Climate change and displacement: Protecting whom, protecting how?

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Environmental issues have been part of the discourse on forcibly displaced people and migration for several decades. In the ‘90s, the international community was primarily concerned with the negative impact that refugees had on the environment of their host countries. It is only in the second decade of this century that the reverse causal relationship has been given more attention – that slow-onset environmental change may result in human displacement. Now, this has turned into the main topic on the displacement agenda, with a particular focus on the eventual impact of climate change.

There is growing commitment by governments to discuss multilaterally the complex theme of migration. This is also the case for migration that is potentially induced by slow-onset natural disasters, or, more specifically, by climate change. Cooperation is increasing among states, with moves toward harmonization – both at the regional level, by fostering regional migration regimes, and the multilateral level, through, inter alia, the UN Intergovernmental Panel on Climate Change (IPCC), the World Bank, the International Organization on Migration (IOM), and the UN High Commissioner for Refugees (UNHCR). Moreover, the security sector is also increasingly involved in research on the subject.

With increased international attention and new cooperation initiatives, we are faced with the challenge of ensuring a holistic approach that addresses the interlinked nature of climate change, migration, human rights, humanitarian and protection needs, and co-development instead of focusing exclusively on the scientific aspects of climate change alone. This article will look at recent developments regarding the protection of environmentally displaced persons, focusing in particular on the legal challenges brought about by these changes.

Context: Recent discussions on environmental displacement

Climate change is leading to a clear increase in the frequency and intensity of natural disasters while also affecting the pace and magnitude of slow-onset environmental changes. The impact on population movements is bound to be considerable, with an often-proposed figure of 200 million affected persons over a period of 40 years. Most of the present and foreseen displacement is occurring within national borders, but there are also noteworthy occurrences of people crossing international borders due to these environmental factors.

The slow-onset environmental changes that are predicted and already occurring affect the social and political stability of many countries – especially in the Global South – and have a direct impact on humanitarian, political, developmental, security, and international relations policies. There is a growing realization of the impacts of climate change and, at the same time, a growing acceptance that more complex migration flows have become a structural characteristic of all societies in the North as well as in the South. Indeed, countries that previously were mainly countries of origin for refugees have now also become transit as well as receiving countries.
The issue of protection of persons displaced by slow-onset natural disasters or climate change has become more prominent on the international agenda since the publication of the Foresight Report on Migration and Global Environmental Change and the Nansen Principles on Climate Change and Displacement in 2011. With the support of, among others, the governments of Norway and Switzerland, the Nansen Principles have been developed into the Nansen Initiative, which was launched at the UN High Commissioner for Refugees’ (UNHCR) Executive Committee meeting of October 2012. The International Organization for Migration (IOM) has also contributed to the debate and initiated a program of capacity building for government officials and other relevant actors. Development agencies, such as the World Bank, the Asian Development Bank, the Asian Development Fund, and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), together with the Infectious Disease Research Institute (IDRI) and Sussex and Oxford Universities have been involved in research on the issue. The Geneva meeting of the Global Forum on Migration and Development (GFMD) in 2011 served as an important occasion for advancement of discussion of the issue.

The Hague Process on Refugees and Migration held a “Global Hearing” in June 2012, which aimed to bring together a range of stakeholders to develop a new road map for refugee and migration discussion in the decades to come. The hearing dealt with a number of issues that will be central to improving the response to displacement due to environmental change and called for a variety of measures, including:

- Strengthening protection structures to include people displaced by environmental disasters;
- Exploring the social impact of environmental degradation and the gaps in coping mechanisms for people displaced by such events;
- Supporting the introduction of a climate change dimension into urbanization and development planning;
- Creating an inventory of existing legal provisions so as to propose new legislation to cover gaps in protection for persons displaced as a result of climate change;
- Harmonizing the process of developing domestic legislation on natural disasters and climate change displacement;
- Finding solutions for vulnerable communities in risk situations such as water shortage, flooding, and coastal settings;
- Creating a forum of cities threatened by climate change;
- Including climate change-related migration in the economic integration agenda of regional organizations;
- Standardizing the language used to describe climate change-related migration;
- Informing decision makers about the relationship between climate change, environmental degradation, migration, and refugees using all available communication channels; and
- Introducing the subject of climate change in courses on refugee law and migration at universities and other education channels.

How do we define environmental displacement?

