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# Climate Change and Social Vulnerability: Improving Global Protection of Forced Migrants and Displaced Persons

Michelle Leighton

## InterSecTions

'Interdisciplinary Security ConnecTions'  
Publication Series of UNU-EHS

No. 9/2011

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*United Nations University  
Institute for Environment  
and Human Security (UNU-EHS)*

*UN Campus  
Hermann-Ehlers-Str. 10  
53113 Bonn, Germany  
Tel.: + 49-228-815-0200  
Fax: + 49-228-815-0299  
e-mail: info@ehs.unu.edu*

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Michelle Leighton

## About the author

**Michelle Leighton, L.L.M., J.D.,** is a US Fulbright Scholar in Kyrgyzstan and Munich Re Foundation (MRF) Chair on Social Vulnerability for the United Nations University Institute for Environment and Human Security (UNU-EHS).

She is affiliated with the University of San Francisco School of Law, and before her Fulbright was Director of Human Rights Programs for the Center for Law and Global Justice and a member of the German Marshall Fund's transatlantic study team on the impacts of climate change on human migration. Ms. Leighton is a specialist in international human rights law, desertification, climate change and migration, and counsels non-profit organizations, government and intergovernmental agencies.

She has served as a consultant on these issues since 1992, advising the United Nations Environment Programme (UNEP), the Secretariat of the United Nations Convention to Combat Desertification and Drought (UNCCD), the Food and Agriculture Organization of the United Nations (FAO), the International Organization for Migration (IOM) and the United States Congressional Commission on Immigration Reform.

Ms. Leighton teaches courses on International Law, Human Rights, Sustainable Development, and Corporate Accountability. She has taught at the Kyrgyz Academy of Law in Bishkek, East China University of Politics and Law, Shanghai, UC Berkeley's School of Law, the University of San Francisco, Golden Gate University, and has served as Acting Dean of John F. Kennedy University Law School.

She has authored chapters for books, United Nations reports and articles for legal journals. She recently authored a chapter in IOM's "Migration, Environment, and Climate Change: Assessing the Evidence" (2009), and her chapter on Drought, Desertification and Migration will be published in UNESCO's book on Migration, Environment and Climate Change this year.

She received her LL.M. degree from the London School of Economics and Political Science, J.D. from the Golden Gate University Law School with honours, and a BA from the University of California at Davis.

In 1989, Ms. Leighton co-founded the non-profit organization the Natural Heritage Institute, [www.n-h-i.org](http://www.n-h-i.org), serving as senior attorney for 15 years.

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## Foreword

Human Mobility is not a new phenomenon. However, with changing environment and other climate-related extreme events the lives and livelihoods of the people are under larger threat than ever before. On the one hand, when climate change is considered as a geophysical phenomena, the fact that it is threatening the social fabrics of our human societies mostly from the vulnerable segments makes it a socioecological problem. The scientific and political limelight, hence on climate change and its physical, biological and social consequences is on increase.

Since the potential impact of climate change may also raise human security concerns, we at the United Nations University Institute for Environment and Human Security (UNU-EHS) are interested in the interdisciplinary research approach to understand the complex relationship of climate change and mobility. Our research findings in Tuvalu, the Mekong delta in Vietnam, Bangladesh, Alaska and the US Gulf Coast not only provide us with the evidences that (forced) displacement is already happening, but also point out to the diversity of geographical and socio-economic settings of its occurrence. However, aspects of the complexity of protection issues for environmental migrants and analysis of current protection regimes are still under scholarly debate and focus of the international research community.

Our 2010 Summer Academy entitled "Protecting Environmental Migrants: Creating New Policy and Institutional Frameworks", aimed to develop policy options for decision makers to better address the needs of such environmentally induced migrants. Prof. Leighton takes this discussion further in this paper and presents recommendations on new policy approaches to ensure more consistent, global protection of persons displaced or forced to migrate.

We are grateful to Prof. Leighton for highlighting the typology of most vulnerable climate disaster victims and the challenges faced by them. In addition, considering how the existing gaps in international law concerning climate victims 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 in their development of migration management policy.



