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## HUMAN RIGHTS, CLIMATE CHANGE, ENVIRONMENTAL DEGRADATION AND MIGRATION: A NEW PARADIGM

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### Executive Summary<sup>1</sup>

Climate change and environmental degradation are predicted to displace millions of people in the coming years, either directly or indirectly. The international community has recognized the gravity of the situation, and today's international legal framework provides a degree of protection to certain environmental migrants.

Yet there is little consensus on the definition of such migrants, in large part because it is difficult to ascertain the influence of environmental factors, such as environmental degradation and climate change, on migration. However, a precise definition of this segment of the world's population is necessary to facilitate recognition of their vulnerability and to ensure protection of their rights. In the absence of a fixed definition, gaps persist in the existing legal framework, which in turn create difficulties in implementation.

This issue in brief emphasizes the need to defend the rights of migrants whose movement is induced by environmental degradation or climate change, particularly in the highly vulnerable Asia-Pacific region, by pursuing an integrated approach to climate change that incorporates rights-based strategies. The issue in brief evaluates the current human rights framework; identifies gaps both in the legal framework and in implementation; and then reviews different legal options available to the international community. Finally, the brief makes recommendations on how to strengthen the "soft law" approach as an interim step before there is broad global consensus on a possible binding framework to protect the rights of environmental migrants.



## I. Introduction

Human migration – voluntary and forced, short- and long-term, within and across borders – will possibly be one of the greatest impacts of climate change. While the concept of environmental degradation and climate change-induced migration is relatively new (see box 1), it is now evident that there are already large numbers of people on the move. In 2012 alone over 29 million persons were displaced worldwide by extreme weather events (Internal Displacement Monitoring Centre, 2013). Until very recently the international community and experts were focused primarily on the scientific aspects of climate change, principally its effects on the environment and ways to mitigate its negative impacts. Much less time and effort had been spent on looking at the humanitarian aspects of climate change, including the impact on population mobility and on human rights. An integrated approach to climate change demands that human rights and adaptation strategies be pursued hand in hand (Leckie, 2008). This issue in brief reviews the extent to which migrants whose movements are induced by environmental degradation or climate change are protected under the existing international legal framework, identifies gaps and limitations and offers a potential solution. It also touches upon the situation in Asia and the Pacific, looking specifically at the legal challenges posed by the submergence of small island states and other climate-vulnerable countries, such as Bangladesh.

### Box 1: Key Definitions

#### Climate change

A change in the climate that persists for decades or longer arising from either natural causes or human activity (Source: Intergovernmental Panel on Climate Change, 1990).

#### Environmental degradation

The reduction of the capacity of the environment to meet social and ecological objectives and needs (Source: UNISDR Terminology on Disaster Risk Reduction, 2009).

Source: IOM, 2012.

It is predicted that millions of people will be displaced by environmental and climate factors such as riverbank and coastal erosion, floods, cyclones, salinity intrusion and drought. Current predictions of the number of people who will be displaced vary enormously – from tens of thousands to well into the millions. While the exact number of people who will be displaced – directly or indirectly – is uncertain,

it is clear that climate change will contribute both to increased temporary displacement and longer-term migration (Kirsch-Wood, et al., 2008). Direct displacement will be caused by sudden and slow onset events such as cyclones, floods, droughts, rising sea levels, coastal and river bank erosion and so on. Indirect displacement will be caused by the cascade effects of these events, such as increased environmental degradation in places of destination for environmental migrants and displaced populations, rapid and unplanned urbanization and increased competition for basic resources.

Displacement is a form of forced migration (IOM, 2011), wherein people have been dislocated from their places of residences as a consequence of external events. While there has always been a link between environmental factors and human mobility, it is important to note that it will not always be possible to isolate climate change as a cause of displacement or migration. There are a myriad of factors in a person’s life, which may motivate him or her to migrate, and the degree of force will vary (Kolmannskog, 2008: 11). Additionally, not all migration related to environmental and climate factors will be forced. Migration is one of the oldest coping strategies, and short-term voluntary migration can not only save lives but also help to ease pressure on ecologically vulnerable places.

