

REPORTS

NRC

NORWEGIAN
REFUGEE COUNCIL

A thematic report from the Norwegian Refugee Council, 2009



CLIMATE CHANGED: PEOPLE DISPLACED



Elisabeth Rasmusson
Secretary General, NRC

FOREWORD BY ELISABETH RASMUSSON

Climate change is here and now. It is one of the greatest humanitarian challenges of our time. As a humanitarian non-governmental organization working with displaced persons worldwide, the Norwegian Refugee Council felt it was natural to take an initiative to look further into the dynamics of climate change and displacement.

The NRC report *Future Floods of Refugees* was published in April last year and was the first step in our work in this area. The report concludes that climate change impacts are among several, often interlinked, causes that contribute to an increase in displacement. While the developed countries bear the main responsibility for climate change, the report questions whether the dynamics of climate change, conflict and displacement can and should be portrayed as a threat image of masses of refugees flooding over western borders. The sad truth is that there will be real floods, and if nothing changes, many of the affected will have little choice but to return and risk further flooding. Most of the displacement is expected to be internal in developing countries, and the displaced should be considered internally displaced persons. Here

there are mainly operational protection challenges. In the case of cross-border displacement, there is also a protection gap in law since many of the displaced will not qualify as refugees. The report recommends that further research is carried out, in particular that existing law and protection possibilities are further investigated to identify and address potential protection gaps, and that adaptation in developing countries are made a top priority along with mitigation in order to better prevent disasters and displacement.

We have followed up on these recommendations, and now we can present a new report. Over the last year, we have focused on researching the law and protection that applies to people displaced in the context of climate change and seeking better answers to the question of how many are displaced. Together with the UN Refugee Agency (UNHCR), the Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons and other key partners we have submitted legal analysis to the climate change negotiators and advocated for the inclusion of migration and displacement issues in a new

climate change agreement. Together with the UN Office for the Coordination of Humanitarian Affairs (OCHA), the Internal Displacement Monitoring Centre of NRC has undertaken a disaster displacement monitoring study to present some first numbers of displaced.

In this report, we also draw on our presence in countries that are particularly vulnerable to climate change. While producing the smallest amount of greenhouse gases, Africa is one of the continents most vulnerable to climate change, and with the greatest lack of adaptive capacity. Burundi and Somalia, which we focus on here, are considered among the ten most vulnerable countries in the world.

While much more research is needed, we hope that this report makes it clear that we do have enough knowledge to also act now. We have to “avoid the unmanageable” by cutting greenhouse gases and mitigating climate change. At the same time, climate change is already having effects and “managing the unavoidable” is also necessary. Climate change is here and now. People are displaced. People must be protected.



Antonio Guterres
UN High Commissioner for Refugees

FOREWORD BY ANTONIO GUTERRES

The process of climate change – and the natural disasters and conflicts it engenders – will add to the scale and complexity of human mobility and displacement. While climate change has been the subject of intense debate and speculation within the scientific community, insufficient attention has been given to its humanitarian consequences. Just as the causes of climate change are being analyzed and their likely effects assessed, it is equally imperative to anticipate displacement scenarios and improve the quality and readiness of our response.

It is likely that most of the displacement caused or contributed to by climate change will be internal and thus primarily the responsibility of the States concerned. Pioneering support for this principle has been given by the African Union, which in October 2009 adopted the first continent-wide and binding Convention for the Protection and Assistance of Internally Displaced Persons. Significant progress has also been made in the system for coordinating the international humanitarian response to internally displaced people, with responsibilities for protection and assistance distri-

buted to different agencies under the so-called Cluster Approach. The increased frequency and intensity of natural disasters, however, is already testing the response capacity of the international community.

For people displaced across an international border by natural disaster or, as is increasingly the case, by a complex of factors exacerbated by climate change, the responsibility for providing protection and assistance is less clear. Some cross-border movements may be dealt with within the existing international refugee framework, which has

– losing not just their habitat but their culture and identity.

I would like to acknowledge the excellent collaboration established between UNHCR and the Norwegian Refugee Council (NRC) and to thank Mr. Vikram Kolmannskog for his outstanding work on climate change, including his contribution to this publication.

“The increased frequency and intensity of natural disasters is already testing the response capacity of the international community.”

proven to be flexible over the past decades, but others may require new approaches, premised upon new forms of inter-State cooperation, international solidarity and responsibility-sharing. We need also to reflect on and develop responses to the risk of entire communities becoming stateless



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LIST OF CONTENTS

FOREWORD by Elisabeth Rasmusson, NRC Secretary General	2	INTERNAL DISPLACEMENT: International Law and Protection	8	CASE STUDY: Burundi	24
FOREWORD by Antonio Guterres, UN High Commissioner for Refugees	3	CROSS-BORDER DISPLACEMENT: International Law and Protection	14	CASE STUDY: Somalia	30
ANSWERING THE BASICS: the How, Who, Where, and How Many	4	TOWARDS A HUMANITARIAN CLIMATE CHANGE AGREEMENT	22	CONCLUSIONS AND RECOMMENDATIONS	36
				REFERENCES	37

EDITOR: Richard Skretteberg AUTHOR: Vikram Kolmannskog OTHER CONTRIBUTORS: Eirik Christophersen and Stefan Storm Larsen. ACKNOWLEDGMENTS: The author has benefited from discussions with, and would like to thank, NRC Somalia, NRC Burundi, and the members of the IASC Task Force on Climate Change in general and the following members in particular: Jean Francois Durieux and Yoichiro Tsuchida (UNHCR), Patrick Egloff (Adviser to the Representative of the UN Secretary General on the Human Rights of IDPs), Jenty Kirsch-Wood (OCHA), Philippe Boncour and Alina Narusova (IOM) and Koko Warner (UNU). FUNDED BY THE NORWEGIAN MINISTRY OF FOREIGN AFFAIRS.

DESIGN AND LAYOUT: Cox. COVER PHOTO: G.M.B. Akash / Panos Pictures /Felix Features. BACK PAGE PHOTO: Espen Rasmussen. PRINTING: Gamlebyen grafiske. Printed on environmental friendly paper. EDITION: 3000. ISBN: 978-82-7411-201-8.



Photo: G.M.B. Akash/Panos Pictures/Felix Features.



A man ferries his mother and father through the flood waters. Monsoon rains caused flooding in 40 of Bangladesh's 64 districts, displacing up to 30 million people and killing several hundred.

ANSWERING THE BASICS: THE HOW, WHO, WHERE, AND HOW MANY

As early as in the First Assessment Report in 1990, the Intergovernmental Panel on Climate Change (IPCC) stated that the gravest effects of climate change may be those on human mobility. Yet, there is still a lack of research relating to this issue. Over the last year, some progress has been made within the humanitarian community in seeking answers to basic questions, like how and where people are displaced, who the displaced people are, and how many.

MORE FREQUENT AND SEVERE DISASTERS

We know that climate change has effects here and now. In 2007, the Fourth Assessment Report of the IPCC authoritatively established that human-induced climate change is accelerating and already has severe impacts on the environment and human lives.¹ A significant impact of climate change is the increase in the frequency and severity of certain hazards. Hazards combined with vulnerability can result in disasters. The UN International Strategy for Disaster Reduction has the following definition of a disaster:

A serious disruption of the functioning of a community or a society causing widespread human, material, economic or environmental losses which exceed the

ability of the affected community or society to cope using its own resources. A disaster is a function of the risk process. It results from the combination of hazards, conditions of vulnerability and insufficient capacity or measures to reduce the potential negative consequences of risk.²

The overall trend shows that the number of recorded natural disasters has doubled from approximately 200 to over 400 per year over the past two decades.³ The majority are climate-related disasters – that is, disasters which climate change can influence both in terms of frequency and severity. These include the meteorological (for example storm), the hydrological (for example flood), and the climatological (for example drought). According to the UN

