

FALLING THROUGH THE CRACKS

A briefing on climate change,
displacement and international
governance frameworks





Protecting People and Planet

The Environmental Justice Foundation is a UK-based environmental and human rights charity registered in England and Wales (1088128).

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EJF'S MISSION IS To Protect People and Planet

EJF believes environmental security is a human right.

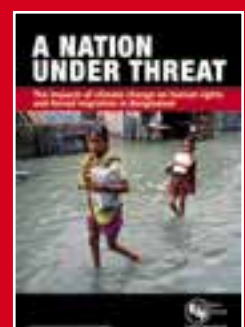
EJF strives to:

- Protect the natural environment and the people and wildlife that depend upon it by linking environmental security, human rights and social need.
- Create and implement solutions where they are needed most – training local people and communities who are directly affected to investigate, expose and combat environmental degradation and associated human rights abuses.
- Provide training in the latest video technologies, research and advocacy skills to document both the problems and solutions, working through the media to create public and political platforms for constructive change.
- Raise international awareness of the issues our partners are working locally to resolve.

Climate change is creating millions of climate refugees – people forced from their homes and land – by rising temperatures, sea-level change and extreme weather events. Many are among our planet's poorest and most vulnerable people. These are the first victims of our failure to prevent climate change: people who, without international help and new binding agreements on assistance, have nowhere to go and no means to survive.

EJF is dedicated to arguing their case: putting the call to governments and our political leaders for a new agreement on climate refugees, guaranteeing them rights, assistance and a fair claim to our shared world.

EJF is also committed to empowering individuals and organisations to take positive actions to reduce their impact on the natural environment; encouraging them to act now, before the irreversible effects of climate change take hold.



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Foreword

I welcome this briefing on climate change, displacement and international governance frameworks from the **Environmental Justice Foundation** which provides an outline of the various legal and international frameworks which are relevant to climate-induced displacement. Climate change is not just an issue of science and the environment – it is about rights. As a former United Nations High Commissioner for Human Rights, and now President of my Foundation focused on climate justice, I am concerned that human rights, such as the rights to health, water and food are undermined by the impacts of climate change. The people who are most vulnerable in any society bear the brunt of the ever more frequent extreme weather events and climate change impacts. Whether we consider those who live on the East Coast of the United States who lost their homes and livelihoods as a result of Hurricane Sandy or the people of the Carteret Islands who are leaving their homes, livelihoods and the bones of their ancestors because of the rising sea level, it is the poorest and least resilient who suffer most. This is an injustice and an affront to our humanity. Therefore, climate change is, I believe, the greatest challenge facing us in the 21st Century.

In my work on climate justice, I argue for a rights-based approach to climate action. One of the principles of climate justice is around participation in decision making. Engaged participation is also a recommendation of this EJJ briefing paper, which states ‘incorporate the voices of those dispossessed of their homes and livelihoods as well as populations at risk into decision-making forums and policy processes.’ It has been recognised, for example, that policies which provide access to information, opportunity for public participation, and access to justice have been critical in reducing pollution, improving environmental quality, and enforcing the law. Access to information motivates and empowers people to participate in an informed manner and become integral to climate change responses.¹ Findings from current governance literature show that increasing public participation improves the legitimacy of decisions, helps build stakeholder capacity, enhances implementation, and improves the sustainability of decisions.²

Without legal and regulatory structures in place, through which individuals can hold their governments to account if they fail to design, implement, execute and enforce adequate strategies and policies that protect them from the effects of climate change, there is a significant risk that climate change mitigation measures will not reach the populations which need them most.³ Such accountability measures should be operated in conjunction with efforts to strengthen access to justice, particularly for vulnerable groups, at the local level. This briefing of the EJJ is timely as it comes in the wake of the report of Working Group II of the Intergovernmental Panel on Climate Change, in which it is stated that ‘climate change will have negative effects on human security through increased displacement, damage to critical infrastructure and competition over resources’. The report goes on to say that;

- Over the 21st Century, climate change is projected to increase displacement of people.
- The risk of displacement is amplified when rural and urban populations that lack the resources for planned migration experience higher exposure to extreme weather events, particularly in developing countries with low income.

EJJ has examined relevant international frameworks governing displacement, statelessness, environmental change, persons seeking asylum and human rights from the perspective of climate-induced displacement and concludes that there is ‘a gaping void which perpetuates the threat that climate change poses to our collective human rights’.