There has been growing debate over whether migrants whose movement has been induced by climate change and environmental degradation are a “new” group in need of protection (Kirsch-Wood, et al., 2008). This has contributed to increasing debates over terminology and the need for definition. Some, including the small island state of the Maldives (Biermann and Boas, 2008), argue that those displaced by environmental and climate factors should be included under the 1951 Refugee Convention, while others like the Environmental Justice Foundation (EJF, 2012) call for a completely new legal instrument. The suggestion that those displaced by environmental and climate factors be considered “refugees” is seen as problematic, as the case of “persecution” cannot be established. This is because environmental factors are non-discriminatory, i.e. affecting all groups and individuals alike and not on account of any specific characteristics that the group or individual might possess. Furthermore, there are concerns voiced by the Office of the United Nations High Commissioner for Refugees (UNHCR) (McAdam, 2011; Glahn, undated) amongst others, that the inclusion of this group of people under the 1951 Refugee Convention

might lead to decreased protection for “refugees” (as defined by the Convention).

In the absence of consensus, a multitude of terms – such as “climate/environmental refugees,” “environmental displacees,” “environmental/climate migrants,” “climate-change-induced migrants” and so on – are being used interchangeably to refer to such affected populations. Without a precise definition, adequate assistance and recognition of the needs of this vulnerable segment of the population will not be forthcoming. Further, lack of a definition also impedes implementation of existing rights that would otherwise provide a certain degree of protection.

In 2007, the International Organization for Migration (IOM) developed a working definition of environmental migrants in order to facilitate adequate policy responses and coping mechanisms (see box 2) (IOM, 2007). The definition is possibly the most comprehensive one to be found but the exclusion of “climate change” implies that it does not endow adequate recognition to the evident consequences of climate factors on population mobility issues. However, the definition does include possible situations of forced and voluntary, short- and long-term, and internal and international migration. While recognizing that definitions by themselves will not resolve the issue of identifying the exact reasons for migration, they may provide a framework in which to consider the protection and the needs of this vulnerable population and to solve any implementation gaps that may arise.

## Box 2: Terminology\*

### Environmental migrants

In the absence of international consensus, IOM has proposed a working definition of “environmental migrants” as “persons or groups of persons who, for 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 choose to do so, either temporarily or permanently, and who move either within their country or abroad.”<sup>1</sup>

### Internally displaced persons

The currently accepted definition is “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 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.” This definition includes all those forcibly displaced within their country due to the effects of climate change.<sup>2</sup>

### Refugees

The 1951 Convention Relating to the Status of Refugees Article 1A defines a refugee as a person who “owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinions, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside of the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

These definitions exclude anyone who crosses borders solely because of environmental degradation in their nations of origin.

### Stateless persons

Defined as “a person who is not considered as a national by any state under the operation of its law.”<sup>3</sup> Persons who possess a nationality in formal terms but whose nationality is ineffective are generally referred to as “de facto stateless persons.”

Source: Walsham, 2010.

Note: \* The text in this box was jointly drafted by IOM and UNHCR for the United Nations Population Fund (UNFPA) report, The State of the World Population 2009. For further discussion and background on terminology, see Laczko and Aghazarm (2009).

<sup>1</sup> IOM, 2007.

<sup>2</sup> Office for the Coordination of Humanitarian Affairs, 2004.

<sup>3</sup> Convention related to the Status of Stateless Persons

## II. Environmental migrants and displaced persons: International legal framework

The existing international legal framework endows every human being with fundamental human rights. Environmental and climate change migrants and displaced persons are thereby entitled to enjoy, equally and without discrimination, the same human rights and freedoms under international and national laws as every other person. In this regard, the principles of equality and non-discrimination also apply to this group. However, there are certain circumstances (like in the case of the sinking islands or when the country of origin cannot be proved) when such vulnerable populations fall “through the cracks of international refugee and immigration policy,” (Brown, 2008) and protection (in one form or the other) is not safeguarded. Protection of any vulnerable population is not limited to securing survival and physical security, but encompasses civil and political, economic, social and cultural rights as attributed by international human rights law and humanitarian principles.



Under the broader framework of the international human rights regime, the rights that are particularly relevant to persons displaced by environmental and climatic factors include the right to adequate healthcare; to life and dignity; to adequate housing; to security of tenure; to protection from arbitrary eviction; to land and rights in land; to property and the peaceful enjoyment of possessions; to privacy and respect for the home; to security of the person, freedom of movement and choice of residence; and to housing, land and property restitution and/or compensation following displacement (Leckie, 2008).