Dr Jakob Rhyner  
Director UNU-EHS

## Foreword

Today there are no doubts in the scientific community about the phenomena of global climate change which is responsible for profound changes in the global environment. A changed global climate leads to an increased probability of extreme weather events such as severe windstorms, droughts or floods. Year for year we record more of these events and our statistics are in line with climate change projections of the Intergovernmental Panel on Climate Change (IPCC). Events are increasing in number and intensity. The occurrence of events, rapid-onset or slow-onset, forces people to leave their habitats to save their lives and is furthermore often leading to an immediate loss of livelihood resources in the affected regions. Another implication of a changing global climate is the aggravation of the degradation of natural resources, impacts on e.g. desertification or groundwater can be huge. Slow-onset events will increase the vulnerability of households, stress livelihood resources and can trigger migration. Migration has been an adaptive strategy to cope with changing livelihood resources since the beginning of humankind. However, the world today is entering a new phase: the increasing world population and decreasing amount of habitable land combined with climate change will lead to new dimensions in migration. Vulnerable population which decides to leave their territories either stay within the borders of their home country as internally displaced persons (IDPs) or cross international borders in this case they are categorized as international migrants.

Legal rules and definitions are crucial to protect those on a move from discrimination, marginalization, other abuses and criminalization. The push and pull factors for migrants are complex, in many cases the environment factor is one element of many. Moving due to environmental reasons is so far not uniformly defined, nor does a legal framework exist to protect the rights of environmental induced migrants. These gaps in the protection of the affected individuals are considered as serious issues of human security and implicate human rights and humanitarian norms. They furthermore present key challenges for governments affected by international migration or internal movements, and international institutions and organizations.

In this issue of InterSecTions Michelle Leighton takes this theme up and discusses the various ambiguities and gaps in the present international law to protect the rights of those who are forced to move due to environmental reasons. Prof. Leighton furthermore elaborates how these gaps need to be addressed and offers recommendations on new policy approaches to improve protection of environmental induced migrants. Although there seems to be time, the topic is burning. We will only come to sustainable solutions in the future if we tackle these important issues today.



Thomas Loster  
Chairman of the Munich Re Foundation

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### User guide

#### **The margins of the InterSecTions series – A service for the cursory reader**

*The InterSections Series means to provide direct, knowledge-based recommendations as basis for well-founded decisions.*

*Our InterSecTions Series provides authoritative research and information for policy-makers and decision makers; additionally we provide a service for the cursory reader.*

*To receive the full message of the respective page one has to read the quotations provided in the margins. In those margins the reader will find thought-provoking, but well researched policy recommendations and the quintessence of the page.*

*Additionally, the quotations are placed directly beside the respective paragraph, so if the reader wishes to find out more, the quotations can easily be found in the text and the reading can be taken from there.*

*The editorial team of UNU-EHS hopes this format will be well received. However, any comments and/or recommendations of improvements are very welcome.*



*Populations already vulnerable to conflict, environmental scarcity, cultural fragmentation or economic stress will bear the greatest impact as climate disasters worsen.*

## Executive 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 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. Populations already vulnerable to conflict, environmental scarcity, cultural fragmentation or economic stress will bear the greatest impact as climate disasters worsen. They are less able to withstand climate shocks or build resilience. Moreover, the potential indirect impacts from disaster response strategies or climate adaptation programmes, such as large-scale relocation of populations, can contribute to human vulnerability. Historically, resettlement programmes have not sustained community livelihoods or remained sensitive to religious, ethnic and cultural needs. 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 labour migration as a means of survival, or to help build their resilience to future disaster. These gaps in the protection of climate victims displaced or forced to migrate pose serious issues of human security and implicate human rights and humanitarian norms.

Legal standards, normative frameworks and guidelines on best practice are important tools that can both support adaptive community development in a climate-changed world and help governments to more humanely respond and protect socially vulnerable groups who have relocated or been displaced by various types of climate disasters. This InterSecTions discusses various ambiguities and gaps in international law which can leave climate victims vulnerable to abuse. It highlights the types of climate disaster victims most in need and considers how 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 in their development of migration management policy. It concludes by presenting recommendations on new policy approaches to ensure more consistent, global protection of persons displaced or forced to migrate.

## Introduction

*“Climate change is often viewed as a “threat multiplier”, exacerbating threats caused by persistent poverty, weak institutions for resource management and conflict resolution, fault lines and a history of mistrust between communities and nations, and inadequate access to information or resources.”*

Report of the United Nations Secretary-General<sup>1</sup>

Scientists have observed signs of long-term alterations in world climate patterns for some time, and 2010 was no exception. Closing the decade as the warmest on record, 2010 witnessed a myriad of calamities reported by the World Meteorological Organization, from heat waves and drought in some locations to torrential storms and cyclones in others.<sup>2</sup> The worst drought in four decades hit the northern and western Amazon. Heat waves in Russia led to massive forest fires, while flash floods and widespread flooding moved across parts of Asia and Central Europe – Pakistan bearing some of the most destructive consequences with millions of people homeless and \$9.5 billion in

damage.<sup>3</sup> On 5 August an ice mass of 251 km<sup>2</sup> broke off the Petermann Glacier in north-west Greenland, the largest ice rupture in the Arctic since 1962.<sup>4</sup>

