

# Summary of Recommendations from the OHCHR Expert Meeting on the Slow Onset Effects of Climate Change and Human Rights Protection for Cross-Border Migrants

(5 October 2017, Geneva)

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## Introduction

The risks to human rights posed by climate change have been repeatedly recognized by the Human Rights Council, its special procedures mechanisms and OHCHR in various resolutions, reports and activities. The relationship between such risks and migration and displacement is also increasingly recognized. Most recently, the Council's resolution 35/20 acknowledged the urgent need to protect and promote the human rights of migrants and persons displaced across international borders in the context of climate change. The resolution further highlights that "the adverse effects of climate change are felt most acutely by those segments of the population that are already in vulnerable situations owing to factors such as geography, poverty, gender, age, indigenous or minority status, national or social origin, birth or other status and disability". It calls for international cooperation and assistance to protect those most vulnerable to the impacts of climate change, including migrants, and emphasizes the specific needs of least developed countries and small island developing states.

Climate change causes or contributes to an increase in the frequency and intensity of climate and weather events that affect the full enjoyment of a multitude of internationally guaranteed human rights and aggravate or interact with other factors that prompt people to move. Global temperatures and sea level are expected to rise significantly by the end of the century, with the full extent of these increases being directly related to the extent of contemporary efforts to mitigate climate change. These changes will affect the availability of freshwater, food production, and biodiversity all of which will in turn effect the lives of people. The impacts from the adverse effects of slow-onset climate change, combined with individual vulnerabilities and socio-economic, demographic and political contexts, will affect the ability and agency of people to respond to stressors and enjoy lives of human dignity.

This can lead some people to move internally or across borders in search of decent work and better life opportunities, and trap others in their homes and communities. An average of 21.7 million people were internally displaced each year from 2008 – 2016 by weather-related disasters.<sup>1</sup> Problematically, similar estimates are not readily available for cross-border displacement in response to the adverse effects of climate change nor for all such movement resulting from slow-onset adverse effects. Existing data may not include many of those who move because of the adverse effects of slow onset processes driven by climate change such as sea level rise, salinization, desertification and drought. In some cases, it may also be hard to distinguish between a sudden-onset event and a slow-onset event, or the two may interact with each other to drive movement. Nevertheless, the distinction is important to this analysis because those affected by slow-onset events have distinct needs, their long-term prospects of being able to safely return home after moving away may be lower, they may not be able to access the same forms of relief as those affected by sudden-onset disasters, and less is known about their situation.

While movement, if well-managed, can be a valuable climate change adaptation strategy, movement (for example planned relocation) can also cause or exacerbate vulnerabilities. Precarious conditions while in transit, in places of temporary refuge, or upon arrival can expose migrants to exploitation or

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<sup>1</sup> IDMC, Global Report on Internal Displacement, p.3 (2017) <http://www.internal-displacement.org/global-report/grid2017/pdfs/2017-GRID.pdf>.

human rights violations.<sup>2</sup> Unfortunately, the number of people engaged in such precarious movement is only growing as climate change is expected to contribute to increased human mobility in the future.<sup>3</sup> Therefore, human rights-based action to address the slow-onset adverse effects of climate change as an underlying cause of human mobility and to facilitate safe, orderly and regular migration for those affected by climate change is increasingly urgent.

## Background

This summary is derived from discussions and other inputs received in the context of a multi-stakeholder **expert meeting on the slow onset effects of climate change and human rights protection for cross-border migrants** organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in collaboration with the Platform on Disaster Displacement on 5 October 2017 in Geneva, Switzerland.<sup>4</sup> The one-day meeting provided a forum for exploring the intersections between the slow-onset adverse effects of climate change, human movement, and the protection of the human rights of people on the move. The expert meeting also provided an opportunity to discuss issues raised in OHCHR's **draft study on the *Slow Onset Effects of Climate Change and Human Rights Protection for Cross-Border Migrants***.<sup>5</sup>

Participants included a diverse group of experts representing, *inter alia*, Alaska Institute for Justice, Center for International Earth Science Information Network, Center for International Environmental Law, Earthjustice, FIAN International, Food and Agriculture Organization, Greenpeace Africa, Internal Displacement Monitoring Center, International Labour Organization, International Organization for Migration, Kiribati National Youth Association of NGOs, Mary Robinson Foundation – Climate Justice, Office of the UN High Commissioner for Human Rights, Permanent Mission of Costa Rica to UNOG, Platform on Disaster Displacement, Quaker United Nations Office, Refugees International, Regional Mixed Migration Secretariat, South American Network for Environmental Migrations (RESAMA), UN Children's Fund, UN Environment, UN High Commissioner for Refugees.