These fundamental rights for all are well established in the key international human rights instruments (such as the International Covenant on Civil and Political Rights, Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights); additionally there are other human rights instruments and conventions that can be applied more specifically to the protection of displaced persons, such as the Convention on the Reduction of Statelessness; Convention on Status of Stateless People; International Convention on the Protection of the Rights of All Migrant Workers and their Families; Convention on the Elimination of All Forms of Racial Discrimination; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; Convention on the Rights of the Child; Convention on the Elimination of All Forms of Discrimination against Women and the International Labour Organization (ILO) Convention on the Rights of Indigenous People (OHCHR, 2007).

Further, a number of international bodies, guidelines and standards also exist which specifically protect the rights of displaced persons (see box 3).

### Box 3: Protecting the rights of displaced persons

The *Guiding Principles on Internal Displacement* establish that internally displaced persons shall enjoy in full equality, the same rights and freedoms under international and domestic laws. The document states that every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence. It specifies that internally displaced persons shall have the right to seek safety in another part of the country, the right to leave their country, the right to seek asylum in another country and the right to be protected against forcible return or resettlement to any place where their life, safety, liberty and/or health would be compromised.<sup>1</sup>

The *United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons* (The Pinheiro Principles) outline the right to be protected from

displacement, the right to housing and property restitution, right to privacy and respect for the home, right to peaceful enjoyment of possessions and right to voluntary return and safety.<sup>2</sup>

The UN Inter-Agency Standing Committee's *Operational Guidelines on Human Rights and Natural Disasters* ensure that displaced persons or those otherwise affected by natural disasters do not lose the rights of the population at large, and at the same time acknowledge that they have particular needs that call for greater protection and assistance measures. The document encompasses all aspects of civil, political, economic, social and cultural rights as afforded by international standards.<sup>3</sup>

The *Human Rights Council Resolution 7/23, 10/4 and 18/22 on Human Rights and Climate Change* recognized the linkage between human rights and climate change, and also climate-change-induced displacement.<sup>4</sup>

The *Code of Conduct for the International Federation of the Red Cross and Red Crescent Societies and NGOs in Disaster Relief* affirms that humanitarian imperative comes first and without any discrimination, and that disaster-affected victims will be recognized and treated as dignified humans.<sup>5</sup>

The *Responsibility to Protect of the International Commission on Intervention and State Sovereignty* reaffirms that in situations where a state cannot protect its people as it is not possible or not being done, the international community will intervene – which includes scenarios of overwhelming natural or environmental catastrophes.<sup>6</sup>

#### Source:

- <sup>1</sup> UN Economic and Social Council (ECOSOC), *Guiding Principles on Internal Displacement*, 22 July 1998, E/CN.4/1998/53/Add.2
- <sup>2</sup> UN Sub-Commission on the Promotion and Protection of Human Rights, *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, 28 June 2005, E/CN.4/Sub.2/2005/17
- <sup>3</sup> Inter-Agency Standing Committee, *Protecting Persons Affected by Natural Disasters. IASC Operational Guidelines on Human Rights and Natural Disasters*, June 2006
- <sup>4</sup> Human Rights Council. *Human rights and climate change. Human Rights Council Resolution 7/23*, March 28, 2008
- <sup>5</sup> International Federation of the Red Cross and Red Crescent Societies and International Committee of the Red Cross, *Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief*. 2004
- <sup>6</sup> International Commission on Intervention and State Sovereignty. *The Responsibility To Protect*. December 2001

These guidelines and instruments, though not legally binding provide a “soft law” approach to dealing with the issue of displaced persons. It should be noted, however, that most of these instruments only cover displacement caused usually by sudden-onset natural disasters, and do not take into account displacement and migration caused by slow-onset environmental degradation (such as desertification and river bank



erosion or even movement caused indirectly by climate change). It is predicted that most climate-change-induced migration will be caused by slow-onset disasters and through cascading environmental effects; there is a critical need, therefore, to formulate a framework for protecting the rights of not only those who are displaced due to sudden-onset disasters but also those who migrate away from slow-onset environmental degradation. Not only will such movement erode access to some of the basic rights mentioned above, but other consequences such as unplanned urbanization and competition over scarce resources will contribute to human insecurities and engender potential conflict hotspots. There remains an institutional gap in the international system regarding the protection of this group of migrants and a strong need to strengthen the implementation of the fundamental normative basis of protection.

