the subject of substantial scrutiny and a number of processes have been undertaken at the international and regional levels addressing wholly or in part displacement related to climate change including:

- through the development of the Nansen Initiative Protection Agenda on Cross-Border Displacement in the Context of Disasters and Climate Change, endorsed by a global inter-governmental consultation in October 2015, and being taken forward by the State-led Platform on Disaster Displacement
- as recognised under the UNFCCC system, including paragraph 14(f) of the Cancun Adaptation Framework, and the COP21 decision to create a Taskforce on Displacement under the Warsaw International Mechanism on Loss and Damage to draw up recommendations on measures “to avert, minimize and address displacement related to the adverse effects of climate change.”
- the Global Forum on Migration and Development
- the High Level Summit for Refugees and Migration (September 2016).

For an overview of these processes see Annex A.

Displacement related to climate change impacts, including climate-related disasters, has additionally been addressed to varying degrees in:

- the UNFCCC Paris Agreement
- the Sendai Framework for Disaster Risk Reduction
- the Addis Ababa Action Agenda and
- the 2030 Agenda for Sustainable Development.

Although each of these outcomes emphasizes the importance of human rights in varied contexts, none explicitly take human rights as a starting point for further action on climate displacement. The most expansive exploration of the rights of climate displaced people is found in the Nansen Initiative’s Agenda for the Protection of Cross-Border Displaced Persons in the Context of Disasters and Climate Change which identifies coordination on

human rights as one of the key elements for future action. It notes that future action on climate change related displacement;

Requires a shared understanding of and coordinated approaches to cross- border disaster-displacement that bring together and link humanitarian action, human rights protection, migration management, refugee protection, disaster risk reduction, climate change adaptation, and development interventions.

The Sendai Framework for Disaster Risk Reduction provides guidance on the role of risk reduction and its relationship to human rights, at Article 19(c) ‘Managing the risk of disasters is aimed at protecting persons and their property, health, livelihood and productive assets, as well as cultural and environmental assets, while promoting and protecting all human rights, including the right to development’. A stronger engagement between human rights and climate change institutions would assist in the delivery of this objective.

While not widely adopted, the Peninsula Principles²⁰ provide a comprehensive normative framework, based on principles of international law, human rights obligations and good practice, within which the rights of climate displaced persons within States can be addressed. These provide a good reference point for continued discussion of the interaction between human rights and climate change.

Additionally there has been some engagement with this issue in the human rights institutional architecture. In 2009, in response to a Human Rights Council request, the Office of the High Commissioner for Human Rights carried out a study on climate change and human rights which included a brief examination of how climate change impacts specific rights, vulnerable groups, forced displacement and conflict.²¹

Developing Policy Cohesion

As recommended in the Nansen Initiative’s Protection Agenda a process of consolidation and cohesion is necessary to share lessons learned and to develop effective and coherent strategies to assist the people and communities most exposed to the negative impacts of climate change.

Even recognising that there has already been much work done in this area, there remains a need to continue the process of drawing together the spheres of human rights, climate

²⁰ <http://displacementsolutions.org/wp-content/uploads/2014/12/Peninsula-Principles.pdf>

²¹ Human Rights Council; Annual Report of the United Nations High Commissioner for Human Rights and Reports of the office of the High Commissioner and the Secretary General; Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights; 2009 A/HRC/10/61

change and displacement. This includes continued engagement at the institutional level to build on previous work. The Nansen Principles developed to guide responses to the challenges of displacement in the context of climate change and other environmental hazards recognise this. Principle 1 states that ‘Responses to climate and environmentally related displacement need to be informed by adequate knowledge and guided by the fundamental principles of humanity, human dignity, human rights and international cooperation.’²² Keeping human rights as a central focus is also in line with current efforts in the UN to reduce work silos and develop a more crosscutting approach along with the Secretary General’s ‘rights up front’ policy.²³

For example, the Special Rapporteur on Human Rights and the Environment in a recent field trip to the UNFCCC secretariat noted that the organisation is engaged, and eager to deliver better human rights solutions. However country delegations to the UNFCCC, whose members make up the decision making apparatus, including the Executive Committee of the Warsaw Mechanism, do not necessarily include human rights experts as part of their delegations. Initiatives such as the Geneva Pledge for Human Rights in Climate Action²⁴ are working towards rectifying this lack of collaboration between human rights and climate change policy makers at the national level. Building ways to deliver rights as the centre of solutions in these often technical discussions will be central to ensuring people focused outcomes.