The expert meeting preceded an **intersessional panel discussion of the Human Rights Council on human rights, climate change, migrants and persons displaced across international borders** held on Friday, 6 October 2017 from 10:00 – 13:00.<sup>6</sup>

## Terminology

The discussion during the expert meeting highlighted that terminology is an important and often controversial issue when discussing the effects of climate change on human mobility. There is no universal legal definition or agreed upon terminology that describes people who move in the context

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<sup>2</sup> See OHCHR and Global Migration Group, 'Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations - Draft' (2017).

<sup>3</sup> See the Fifth Assessment Report of the Intergovernmental Panel on Climate Change.

<sup>4</sup> More information and relevant documentation regarding the expert meeting is available at: <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeAndMigration.aspx>

<sup>5</sup> The revised study has now been submitted as a conference room paper to the Human Rights Council. See A/HRC/37/CRP.4.

<sup>6</sup> For more information and the summary report of this discussion please see: <http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeAndMigration.aspx>. A broadcast is archived at <http://webtv.un.org>.

of climate change. For the purposes of these recommendations, movement will be referred to broadly as ‘human mobility’ or ‘movement.’ The term ‘displacement’ is used to describe movements that are predominately forced, while ‘migration’ is used to describe movement that is not predominately forced but nonetheless may not be entirely voluntary. Where reference is being made to people with specific legal entitlements in international law, such as refugees, trafficked persons or migrant workers, this will be made clear in the text. The term migrant refers to any person who is outside a State of which they are a citizen or national, or, in the case of a stateless person, their State of birth or habitual residence.

## Summary of Recommendations

Meeting participants observed that human mobility is a matter of multiple and overlapping causality, making it difficult to attribute movement to a single cause. People moving in whole or in part due to the slow-onset adverse effects of climate change are often hard if not impossible to distinguish from other vulnerable groups who are moving for myriad social, economic and political factors whether voluntarily or out of necessity. The adverse effects of climate change, however, disproportionately impact the poorest and most vulnerable sectors of society. **And when movement occurs out of necessity, those moving often face greater risks of human rights violations throughout their journey.**

People who move in whole or in part because of climate change are unlikely to be able to avail themselves of protection under refugee law and may also struggle to exercise their human rights.<sup>7</sup> They may, in other words, fall through the cracks of existing protection regimes. In the case of those trying to escape the slow-onset adverse effects of climate change, their vulnerability could be even greater because these effects and their impacts often go unrecognized.

The discussions affirmed that **specific efforts were needed to protect the rights of those most vulnerable to the slow-onset adverse effects of climate change, to ensure their meaningful participation in climate action and to empower action at the community level.** Meeting participants agreed that it was important migrants be able to exercise choice in the act of migration and called for the establishment of safe, orderly and regular migration channels that could prevent forced displacement by enabling migration with dignity. Better understanding, information, research and analysis about climate change and its impacts, including disaggregated data would contribute to this objective.

It was agreed that in order to protect the human rights of migrants who cross borders because of the slow-onset adverse effects of climate change, States and other relevant stakeholders needed to take a number of urgent actions. States, in particular, had obligations to act individually and collectively in order to respect, protect and fulfil the human rights of all migrants. The following core recommendations emerged. States and other duty-bearers should:

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<sup>7</sup> Protection under the Refugee Convention may apply in a limited set of circumstances. These include, *inter alia*: 1) if a national authorities’ denial of protection from the adverse effects of climate change towards the person amounts to persecution; 2) if national authorities use the negative impacts of climate change to persecute particular groups or individuals; and 3) if serious human rights violations or armed conflict triggered by climate change causes people to flee based on a well-founded fear of persecution.