In 2007 the UN Security Council held its first ever debate on the impact of climate change on peace and security. While doubts were raised about the Security Council's role on the issue of climate change, member states participating in the debate (over 50 speakers) expressed the view that climate change poses serious security concerns. Most speakers, including UN Secretary-General Ban Ki-moon, stressed that climate-change-induced displacement has the potential to destabilize conflict-prone regions. In his statement the Secretary-General urged the international community to take early action and prevent any potential mass exodus and conflict scenarios (UNSC, 2007).

While there are certain principles and standards that define the rights of environmental degradation/climate displaced and migrants, a legally binding human rights instrument has yet to evolve to ensure the rights and protection of this vulnerable population. The approach commonly taken to the issue of environmental migrants and climate displaced stems principally from a scientific and developmental perspective, and it is only recently that the rights angle has been brought into the debate. One of the first countries to moot the nexus of climate change displacement and human rights was the Maldives, in September 2007 at the sixth session of the Human Rights Council, which led to the Office of the United Nations High Commissioner for Human Rights to report to the Human Rights Council on the relationship between climate change and human rights including on displacement due to climate change. The UN Human Rights Council has since then adopted three resolutions on human rights and climate change (*Human Rights Council Resolutions 7/23, 10/4 and 18/22 on Human Rights and Climate Change*) and two resolutions on human rights and

the environment (Human Rights Council Resolutions 16/11 and 19/10).

Small island states have long highlighted their particular vulnerability to environmental and climate change. Perhaps the most forceful and direct call for a legal framework to address this area of vulnerability to date, however, was made by Bangladesh Prime Minister Sheikh Hasina in her statement to the UN General Assembly (UNGA) in September 2009, when she called upon the world body to consider adopting a legal regime under the United Nations Framework Convention on Climate Change (UNFCCC) Protocol to ensure the social, cultural and economic rehabilitation of environmental degradation and climate-change induced migrants (UNGA, 2009). She repeated the call at the Copenhagen Conference in December 2009. At the UNGA the following year, she called for innovative ways to rehabilitate "climate migrants" (UNGA, 2010).

In 2010, through the efforts of IOM, migration was included in the agreement of the sixteenth session of the UNFCCC Conference of Parties held in Cancun. All parties were invited to enhance action on adaptation by taking "measures to enhance understanding, coordination and cooperation with regard to climate-change-induced displacement, migration and planned relocation, where appropriate, at the national, regional and international levels." (UNFCCC, 2010) This was bolstered by the second reference to migration in the context of climate change and rapid urbanization in the outcome document entitled "The Future We Want" of the UN Conference on Sustainable Development (Rio+20<sup>2</sup>) in 2012, by countries committing to "systematically consider population trends and projections in [their] our national, rural and urban development strategies and policies. Through forward-looking planning, we can seize the opportunities and address the challenges associated with demographic change, including migration (UNCSD, 2012)." In the eighteenth session of the UNFCCC Conference of Parties held in Doha, a draft agreement "acknowledges the further work to advance the understanding of and expertise on loss and damage, which includes, inter alia how impacts of climate change are affecting patterns of migration, displacement and human mobility." (UNFCCC, 2012) Though these developments indicate a growing awareness and recognition of the nexus of migration and climate change, and reflect an attempt to increase awareness of climate change, neither of the texts call for any significant change in the legal paradigm associated with environmental degradation and climate-change-induced migrants.



Efforts by the Nansen Initiative, a state-led process outside the United Nations, to build bottom-up consensus on the theme of climate change, migration and the environment may achieve a breakthrough in this area. The objective of the process is to develop a “protection agenda” that will: (1) consist of standards for the treatment of people displaced across borders in the context of natural disasters; (2) promote international cooperation and solidarity; and (3) develop operational responses that will ensure preparedness in dealing with these displacees. It is interesting to note that although creating a new legal standard is not inscribed as one of the initiative’s goals, it is possible that it may be an outcome of the process. (Nansen Initiative, 2013)

### III. Climate vulnerability and the Asia-Pacific situation: Rapid and unplanned urbanization and its human security implications