Glacier melt in Asia continues to concern many mountain and lowland communities because “changes in the intensity and timing of rains, added to variable snow and glacier melt will increasingly challenge food security and the livelihoods of the most vulnerable under various climate change scenarios.”<sup>5</sup> Between 1955 and 1999, some glaciers in Kyrgyzstan and the northern Tien Shan bordering China, for example, lost between 15 and 30 per cent of their surface area.<sup>6</sup>

As climate disasters increase, social vulnerability is predicted to follow.<sup>7</sup> Climate disasters remain heavily concentrated in poor countries, affecting those already battling food insecurity, water shortages, sanitation and infrastructure deficits, rising unemployment and diminished access to medicines and health care. Of the 262 million people reportedly impacted by climate disasters from 2000 to 2004, 98 per cent lived in the developing world.<sup>8</sup>

This dangerous trend is increasing. Over the past two decades the number of recorded disasters has doubled from 200 to 400. The frequency of floods leading to disaster has grown by four times (from 50 to 200). Between 1991 and 2005, weather-related disasters had an impact on 3.4 billion people, and nearly 1,000,000 people died.<sup>9</sup> Hampering the ability of millions to rebuild in these countries, economic losses were nearly a trillion US dollars. In extremely vulnerable countries, the financial loss from damages due to a single event can exceed a country's annual gross domestic product (GDP). This happened to Grenada in 2004 when Hurricane Ivan led to financial losses of 2.5 times the country's GDP, or 900 million US dollars.<sup>10</sup> Years later, Grenada is still struggling to rebuild its economy to pre-Ivan levels.

As our climate becomes more variable, erratic, or perhaps permanently changes, experts predict a number of scenarios in which people could be displaced or forced to migrate due to extreme weather events related to the climate change phenomenon.<sup>11</sup> Hurricanes and floods, generally rapid-onset events, may destroy homes, property, infrastructure and employment, and cause large-scale human displacement. Drought and desertification, slower-onset events, can become serious environmental and human disasters over longer periods of time. Droughts already affect millions of people worldwide, impairing and diminishing the capacity for food production, sustainable development and human health. 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 involuntary movement of people in response to climate disasters, whether of the rapid-onset or slow-onset variety, raises serious human security issues and implicates human rights and humanitarian norms. Climate disasters do not just affect those exposed to the disaster, but can engender longer-term human suffering among society's vulnerable groups. Those exposed to disaster in developing countries have the least means to replace damaged property and fewer resources to adapt to family, home, and incomes losses. Those seeking even temporary shelter and employment elsewhere may face even more precarious circumstances.

“Regardless of the cause, displaced people, disaster victims, and refugees face a complex series of events involving dislocation; homelessness; unemployment; the

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dismantling of families and communities; adaptive stresses; loss of privacy; political marginalization; a decrease in mental and physical health status; and the daunting challenge of reconstituting one's livelihood, family and community." (Oliver-Smith 2009).

The potential impact from the implementation of disaster response strategies or climate adaptation programmes may also raise human rights concerns. Some migration in anticipation of climate-related disaster may be voluntary, such as when migration is used as a coping strategy in times of prolonged drought, and may in fact be beneficial to the home community. Strategies that only recognize migration as a failure of adaptation could be harmful to building community resilience, as discussed further in the following sections.

In other contexts, governments may seek to rely on resettlement as a part of adaptation planning. Historical experience of government resettlement programmes demonstrates that most have been flawed at best and, at worst, have lacked sensitivity to community cultural, religious and ethnic needs and have failed to create sustained livelihoods. As a result, many communities became more vulnerable. There are now a series of best practices being developed but no international standards or norms.

While some standards exist for internally displaced persons (IDPs), there remain many uncertainties in the law and gaps in the legal standards for 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 security or to otherwise engage in labour 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.

Legal standards, normative frameworks and guidelines are important tools that can both support sustainable community development and help governments to more humanely respond to disasters. They can ensure that policies incorporate best practices as they emerge to better protect socially vulnerable groups who have relocated or been displaced by various types of climate disasters. They can also ensure more rapid global consistency and harmonization where appropriate for all affected groups wherever they remain or move.

This InterSecTions 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 InterSecTions 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 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 new avenues for policy reform that decision makers should consider in pursuing climate adaptation programmes.