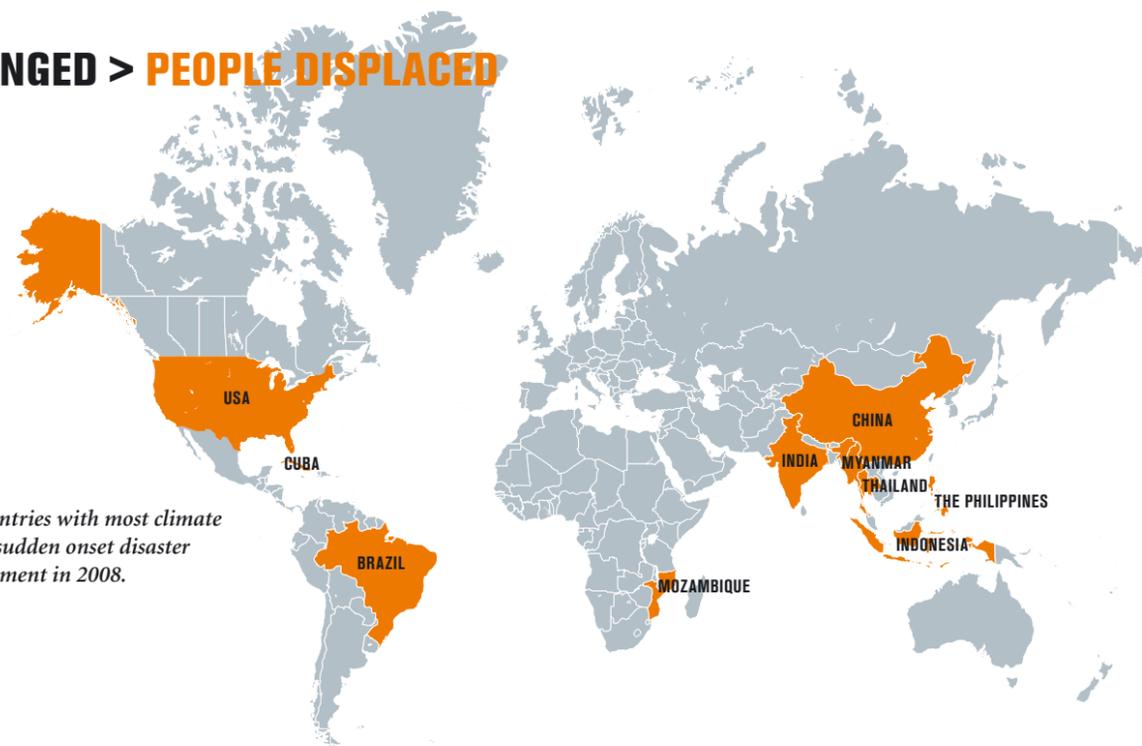
Emergency Relief Coordinator, this situation of more frequent and severe disasters may be "the new normal".⁴

LINKING CLIMATE CHANGE, DISASTERS AND DISPLACEMENT

While there is not a mono-causal relation between climate change, disasters and displacement, the existence of a clear link between the phenomena is increasingly recognised.⁵ Voluntary migration can be a form of coping or adaptation, but climate change and disasters also contribute to forced displacement as a survival strategy.

The current projections for the number of people who will be displaced in the context of climate change vary greatly. For example, the last IPCC report quotes estimates that 150 million people may be

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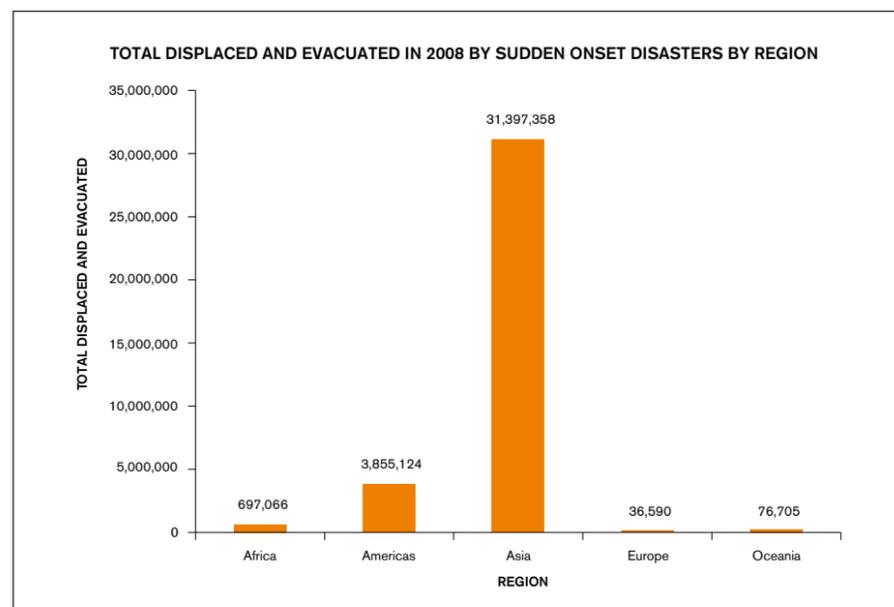
The countries with most climate related sudden onset disaster displacement in 2008.

displaced by 2050, and the Stern Review of the Economics of Climate Change cites estimates of 200 million displaced by 2050.⁶ These estimates are generally accepted to be subject to high degrees of uncertainty, primarily because there is no baseline information on current levels of disaster-related displacement.

To address the need for basic answers to inform policy, advocacy and operations, an expert group was established in 2008 under the humanitarian forum Inter-Agency Standing Committee (IASC). A typology based on the work of the Representative to the UN Secretary General on the Human Rights of Internally Displaced Persons, was further developed to clarify how people can be displaced in the context of climate change and their protection status.⁷ Based on this typology, The UN Office for the Coordination of Humanitarian Affairs (OCHA) and the Internal Displacement Monitoring Centre of NRC (IDMC) carried out a study to start addressing the question of how many people are displaced.⁸ The results indicate that millions are already displaced due to climate-related disasters each year.

HOW AND HOW MANY?

The first category of the IASC typology concerns displacement linked to sudden-onset disasters, such as floods and storms. According to the OCHA-IDMC study, approximately 36 million people were displaced as a result of sudden-onset natural disasters in 2008. The Sichuan earthquake in China alone displaced 15 million people.



Had it not been for this earthquake, climate-related disasters would have been responsible for over 90 percent of disaster-related displacement in 2008. More than 20 million people were displaced due to climate-related sudden-onset disasters.

The second category concerns displacement linked to slow-onset disasters, such as drought, which can seriously impact on people's livelihoods. According to the OCHA-IDMC study, more than 26.5 million people were reported affected by 12 droughts in 2008, but estimates for displacement are not readily available. Determining the element of force and ascribing causation is much more complex than in

sudden-onset disasters. A particular slow-onset disaster case, which is separated out as a third category in the IASC typology, is that linked to sea-level rise and resulting in loss of state territory, as in the case of small island states. As of 2008, the only found permanent relocation plans identified in the OCHA-IDMC study concerned the forced displacement of the 2000 inhabitants of the Tulun (Carteret) and 400 of the Takuu (Mortlock) Islands in Papua New Guinea. However, according to current IPCC findings, this trend is likely to substantially accelerate in the future.

The final IASC category concerns displacement linked to conflict. According to the

OCHA-IDMC study, 4.6 million were newly internally displaced and 42 million people were living in forced displacement due to conflict and persecution in 2008. According to some researchers, climate change impacts such as drought may have consequences for conflict, for example by making resources scarcer and increasing competition.⁹

There are many interlinkages that also need consideration: Disasters and degradation can trigger displacement and conflicts, and conflicts and displacement, in turn, often cause further environmental degradation.

The IASC typology can be considered a work in progress. There are other effects of climate change not explicitly dealt with, such as increases in certain diseases and epidemics. Some of these effects are related to the "natural" disasters while others can perhaps be considered either sudden-onset or slow-onset disasters in themselves.¹⁰ We could also add another category, namely displacement linked to measures to mitigate or adapt to climate change. For example, biofuel projects and forest conservation could lead to displacement if not carried out with full respect for the rights of indigenous and local people.¹¹

Finally, it is important not to overlook those who are not displaced. While some remain because of resilient capacity, others

may in fact be forced to stay. They do not have the resources to move.¹² In general, the most vulnerable people are often the most exposed and affected by disasters. Displacement will result in particular needs, but it is important to stress that many of those left behind may also have very serious protection concerns and there is a need for an inclusive approach to all affected.

HOTSPOTS OF DISPLACEMENT

In one way or another, all countries will eventually be affected by climate change, but some are more immediately and particularly exposed. The IPCC report highlights the following groups of countries: Small Island Developing States (SIDS), Africa, Mega-deltas (particularly in Asia), and the polar regions. As already mentioned, the impacts of climate change such as disasters depend on exposure, hazard, vulnerability and coping capacity. The locations of the disasters are not predicted to change much in the near future. Of the 20 disasters that caused most displacement in 2008, 17 were in Asia.