## **A. Facilitate safe and dignified cross-border mobility for persons affected by the slow-onset adverse effects of climate change**

States should develop laws and policies that improve regular channels for migration including through liberalization of visa policies such as those for refugee resettlement, temporary protection, family reunification, work, retirement and studies. Visa and entry policies should ensure that persons moving, in whole or in part, because of the slow-onset adverse effects of climate change have legal access to safe and dignified migration channels. The objective should be to make voluntary migration a viable climate change adaptation strategy. Participants specifically called for action to:

- 1.) Promote and expand safe, regular, dignified and accessible pathways for human mobility that respect and protect the rights of all people on the move, including migrants and persons displaced across international borders in the context of the slow onset adverse effects of climate change.
- 2.) Respect, protect and fulfill the human rights of all migrants in transit and at international borders, including by operationalizing the Global Migration Group's *Principles and Guidelines, supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations*,<sup>8</sup> and the recommendations from OHCHR's report on the Situation of Migrants in Transit.<sup>9</sup>

## **B. Close the human rights protection gap for persons crossing borders because of the slow-onset adverse effects of climate change.**

It was agreed that the slow-onset adverse effects of climate change posed a particular and growing threat to persons in vulnerable situations, often undermining their food security and livelihoods and serving as a driver of their movement. People who moved in response to the slow onset adverse effects of climate change were therefore amongst those most likely to be in need of protection during their movement. Under current law, they are also unlikely to benefit from the legal protections afforded by refugee status, or the temporary protection and assistance mechanism often provided in response to sudden-onset natural disasters. Therefore, it is critical that they are protected by alternative means in accordance with international human rights law. Participants specifically called for action to:

- 3.) Affirm the relationship between climate change and human mobility and clarify the scope of State obligations towards those moving to avoid the slow-onset adverse effects of climate change in the global compacts on refugees and safe, orderly and regular migration.
- 4.) Address the slow-onset adverse effects of climate change in the context of practical guidance for the implementation of the Principles and Guidelines on the human rights protection of migrants in vulnerable situations.
- 5.) Incorporate recommendations of OHCHR, IOM, UNHCR, the Nansen Initiative, the special procedures of the Human Rights Council, and human rights treaty bodies into State laws and

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<sup>8</sup> <http://www.ohchr.org/EN/Issues/Migration/Pages/VulnerableSituations.aspx>; A/HRC/37/34.

<sup>9</sup> <http://www.ohchr.org/EN/Issues/Migration/Pages/Migrantsintransit.aspx>

policies relevant to the situation of persons crossing borders in the context of the slow-onset adverse effects of climate change.

- 6.) Ensure that all persons who move across international borders due to the slow onset adverse effects of climate change receive an individual assessment of their protection needs upon arrival in countries of transit or destination, and develop specific tools to assess the particular needs of persons crossing international borders in the context of the slow-onset adverse effects of climate change.
- 7.) Ensure access to economic, social and cultural rights, including labour rights, for all persons crossing borders in the context of the slow onset adverse effects of climate change, including by operationalizing the recommendations in OHCHR's report on the Economic, Social and Cultural Rights of Migrants in an Irregular Situation.<sup>10</sup>
- 8.) Facilitate the integration of persons crossing borders because of the slow-onset adverse effects of climate change in host communities, the regularization of their legal status and their access to labour markets.
- 9.) Drawing upon existing practice such as the OAU's Kampala Declaration and its broad definition of refugees, strengthen the role of regional bodies, conventions and economic communities in preventing, minimizing and addressing the movement of persons related to the slow-onset adverse effects of climate change.
- 10.) Consider integrating a definition of migrants and persons displaced in the context of disasters and the adverse effects of climate change into national and regional legislation and providing a protection status or a specific visa and residence permit for those falling under this category.