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## International legal standards

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 are dynamic and evolve 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 of 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>12</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>13</sup> Under this Framework, governments recognize that developing countries are more vulnerable

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to disasters and need to undertake preventative measures to reduce vulnerability within disaster risk reduction programmes, 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 programmes for displaced persons do not increase risk and vulnerability to hazards. Though the government in whose territory disaster occurs has the primary obligation to protect their 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>14</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>15</sup>

International human rights law reinforces the humanitarian obligation of states to cooperate and assist governments less able to fulfil 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>16</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>17</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 attract immediate international attention, but the need for protection, for a new survival strategy, for jobs outside the drought-affected area, e.g., via labour 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. Millions of people are suffering food insecurity, water scarcity and loss of employment. This has led to increased migration throughout the region.<sup>18</sup> 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>19</sup> The Norwegian Refugee Council also reported similar international border crossings during the 2004 drought in Burundi, where drought-affected migrants moved to Rwanda.<sup>20</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>21</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>22</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>23</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>24</sup> For example, drought, water scarcity and food insecurity are currently the most significant climate-related hazards contributing to conflict and mass displacement in the Horn of Africa. The competition for scarce land and

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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 favour of seeking employment, even if it means they remain undocumented. For example, in East Africa 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>25</sup> This has led to an increase in undocumented migrants. Without clarification and perhaps new standards, international refugee norms are of diminished utility in protecting persons forced to move because of combined humanitarian crises.

International agencies, such as 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 labour migration and access to water and pasturelands as a complement or alternative to traditional refugee camps or asylum. Yet, there are no major 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.

International migrants who 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.<sup>26</sup>

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 labour 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 labour 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 labour 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 above or the Cartagena Declaration on Refugees.<sup>27</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 grant 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 few circumstances where disasters occurred in Montserrat, Nicaragua and Honduras. It applies only to those in the US at the time of disaster and allows for 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>28</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>29</sup>

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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. Predictions of thermal expansion of the oceans and accelerated melting of the polar ice-caps is expected to lead to sea level rise of perhaps one metre by the century's end.<sup>30</sup> Many small island states within a metre of sea level could sink. Even before this time, however, low-lying island coastal regions are expected to be ravaged by increased storm surges that will impair agricultural or fisheries industries, and force people to higher ground.<sup>31</sup> These impacts are already being reported.<sup>32</sup>

These persons are covered by the same human rights principles pertaining to migrants discussed above but are not as yet viewed by governments as "refugees". However, these victims may become "stateless" persons, should their homelands be inhabitable due to permanent flooding or sinking 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 or territory. 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 harm in the form of inhuman or degrading treatment of an applicant in the country of origin.<sup>33</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 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>34</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

*These victims may become "stateless" persons, should their homelands be inhabitable due to permanent flooding or sinking and the provisions of various treaties and international instruments relevant to stateless persons may apply.*

country, to have their family members remain together or be reunited if separated. They have the right to 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>35</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>36</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>37</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.”<sup>38</sup> 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 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 foreseeable. 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>39</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>40</sup>

### **Key issues concerning 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

*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 foreseeable.*

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.

### **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.
- *IDPs who move voluntarily:* The IDP guidelines require that victims 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

*Humanitarian laws and the human rights principles adopted for disaster victims may be viewed as “soft law” principles.*

context. The Kampala convention, once in force, may remedy this for IDPs 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 Kolmannskog (2009), “[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 United Nations 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.

### **Closing 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 not feasible or not 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>41</sup> The Special Representative on IDPs of the United Nations Secretary-General has suggested similar recommendations, 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>42</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>43</sup> IOM has also recommended governments

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address the normative gaps in protection of migrants, and facilitate a holistic approach to research and policy development.<sup>44</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 requested that the United Nations Framework Convention on Climate Change (UNFCCC) consider the issue in the climate negotiations leading up to negotiations in Copenhagen.<sup>45</sup> To some extent the issue was considered in side-events during that negotiating session and again in similar meetings during the Conference of the Parties (COP) in Cancun.<sup>46</sup> The Outcome Document resulting from COP 16 in Cancun recognizes the need to consider human displacement and migration in adaptation planning, stating in paragraph 14 (f):

*“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 national, regional and international levels;...”*

The High Commissioner for Human Rights has indicated that climate change 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>47</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>48</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 recommendations will require more political and financial support.

## Conclusion

The number of climate disasters is rising. It is now better understood that these climatic events will have very severe impact on communities already struggling with the challenges of poverty, water scarcity, land degradation, food security, housing, ethnic strife, discrimination, gender inequities and health problems. Most recognize that climate change is a threat multiplier: whatever threats the socially vulnerable face today, they will experience in much deeper and greater doses as more erratic climatic events unfold.