It is the responsibility of our leaders and, indeed, our society as a whole, to ensure that there are adequate legal and international frameworks in place that will protect, remedy and respect the rights of people who are impacted by climate change, regardless of their status or state.

Mary Robinson

Former President of Ireland
President, Mary Robinson Foundation – Climate Justice



Introduction

This document is intended as an overview of the legal and policy frameworks governing climate-induced displacement at the international level. It aims to inform policymakers and interested individuals about the range of relevant legal and policy instruments and to assess how effective these various options are at responding to the issue of climate-induced displacement.

This briefing specifically refers to international and regional legal and policy frameworks governing climate-induced displacement. Consequently it does not address national frameworks which may be considered relevant, such as Temporary Protected Status in the US or the Swedish Aliens Act of 2005. Each section details which legal and policy instruments are to be addressed and then highlights key challenges in summary points, referring to specific instruments where necessary.

EJF's briefing finds that there is a deficit of adequate legal and policy frameworks governing climate-induced displacement at the international level. It refers to a 'protection gap' to indicate the lack of satisfactory measures addressing the various adaptation, disaster risk reduction, humanitarian assistance and legal protection needs of climate refugees. As this briefing demonstrates, the protection 'gap' is more like a series of holes – suggesting the need for a new legal and policy framework which is both broad in scope and sufficiently sensitive to the needs of multiple populations of concern.

Climate refugees

Currently, there is no consensus on categories or terminology to describe persons compelled to move because of climatic or environmental change.⁴ Whilst use of the term 'refugee' in this context is not recognised under existing refugee law – and, as this briefing asserts, nor should it be – EJF believes that the term 'climate refugee' underscores the human rights dimension of climate change and also successfully reflects the reality that a form of refugeehood – the experience of involuntarily leaving one's home due to persecution – is an inherent feature of the globally unequal distribution of *responsibility* for climate change, which has systematically marginalised the world's most vulnerable communities.

EJF uses a modified International Organization for Migration (IOM) definition to refer to climate refugees as: "persons or groups of persons who, for reasons of sudden or progressive climate-related change in the environment that adversely affects their lives or living conditions, are obliged to leave their habitual homes either temporarily or permanently, and who move either within their country or abroad."⁵

Climate-induced displacement

This briefing does not directly engage in the debate over when a person can be said to have fled from environmental degradation. For an introduction to how both environmental and non-environmental factors shape voluntary and involuntary movement in the context of climate change, please refer to the bibliography at the end of this document.⁶

In this document, EJF uses the term 'climate-induced displacement' to refer to a variety of situations whereby environmental hazards and processes of change associated with climate change can reasonably be said to have contributed to the movement of individuals away from an area for any period of time, without implying direct or exclusive causality. Please refer to the bibliography for a more detailed discussion of this topic and a policy-relevant typology of population mobility in response to environmental stress.^{7/8}

INTERNATIONAL FRAMEWORKS GOVERNING PERSONS SEEKING ASYLUM

Key frameworks:

- 1951 Convention Relating to the Status of Refugees
- 1967 Protocol Relating to the Status of Refugees
- 1969 Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa
- 1984 Cartagena Declaration on Refugees
- 2001 European Council Temporary Protection Directive (2001/55/EC)
- 2004 European Council Qualification Directive (2004/83/EC)

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EJF believes that refugee law is not a suitable avenue through which to pursue responses to climate-induced displacement. It is vital that existing instruments are not amended or opened up to renegotiation.
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A mother and daughter collecting firewood in Dadaab refugee camp. UNHCR Chief António Guterres has acknowledged the role environmental factors played in exacerbating refugee crises in the Horn of Africa. © Moulid/Environmental Justice Foundation

CHALLENGES:

- More often than not, refugee status does not offer a durable solution. According to the average rate of resettlement indicated by the last five annual United Nations High Commissioner for Refugees (UNHCR) Global Trends Reports, it would take 112 years to resettle the current total population of refugees. Over two thirds of these refugees live in protracted situations of displacement – the average length of which is now approaching two decades.⁹
- Refugee status would offer a reactive ‘last mile’ response to climate-induced displacement which fails to proactively address the immediate needs of populations of concern such as disaster risk reduction and adaptation to slow-onset environmental degradation.
- Practically speaking, refugee law is of very little use to the vast majority of those displaced by climate change who, for a variety of reasons, move *within* rather than across international borders and who usually move for a *short* rather than prolonged period of time; opting to return home as soon as possible (although unmitigated climate change may significantly alter these trends).
- In a climate change scenario, international refugee law would only apply when persons either (1) cross a border in the context of a conflict linked to environmental degradation or (2) cross a border as a result of the obstruction or withholding of aid and assistance following a climate-related natural disaster. These instances retain the key characteristics of refugeehood – in that they would involve a degree of persecution related to the criteria in the 1951 Convention as well as movement across a political boundary.¹⁰
- Key populations at risk actively reject the idea of becoming refugees, preferring to remain in situ or favouring the opportunity to migrate through regular channels and contribute productively to host societies.^{11/12}
- Amending existing international refugee law by widening its interpretation potentially risks opening it up to renegotiation and thereby undermining existing protection mechanisms.
- Because national systems of decision-making on asylum cases operate according to individual circumstances, it is unclear how institutions could extend recognition and protection *en masse* in the manner sometimes more appropriate to climate-induced displacement.¹³
- Legal causation in this context is difficult to establish. For instance, to qualify as a refugee under the 1951 Convention it is necessary to have a “well-founded fear of persecution” but it is unclear who might be considered an agent of persecution in situations of climate-induced displacement. It is similarly uncertain whether the *indiscriminate* nature of climate-related causes of displacement could be reconciled with a legal definition of persecution.¹⁴
- Similar observations can be made regarding the 1984 Cartagena Declaration and 1969 OAU Convention. Whilst they provide expanded definitions which may nominally include those displaced by natural disasters, establishing legal causation between a particular natural disaster and human activity will prove difficult.¹⁵
- Subsidiary protection afforded by Article 2(e) of the European Council’s Qualification Directive would nominally apply to individuals fleeing a country whose *entire territory* had been affected by an environmental disaster sufficient to cause ‘serious harm’ to the claimant – as defined in Article 15(b) which is based on Article 3 of the European Convention on Human Rights. Currently however, Article 3 does not cover environmental conditions and it would be necessary to amend the Directive in order to extend subsidiary protection.¹⁶
- The European Council’s Temporary Protection Directive only addresses the highly unlikely circumstances of mass influxes of people across borders into European Union territory. Furthermore, it can only extend protection *en masse* and following a Council Decision with a high political threshold. Up until now, the Directive has never been activated.¹⁷
- In 2011, a proposal from UNHCR to 145 member states to develop a soft law framework specifically addressing “protection gaps created by new forms of forced displacement, especially environmentally-related cross-border displacement” was met with a poor response – only four governments committed to exploring the UNHCR initiative further.¹⁸ This indicates a lack of willingness on the part of most states to cede control over the development of frameworks.

INTERNATIONAL FRAMEWORKS GOVERNING DISPLACEMENT

Key frameworks:

- 1998 Guiding Principles on Internal Displacement
- 2009 Kampala Convention for the Protection and Assistance of Internally Displaced Persons
- Nansen Initiative on Disaster-Induced Cross Border Displacement

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EJF asserts that international frameworks governing displacement are ill-equipped to respond to the different types of involuntary movement associated with climate change. Effective responses to those dimensions of the issue that are covered are plagued by operational inefficiencies.
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Individuals who abandon areas wracked by slow-onset changes such as rainfall variability are critically under-addressed by international frameworks. Noor Guhad stands in a dried out earthen dam in Kenya where water levels once reached over his head. © Andrei Engstrand-Neacsu/IFRC

CHALLENGES:

- The 1998 Guiding Principles have a clear relevance to climate-induced displacement. They refer explicitly to flight from ‘natural or human-made disasters’ and cover the before, during and after phases of displacement – meaning that they contain pertinent requirements for states, such as the need to develop adequate early-warning and disaster preparedness systems. However, as they pertain solely to those displaced within national boundaries they exclude any person displaced by climate change who moves across a border. Conversely, the Nansen Initiative[†] is inapplicable to the vast majority of those displaced by climate change who move within national boundaries.
- The Guiding Principles offer a soft law approach which is not legally binding and as such provides no mechanisms for enforcement or accountability. However, it is predominantly based on established international legal norms and, in this sense, it may be possible to invoke the existing instruments to which it refers.¹⁹
- Although the Nansen Initiative and the 2009 Kampala Convention explicitly reference climate change, it is unclear whether the apparent focus of these instruments on disasters provides sufficient scope to adequately protect those displaced by slow-onset environmental processes related to climate change (e.g. saline intrusion linked to sea-level rise or desertification linked to rainfall variability).
- The Guiding Principles deliberately exclude those displaced for economic reasons – yet most human mobility related to climate change features a strong economic dimension centred around the loss of livelihoods and reductions in household income.^{20/21} Whilst the Nansen Initiative directly addresses slow-onset ‘disasters’, its focus on consequences (to the coping capacities of affected populations) means that the Initiative is applicable only during the end phase. It subsequently overlooks the value of migration as an adaptation to gradual change and the challenges posed by slow-onset degradation to the long-term sustainability of some human settlements.²²
- Very few countries act to address internal displacement through national laws and policies. For instance, only two of the seven African countries which host displaced populations over 100,000 have ratified the Kampala Convention and one is not currently a signatory.^{23/24} Even when ratified, the incorporation of treaty principles into domestic law remains sporadic, resulting in poor coverage for those displaced by environmental hazards.²⁵ Out of the 124 countries to have experienced sudden-onset climate-related displacement in 2008-12, just over one third have national policies in place which express a commitment to addressing internal displacement.^{26/27}
- There is no global organisation or institution which is legally empowered to oversee internally displaced persons. The Inter-Agency Standing Committee’s Cluster Approach – a dynamic organisational structure amongst UN and non-UN bodies intended to coordinate responses to situations of large-scale displacement and other disasters – is sometimes considered to lack strategic guidance and be plagued with institutional rivalries which undermine its effectiveness.^{28/29/30}
- The Nansen Initiative aims to provide a policy framework rather than a soft law approach. Through a process of cross-stakeholder consultation, the Nansen Initiative intends to develop standards for the protection of affected individuals and identify appropriate funding mechanisms which could inform future legal frameworks at national, regional and international levels. However, the underwhelming response from national governments thus far affirms that states currently prefer to retain control over any development of protection mechanisms and are prepared to take only the most tentative steps towards expanding normative frameworks related to displacement.

[†] A high-level process aimed at developing a protection agenda on disaster-induced cross border displacement which is currently in the consultative phase.

INTERNATIONAL FRAMEWORKS GOVERNING STATELESSNESS

Key frameworks:

- 1954 Convention Relating to the Status of Stateless Persons
- 1961 Convention on the Reduction of Statelessness

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EJF argues that persons rendered stateless by extreme climate change impacts constitute one of the clearest examples of a legal and policy void across international frameworks.

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Children watch as king tides inundate their village in Tuvalu. Freshwater scarcity threatens to fundamentally undermine some small island states long before their islands are submerged by rising seas. © Gary Braasch

CHALLENGES:

- In some specific cases – such as settlement abandonment involving cross-border movements out of small-island states severely impacted by climate change – populations may be rendered *de facto* stateless.³¹ This is premised on the idea that climate change poses an existential threat to such states and may precipitate their collapse even before inundation under rising sea levels. Despite this, the international legal regime governing statelessness does not nominally apply to such situations, given that the 1954 and 1961 Conventions are “premised on the denial of nationality through the operation of the law of a particular state”.³²
- The issue of ‘climate-induced statelessness’ is fundamentally linked to unresolved questions of what constitutes a state[†] and when a state can be said to have ceased to exist.³³ According to UNHCR, statehood can be said to depend on the willingness of the international community, or individual nations within it, to continue to recognise a state as existing.³⁴
- UNHCR envisages three potential ways to maintain citizenship in the context of climate-induced state collapse or disappearance: (1) a donation of territory and transfer of sovereignty; (2) formal union with another state; and (3) a government-in-exile. The third outcome however, could potentially lead to a situation of *de facto* statelessness – given that the powers and functions of the exiled government would be constrained and subject to the hospitality and good grace of the host state.³⁵ Furthermore the effectiveness of provisions in the 1961 Convention which mandate for the reduction of *de facto* statelessness are severely diminished by the number of states (fewer than 40) which have acceded to it.
- The decision of any state(s) to cease recognising a government-in-exile would also create a situation of *de jure* statelessness[‡] for its citizens. In such an instance, the sole resort for such affected persons would be to seek naturalisation under the law of a third state.³⁶
- The international legal regime governing statelessness fails to address a core protection need for persons displaced across borders by climate change in that it does not mandate any right to admission or residence in a foreign territory.³⁷ Whilst a person whose state had ‘disappeared’ would qualify as a stateless person under the treaty definition, the instruments governing statelessness are reactive rather than proactive in that they would require the person to be already present in the territory of another state.³⁸

[†] Often defined in accordance with the 1933 Montevideo Convention on the Rights and Duties of States as (1) possessing a defined territory; (2) having a permanent population; (3) possessing a government; and (4) having the capacity to enter into relations with other states.