It is well recognized that those worst affected by environmental degradation, climate change and rising sea-levels will be in the developing world, and will be the ones who are least able to adapt to such changes and effects. Asia and the Pacific, as stated by the Intergovernmental Panel on Climate Change (IPCC), is the world’s most climatically vulnerable region, while also being prone to conflict (IPCC, 2007). Any increased pressure such as mass migration and competition over basic necessities will aggravate conflicts, intensifying the need for a rights-based approach to protect environmental migrants. South Asia is one such region with large portions of the population living below the poverty line, with limited resources to withstand such environmental and climatic changes and destruction. The World Bank has identified Bangladesh, India, the Maldives, Myanmar and Pakistan as particularly vulnerable to climate threats such as drought, floods, rising sea-levels and storms (World Bank, 2009: 19). In Southeast Asia, the countries of the Mekong Delta, particularly Thailand and Vietnam along with Indonesia and the Philippines, are at high risk of coastal flooding. Major urban areas of Bangkok, Jakarta and Manila are all located in high-risk zones and are likely to be threatened by a rise in sea levels (Asian Development Bank, 2011). Low-lying small islands of the Pacific, notably Kiribati and Tuvalu, have been highlighted for their extreme vulnerability.

In Asia and the Pacific, the effects of climate change are not merely projections of what might happen in the future but are in fact a reality, the impact evident and real. A significant number of people are displaced

every year as a result of environmental changes such as riverbank erosion and floods. Furthermore, there is increased intensity and frequency of sudden-onset events such as devastating cyclones of the likes of Sidr and Aila, which hit Bangladesh in 2007 and 2008, respectively; Nargis, which hit Myanmar in 2008; and typhoons Bopha and Haiyan which hit the Philippines in 2012 and 2013 respectively. Such disasters displace thousands, rendering them homeless and destitute. In 2012, 22.2 million people or 69 per cent of the global total of displaced populations due to natural disasters were recorded in Asia, which (for the first time) indicates a drop from the average 81 per cent between 2008 and 2012. (IDMC, 2013).

The impacts of these natural disasters in terms of population displacement and mobility are reminders of the kind of challenges the Asia-Pacific region is likely to face in the future. For instance, more than four years after Cyclone Aila hit Bangladesh, large areas remain flooded and continue to be inundated by high tides and tidal waves. Over 100,000 people are still believed to be living on embankments and in makeshift shelters. Events such as Aila and even slower environmental degradation such as riverbank erosion have complex but tangible effects on patterns of migration. Over the long term, climate change is expected to exacerbate the existing situation, leading to increased forced displacement from environmentally vulnerable areas (Fatima and Wadud, 2010: 49). Furthermore, deteriorating environmental conditions may also increase the number of irregular migrants, as people may not all have the resources to migrate in a regular manner. This in turn will increase the vulnerability of these populations to trafficking and related crimes.

Displaced populations who are unable to return to their residences or to resume their traditional livelihoods are usually forced to head to the urban centres in search of employment and a better life. Urban areas in Asia are the fastest growing regions in the world. A study by the United Nations Department of Economic and Social Affairs (UN DESA) in March 2012 shows that by 2025, Asia will have added nine more megacities (cities with a population of over 10 million inhabitants) beyond the 13 that exist today. By 2025 Asia is expected to have 10 of the world’s top 20 most-populated urban agglomerations. Furthermore, in the list of 10 cities at high risk for natural hazards, five Asian cities have been categorized as exposed to three or more environmental hazards. In particular, cities located in coastal regions are highly vulnerable, along with the growing urban centres in Bangladesh, India and Iran that witness extremely high levels of internal migration (UN DESA, 2012).

With changes in the environment causing a decline in profits for farmers, rural populations are increasingly moving out of traditional occupations to cities in search of better opportunities. Such rural-urban migrants end up in the city's slums, earning the bare minimum in the informal sector. The slums are severely overcrowded and lack basic necessities such as proper drainage systems, resulting in water logging during the monsoon seasons. Moreover slums lack services such as electricity, safe drinking water and proper sanitation facilities. Most residents of such slums also face the constant fear of eviction, given that most of the slums are located on privately owned land (Islam et al., 2006).

Despite such decrepit conditions, rural-urban migration is at its highest in Asia. Lack of appropriate city planning, redistributive mechanisms and protective labour laws have increased the vulnerability of the poorest groups in the cities (UN-HABITAT, 2008: 25). Slum dwellers and the urban poor in general face insecurity of land tenure and shelter, with women especially vulnerable to exploitation and abusive practices. The conditions under which most of the rural-urban migrants live violate their most basic human rights; many lack shelter, secure tenure and access to basic services such as clean drinking water, healthcare and education.