General human rights and humanitarian principles provide fundamental rights to all persons, and states have the duty to protect those in their territories from serious harms that are foreseeable. With the growing scientific evidence of more severe

*General human rights and humanitarian principles provide fundamental rights to all persons, and states have the duty to protect those in their territories from serious harms that are foreseeable.*

disasters to come, governments have what may be 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 IDPs, 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 more precarious legal position, even if they view themselves as having little choice but to engage in labour 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 in earnest to clarify the rights of affected climate-induced migrants and the responsibilities of host countries and countries of origin in their treatment of persons migrating from both rapid and slow-onset climate disasters where movement is motivated by a need for basic survival. A more robust humanitarian approach would include the adoption of migration policies sensitive to whether persons who cross borders are threatened by climate disasters in their home community and have a need for international protection: whether they are unable to sustain themselves or their families in their communities or origin, the social, economic and environmental barriers that exist to their movement elsewhere within their home country, and whether their own government cannot offer assistance. Policies should clarify whether and on what grounds the need presented may be considered an entitlement or necessitate some form of governmental protection, particularly by countries most able to provide assistance.<sup>49</sup>

*Governments should begin to clarify the rights of affected climate-induced migrants and the responsibilities of host countries and countries of origin in their treatment of persons migrating from both rapid and slow-onset climate disasters.*



A number of thoughtful policy reflections on this topic recently emerged from the UNU-EHS and MRF Summer Academy that the author had the privilege to Chair.<sup>50</sup> These included a number of conclusions and recommendations worthy of note.<sup>51</sup>

*Global adaptation funding should incentivize cooperation among neighbouring countries for joint regional projects in this area.*

- **Develop adaptation strategies on a regional level that include cross-border resource management and migration as a potential component of adaptation.** Land formation, land use and other biophysical features that span borders may be determinative of adaptation needs. Collaborative management may be an effective measure to address climate change impacts. Successful resource management is often influenced by cross-border social, cultural and economic linkages. Seasonal migration across neighbouring borders may already be playing a role in affecting the natural resource base and resilience of communities to withstand future climate shocks. Understanding the benefits or challenges of migration not as a failure of adaptation but as a potential component development will be important to effective adaptation planning, and may require bilateral or regional cooperation. Institutional support and financing for such cooperation is a critical challenge. Global adaptation funding should therefore incentivize cooperation among neighbouring countries for joint regional projects in this area.
- **Establish Migration and Displacement Vulnerability Assessments (“MDVA”).** Governments should undertake MDVAs to assist in identifying the role of migration as a positive or negative influence on adaptation. These assessments could be developed with the assistance of international agencies, such as OCHA, which already monitors potential humanitarian situations. Vulnerability assessments could include a number of criteria, such as environmental stressors, income patterns and livelihood base that are important for effective government planning and migration management.
- **Provide opportunities to the most vulnerable climate-affected communities for migration within a broader co-development scheme.** Where appropriate and feasible, states should consider adopting circular labour migration schemes that incorporate development programmes and the investment of remittances in communities vulnerable to climate disasters. These programmes could offer community members the opportunity to work in another country and to learn skills that could help to build resilience within their community upon their return home. This scheme should build upon and scale-up existing labour-migration models to cover a larger segment of vulnerable populations. A useful model is the Colombian Temporary and Circular Labor Migration Scheme (TCLM)<sup>52</sup>. Under this programme, Colombians facing recurring natural disasters are offered employment opportunities, business training and education in Spain, and can send remittances home while their community recuperates. The scheme includes a co-development component in which people who do not migrate are given social and financial support. Essentially, this is a co-development scheme which views migrants as agents for development.
- **Establish a Temporary Relocation Scheme (“TRS”) for climate-displaced migrants where migration or displacement across borders will be inevitable.** Governments should consider establishing a TRS mechanism to allow individuals to apply for legal temporary status in a destination country while still in their home country if (1) they are displaced by certain ex-

treme rapid- and/or slow-onset climate disasters (e.g., high-impact storms and prolonged droughts); and (2) they have no opportunity to relocate elsewhere in their country. States could consider establishing an open-ended scheme or one based on a quota for such disaster victims. Any scheme established should include an appropriate framework for duration, employment and assistance. This mechanism could serve to reduce irregular migration by providing temporary legal avenues for those most critically affected. It could also be an important mechanism to assist countries with potential mass displacement across borders from unanticipated natural calamities.