In all the categories of displacement discussed above, the displacement may be internal or cross-border, temporary or permanent, but it is likely that the majority of the displaced remain within their country of origin.¹³ Much of the sudden-onset disas-

ter displacement is temporary and short-distance. The effectiveness and success of response, recovery and rehabilitation efforts largely determine how long people are displaced. Countries may be more or less willing and able to address these challenges, and the international community has a responsibility to support them.

THE NEED FOR RESEARCH AND ACTION

Climate change is likely to lead to increasing rates of displacement, and it is vital that evolving frameworks for climate change adaptation address displacement issues. Consistent application of a natural disaster displacement monitoring methodology would provide a baseline for informed estimates as to how current trends may be affected by climate change in the future, and would be a necessary element for any improvement in the response for the displaced. In addition, data should be collected on related factors, including the duration of displacement and the needs of displaced populations. There is also a need for further research on displacement related to slow-onset disasters and sea level rise, the links between climate change, conflict and displacement, and climate change impacts on those who already are displaced. But, as should be clear by now, a lack of information can no longer be used as an excuse to delay action.

SUMMARY OF THE RESULTS OF THIS STUDY IN THE CONTEXT OF THE IASC TYPOLOGY FOR CLIMATE-CHANGE RELATED DRIVERS OF MIGRATION AND DISPLACEMENT.

Cause of movement	Number of people reported displaced
1. Hydrometeorological extreme hazard events	20,293,413 as a result of climate-related disasters in 2008 (Source: OCHA-IDMC methodology)
2. Environmental degradation and/or slow onset extreme hazard events	Estimates for slow onset disaster related displacement for 2008 are not readily available. Further research to provide improved data on this issue will be essential. According to the CRED database, 26,502,500 people were reported affected by drought in 2008, however not all of these people would have been displaced (Source: CRED EM DAT).
3. Significant permanent losses in state territory as a result of sea level rise etc.	As of 2008, the only found permanent relocation plans identified in the OCHA-IDMC study concerned the forced displacement for the 2,000 inhabitants of the Tulun (Carteret) and 400 of the Takuu (Mortlock) Islands in Papua New Guinea. However, according to current IPCC findings, this trend is likely to substantially accelerate in the future.
4. Armed conflict/violence over shrinking natural resources	4.6 million were newly internally displaced in 2008 as a result of armed conflicts around the world (Source: IDMC). 42 million were living in forced displacement due to conflict, including IDPs and refugees, in 2008. The potential consequences of climate change for water availability, food security, prevalence of disease, coastal boundaries, and population distribution may aggravate existing tensions and generate new conflicts (UNEP 2009).

Sandstorm in settlement for people displaced by drought in Chad.

INTERNAL DISPLACEMENT: INTERNATIONAL LAW AND PROTECTION¹⁴

As the IASC expert group as well as others emphasize, it is likely that the majority of people displaced in the context of climate change in the near future, remain within the borders of their country of origin. Today, about two thirds of all people displaced by persecution, war and conflict remain within their own countries.¹⁵ People's mobility largely depends on resources and networks, and climate change is likely to negatively affect people's resources, increase their vulnerability and thereby reduce their mobility.¹⁶ Many of those affected by climate change are likely to be internally displaced persons.



Photo: Jeremy Harley/Panos Pictures/Felix Features

THE GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

Several rights and systems of law have eventually been identified as relevant for internally displaced persons (IDPs). Rather than creating a separate convention, the 1998 UN Guiding Principles on Internal Displacement (UN Doc. E/CN.4/1998/53/Add.2) is a synthesis of such law, in parti-

cular human rights law. The Guiding Principles were recognized by states as “an important international framework for the protection of internally displaced persons” at the World Summit in 2005 as well as in several UN General Assembly Resolutions (see for example UN Doc A/60/L.1). There are several examples of national and regional IDP legislation and policy inspired by

the Guiding Principles. The latest major development is the adoption of an African Union convention on internal displacement in Kampala, October 2009.¹⁷

The Guiding Principles provide the normative framework for addressing all displacement occurring within a country. According to the broad and descriptive definition in the Introduction of the

Guiding Principles, “internally displaced persons” 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.

The UN and the Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons in particular, have also clarified that this definition covers all climate change-related displacement, including slow-onset disaster displacement.¹⁸ The explicit inclusion of disasters in the definition is a recognition that persons displaced by disasters also have human rights and protection needs requiring international attention. In the aftermath of the 2004 Asian Tsunami, there was increased recognition of the importance of a human rights approach in dealing with those affected by disasters. Operational Guidelines on Human Rights and Natural Disasters have been developed, which address the needs of all affected, including the displaced.¹⁹

OPERATIONAL CHALLENGES

Although there is a normative framework for climate change-related internal displacement, there are still serious challenges on the ground. The states, which have the primary responsibility for people on their territory, are sometimes unwilling or unable to protect displaced people, and in some cases even deny the entry of international protection and assistance agencies referring to the principle of national sovereignty and non-interference.

There are also challenges relating to the roles and responsibilities of the humanitarian agencies. As part of UN humanitarian reform, a division of labour has been established known as the Cluster Approach. In conflict-related internal displacement, UNHCR has assumed global leadership of the Protection Cluster, and co-leads the global Camp Coordination and Camp Management Cluster with the International Organization for Migration (IOM), and the Emergency Shelter Cluster with the International Federation of Red Cross and Red Crescent Societies (IFRC). The Cluster

Approach is also relevant in natural disaster scenarios. At country level, the leadership role for protection in natural disaster situations is decided upon by UNHCR, the Office of the UN High Commissioner for Human Rights and UNICEF, on a case-by-case basis. This arrangement has come under criticism, as it does not bring about the necessary predictability or rapidity of response, and the protection agencies are currently engaged in a thorough review. In addition, what is known as the One UN initiative aims at enhancing system-wide UN coherence at the country level and encompasses a number of dimensions: One Leader, One Programme, One Budget and, where appropriate, One Office. It is likely that climate change and the more frequent and severe natural disasters will test the capacities of humanitarian actors, and may call for a new distribution of roles and/or new models of cooperation.²⁰

PROTECTION IN NATURAL DISASTER

The protection dimension in natural disaster response is still poorly understood at the national level, particularly by state agencies, which after all have the primary responsibility to protect.²¹ The Human Rights Committee has stressed the need to review relevant “practices and policies to ensure the full implementation of [the] obligation to protect life and of the prohibition of discrimination, whether direct or indirect, as well as of the United Nations Guiding Principles on Internal Displacement, in matters related to disaster prevention and preparedness, emergency assistance and relief measures” (CCPR/C/USA/CO/3, para. 26).

Particular challenges for the displaced, as well as for the authorities concerned arise in the context of evacuations, relocations, resettlements and, more generally, the need to find durable solutions for those among the displaced who cannot return. Of the approximately 20 million people displaced by climate-related sudden-onset disasters in 2008, approximately 7.4 million were evacuated either as a preventive measure before a disaster or as palliative measure after a disaster, according to the OCHA-IDMC study.

EVACUATION AND RELOCATION

The state’s duty to protect people entails an obligation to help people move from zones where they face a danger. A failure to assist people who cannot leave such zones on their own may amount to a human rights violation if competent authorities knew or should

have known about the danger and had the capacity to act. For example, the European Court of Human Rights found a breach of the right to life because authorities had not acted adequately in preventing a mudslide (Budayeva and others v. Russia, app.nos. 15339/02, 21166/02, 20058/02, 11673/02 and 15343/02, 30 March 2008). In many areas it is foreseeable that climate change and disasters may result in the need for relocation. For example, accelerating coastal erosion in Alaska is likely to force several communities to relocate; yet no process has been established to address this.²²

PARTICIPATION AND NON-DISCRIMINATION

Participatory, rights-based planning is required. According to the Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons, an approach that treats people as objects of state care rather than with dignity is still prevalent in disasters.²³ Human dignity involves, as a minimum, a right to be heard. Thus, the person participates, and is not merely a means, in decisions concerning herself. According to the Guiding Principles, internally displaced people have a right to be informed, consulted and to participate in decisions affecting them (see in particular Guiding Principles 7.3.c and d, 18.3 and 28.2). The affected and the population at risk should be consulted and invited to participate in the process from the start, including in exploring intervention measures to help them remain or move, and in evacuation, relocation, resettlement and return decisions and design. According to the Operational Guidelines on Human Rights and Natural Disasters, rights are often violated, not because of conscious intention but, because of the lack of rights-based planning.