From a legal perspective, there are several issues that need to be clarified. Most importantly, the fundamental issue of what new categories of displacement we are actually faced with, as well as the specific protection needs of such new categories, has not yet been clearly spelled out. Walter Kälin, former Special Representative of the UN Secretary General on Internally
Displaced People and current coordinator of the Nansen Initiative, makes a useful distinction among five scenarios of environmental migration:

- Sudden-onset disasters, such as flooding, windstorms, or mudslides caused by heavy rainfalls;
- Slow-onset environmental degradation caused, inter alia, by rising sea levels, increased salinization of groundwater and soil, long-term effects of recurrent flooding, thawing of permafrost, as well as droughts and desertification;
- So-called “sinking” small island states;
- Areas designated by governments as “high-risk zones too dangerous for human habitation on account of environmental dangers”; and
- Displacement following “unrest seriously disturbing public order, violence or even armed conflict” that “may be triggered, at least partially, by a decrease in essential resources due to climate change.”

In the absence of an international legal framework or treaty, and considering the unlikelihood that such a framework would be negotiated at present, we should first look into what already exists in national legislation, as well as in bilateral agreements and regional instruments.

There is a need to have a basic working definition of “environmentally displaced people” that avoids reference to the concept of refugees. This concept already has an internationally accepted legal definition with rights and obligations attached to it and, furthermore, is strictly linked to the concept of persecution. Different definitions have already been proposed, for example by the IOM. A simple working definition could be: “persons displaced across borders or internally by the effects of climate change and slow-onset natural disasters.”

**Internal or external displacement**

In terms of categories, a distinction needs to be made with respect to internal or external displacement, i.e. whether the displacement involves the crossing of internationally recognized borders. Internal displacement is covered by the UN Guiding Principles on Internal Displacement (1998), recognized by the UN General Assembly as “an important international framework for the protection of internally displaced persons.” The Guiding Principles are also increasingly implemented through national legislations and regional conventions, for instance the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (the Kampala Convention), which entered into force in 2012.

However, specific attention is needed where affected persons are not nationals but, for instance, irregular migrants or asylum seekers. This was recognized as a challenge in Thailand during the last flooding and addressed by the Thai Red Cross, among others. At the time, some of the displaced persons in the Mekong area in Laos chose to migrate to Thailand. Although the extent to which such migration may be seen as temporary or permanent needs to be carefully assessed (current research on the topic is being coordinated by Chulalongkorn University in Bangkok, Thailand), there seems to be a tendency for flooding to happen more and more often and with increasing intensity. As a result, the possibility that such displacement is permanent cannot be excluded. Another example can be found in the Great Lakes Region of Africa – an area where it is often easier to cross international borders than to find refuge in other parts of one’s own country.
Existing national frameworks

For receiving countries, the main legal issue to be considered is under what circumstances persons displaced across borders by the effects of slow-onset natural disasters and climate change should not be expected to return to their country of origin and therefore remain in need of some form of international protection, whether temporary or permanent.

There are cases of external displacement due to slow-onset natural disasters being incorporated into national legal frameworks. Examples of such can be found in:

- The Pacific Access Category of New Zealand: this approach does not identify specific categories of persons but only the region of origin. Used together with development assistance by providing access to labor markets, this approach may facilitate effective responses, as communities in the area of origin can benefit through remittances.
- Sweden and Finland, where the Aliens Act recognizes environmental displacement as a category.
- Temporary protection in domestic US legislation and in an EU directive (a legislative act of the Union that leaves it up to individual member states to decide how to implement the specified goals in domestic legislation). The problem with such mechanisms is their temporary nature – they are relatively straightforward to apply in cases of sudden-onset natural disasters but less applicable to slow-onset natural disasters or climate change.

Bilateral agreements could also be considered relevant, as in the case of the one concluded between Colombia and Spain, which even if does not address the cause of displacement, provides for quotas that can be particularly useful for circular migration.

Moving forward: Developing new frameworks

The development of national legal frameworks to address displacement related to climate change and slow-onset natural disasters would facilitate national responses where governments have direct responsibility for protection of persons in need, even if international assistance may be required. Regional responses could be facilitated through the development of regional coordinated migration management systems, such as the EU’s Global Approach to Migration and Mobility (GAMM) in the EU and the framework under development by the Association of South-East Asian Nations (ASEAN), as well as bilateral and regional arrangements or agreements, such as the Spanish-Colombian agreement or the New Zealand migration regime.