- **Extend the stay of deportation for migrants or provide TPS for those who cannot return to their home country.** Governments should clarify national law to ensure that a stay of deportation is possible for those living in a host country who cannot safely return to their home country and where no internal flight alternative is possible, or survival is threatened upon return due to their vulnerability. In this context, the extended stay of deportation would be consistent with international law, granting limited rights and legal status where return would jeopardize a person's survival.<sup>53</sup> Supporting evidence of the nature of disaster could be provided through a review of national MDVAs or similar evaluations, referred to above. A certification process could also be established to verify disaster threats and ensure that receiving countries have access to such information in determining legal status.

Though the international community and perhaps individual nations are not ready to enshrine principles on climate-induced migration into a more permanent international legal instrument, such as a treaty, more serious and thoughtful normative development is warranted. Equity and accountability among nations most responsible for climate change is not the only reason to harness more robust standards. Legal principles, normative frameworks and guidelines on best practice are important tools that can both support adaptive community development in a climate-changed world and help governments to more humanely respond to socially vulnerable groups who have the added burden of being displaced, relocated or, in order to survive in dignity, forced to migrate.

*Any scheme established should include an appropriate framework for duration, employment and assistance.*



## Endnotes

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<sup>3</sup> Reuters (13 October 2010): <<http://uk.reuters.com/article/2010/10/13/uk-pakistan-floods-damages-idUKTRE69C18P20101013>>.

<sup>4</sup> World Meteorological Organization (2011): *Statement on the Status of the Global Climate in 2010*, Geneva.

<sup>5</sup> Steiner, A. (2010): In: Kaltenborn, B. P.; Nellesmann, C.; Vistnes, I. I. (Eds): *High Mountain Glaciers and Climate Change – Challenges to Human Livelihoods and Adaptation*. United Nations Environment Programme, GRID-Arendal, [www.grida.no](http://www.grida.no).

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<sup>7</sup> Stern, N. (2007): *The Economics of Climate Change: The Stern Review*. Cambridge University Press.

<sup>8</sup> United Nations Development Program (2009): *Fighting Climate Change: Human Solidarity in a Divided World. Human Development Report 2007/2008*.

<sup>9</sup> Informal Task Force on Climate Change of the Inter-Agency Standing Committee (IASC) and International Strategy for Disaster Reduction. IASC Submission to the UNFCCC Ad hoc Working Group on Long Term Cooperative Action (2008).

<sup>10</sup> *Ibid.*

<sup>11</sup> This phenomenon is explained in detailed papers published by the IPCC Fourth Assessment Report: IPCC (2007): *Climate Change Impacts, Adaptation, Vulnerability. Working Group II Contribution to the Intergovernmental Panel on Climate Change Fourth Assessment Report Summary for Policymakers*.

<sup>12</sup> Report of the Representative of the Secretary-General on the Human Rights of Internally Displaced persons, Walter Kalin, Addendum (2009): *Protection of Internally Displaced Persons in Situations of Natural Disasters*. 6, A/HRC/10/13/Add.1.

<sup>13</sup> Final Report of the World Conference on Disaster Reduction. UN Doc. A/CONF.206/6 (2005).

<sup>14</sup> Protecting Persons Affected by Natural Disasters, IASC Guidelines (9 June 9 2006).

<sup>15</sup> Developed by the International Federation of the Red Cross and Red Crescent Societies. 30IC/07/R4 annex (2007).

<sup>16</sup> General Comment 14, Right to Health, International Committee on Economic, Social and Cultural Rights.

<sup>17</sup> Report of the United Nations High Commissioner for Human Rights, *supra* note 11, at 20.

<sup>18</sup> In Pursuit of the Southern Dream: Victims of Necessity, April 2009 (IOM, Geneva).

<sup>19</sup> OCHA, Reliefweb database, has documented the crises; its findings and related research can be found at <<http://www.reliefweb.int/rw/rwb.nsf/db900sid/HHOO-7YZUNM?OpenDocument&rc=1&emid=ACOS-635NZE>>.

<sup>20</sup> Norwegian Refugee Council (2009): *Climate Changed: People Displaced*.

<sup>21</sup> UNHCR (2009): *Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective*. at 8.

<sup>22</sup> See, e.g., UNHCR: 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 (20 May 2009).

<sup>23</sup> Cartagena Declaration on Refugees, Section III(3), adopted 1984.

<sup>24</sup> UNHCR (2009): *Climate Change, Natural Disasters and Human Displacement: A UNHCR Perspective*. at 8.

<sup>25</sup> IRIN, UN Office for Coordination of Humanitarian Affairs, Feb. 2, 2009.