Non-discrimination is another paramount element in human dignity and human rights; all humans have dignity and certain rights. Evacuation and relocation measures must not discriminate against certain ethnic, religious or other groups. In some of the countries affected by the Asian Tsunami there were reports that buffer zones were being established in a discriminatory manner allowing construction of tourism facilities while local residents were not allowed to return and reconstruct their homes.²⁴

Non-discrimination may require that distinctions are made to take into account special protection needs. After Hurricane Katrina hit New Orleans, the Human Rights Committee received reports that the poor,

A man sits on the roof of his submerged home. Thousands of people were displaced in Satkhira district in Bangladesh after Cyclone Aila struck in May 2009, triggering tidal surges and floods.



Photo: G.M.B. Akash / Panos Pictures / Felix Features

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and in particular African-Americans, were disadvantaged because the rescue and evacuation plans were based on the assumption that people would use their private vehicles, thus disadvantaging those not owning a car (CCPR/C/USA/CO/3). During displacement, pre-existing patterns of discrimination are often exacerbated, putting vulnerable groups at further risk of human rights abuses. In the context of Hurricane Katrina, the Human Rights Committee highlighted the importance of ensuring that the rights of the poor, and in particular African-Americans, are fully taken into consideration in the reconstruction plans with regard to access to housing, education and healthcare (CCPR/C/USA/CO/3).

USE OF FORCE

Sometimes, populations at risk refuse to evacuate, either out of fear of losing livestock or other property or because they do not take warnings seriously. There is also a real risk that states use climate change and disasters as a pretext, while in reality having other reasons for relocating certain groups from certain areas, as we saw examples of after the Asian Tsunami. While evacuation or relocation to safer areas in consultation with the affected, can and should be encouraged and facilitated, forced evacuation or relocation is only permissible on certain conditions.

Freedom of movement is prominently enshrined in the 1966 International Covenant on Civil and Political Rights article 12, and includes the right to remain at the place of habitual residence. In the context of climate change and disasters, the prohibition on arbitrary displacement (Guiding Principle 6.1) means that the safety and health of those affected must require the forced evacuation or relocation (Guiding Principle 6.2.d). The evacuation or relocation must be a measure of last resort; all feasible alternatives must have been explored in order to avoid displacement altogether (Guiding Principle 7.1). In the context of climate change and disasters, this means that the authorities must make real efforts to implement other adaptation and disaster risk reduction measures to make the areas safe enough so people can choose to stay. Involuntary relocation and resettlement rarely leads to improvements in the quality of life of those who are moved, so moving communities in anticipation of climate change may precipitate vulnerability more than it avoids it.²⁵

RETURN AND RESETTLEMENT

While consultation and participation of affected people may be difficult or even impossible during the emergency phase of a disaster, it is particularly important, with regard to return, resettlement and recovery (Guiding Principle 28.2). On the basis of freedom of movement, Guiding Principle 28 spells out three solutions which all IDPs have the right to choose between: return to the place of origin, local integration in the place of displacement, and resettlement in another part of the country. As in the case of initial relocation, it can only be for the safety and health of those affected (Guiding Principle 6.2.d) that a state prohibits return to an area.

As a corollary to Guiding Principle 28, Guiding Principle 15 d stipulates the right of internally displaced persons to be protected against forcible return or resettlement to places where their life, safety, liberty or health would be at risk. Returning a person to an area that was recently struck by disaster, is generally disaster-prone or severely environmentally degraded, may be in breach of the prohibition on forced return reflected in Guiding Principle 15 d. In the annotations to the definition of IDPs in the Guiding Principles, people who have left voluntarily to another part of their country but cannot return to their homes because of events occurring during their absence that make return impossible or unreasonable, are also considered displaced.²⁶

Even when it is permissible to enforce return, it may be unreasonable to expect the person to return, and some places of origin may become uninhabitable in the near future and return may be inadvisable. If there is an increase in the population living in the area, the process of environmental degradation and disaster could be further accelerated. What has been said about the possibility, permissibility and reasonableness of forced return, applies similarly to forced resettlement to a third area.

HOUSING, PROPERTY AND LIVELIHOODS

The affected should receive compensation for property and land lost, as well as assistance in resettling and re-establishing their livelihoods and residence elsewhere (Guiding Principles 28 and 29). If it is a permanent relocation, some development principles could also apply by analogy. The World Bank's Operational Policy 4.12 on Involuntary Resettlement of January 2002 requires that all the affected people should have incomes and standards

of living that are at least equivalent to their pre-project condition.

Experience indicates that while there is investment in building houses at the relocation and resettlement sites, there is often not sufficient focus on the creation of livelihood opportunities and the provision of basic services such as water, sanitation, education and health. In some tsunami-affected countries, fishing families relocated or resettled in-land sometimes ended up

destitute, because adequate livelihood alternatives were not available or made available. Where people are unable to return to previous sources of livelihood, appropriate measures, including provision of re-training opportunities, should be taken (See also the Operational Guidelines C 4.2). According to the Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons, problems relating to housing, property and

livelihoods result in most cases from an inadequate legal and budgetary framework, and the fact that the affected often come from marginalized sectors of society that continue to be marginalized.²⁷

States and humanitarian agencies should review policies, laws and institutional arrangements and take a rights approach when addressing climate change, disasters and displacement. Considering that climate change is a global process, the international

community also has a responsibility to support and strengthen different states' ability to provide protection from displacement, during displacement and to end displacement.

Eight year old Henry Loper guards his house from looters in the aftermath of Hurricane Katrina.



Photo: Jez Coulson / Insight/Panos/Felix Features



Islanders of the Sunderbans in the Bay of Bengal can only stand by and watch as rising sea levels consume their homes and livelihoods.

CROSS-BORDER DISPLACEMENT: INTERNATIONAL LAW AND PROTECTION²⁸

While it is likely that the majority of the displaced remain within their country of origin, some may cross internationally recognised borders and have an uncertain legal status. While new legal and governance solutions may be needed, developing these will take time, and it is also important to look at how existing international law already applies. Some of the displaced should indeed be considered refugees, and considerations relating to the possibility, permissibility and reasonableness of return, may provide a starting point to strengthen or even expand existing instruments and mechanisms to address the cross-border protection gap.

RELOCATION, RESETTLEMENT AND STATELESSNESS

In some extreme cases, such as in the case of the “sinking” island states and potential statelessness, there may be a need for a cross-border relocation. The President of the Maldives announced late last year that they want to buy land in another country.²⁹ The government of Kiribati is trying to secure enhanced labour migration options to Australia and New Zealand, but they also recognise that migration schemes will eventually need to be accompanied by humanitarian options and are keen to secure international agreements in which other governments recognise that climate change has contributed to their predicament and acknowledge relocation as part of their obligation to assist. The government of Tuvalu, on the other hand, does not want relocation to feature in international

agreements, because of its fear that if it does, industrialized countries may simply think that they can solve problems like rising sea levels by relocating affected populations rather than reducing greenhouse gas emissions.³⁰

It is still unclear whether people who lose their state due to climate change impacts, such as the “sinking” island state citizens, would be considered stateless. According to the 1954 Convention Relating to the Status of Stateless Persons article 1, a stateless person is “a person who is not considered as a national by any state under the operation of its law.” According to McAdam, the “sinking” island citizens would not be protected because the definition of statelessness is premised on the denial of nationality through the operation of the law of a particular state, rather than through

El Hache Camp in Kenya. The severe drought has extended across East Africa after the rainy season which was expected in October 2005 failed to arrive, continuing a decade of low rainfall.

the disappearance of a state altogether.³¹ Furthermore, current legal regimes are hardly sufficient to address their very specific needs, including relocation.

UNHCR has been mandated to engage in preventing and reducing statelessness as well as to protect stateless persons (see GA/RES/50/152, 9 February 1996, paras.14-15). In a recent submission to the climate change negotiations, UNHCR, supported by IOM and NRC, recommends multilateral comprehensive agreements that could provide where and on what legal basis populations affected by climate change would be permitted to move, and their status.³² Stateless refugees are protected in the 1951 Convention, article 33(1).

THE REFUGEE REGIME

According to article 1A of the 1951 Convention relating to the Status of Refugees, as modified by the 1967 Protocol, a refugee is a person who owing to a well-founded

fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, 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 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.

Displacement in the context of climate change and disasters was not part of the drafters' considerations when this definition was formulated. Nonetheless, some people displaced across borders in the context of climate change could qualify for refugee status and protection. Serious or systematic human rights violations are normally considered to amount to persecution.³³ Experience shows that situations of both natural disasters and conflict are prone to human rights violations. The 1951 Convention, as well as UNHCR's mandate, will as a minimum be applicable in situations where the victims of natural disasters flee because their government has consciously withheld or obstructed assistance in order to punish or marginalize them on one of the five grounds in the definition.³⁴ In addition, there are often several reasons why a person moves, and convention refugees may flee in the context of disasters while the well-founded fear of persecution exists independently.³⁵

There are regional instruments with broader definitions, but none explicitly mention climate change or disasters as a reason to grant refugee status. The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, article 1.2, includes as refugees persons forced to flee due to "events seriously disturbing public order." Although there have been examples of practice



Photo: Dieter Telemans, Panos Pictures.