[‡] When an individual is “not considered as a national by any state under the operation of its law”.

INTERNATIONAL FRAMEWORKS GOVERNING ENVIRONMENTAL CHANGE

Key frameworks:

- United Nations Framework Convention on Climate Change (UNFCCC)
- 1996 United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD)
- Agenda 21 of the 1992 United Nations Conference on Environment and Development

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EJF believes that without further clarification of affected populations and the stipulation of specific measures, the frameworks governing environmental change are too weak to provide targeted and sufficient assistance. In addition, they currently offer no legal protection.
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Nemesia Tipait stands by the ruins of her house in the Philippines. Neighbours rescued her from underneath the rubble in the aftermath of super-typhoon Haiyan, which displaced over 4 million in just 24 hours. © Pio Arce/Genesis Photos – World Vision

CHALLENGES:

- Climate-induced displacement has been explicitly recognised in the UNFCCC treaty framework. Section 14(f) of the 2010 Cancun Adaptation Framework encourages parties to undertake: “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.”
- At the eighteenth session of the Conference of Parties (COP 18) in 2012, Paragraph 7(a)(vi) of Draft Decision 3/CP.18 stresses the need to study how climate change affects patterns of migration, displacement and human mobility in more detail. During COP 19, this was confirmed in the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts which will mobilise and secure funds, technology and capacity building activities for countries vulnerable to climate change. It is therefore possible that in the future countries affected by losses and damages associated with climate change impacts may have access to funding for programmes addressing climate-induced displacement.
- Although the UNFCCC framework has begun to differentiate scales (national, regional, international) and types (displacement, migration, planned relocation) of human mobility it has yet to fully incorporate migration as a form of climate change adaptation. Were migration to be mainstreamed into adaptation plans, the UNFCCC could provide funding mechanisms[§] for programmes which would mitigate the likelihood of climate-induced displacement necessarily occurring.³⁹
- UNCCD addresses forced migration associated with slow-onset processes of desertification. Paragraph 1(e) of Article 17 explicitly calls for research which addresses the relationship between desertification, drought, poverty and migration. Meanwhile, Article 11 mandates the development of sub-regional actions programmes which include “early warning systems and joint planning for mitigating the effects of drought, including measures to address problems resulting from environmentally induced migrations”. Articles 12.46 and 12.47(c) of Agenda 21 of the 1992 United Nations Conference on Environment and Development make identical recommendations in the context of ‘environmental refugees’ and desertification.
- As a whole, the international framework governing environmental change has made some progress on the issue of climate-induced displacement. Some researchers propose that the UNFCCC potentially offers a strong institutional framework through which to prevent climate-induced displacement.⁴⁰ However, it is difficult to see how it could be utilised to extend protection or assistance in its current state. Without clarification on the definition of climate-induced displacement, and other forms of human mobility, and a stipulation of concrete measures to prevent, prepare for and respond to situations of displacement, the current legal and policy framework remains too vague to be of sufficient value.

[§] According to Article 4.4 of the Convention, high-income countries have agreed to meet the adaptation costs of the most vulnerable countries. Currently, relevant UNFCCC funds would include the Strategic Priority for Adaptation (GEF); Special Climate Change Fund (GEF); Least Developed Countries Fund (GEF); and the Adaptation Fund.

INTERNATIONAL FRAMEWORK GOVERNING HUMAN RIGHTS

Key frameworks:

- International Bill of Rights
 - 1948 Universal Declaration of Human Rights (UDHR)
 - 1966 International Covenant on Civil and Political Rights (ICCPR)
 - 1966 International Covenant on Economic, Social and Cultural Rights
- 1990 International Convention on the Protection of the Rights of All Migrant Workers and Their Families
- United Nations Human Rights Council Resolutions 7/23, 10/4 and 18/22
- 1950 European Convention on Human Rights (ECHR)

“EJF argues that current international human rights standards are of limited utility to situations of climate-induced displacement in that they fail to explicitly govern the issue and neither inform policy nor offer sufficiently strong grounds upon which to pursue litigation.”