<sup>26</sup> IRIN, UN Office for Coordination of Humanitarian Affairs, Feb. 2, 2009.

<sup>27</sup> Cartagena Declaration on Refugees, Section III(3), adopted 1984.

<sup>28</sup> See discussion of country TPS provisions in OHCHR, "Forced Displacement in the Context of Climate Change: Challenges for States under International Law, at p. 12, (May, 2009), <<http://www.unhcr.org/4a1e4d8c2.html>> .

<sup>29</sup> Council Directive 2001/55, 2001 O.J. (L.212) 12 E.C.

<sup>30</sup> IPCC (2007): *Climate Change Impacts, Adaptation, Vulnerability. Working Group II Contribution to the Intergovernmental Panel on Climate Change Fourth Assessment Report Summary for Policymakers*.

<sup>31</sup> Thornton, F. (2011): Regional Labour Migration as Adaptation to Climate Change: Options in the Pacific. In: Leighton, M.; Shen, X; Warner, K. (Eds.): *Climate Change and Migration: Rethinking Policies for Adaptation and Disaster Risk Reduction*. SOURCE No. 15/2011. UNU-EHS, Bonn.

<sup>32</sup> See, e.g., Joint Submission 1 – submission by submitted by Earthjustice\*, Oakland (USA); Greenpeace International, Amsterdam (The Netherlands); Human Rights Advocates (USA); 350.org, Palau UPR Review by United Nations Human Rights Council, referenced in UNGA Doc. A/HRC/WG.6/11/PLW/3 (2-13 May 2011).

<sup>33</sup> Art 15(b), Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, Official Journal L 304 , 30/09/2004 P. 0012 - 0023. For more detailed discussion see, A. Lopez, The Protection of Environmentally-Displaced Persons in International Law, 37 *Envtl. L.* 365 (2007).

<sup>34</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.

<sup>35</sup> See also, Report of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, at 19, UN Doc. A/HRC/10/61 (15 Jan. 2009).

<sup>36</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>37</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>38</sup> U.N.GA Doc. A/RES/60/1, 2005.

<sup>39</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 (15 Jan. 2009).

<sup>40</sup> *Budayeva and others v. Russia*, Applications nos. 153339/02, 21166/02, 20058/02, European Court of Human Rights judgment of 20 March 2008.

<sup>41</sup> UNHCR: Forced Displacement in the Context of Climate Change, *supra* note 15.

<sup>42</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>43</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>44</sup> IOM (2009): *Migration, Climate Change and the Environment*. IOM Policy Brief; see also discussion and publications at <<http://www.iom.int/jahia/Jahia/activities/by-theme/migration-climate-change-environmental-degradation>>.

<sup>45</sup> See, e.g., *supra* note 11.

<sup>46</sup> See, e.g., <<http://www.iom.int/jahia/Jahia/activities/by-theme/migration-climate-change-environmental-degradation/copenhagen-and-beyond/iom-unfccc-conference-cancun/cache/offonce/>>.

<sup>47</sup> See Report of High Commissioner of Human Rights, at 20, *supra* note 9.

<sup>48</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>49</sup> Id. at 5. <http://www.irinnews.org/report.aspx?ReportID=82683>.

<sup>50</sup> See UNU-EHS web portal for details of the July 2010 Summer Academy on Policy and Institutional Frameworks for Better Protection of Environmental Migrants: <<http://www.ehs.unu.edu/article/read/2010-summer-academy-recommends-new-policy-and-institutional>>.

<sup>51</sup> Leighton, M.; Shen, X.; Warner, K. (Eds.) (2011): *Climate Change and Migration: Rethinking Policies for Adaptation and Disaster Risk Reduction*. SOURCE No. 15/2011. UNU-EHS, Bonn.

<sup>52</sup> De Moor, N. (2011): Temporary Labour Migration for Victims of Natural Disasters: The Case of Columbia. In: Leighton, M.; Shen, X.; Warner, K. (Eds.) (2011): *Climate Change and Migration: Rethinking Policies for Adaptation and Disaster Risk Reduction*. SOURCE No. 15/2011. UNU-EHS, Bonn

<sup>53</sup> International human rights law serves as the basis of criteria where the return of a person to desperate conditions would breach the right to life or amount to inhuman or degrading treatment. In certain cases, return may arguably be prohibited, for example where land is uninhabitable and cannot support life, or there is little possibility of survival. The InterAmerican Commission on Human Rights has stated: The realization of the right to life, and to physical security and integrity is necessarily related to and in some ways dependent upon one's physical environment. Accordingly, where environmental contamination and degradation pose a persistent threat to human life and health, the foregoing rights are implicated. Report on the Human Rights Situation in Ecuador OEA/Ser.L/V/II.96Ch 8, Yanomami case (case 7615 of 5 March 1985), referenced in the Annual Report of the Inter-American Commission on Human Rights, 1984–85.