CLIMATE CHANGED > PEOPLE DISPLACED

protection have suggested amending the 1951 Convention. But any initiative to modify the refugee definition would risk a renegotiation of the Convention, which, in the current political situation, may undermine the international refugee protection regime altogether.³⁸ Some solution to the normative protection gap may be found in the broader human rights law and considerations of the possibility, permissibility and reasonableness of return.

We may see cases where return of a person to his or her place of origin at some point becomes impossible due to climate change and disasters. The “sinking” island states may be an extreme example. In other cases disasters are likely to affect infrastructure required to effectuate a return.

Forced return may also be impermissible, either because it is considered a direct breach of a fundamental right or considered to be a more indirect breach of such a right. The principle of non-refoulement in the Convention relating to the Status of Refugees article 33(1), stipulates a prohibition of expelling or returning (“refouler”) a refugee “in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a social

group or political opinion.” This fundamental principle is widely regarded as being a part of customary international law and has counterparts in human rights law. In human rights law, non-refoulement is an absolute and general ban on sending a person, independent of conduct or status, to places where he or she risks certain rights violations.

It may also be considered that return in some cases is unreasonable. Not only strict permissibility, but also a more discretionary reasonableness of return, would be relevant for states to consider in the context of climate change.

PROTECTION AGAINST RETURN TO TORTURE, INHUMAN AND DEGRADING TREATMENT

Most agree that the prohibition on torture is a peremptory norm, but there is disagreement regarding the extent to which one is protected by customary law against lesser ill-treatment and human rights violations.

No matter how much a disaster has been induced or created by humans, it is doubtful, to say the least, if it can meet the international definition of torture as the infliction of severe pain or suffering by

a public official for an enumerated purpose such as punishment or obtaining a confession. It could also seem far-fetched to call a disaster cruel, inhuman or degrading treatment. In some cases, rather than claiming that a person is returned to ill-treatment, the return itself could arguably constitute the ill-treatment and perhaps even torture. Let us illustrate with a rather extreme example: How should we consider a case where a public official leaves a person to cope by himself with hardly any means in the middle of a desert? There is a continuum between direct and indirect human rights violations.

Generally, courts have carefully circumscribed the meaning of “inhuman or degrading treatment”, but there are cases where the concept of “inhuman treatment” has been interpreted rather progressively. In the case of *D v. the United Kingdom* (application number 30240/96, 2 May 1997), the European Court of Human Rights considered that returning an HIV-infected person to St. Kitts would amount to “inhuman treatment,” due to inter alia the lack of sufficient medical treatment, social network, a home or any prospect of income. During and after disasters, such as the hurricane Mitch in Central-America in 1998 and the cyclone Nargis in Myanmar in 2008, homes and vital infrastructure is destroyed or damaged,

hindering the provision of basic services such as clean water, electricity and food. One could consider that persons with particular vulnerabilities are protected against return to such circumstances. Clearly, law relating to the permissibility of return is relevant in a climate change context.

OTHER RIGHTS AND PRINCIPLES RELEVANT TO RETURN

Climate change and disasters have negative effects on the realisation of several human rights.³⁹ In theory, any human rights violation under systems such as the European Convention on Human Rights, could give rise to a non-refoulement obligation (*R v. Special Adjudicator ex parte Ullah*, 2004 UKHL 26, paras 24-25). Importantly, the right to life is non-derogable and has very limited exceptions (article 2(2) and article 15(2)). Hence, a person should not be sent back where there is a danger to her life. In addition, one could apply the non-refoulement of refugee law (which includes protection of life) by analogy. Climate change and disasters also effect other human rights such, as the right to food, the right to water, the right to health and the right to adequate housing. Except for absolute rights, such as the right to life and the ban on torture and certain ill-treatment, most human rights provisions permit a balancing test between the interests of the individual and the state. The “new normal” of climate change with more frequent and severe disasters must weigh heavily. These rights will often also be linked to the right to life, and could arguably also be linked to the ban on inhuman and degrading treatment.

Related to the question of permissibility and reasonableness of return, is the principle of return in safety and dignity. International treaties, UN resolutions, UNHCR handbooks and the High Commissioners’ speeches, indicate that important elements of the norm include participation, voluntariness, restoration of rights and sustainability of returns.⁴⁰

A PROTECTION STATUS

If return is not possible, permissible or reasonable due to circumstances in the place of origin and personal conditions, a person should receive protection regardless of the initial cause of movement. The Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons has argued that in the context of climate change, such persons could in fact be considered displaced.⁴¹ In cases of slow-onset disasters, it would not be so much a question of why someone left initially, but rather whether the gradual degradation has reached a critical point where they cannot be expected to return now. As already mentioned, the annotations to the Guiding Principles on Internal Displacement include as displaced persons those who have left voluntarily to another part of their country, but cannot return to their homes because of events occurring during their absence that make return impossible or unreasonable. To a certain degree, this line of thinking is also acknowledged in traditional refugee law with the recognition of *sur place* refugees, who were not refugees when they left their country, but who became refugees at a later date due to circumstances arising in the country of origin or as a result of their own actions.

Naturally, it is the present and future risk of rights violations, rather than the past, which is crucial in determining protection need. Where this need is acknowledged, a clear protection status should also be granted. Existing human rights law, including the non-refoulement principle, does not provide for a right to

Alcora in eastern Spain during a drought period in 2005.



Photo: AP Photo/Fernando Bustamante.

*Satkhira district after Cyclone Aila struck
Bangladesh in May 2009.*

stay nor dictate the content of any protection, but it must include non-rejection at the border to be effective, and can provide a basis for some form of complementary protection.

STATE PRACTICE AND COMPLEMENTARY PROTECTION IN NATURAL DISASTER CASES

Complementary forms of protection have been granted to persons who do not fit so well in the refugee definition, but nonetheless are considered to be in need of substitute protection.

We should not assume that people displaced by climate change and disasters will automatically and permanently lose the protection of their state of origin. The responsibility of neighbouring and more distant states receiving the displaced should come in support of that of the state of nationality. The American Temporary Protected Status mechanism seems to reflect such thinking. According to the 1965 Immigration and Nationality Act, section 244, the nationals of a foreign state can be designated for Temporary Protected Status (TPS) on condition that:

- 1) there has been an environmental disaster in the foreign state resulting in a substantial, but temporary, disruption of living conditions;
- 2) the foreign state is unable, temporarily, to handle adequately the return of its own nationals; and
- 3) the foreign state officially has requested such designation.

In the aftermath of the hurricane Mitch in 1998, the United States made the unprecedented decision to grant TPS to Hondurans and Nicaraguans and other Central Americans. The repeated US extensions of TPS for Hondurans and Nicaraguans is commendable, but it does not change the fact that the individuals in question are still residing in the country on a temporary basis, more than ten years after the disaster struck. Only a few of the other nationalities that appear to qualify for TPS have been accepted. The wide discretion in designating countries for TPS raises a concern that the failure to designate a country may be due to domestic politics, ideology, geographical proximity to the United States, foreign policy interests, the number of nationals present in the United States who would benefit from a designation, and other factors unrelated to human rights protection.⁴² Furthermore, in extreme disaster scenarios, the state of origin may be unable to even advocate with other states on behalf of its citizens in distress. There are also cases in which displacement relates to a certain unwillingness to protect, or even active human rights violations, in the state of origin. While the American model recognises a role for the state of origin, it is not a strong, legal obligation to protect the individual.

In Finland and Sweden, another model has been chosen.⁴³ While they emphasise that the first alternative in natural disasters is internal flight and international humanitarian help, the countries also recognise that complementary protection may be necessary. There are provisions in both countries' Aliens Acts to extend either tem-

porary or permanent protection to foreign nationals who cannot return safely to their home country because of an "environmental disaster" (see for example the Swedish Aliens Act 2005:716, Chapter 4 Section 2).

While other countries may not have an explicit recognition of such displacement in their legislation, some have an inclusive practice of temporary or discretionary "humanitarian" stay.⁴⁴ From 2001 to 2006, there was a presumption in Denmark that families with young children, and eventually also landless people, should not be returned to Afghanistan due to the drought there. In non-EU countries there is also increasing attention being paid to the topic.