The right to a safe and healthy environment is a basic right upon which other human rights depend. Here, children make a bridge across a flooded slum in Khulna. © EJF

CHALLENGES:

- The United Nations Human Rights Council (UNHRC) has passed three separate resolutions recognising the human rights impacts of climate change. Participants at the UNHRC-mandated seminar on the inter-linkages between climate change and human rights in 2012 made some references to climate-induced displacement in this context.⁴¹
- In particular, climate change can be seen as affecting multiple human rights enshrined within international customary and treaty-based law which may apply to situations of climate-induced displacement.^{42/43} These include:
 - o The right to life – Article 6(1) of the ICCPR
 - o The right to enter one's own country – Article 12(4) of the ICCPR
 - o The right to adequate food and housing – Article 11(1) of the ICESCR
 - o The freedom to choose one's residence – Article 12(1) of the ICCPR
 - o The right to the highest attainable standard of health – Articles 7(b), 10 and 12 of the ICESCR
- The International Bill of Rights places all states under two categories of obligation, namely: (1) to refrain from courses of conduct that violate or may violate human rights and (2) to take protective measures to prevent other actors and events from infringing upon human rights. In the context of climate-induced displacement however, there are a variety of reasons as to why these obligations, as they relate to states of origin and/or third states, cannot be straightforwardly determined.⁴⁴ For instance, establishing legal causation between one particular environmentally harmful course of conduct and a specific instance of climate-induced displacement which violates one or more human rights is highly problematic.
- The right to seek asylum is provided under Article 14 of the UDHR and the principle of 'non-refoulement' is recognised as customary international law. The latter prohibits the expulsion of individuals to territories where they may be subjected to torture, inhuman or degrading treatment, or where their lives and freedoms might be at risk. Even so, international human rights law does not regulate admission into foreign territory. This is a core protection gap for those forced to move across borders as a result of climate-induced displacement.
- Whilst Article 15(1) of the UDHR provides for the right to a nationality – which may be viewed as having relevance to persons rendered stateless by climate change impacts – it does not mandate a correlative duty on states to *confer* nationality and hence does not offer a durable solution to persons rendered stateless by extreme climate change impacts.⁴⁵
- The growing phenomenon of mixed migration – which essentially refers to the fact that migration streams include both those who escape distress as well as those seeking betterment while also acknowledging that mobility itself has mixed motivations⁴⁶ – may mean that legal frameworks governing the rights of migrant workers can afford limited protection to those displaced across borders who engage in remunerated work.⁴⁷ The 1990 Convention however, has been ratified by fewer than 50 countries – most of which are countries of origin rather than destination.
- Several rulings in the European Court of Human Rights acknowledge that the right to life enshrined under Article 2 of the ECHR is fundamentally linked to the right to a healthy environment and that "the obligation to protect the right to life may also include protection from environmental harm."⁴⁸ It may also be within the remit of the European Court of Human Rights to interpret Article 3 of the ECHR – which prohibits inhuman or degrading treatment – as pertaining to extreme environmental disasters.⁴⁹
- Protection under the ECHR focuses on potential harm to the applicant resulting from removal. Potential harm is contingent upon a reasonable consideration of the capacity of the state of origin or return to mitigate against causes of harm. However, due to the fact that the European Court of Human Rights has been inclined to accept a comparatively less rigid standard of what constitutes an acceptable degree of mitigation (due to the difficulty predicting and controlling such events) – any appeal to climate change factors in isolation is unlikely to succeed.⁵⁰



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CORE GAPS IN CURRENT REGIME

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Definitions describing persons compelled to move as a result of climate change impacts

Protection frameworks addressing cross-border displacement from states experiencing extreme climate change impacts that pose threats to the long-term sustainability of human settlements

Systems of recognition and assistance for populations involuntarily moving within or across borders in response to the impacts of slow-onset changes

Targeted assistance for populations displaced by rapid-onset hazards related to climate change

Adaptation programmes which mainstream migration and target populations exposed to climate impacts

Disaster risk-reduction and recovery systems for areas at risk of rapid-onset hazards related to climate change