Rapid and unplanned urbanization not only has implications for environmental migrants and the urban poor, but also society at large. There are serious, far-reaching human security impacts arising from such conditions. First, environmental and other rural-urban migrants tend to live in overcrowded slums, and consequently end up contributing to the environmental degradation of surrounding areas. Absence of proper drainage and garbage disposal systems also compound the effects. Second, competition over already scarce basic resources (such as clean water, electricity and so on), leads to increased social tension within the slum population and also among urban residents at large, which could eventually result in outbreaks of conflict. Third, the arrival in large numbers of displaced persons to a city also jeopardizes a city's coping capacity and ability to plan for the future, as overcrowding and overuse of existing amenities and services disrupt urban planning. Finally, overcrowding and overpopulation of urban centres pose an incredible risk in terms of disasters such as floods and earthquakes, and public health challenges.

## IV. The legal implications of sinking islands

In the Asia-Pacific region, sinking islands pose a unique challenge to the legal framework of migration. Maldives, Tuvalu, Vanuatu and Kiribati are among the island states in the region that are ranked as countries extremely vulnerable to the effects of climate change. The populations of these countries are at high risk of forced migration due to rising sea-levels exacerbated by tectonic activity. At the Pacific Islands Forum in 2011, the president of Kiribati exhorted the urgent need for action and considered the possibility of relocating his country's population to artificial islands created using interlinked oil rigs to adapt to climate change (Vidal, 2011). If executed, Kiribati would become an example of perseverant adaptation to climate change, although such relocation would raise critical questions from the perspective of human rights and state sovereignty of this population as defined by territorial terms. First, would such a land mass be eligible to qualify as a *defined territory*,<sup>3</sup> which is one of the necessary pre-conditions of sovereign statehood? Further, how would the right to self-determination be exercised in the case of loss of statehood? Also, keeping in mind that relocation is bound to endanger the culture of indigenous and endangered tribes living on the islands, how would the social, cultural and economic rights of these populations be protected? Would the existing legal definitions apply to such relocated populations, including their right to return when the territory of their *own country*<sup>4</sup> no longer exists? As noted by the Special Rapporteur of the human rights of migrants, the Convention relating to the State of Stateless Persons does little to protect these populations, while expanding the ambit of the refugee convention to include such populations is "undesirable."

The Maldives submission to the study called for by the UN Human Rights Council in resolution 7/23 (Human Rights Council, 2008: 10) addressed these issues and focused not just on the individual but also the collective rights of a resettled population. The proposal notes that even if climate change is stabilized, the rise in sea level is expected to render certain islands inhabitable, forcing its residents to migrate. In such a situation, the duty lies with the international community to protect the fundamental human rights of the migrant population. The proposal calls on the international community to consider ways of developing a more consistent and cohesive response, by inter alia, establishing a Special Rapporteur or Special Representative of the UN Secretary General on human rights and climate change; and reviving the mandate of the Special Rapporteur on human rights and the environment. Meanwhile, the UN Special Rapporteur on the human rights of migrants



in his report to the General Assembly in August 2012 (UNGA, 2012), focused specifically on the theme of climate change and migration, singling out the case of disappearing low-lying island states as a challenge “simply so new” that it is not covered by international law. He emphasized the importance of developing a framework for protection of the inhabitants of sinking islands, and noted that it was critical to ensure that the relocation of such vulnerable populations is not contingent on political will or benevolence of other states.

Recognizing that there are cases where displacement may occur only if vested interests at play are in its favour (Barrs, 2012), it is important to create an instrument or legal framework that will protect these vulnerable populations, irrespective of the influence that such external forces might exert.

## V. Conclusion

The lack of a clear normative and institutional framework could create problems for states seeking to address migration and displacement induced by environmental degradation and climate change. Countries, specifically of destination and transit, lack guidance about their obligations toward such vulnerable populations, particularly when the migrants’ country of origin is no longer within the ambit of the international legal framework. Countries are left to define their own standards and their own interpretation of existing norms and human rights obligations, and to determine which legal approach to use while absorbing these populations (McAdam, 2011). As a result states offer varying levels of protection and often engage in a “race to the bottom” to avoid providing more generous or tolerant protection than other states in the region (Betts, 2010).