STATE PRACTICE AND COMPLEMENTARY PROTECTION IN CONFLICT CASES

Climate change and disasters could also contribute to increasing conflict and related cross-border displacement. Regional instruments like the OAU Convention and the Cartagena Declaration include as refugees persons fleeing from "generalised violence." The EU Temporary Protection Directive provides for temporary protection in mass-influx situations of persons fleeing armed conflict, and the EU Qualification Directive extends subsidiary protection if there is "a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict" (article 2 e, cf. 15 c). But, apart from those that have adopted the OAU Convention or the EU directives, many countries do not yet recognize people fleeing generalised violence as refugees or persons qualifying for complementary protection. This area of law therefore also needs further harmonisation and binding force. As in the disaster displacement cases, one could build further on human rights and non-refoulement, to support existing law with guidelines on when return is permissible and reasonable and when protection status should be granted.

In sum, some displaced persons may qualify as either stateless persons or refugees, and states should recognise them as such, but states should also ensure that migration management systems provide for the entry and protection of others in need. The human rights regime and complementary protection mechanisms can be built on for such solutions. While bilateral deals such as those under the American TPS, is one option, the receiving states must also use their sovereign right to grant safe haven in accordance with basic human rights commitments. If return is not possible, permissible or reasonable due to circumstances in the place of origin and personal conditions, a person should receive protection. Temporary or more permanent protection would of course also alleviate pressure on a state struggling with disasters or violent conflicts. As many of the domestic approaches are discretionary and vary greatly, there is a need to address these questions at a regional and international level, but states should also already start adapting their national laws to better respond to climate change and cross-border displacement.



Photo: G.M.B. Akash / Panos Pictures / Felix Features

TOWARDS A HUMANITARIAN CLIMATE CHANGE AGREEMENT⁴⁵

The 1992 United Nations Framework Convention on Climate Change (UNFCCC) provides the common international framework to address the causes and consequences of climate change. The current 1997 Kyoto Protocol commitments run until 2012. States are therefore expected to arrive at an “agreed outcome” at the Conference of the Parties 15 in Copenhagen in December 2009.

Many developing countries favour a continuation and improvement of the Kyoto Protocol, while some developed countries want to replace the Kyoto Protocol with something completely new that will include commitments for the developing countries. While the Kyoto Protocol commitments focus on reducing greenhouse gas emissions (climate change mitigation), a successor agreement will also address the consequences of climate change that can no longer be avoided (climate change adaptation).⁴⁶

CLIMATE CHANGE MITIGATION AND ADAPTATION

Both climate change mitigation and adaptation are relevant to the obligation to prevent arbitrary displacement from happening in the first place. Even the slightest increase in global mean temperature can lead to unmanageable humanitarian disasters and displacement of people. With a four degrees increase, we risk inter alia one meter sea level rise within 2100, according to the latest scientific conferences. One tenth of the world’s population lives in coastal areas less than one meter above sea level. The IPCC recommends that the increase in global mean temperature should not exceed 2 to 2,4 degrees Celsius. Such climate change mitigation would require enormous and fast reductions in greenhouse gas emissions. Who is going to cut, and how much, is a contentious issue.

It is also important that mitigation measu-

res, such as biofuel projects and forest conservation, are carried out with full respect for the rights of indigenous and local people so they do not lead to displacement. While mitigation is a must, there is also a need to adapt to the current and unavoidable impacts of climate change. This includes reducing the risk of climate-related disasters and thereby also the need to move. The measures range from flood defence infrastructure to education and livelihood diversification. How and how much money will be made available for these purposes is still unclear.

GETTING RECOGNITION FOR MIGRATION AND DISPLACEMENT ISSUES

There are also situations for which mitigation and anticipatory adaptation has not been sufficient to prevent disasters and displacement. Even though the IPCC highlighted migration and displacement already in 1990, this was never addressed in the climate change negotiations and agreements. A sub-group of the IASC task force on climate change has focused on getting recognition for migration and displacement issues in the current negotiations.⁴⁷

Climate change-related migration and displacement was highlighted in some statements during the Conference of the Parties 14 in Poznan, December 2008, most prominently in the opening statement by the Minister of the Environment of Poland and

President of COP 14, and in the statement delivered by the Ambassador of Algeria on behalf of the Africa Group. In the risk management workshop, the states expressed further their support and willingness to build on and coordinate with existing institutions and mechanisms such as the Hyogo Framework for Action.⁴⁸ The issue of migration and displacement later figured in the assembly document of ideas and proposals where Bangladesh referred to “climate refugees.”⁴⁹ The particular challenge of relocation has also been mentioned, inter alia by Mexico during the risk management workshop held in Bonn in April 2009.

A REFERENCE IN THE DRAFT AGREEMENT

In May 2009 a draft negotiation text had been prepared and was made public.⁵⁰ It was a 200 pages document based on literally hundreds of submissions. Many text proposals suggested by humanitarian agencies was included and had support from both Annex 1 (mainly industrialized) and Annex 2 (mainly developing) countries, but much of the text was in brackets which meant it required further negotiation.

Paragraph 25 (e) of the first draft negotiation text included as adaptation actions, “activities related to national and international migration/planned relocation.” The reference ensured by the Bangladeshis, was well received by many states at the first read-



People in Padma Pakur, Bangladesh, are trying to build a new and stronger flood barrier after the tropical cyclone Sidr destroyed the old one.

ing in Bonn in June 2009. Humanitarian agencies present, such as UNHCR, IOM, the Representative to the Secretary-General on the Human Rights of IDPs and NRC, welcomed the reference and offered some advice on how the text could be modified.⁵¹ At a second reading of the draft text, suggested modifications had been included, and a revised negotiation text was made available.⁵²

Since then, negotiation sessions have been held in Bonn in August, Bangkok in September and Barcelona in October 2009. Different groups were set up to edit and shorten the 200 pages initial negotiation draft. The inclusion of migration and displacement issues received explicit support, by the G77 and China during the Bangkok session. Significantly, no states have opposed it. After Barcelona, the reference to migration and displacement featured in the non-paper 41 on adaptation in paragraph 13.⁵³

All Parties [shall] [should] jointly undertake action under the Convention to enhance

adaptation at the international level, including through:

(b) Activities related to migration and displacement or planned relocation of persons affected by climate change, while acknowledging the need to identify modalities of interstate cooperation to respond to the needs of affected populations who either cross an international frontier as a result of, or find themselves abroad and are unable to return owing to, the effects of climate change.

It is important that the reference to “the international level”, is not interpreted to mean that only cross-border movements are addressed. It should rather be interpreted to encompass international cooperation as well as international standards to address, inter alia, migration and displacement, whether such movements are internal or cross-border. Much of the movement is after all expected to be within countries, and the plight of IDPs is a matter of international concern. For clarity, however, it could be

useful to modify *litra b* slightly to read “Activities related to internal and cross-border migration and displacement.”

A STRONG, BINDING, LEGAL AGREEMENT

In addition to the displacement-specific text, key language on risk management and disaster risk reduction was prominent. While these were significant steps in the right direction, the overall negotiation climate was not very good. Little progress was made on the more contentious issues such as greenhouse gas emission targets and funding, and there was a widening gap between developing countries and developed countries. Hopefully, Copenhagen results in a political agreement with clear commitments on all the key elements, and we will see a binding legal agreement within 2010. It remains to be seen whether and how this agreement incorporates displacement and other humanitarian issues.



Deforestation in Burundi.

CASE STUDY: BURUNDI⁵⁴

While producing the smallest amount of greenhouse gases, Africa is one of the continents most vulnerable to climate change and with the greatest lack of adaptive capacity.⁵⁵ Burundi and Somalia are considered among the ten most vulnerable countries in the world.⁵⁶

Burundi, a small country situated in the Great Lakes Region in Central Africa, has recently come out of a civil war, mainly along the ethnic lines of Hutu-Tutsi, and is among the poorest countries on the planet. The small country already struggles with a high population density and land scarcity; this is exacerbated due to several hundred thousand refugees returning home. Population density and waves of displacement have resulted in almost complete deforestation. Trees have been cut for energy, construction and land clearance for agriculture. Deforestation impacts on the local climate – because there is less capture of humidity and rain – and makes the area more vulnerable to floods and droughts – because there are no trees to bind and nurture the soil. In a country where 94% of the working population is employed in the agricultural sector – many as subsistence farmers with rain-fed farms – this has devastating effects.