Rights-based standards governing the planned relocation of populations in areas of high risk

Targeted support for vulnerable populations 'trapped' by adverse climate impacts

CONCLUSION

In 2008, an International Organization for Migration (IOM) report warned that vulnerable populations exposed to climate change impacts were falling “through the cracks” of international governance frameworks.⁵¹ Nothing has changed during the intervening six years – despite the growing amount of empirical research which is rapidly refining our understanding of the climate change-mobility nexus.⁵²

This briefing provides an outline of the different international policy and legal frameworks which are relevant to various forms of climate-induced displacement. Generally, it finds that frameworks governing climate-induced displacement within countries are better developed than those pertaining to transnational movement. Individuals rendered *de facto* stateless by extreme climate change impacts essentially constitute an entirely unprotected and unassisted category. For the most part, persons crossing borders are afforded a minimum of protection provided by the prohibition on *refoulement* – although for those adversely affected by slow-onset changes even this may not apply. Populations inhabiting under-resourced areas at risk of being affected by rainfall variability, saltwater intrusion and other slow-onset processes of degradation also have, in many instances, poor access to options for adaptation, in situ or otherwise. In cases where such persons move in advance of the full deterioration of their environment, livelihood or ability to continue inhabiting a place, there is virtually no recourse to rights-based protection – besides that afforded by legal instruments governing international labour migration.

Almost all legal and policy frameworks lack specificity with regards to how particular populations are affected by different types of climate-induced displacement. Several frameworks, such as the legal instruments governing statelessness and refugees, are largely inapplicable and inappropriate. Frameworks which do specify particular criteria tend to exclude a large proportion of the overall population of concern. Those which detail obligations upon states and identify mechanisms aimed at reducing the risk of displacement and assisting affected populations are undermined by a lack of systems for monitoring, enforcement and accountability. Those which can confer varying degrees and types of legal protection are generally vulnerable to dispute or differences of interpretation. In many respects, these shortcomings reflect the broader failure to arrive at functional definitions and, in particular, develop a means of distinguishing forced from voluntary movements in a context of environmental change.

Taken together, this series of holes in global governance frameworks is a gaping void which perpetuates the threat that climate change poses to our collective human rights. At the same time however, if it is the case that legal regimes are considered as the only or principal means of responding to the challenges of climate-induced displacement, then it is inevitable that significant protection gaps will remain. A new international framework is required to plug these holes. EJF argue that this framework must not only be capable of responding to a multiplicity of climate-induced displacement scenarios but it must also incorporate mechanisms to provide for the adaptation and risk reduction needs of multiple populations of concern.



RECOMMENDATIONS

The international community must:

Develop precise, legally-worded definitions to describe types of climate-induced displacement which inform and enable targeted policy measures.

The international community should:

- Instate a mandate of United Nations Special Rapporteur on Human Rights and Climate Change in order to consolidate and guide international action on climate-induced displacement
- Work in cooperation with states threatened by severe climate impacts to develop national, bilateral and multilateral frameworks which both reactively protect the rights of the vulnerable and proactively enable people to move freely, safely and with dignity
- Create durable solutions, locally or internationally, for populations forcibly displaced within and across borders by slow-onset environmental degradation
- Build the operational capacity of national and international humanitarian actors to respond to rapid-onset hazards related to climate change and assist displaced populations
- Mainstream migration into climate change adaptation plans, particularly with regards to the UNFCCC process
- Upscale efforts to assist vulnerable countries in building disaster risk-reduction programmes and work to ensure the effective development of the Warsaw International Mechanism for Loss and Damage
- Implement planned relocation as a last policy alternative and ensure that resettlement is voluntary and participatory in nature and implemented under standards which are sensitive to the civil, political, economic, social and cultural rights of affected populations
- Incorporate the voices of those dispossessed of their homes and livelihoods, as well as populations at risk, into decision-making forums and policy processes

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There are well established international, regional and national legal instruments, covenants and norms to protect the rights of people forcibly displaced by conflict, persecution, natural disasters and development projects. It is therefore surprising that a similar framework to protect the rights of people forced to move because of climate-induced environmental change does not exist.

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Professor Roger Zetter, former Director of Refugee Studies Centre, University of Oxford⁵³

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The village was destroyed
in three days.
150 people used to live
in this part of the village.
We all had to flee in three days.

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Hon. Quaran Ali