### **C. Reduce the risk of displacement through effective climate change mitigation and adaptation**

The slow onset adverse effects of climate change combined with other factors, including vulnerabilities, conflict, and socio-economic, demographic and political contexts, affect the ability and agency of people to respond to stressors, secure their livelihoods and enjoy lives of human dignity. This can lead some people to move internally or across borders or trap others in their homes and communities. Climate change mitigation and adaptation, including disaster risk reduction, can reduce the future negative human rights impacts of climate change and help those persons most affected by climate change to adjust to these impacts. Participants specifically called for action to:

- 11.) Ensure a human rights-based approach to all climate action and in particular ensure human rights are a primary consideration and guide States in the way they address human mobility at the UNFCCC.
- 12.) Mitigate climate change in order to prevent its impacts from worsening and reduce its role as a driver of human mobility. In particular, push to limit global average temperature rise to 1.5

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<sup>10</sup> <http://www.ohchr.org/EN/Issues/Migration/Pages/ESCRMigrantsSituation.aspx>

degrees Celsius in line with the most ambitious goal of the Paris Agreement under the UNFCCC in order to prevent and minimize forced displacement and migration.

- 13.) Address the impacts of the slow onset adverse effects of climate change on the enjoyment of all human rights through effective adaptation that benefits the most vulnerable, facilitates voluntary movement and minimizes forced movement. Adaptation measures should:
  - a. build capacity,
  - b. enhance knowledge,
  - c. empower persons in vulnerable situations,
  - d. support inclusive and sustainable development, and
  - e. ensure appropriate, inclusive disaster risk reduction and crisis management
- 14.) Strengthen social protection systems in order to increase climate resilience.
- 15.) Support livelihood adaptation through the ILO's green economy approach including by stimulating investment in green products and services and greening workplace practices.
- 16.) Consider facilitating migration as an adaptation strategy, by using available migration channels (labour migration, family reunification options, student visas) and by developing new regular migration channels in coordination with neighboring States or other States.

#### **D. Ensure participatory, transparent and informed decision-making about human mobility and climate change**

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Participants emphasized the importance of participatory, transparent and informed decision-making when taking action to address human mobility related to the slow-onset adverse effects of climate change. All climate actions should be informed by the best available information and result from participatory decision-making processes. Relevant laws and policies should empower people and communities to make informed decisions about how to respond to climate change, including whether and how to move. Participants specifically called for action to:

- 17.) Establish clear mechanisms for affected people, including both migrants and affected communities in places of origin and of destination, to participate in relevant decision-making.
- 18.) Adequately inform all people about the existing and potential adverse effects of climate change in order to promote informed decision-making, support the right of all persons to plan and manage their own movement and facilitate their access to justice.
- 19.) Ensure children's environmental education and consider the best interests of the child when moving or in cases of migration as adaptation, including through children's participation in decision-making processes.
- 20.) Develop national laws and policies related to climate action through meaningful consultation with and participation by affected persons and their representative organizations taking into special consideration gender equality and the short and long-term needs of vulnerable groups.

21.) Address data gaps through collection of disaggregated data related to the drivers of human movement and through community mobilization to measure the adverse effects of climate change and generate data and knowledge. Specific gaps identified included those related to the relationship between the adverse effects of climate change and movement and those related to the impacts of climate-induced migration on the enjoyment of human rights, the impact

#### **E. Ensure access to justice and effective remedies for those crossing borders because of the slow-onset adverse effects of climate change**

It was emphasized that States had the primary obligation to address and remedy climate change related risks and harms. This obligation extended to all rights-holders and to harm that occurred both inside and beyond their territories. States must be held accountable for fulfilling human rights for all persons under their jurisdiction or effective control, regardless of their migration or residency status. In the event that States failed to comply with their human rights obligations in this respect, it was imperative that the affected persons have access to justice and effective remedies. Participants specifically called for action to:

22.) Ensure that those harmed by climate change or government actions and inactions have access to effective remedies, including judicial and other redress mechanisms, when they are on the move.

23.) Develop and improve mechanisms at all levels of governance that ensure access to justice for persons crossing borders because of the adverse effects of slow-onset climate change.

#### **F. Ensure that relocations planned in response to the slow-onset adverse effects of climate change are fully informed and voluntary**

In extreme situations, planned relocations may be an effective or even necessary strategy to protect people from the harmful consequences of climate change. However, all relocations should ensure that the human rights of the people concerned are fully respected and protected. Participants specifically called for action to:

24.) Only employ planned relocation as a measure of last resort and with the meaningful and informed participation of all affected persons, including migrants and receiving communities.