Potential measures to achieve policy coherence around human rights for those displaced by climate change include ensuring OHCHR has a role in engaging on the Taskforce on Displacement under the UNFCCC as well as developing the UNFCCC’s role, and hence the climate dimension, of several processes currently underway. These could include;

- the outcome processes from the High Level Summit on Migrants and Refugees
- the global compact on safe migration
- The development of principles on migrants in vulnerable situations (these could build on a set of principles/practical guidance that are currently being developed by the GMG WG on human rights and gender led by OHCHR)
- the Global Forum on Migration and Development
- inputs to the Secretary General’s Report on the human rights of migrants

Further, displacement as a result of climate change could also be addressed by the annual Human Rights Council Climate Change Resolution. Such a resolution, detailing the most pertinent rights priorities for displaced groups could provide a valuable basis for discussions

²² Principle 1, The Nansen Principles, The Nansen Conference Climate Change and Displacement in the 21st Century, Oslo, 2011

²³ <https://www.un.org/sg/en/content/ban-ki-moon/human-rights-front-initiative>

²⁴ <http://www.rree.go.cr/?sec=politica%20exterior&cat=medio%20ambiente%20y%20desarrollo%20sostenible&cont=974>

moving forward. The HRC's continued engagement with the intersection of climate change and human rights provides a springboard for moving their engagement into the climate related displacement space. An appropriate resolution would provide countries and organisations dealing with the issues of people displaced by climate change an evidence and technical basis from which to argue for a more human rights centred approach to responses.

Guiding Questions for Discussion

1. What are some of the particular challenges and protection concerns when considering climate change as a driver of displacement and migration?
2. What concrete actions should be taken by governments, UN agencies, international and local organisations to better protect the rights of people displaced by the effects of climate change and of those migrating in the context of climate change? Are approaches the same for people who are displaced by climate change related activities (i.e. mitigation/adaptation)? What obligations does the State have towards people displaced by climate change-related activities (ie. mitigation/adaptation)?
3. There has been significant academic work on the legal aspects of the concept of 'complimentary protection' for people displaced by climate change, although this has only had limited testing in jurisprudence. What can be done to better catalyse political leadership to make this theory a reality? What role can human rights instruments/provisions have in admission/stay policies and international (temporary) protection?
4. How can the international Human Rights infrastructure be better engaged in mechanisms dealing with climate displaced people? What are the processes needed to make this happen?

Annex A

The Nansen Initiative and Platform on Disaster Displacement,

The objective of the Platform on Disaster Displacement is to follow-up on the work started by the Nansen Initiative, and to [implement the recommendations of the Protection Agenda](#), a toolbox to better prevent and prepare for displacement and to respond to situations when people are forced to find refuge, within their own country or across the border. The Platform will build partnerships between policymakers, practitioners and researchers and constitute a multi-stakeholder forum for dialogue, information sharing as well as policy and normative development.

The Cancun Adaptation Framework

Decision 1/CP.16 of the COP was the first significant recognition of issue of climate change induced displacement and migration under the UNFCCC it:

14. *Invites* all Parties to enhance action on adaptation under the Cancun Adaptation Framework, taking into account their common but differentiated responsibilities and respective capabilities, and specific national and regional development priorities, objectives and circumstances, by undertaking, inter alia, the following:
 - (f) Measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels;

The Warsaw International Mechanism

The Decision adopting the Paris Agreement, 1/CP.21, included the following:

50. Also requests the Executive Committee of the Warsaw International Mechanism to establish, according to its procedures and mandate, a task force to complement, draw upon the work of and involve, as appropriate, existing bodies and expert groups under the Convention including the Adaptation Committee and the Least Developed Countries Expert Group, as well as relevant organizations and expert bodies outside the Convention, to develop recommendations for integrated approaches to avert, minimize and address displacement related to the adverse impacts of climate change;

The Global Forum on Migration and Development

The GFMD process brings together expertise from all regions and countries at all stages of economic, social and political development. Policy-makers from a wide range of government agencies participate, including from Ministries and Departments of Immigration, Development, Labour, Foreign Affairs, Gender Equality, Home Affairs, Justice, Interior, Integration and Nationals Abroad. Since its inception, the GFMD has operated on the basis of a unique participative working method, involving governments and policy makers from a varied background. UN and other international agencies, including those that make up the

Drafted by the Mary Robinson Foundation – Climate Justice in consultation with the core drafting group

Global Migration Group , as well as academia and civil society organizations, as appropriate and desired by governments are involved in the process.

High Level Summit for Refugees and Migration

The outcome document for the High Level Summit for Refugees and Migration, The New York Declaration for Refugees and Migrants, includes a number of references to climate change, most importantly its first which notes:

1.1 Since earliest times, humanity has been on the move. Some people move in search of new economic opportunities and horizons. Others move to escape armed conflict, poverty, food insecurity, persecution, terrorism, or human rights violations and abuses. Still others do so in response to the adverse effects of climate change, natural disasters (some of which may be linked to climate change) or other environmental factors. Many move, indeed, for a combination of these reasons.

And

1.5 We reaffirm the purposes and principles of the United Nations Charter. We reaffirm also the Universal Declaration of Human Rights and recall the core international human rights treaties. We reaffirm, and will fully protect, the human rights of all refugees and migrants, regardless of status; all are rights holders. Our response will demonstrate full respect for international law and international human rights law, and, where applicable, international refugee law and international humanitarian law.

The High Level Summit also mandated two Global Compacts to be agreed in 2018 one on Migration and the other on Refugees.