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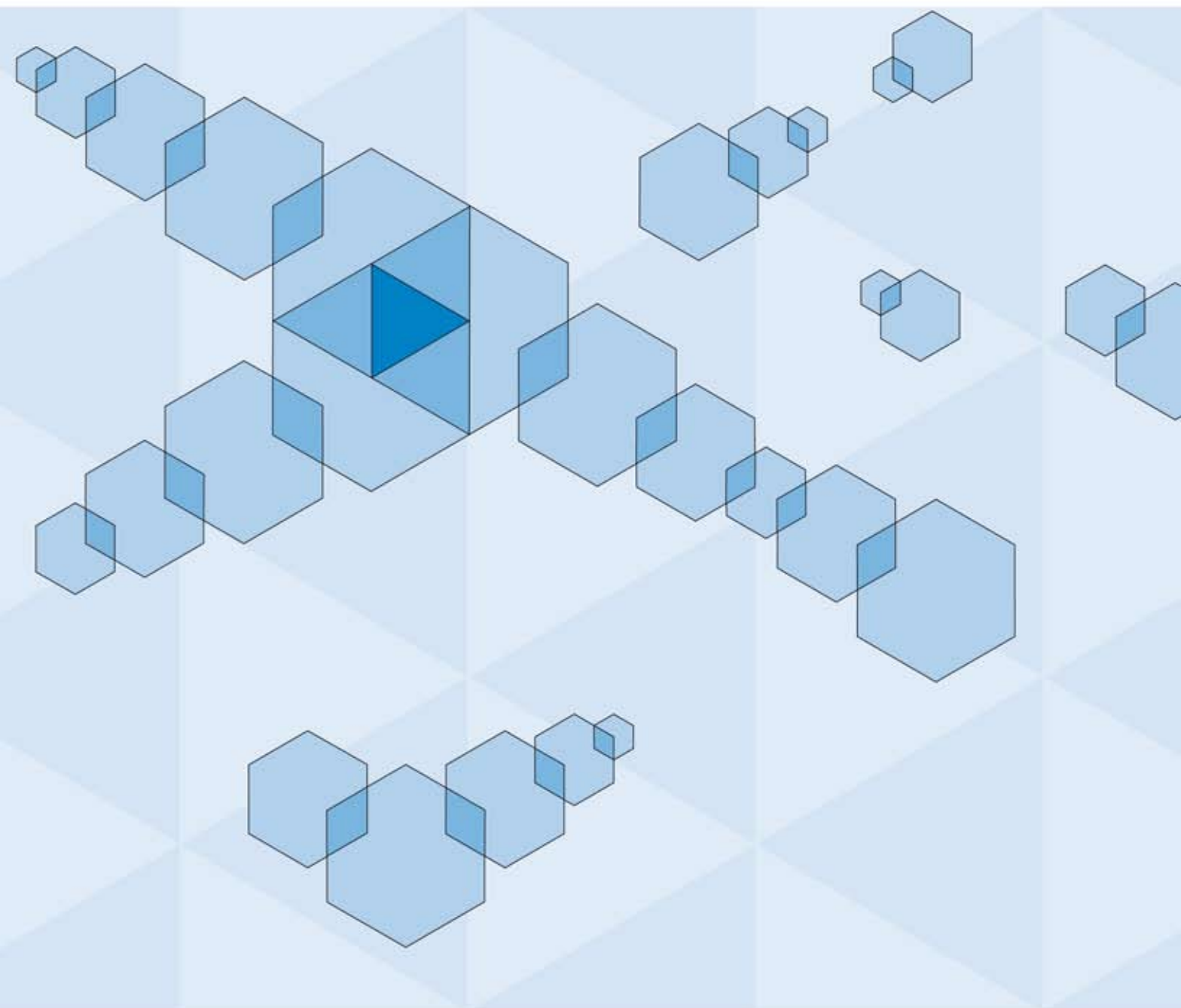
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Institute for Environment and Human Security (UNU-EHS)  
UN Campus  
Hermann-Ehlers-Str. 10  
53113 Bonn, Germany

Tel: +49 228 815-0200  
Fax: +49 228 815-0299  
E-mail: [info@ehs.unu.edu](mailto:info@ehs.unu.edu)  
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