As a Working Paper of the Inter-Agency Standing Committee (IASC) states, “neither the UN Framework Convention on Climate Change, nor its Kyoto Protocol, include any provisions concerning specific assistance or protection for those who will be directly affected by the effects of climate change” (IASC, 2008: 1). However, as early as the 1990s, IPCC forewarned that “the gravest effects of climate change may be those on human migration” (IPCC, 1990). As we have seen from the short overview of the relevant soft law instruments in this brief, certain gaps need to be bridged to ensure the protection of migrants whose movement is induced by environmental degradation or climate change, irrespective of whether the movement is within or across borders.

Possible gaps in the legal framework for the protection of environmental migrants include: (1) movement

across borders that does not entitle environmental migrants the right to enter or stay in another country (moreover, they are not protected under the 1951 Refugee Convention, unless they meet the criteria as specified in the Convention); (2) lack of criteria to distinguish between voluntary and forced movement due to environmental degradation and/or slow-onset disasters; and (3) confusion as to whether statehood would continue to be recognized by the international community if there are significant losses in state territory, and a risk that affected populations would be rendered stateless (UN DESA, 2012: 3).

There is growing recognition that the international protection of “people on the move” is no longer simply about refugees (Fatima and Wadud, 2010: 223). In the late 1980s and early 1990s, the growing numbers of internally displaced persons (IDPs) was used to gain support for international response through the UN framework, and led to the development of the *Guiding Principles on Internally Displaced Persons*. Similarly, the growing recognition and the growing numbers of environmental-degradation and climate-change-induced migration provides sufficient rationale to create the necessary framework — be it binding or non-binding — for the protection of this new group of people.

Given the sensitivities and the clear divergence of views on a legal and normative framework for this issue, a soft law approach could be explored. This has distinct advantages over traditional *hard law*. First, the informal nature of soft “law-making” and its compliance provides scope for leveraging the expertise and knowledge base of actors such as non-governmental organizations (NGOs). Second, it does not directly challenge state sovereignty, expands the range of available institutional arrangements and accommodates diverse views and positions. Third, it allows for timely action in situations where governments have reached a stalemate. Fourth, it helps to reaffirm or expand on previously accepted norms and other binding and non-binding instruments. Furthermore, it has been proven that a soft law generates new international norms and is more easily absorbed into domestic legislation (Orchard, 2010).

Many working in the field have argued that the *Guiding Principles for IDPs* should create a chain reaction of domestic and international programmes and initiatives, in order to avoid being solely a “lofty declaration of intent” (Morel, Stavropoulou and Durieux, 2012). Pending a consensus on a legally binding regime, the soft law approach is perhaps the viable option to pursue, and similar to the *Guiding*



*Principles*, it should create a series of initiatives at the regional, domestic and international levels.

The Special Rapporteur on human rights of migrants also recognized the vulnerability of environmental migrants and the protection gaps that exist and called for engagement at all levels of governance and for a soft law guiding framework to deal with environmental degradation and climate-change-induced migration that abides by international human rights norms and standards as “first steps towards international action.” (Human Rights Council, 2008: 17–20).

With growing recognition of the heightened vulnerability of Asia and the Pacific to climate change and its impact on population mobility, there could be efforts to build consensus for a normative framework to ensure the rights of environmental and climate-induced migrants. An incremental approach involving the elaboration of a “soft law” at the national or regional level might be the pragmatic course to adopt. The success or efficacy of that approach could contribute to an international legal regime to ensure the rights of this group of population in need of protection.

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2. United Nations Conference on Sustainable Development, Rio de Janeiro, 20 to 22 June 2012 marks the twentieth anniversary of the 1992 United Nations Conference on Environment and Development held in the same city.
3. Montevideo Convention on the Rights and Duties of States: The state as a person of international law should possess the following qualifications: (a) a permanent population, (b) a defined territory, (c) government and (d) capacity to enter into relations with the other states.
4. Article 13 of the Universal Declaration of Human Rights.

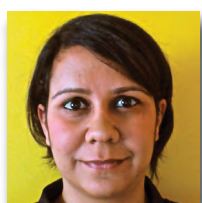
## Endnotes

1. This Issue in Brief is an update of an article by Rabab Fatima and Anita J. Wadud, “Human Rights, Climate

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