Accelerating global climate change comes on top of these challenges. Burundi is already experiencing, on the one hand, longer and hotter dry seasons, and, on the other hand, heavier and more concentrated rains.⁵⁷ The result is drought, a deficit of water for various uses, loss of biodiversity, floods, rain erosion, deterioration of water quality, a fall in livestock and agricultural production, food insufficiency, the spread of diseases such as malaria, cholera and dysentery, loss of human lives, migration and forced displacement.

The trend of higher mean temperatures, a longer dry season and heavier and more concentrated rains is only set to increase with further climate change.

DROUGHT IN THE GREAT LAKES REGION

The northern province of Kirundo used to be the granary of Burundi, but since 1999, marked changes in the climate have been observed, and now there is even a tendency towards desertification.⁵⁸ Unpredictability is another characteristic; the weather has become “bizarre”, as one interviewee put it.⁵⁹ For farmers climate disturbances such as drought are devastating. The livelihood vanishes.

To survive the latest drought in 2008, many people had to sell what little they had, making them even more vulnerable to the next drought. Other examples of negative coping mechanisms included school dropout, in particular of girls and especially where there was no school feeding programme, and prostitution.⁶⁰ The most marginalized and vulnerable sections of society, such as single women, may not have the resources to move and may actually be forced to stay during a disaster.⁶¹ As one widowed mother said, “If a drought or flood comes, we will suffer. We have to stay; we have nowhere else to go.”⁶² Although there was no survey or systematic monitoring of people moving away (or subsequent returns), it was also clear that some people left Kirundo in search of other livelihood.

MIGRANTS OR DISPLACED PERSONS?

Drought is a slow-onset disaster, and there are challenges in determining the causality. In northern Burundi, plots are too small to feed the family with subsistence agriculture. How do you draw the line between someone moving because his plot of land, and thus his harvest, is too small, and someone moving because a drought reduced his revenue due to crop failure? The result is the same, not having enough food to feed the family and deciding to look somewhere else.

There is also the question of when the movement should be considered forced displacement and not merely labelled “voluntary”, “economic” or “labour” migration. This is an important distinction because displacement could trigger international law obligations, attention and response. A senior international humanitarian agency staff discussed whether the term “distress migration” is more appropriate than displacement.⁶³ Movement due to drought can differ from conflict and sudden-onset disaster displacement in several respects, and existing laws and policies on displacement may not be completely appropriate. For example, in conflicts and sudden-onset disasters, entire families are often forced to move, while the drought in Kirundo was characterized by family separation with the male head of household leaving in search of work. (In some cases, both the mother and father moved and the children were

left behind alone to fend for themselves.) Perhaps the tipping point is when the entire family leaves; when there is no possibility of survival there, we can talk about forced displacement.⁶⁴ But, the same interviewee clarified, “Everyone talks about it as displacement here,” referring to all drought-related movement.⁶⁵

PROTECTION NEEDS AND RESPONSES

Little is known about the particular protection challenges of the persons displaced due to drought. Some international humanitarian agency staff suggest that they probably face many challenges similar to other displaced persons. Others claim that the protection challenges are more similar to those faced by migrants. For example, if their land is lost, it is likely to be through an interfamily conflict, and the women who are left behind may be vulnerable and at risk of expulsion and exploitation or other rights violations.⁶⁶

All interviewees agreed that the drought displaced persons do not receive the same level of attention and protection as refugees and persons displaced due to conflict and sudden-onset disaster. The persons displaced due to drought are often left to themselves with less access to the aid, public services and security that other displaced persons would benefit from in a camp.⁶⁷ They may therefore be even more vulnerable and at risk of rights violations. The coping mechanisms of these persons often depend on what they used to do in their place of origin – for example, farmers work on other people’s farms – and often people move to a place where they have family or some sort of network.⁶⁸

In Burundi, there are not many effective laws and policies on displacement, and if you find a law or policy, even the department meant to implement it, may not be aware of it.⁶⁹ It is therefore necessary to analyze statements, discussions and practices. The Ministry of National Solidarity is responsible for assisting “sinistres”. This is a term often employed by government agencies and others. By using this term, roughly corresponding to “disaster-affected persons”, they include not only people affected by conflict and sudden-onset disasters, but also natural disasters like droughts. As a response to drought and food insecurity, the government has previously made a national call for solidarity.⁷⁰ A national

platform has now been established under the Hyogo Framework for Action, and crises cells are to be established when a disaster hits.

Much of the displacement due to drought seems to be temporary, and in the summer of 2009, PARESI, which is responsible for assisting in the return, resettlement or integration of disaster-affected persons, assisted a group of people to return to their homes in Kirundo by giving them money for the bus fare and some material assistance.⁷¹ According to one senior international humanitarian agency staff, the durable solution in the drought situations is “mostly material,” it consists in giving materials for a house, providing tools and seeds rather than having to address protection concerns such as security and reconciliation, the way it is done for conflict IDPs.⁷²

THE ROLE OF HUMANITARIAN AGENCIES

Unlike the particular international protection of refugees, those internally displaced are under the protection and sovereignty of their own government, but the government can declare a disaster and call on outside help. This may leave them particularly vulnerable under some governments, but according to senior humanitarian agency staff, “Burundi seems to be quick to declare disaster.” “there is not a problem of political will,” and “there is a regular link between the government and humanitarian agencies.”⁷³ As one international humanitarian agency staff said, “The government has the main responsibility, and we are supposed to be auxiliary, but in reality we are called upon and are the main actors in every crisis.”⁷⁴ Hence, it is important to look at how the different development and humanitarian agencies consider the persons displaced due to drought.

UNHCR Burundi said, “We know what a refugee is, while in a drought it is unclear what the categories are, who has responsibilities.”⁷⁵ If UNHCR intervenes, it is on purely “humanitarian grounds” – a humanitarian imperative can go beyond law and traditional mandates – and as part of a joint UN effort, since natural disaster displacement does not fall clearly within their mandate. They acknowledged that this happens more and more globally, however, due to the One UN

concept, and in Burundi even though the One UN approach has not yet been rolled out. They were for example part of the mission to Kirundo.

REFUGEES, ILLEGAL IMMIGRANTS OR SOMETHING ELSE?

During the droughts in Kirundo, many people move across the border to neighbouring Rwanda rather than internally in Burundi. Most cross-border movement is probably illegal, but the fact that people are ethnically and linguistically the same along the borders, facilitates the movement.⁷⁶ During the 2004 drought many people went to Rwanda. According to an international humanitarian agency staff, UNHCR made an effort to consider them within a political context – there was a certain fear that the 2005 elections would trigger persecution based on ethnicity – and the displaced themselves naturally also recounted the accepted political narrative to UNHCR and Rwandan authorities.⁷⁷ Thus, they fell within the traditional mandate of UNHCR and the 1951 Convention refugee definition.

According to one interviewee, today, some people move to Uganda and work or seek protection as refugees in a camp: “Normally, people have many reasons to leave; those who leave mainly because of hunger, will give another reason that is accepted by those who provide protection.”⁷⁸ Many researchers today agree on the multi-causality of all human mobility, including forced displacement. In interviews undertaken for this article, displaced persons gave both environmental and political reasons for having left Kirundo.⁷⁹ Some people who leave during a drought may therefore legitimately be considered 1951 Convention refugees, but many fall outside legal definitions and protection frameworks.

LAND AND CONFLICTS

Some of the returning refugees do not have access to housing, land and property, and become internally displaced with little means of survival and particularly vulnerable to droughts and other disasters.⁸⁰ While land is a main problem for displaced persons and returnees in general, single women and widows face particular problems since the law still does not allow women to inherit land.

Erosion in Burundi.



Photo: Wikram Kumarasingh

CLIMATE CHANGED > PEOPLE DISPLACED

Droughts and environmental degradation exacerbate land conflicts, and Burundi is a country with a high proliferation of small arms.⁸¹ Every month you hear about people – even brothers – killing each other over land in Burundi, and many murders probably go unreported.⁸² As one refugee who recently returned home noted, “My family had sold much of the land to survive the drought, and when I came back, my brothers were not happy. They were afraid I would claim my part of what little was left of the land. I still have not claimed it.”⁸³ According to some NGO staff, “The next crisis in Burundi will be over land.”⁸⁴ Violent conflict could lead to new displacement.