25.) Refrain from, and protect against, forced evictions by ensuring any relocation of persons is grounded in human rights.

26.) Respect the right to self-determination of communities during planned relocations.

27.) Respect the tangible and intangible cultural rights of persons and communities during planned relocations and provide for the maintenance of their previous living standards

28.) Ensure that persons and communities who are displaced from their traditional territories due to climate change are empowered to make decisions about their futures and ensured, to the greatest extent possible, continued access to traditional territories, resources and livelihoods.



## **F. Employ the principle of *non-refoulement* and other international human rights law obligations to protect persons unable to return home because of climate change.**

States are bound by their non-refoulement duties to ensure appropriate protection for any persons subject to their jurisdiction or effective control. In general, they should refrain from returning persons to an area where there is a high likelihood that climate change-related risks will pose a threat of serious human rights violations. Therefore, States should:

- 29.) Consider measures to admit persons from areas adversely affected by climate change.
- 30.) Employ the principle of non-refoulement and other international human rights law obligations to provide protection for persons who are unable to return to their homes as a result of the slow-onset adverse effects of climate change.

## **G. Mobilize resources in order to close human rights protection gaps for persons affected by the slow-onset adverse effects of climate change**

Participants emphasized the obligations of and commitments by States to take ambitious action to avoid the worst effects of climate change and limit global average temperature rise to 2 degrees Celsius, as well as to mobilize resources to assist least developed countries to mitigate and adapt to climate change. In doing so, States have an obligation to prioritize financing climate actions that will benefit persons and communities in vulnerable situations, including those on the move. States should:

- 31.) Ensure that sustainable development financing mechanisms such as the GCF, the GEF, and others finance effective climate change mitigation and adaptation actions that respect, protect and fulfil the rights of persons on the move because of climate change.
- 32.) Mobilize adequate resources to protect the human rights of persons crossing borders as a result of the slow-onset adverse effects of climate.
- 33.) Respect principles of equity, justice, solidarity and common but differentiate responsibility in the mobilization of resources to protect those persons most affected by the slow-onset adverse effects of climate change.

## **G. Promote policy coherence across the human rights, development, climate change, disaster risk reduction, and human mobility spheres**

Participants emphasized the need for greater policy coherence across a wide range of areas relevant to the human rights situation of persons affected by climate change. They called for stakeholders to:

- 34.) Improve communications between UN system agencies working on human rights, development, climate change, disaster risk reduction and human mobility.
- 35.) Support a comprehensive, interdisciplinary approach to addressing these issues within and between government agencies.
- 36.) Ensure consistency between human rights obligations and positions taken in the context of relevant negotiations processes (i.e. the UNFCCC, the global compacts, etc.).

## Doing our part

OHCHR has engaged in a number of activities to raise awareness of climate change and its human rights impacts. The United Nations High Commissioner for Human Rights has repeatedly called for aggressive rights-based climate action to keep warming to no more than 1.5 degrees above pre-industrial levels and ensure all persons have adequate capacity to adapt to the negative impacts of climate change.

Through its Key Messages on Human Rights, Climate Change and Migration, the Office has provided concrete recommendations and guidance for integrating human rights in climate actions. The Office has also provided specific recommendations for the integration of human rights in UNFCCC processes, including the work of the Warsaw International Mechanism on Loss and Damage, as well as in the negotiations of the global compacts on refugees and migration.

By organizing multi-stakeholder events such as the expert meeting from which this summary of recommendations is derived, the Office has contributed to breaking down silos and raising awareness of the intersections of human rights, climate change and human mobility. The Office also supports the work of human rights mechanisms addressing climate change, including the human rights treaty-bodies and the special procedures of the Human Rights Council. We are currently in the process of developing tools to assist States and other stakeholders in fulfilling their human rights obligations in the context of climate change. However, OHCHR cannot act alone. Urgent, rights-based action by all relevant stakeholders is needed to ensure the protection of the human rights of migrants affected by the slow onset adverse effects of climate change.

**Do not wait. Start by learning more at:**

<http://www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeIndex.aspx>

<http://www.ohchr.org/EN/Issues/Migration/Pages/MigrationAndHumanRightsIndex.aspx>

<https://disasterdisplacement.org/>