Regional cooperation should also cover strengthening of capacity and support to dedicated research into existing practice and potential remedies that would address displacement in the context of adaptation to climate change and assist in the development of reliable and comparable data collection systems. Such cooperation should be facilitated within existing regional integration programs. The development of national and/or regional legal frameworks would, however, require harmonization and attention to ensure that they are compatible with international norms and standards and to close any gaps that may exist in the protection of persons displaced by climate change or slow-onset natural disasters.
Jurisprudence is another interesting aspect that needs to be explored in more detail. Judiciaries could help in providing the needed jurisprudence, as has been the case for corporations co-responsible in human rights cases. With climate change, the challenge remains the causality nexus – but a collection of relevant cases from which to draw analogies could already be a valuable first step.

Equally, arbitration could help. An interesting example, to my knowledge not yet explored in the current literature on climate change and migration but which could be used as a precedent, is that of Laos and Thailand, where the Supreme Court of Malaysia has been asked to provide legal advice to the other two countries regarding their conflicting interests in the Mekong region after other judicial remedies had been exhausted. The relevance of such an example to the case of climate change and migration could be further explored to assist in the development of adaptation measures, including legal cooperation mechanisms.

Concluding remarks

Research centers and operational humanitarian organizations brought the issue of human migration and displacement to the attention of the UN Framework Convention on Climate Change (UNFCCC) negotiators. Subsequently, the issue was brought into the policy process, for example in the Cancun and Durban climate change conferences. Research, practice, and policy must continue to move forward together in the coming years to explore appropriate measures to address environmentally-induced migration in the context of adaptation to climate change, provide more reliable and comparable data on the numbers and kinds of displacement, and bring together the areas of human rights, migration, development, and the environment.

About the author

Dario Carminati has served with the UNHCR for almost 30 years, mainly in conflict or post conflict situations working on issues closely related to access to basic rights and finding durable solutions to situations of displacement. He has been the UNHCR Representative in five countries, including in two flagship operations, and the Deputy Coordinator for the Special Operation in Former Yugoslavia during the war in Bosnia. He took early retirement from the UN in 2008 to concentrate on teaching activities and capacity building of government officials on refugees, migration, human rights, and humanitarian law. He has been part of several international conferences and training sessions on the issue of climate change and displacement, including the Asia Pacific Climate Change Adaptation Forum in Seoul in March 2013. Since 2010 he is a member and an Advisor at the International Institute for Humanitarian Law (IIHL) and a member of PHAP since 2012.
Notes


2 The Nansen Conference on Climate Change and Displacement in the 21st Century was held in Oslo 6–7 June 2011.

3 For example the Asia-Pacific Training for Policymakers and Practitioners on Migration, Environment, Climate Change and Adaptation, 21–23 March 2013 in Seoul, Republic of Korea.

4 The ADF, GIZ, and the World Bank, among others, foster a research network on climate change policies as well as on adaptation policies.

5 Another relevant forum was the Dhaka climate vulnerable forum in 2011.


8 Referencing the concept of refugees should be avoided in order to steer clear of confusion with the 1951 Refugee Convention linked to the concept of fear of persecution. Such a category of person does currently not exist in the international legal, normative, and institutional framework for protecting and assisting those affected by this form of environmentally induced displacement. In the case of displacement from man-made disasters, such as armed conflicts, it was easier to relate to within the context of persecution and it was therefore included into the larger refugee definition. Having a new international instrument for environmental displacement would be unlikely in the present context. Similarly, a process to develop some form of Guiding Principles could be lengthy and lack an institutional framework. Be that as it may, refugee claims by people affected by climate change may be strengthened if linked to one of the five elements of persecution, as was done, for instance, in a recent case adjudicated by the Office français de protection des réfugiés et apatrides (OFPRA) of a Mauritanian herdsman.

9 The IOM proposes the following definition: “Environmental migrants are persons or groups of persons, who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or chose to do so, either temporarily or permanently, and who move either within their country or abroad”. See IOM (2008), "Migration and Climate Change," IOM Migration Research Series, no. 31.

10 UN General Assembly (2005), A/60/L.1, ¶132.

11 Research coordinated by Prof. Dr. Supang Chantavanich, Director of Asian Research Center for Migration, Institute of Asian Studies and Prof. R. Black, University of Sussex [http://www20100324.chula.ac.th/chulaglobal/index.php/component/content/article/2-latest/84-international-conference-on-the-move-critical-migration-themes-in-aseanq]


13 [http://www.regeringen.se/content/1/c6/06/61/22/bfb61014.pdf]

14 Finland's Aliens Act

15 Within the Asia Pacific Malaria Elimination Network (APMEN), supported by the ADP as well as Governments, a network of academic centres is aiming at supporting such process through the development of local capacity. As for ASEAN itself, bringing climate change and migration under the economic pillar, while maintaining coordination with the two other pillars of economy and culture, will facilitate such a process of increased regional coordination.