THE NEED FOR LONGER-TERM DEVELOPMENT AND CLIMATE CHANGE ADAPTATION

A lot could have been done to prevent or at least reduce the effects of the 2008 drought in Kirundo, such as better management of water and irrigation.⁸⁵ Large parts of Africa, including Burundi, is still first and foremost facing “economic” rather than “physical” water scarcity, that is, human, institutional, and financial capital limit access to water even though water in nature is available locally to meet human demands.⁸⁶ The role of governance is illustrated by the fact that while the climate is not so different in Rwanda, the twin neighbour, having consolidated peace and come further in terms of development, did not experience similar devastation.

After the many disasters followed by emergency relief in Kirundo, natural coping capacities and practices of local people have also changed. Some people have a mentality of aid dependency. In the words of a senior international humanitarian agency staff, “People need help to adjust, not just to survive through a drought to face yet another one a few years later. Many donors want to help, but we think long-term action is needed, not more emergency aid.”⁸⁷

Burundi has some laws and policies to prevent environmental degradation and ensure sustainable development, but, as a senior government staff said, “A main challenge is that the country has just come out of a crisis, so everything is a priority, and the environment is seen as a break on development by investors and others.”⁸⁸ There is a need for sensitization and education, technology, capacity and finance.



Photo: Vikram Kohmannskog

Corruption is also a major challenge at all levels and in any work in Burundi.

Burundi also has a National Adaptation Plan of Action – a mechanism specific to the Least Developed Countries.⁸⁹ The NAPA identifies priority options of adaptation and project proposals, such as reforestation, promotion of energy/wood-saving techniques, setting up erosion control mechanisms, popularizing rainwater harvesting techniques and popularizing short cycle and dryness-resistant food crops.

The NAPA also mentions human mobility as a historical adaptation to drought and food insecurity in Burundi. The free movement of people and goods now being discussed in the East-African Community, which Burundi is part of, could help address the challenge of climate change and pressure on land and encourage development through remittances and new skills. UNHCR is currently working with the government to address challenges in the process of legal cross-border movements outside the 1951 Convention.⁹⁰ While people who move may receive more attention and protection if labelled “displaced”, the case of Burundi clearly also stresses the need to increase focus on development and the facilitation of movement for people so they can choose more or less freely to move before they are more or less forced to move.

There is also a need to create and encourage other livelihoods than farming. Burundi is among the least urbanized countries in Africa. The government offers settlement in peace villages to returning refugees who have no land or do not remember where it is because their families fled so long ago. This villagization may prove a positive adaptation to the new environmental situation.

The case of Burundi, with the severity of future climate change, challenges us to think differently about disasters and development. Getting donors and national governments to spend money on preventing potential future disasters is difficult, however. What we have today is politics of the last disaster; what we need is politics of the next disaster.

Erosion in Burundi

Drought at the Horn of Africa.

CASE STUDY: SOMALIA⁹¹

With almost 20 years of armed conflict and droughts and floods, there is a constant, but increasingly acute, humanitarian crisis in Somalia. In the summer of 2009, half of the population, or an estimated 3.7 million people, was in need of humanitarian assistance, more than 1.5 million people were internally displaced and half a million people had fled abroad, mainly to neighbouring Kenya.⁹²

The climate in Somalia is arid to semi-arid. Livestock and rain-fed agriculture, the main livelihoods and components of the economy, directly depend on the weather and environment. According to researchers, international humanitarian agency staff, local NGOs and local people, the drought cycle has changed over the last decades from once every ten years – when the droughts were given names – to becoming an almost nameless constant.⁹³ In addition to changes in the climate, there has been a high population growth and concentration in some areas. As one elder said, “The drought now is different; there is less rain and more people.” The older people talk about the change they have witnessed, and, as one interviewee said, “These are becoming stories in our community now.”⁹⁴ In 2009, the drought intensified in many regions, and in the places that experienced rain, it often came in the form of unexpected and heavy rainfalls that often killed off much of the livestock that was already weak from the drought.⁹⁵ An escalating civil war exacerbates food insecurity further. The country now faces its worst humanitarian crisis in eighteen years.⁹⁶ As a water-stressed, low-lying and coastal, poor and war-torn country that is not a party to the UNFCCC, and consequently does not have a NAPA or any climate change policies, Somalia is especially vulnerable to further climate change.

DISPLACED PASTORALISTS

Most Somalis are pastoralists, and they have always moved to greener pastures during droughts. An important question is how we can talk about displacement in a pastoralist context? International humanitarian agency staff, local NGOs and local people seemed to agree that one could talk of displacement when their migratory pattern is disturbed.⁹⁷ A recent assessment mission concluded that drought has affected even the traditional areas pastoralists in North Somalia migrated to in times of hardship.⁹⁸ Hence, pastoralists cannot use migration as a traditional coping strategy to save their herds, and they resort to erratic and abnormal movement – or are forced to settle.

DROUGHT AND DISPLACEMENT

There are many links between the conflict, disasters and human mobility. There can be more or less direct displacement due to drought, and part of the increase in displacement in Somalia has been ascribed to the drought.⁹⁹ The drought may force people to move, while others are forced to settle. The poor pastoral households with smaller livestock herds, and those who cannot afford to transport their livestock by truck, generally remain behind in areas that receive less rainfall.¹⁰⁰ Some pastoralists loose too



Photo: Sven Torfinn / Panos Pictures/Felix Features

CLIMATE CHANGED > PEOPLE DISPLACED

many of their livestock due to the lack of pastures and water and give up their traditional livelihood to settle permanently in the cities, where they often join the urban poor and IDPs, or in the countryside, where they create enclosures. For example, within a week during the summer of 2009, a family that had 480 sheep, lost 224 animals, and could not continue moving because the remaining animals were too weak or ill.¹⁰¹

DROUGHT AND CONFLICT

There may also be an indirect link between drought and displacement through conflict. Some interviewees believed the drought exacerbates the conflict by increasing competition over fertile land and resources.¹⁰² Now that automatic weapons have become common among people, traditional dispute and coping mechanisms have been weakened. Conversely, the armed conflict may exacerbate the drought. War and military activities have detrimental impacts

on the environment. Lack of state control or any other effective form of governance has led to widespread misuse and overuse of natural resources and environmental degradation. For example, the commercial charcoal production and export resulting in deforestation and thereby contributing to drought, is an important part of the war economy with much of the proceeds going to warlords.¹⁰³

ACCESS AND ABILITY TO MOVE

There is also the question of access and ability to move. The armed conflict can hinder the normal movement of pastoralists and others moving due to drought, as they cannot pass through certain unsafe areas.¹⁰⁴ Land grabbing and new enclosures also restrict pastoralist movement and trigger conflicts. Furthermore, the armed conflict impacts on the access of humanitarian agencies to the drought-affected. Somalia is one of the most dangerous places for aid workers in the world, and humanitarian space is shrinking at an alarming

rate.¹⁰⁵ The escalating conflict is occurring in the same areas where agencies are recording the greatest problems of food access and malnutrition. This places additional burdens on the people already in crisis and makes it difficult for humanitarian agencies to reach the people in need.¹⁰⁶ Floods may also hinder the movement of persons displaced both due to drought and conflict. The flash floods in South Somalia in the summer of 2009 may temporarily have made it more difficult for people to flee across to Kenya.¹⁰⁷

SECONDARY DISPLACEMENT

Settlements and displacement and mass movement of people due to conflict, droughts and floods to an already resource-stressed area, may deplete the area of resources. There has been a massive abnormal movement to areas that receive rains. Technology plays a role in this: Today, people inform each other immediately about rainfall in an area through mobile phones, and the wealthier pastoralists transport

huge numbers of livestock by trucks, creating a sudden and massive pressure on pastures.¹⁰⁸ This, in turn, could make the area more prone to disaster, increase competition over scarce resources and conflict and trigger further displacement.

The drought can also contribute to another form of secondary and longer-distance displacement. When asked why Somalis were coming to neighbouring countries like Kenya, both international humanitarian agency staff and displaced persons themselves first mentioned the conflict in and around Mogadishu. When asked more in detail, however, it became clear that many people first fled from Mogadishu to the countryside or another town within Somalia, but because of the current drought and environmental degradation in these areas, they were forced to move further.¹⁰⁹ Often, people have many reasons to move somewhere. Movement is multi-causal.

MAIN PROTECTION CHALLENGES

Typical protection challenges for those displaced relate to food, water, shelter, healthcare and sexual and gender-based violence.¹¹⁰ The main form of protection is clan protection. Some members of minority clans or people displaced to areas where they have no clan ties therefore face particular problems. Pastoralists who move to the cities do not have the appropriate livelihood skills, and many end up doing unskilled, casual labour or begging. According to some international humanitarian agency staff, return is not a durable solution.¹¹¹ Very few displaced persons in Hargeisa say they want to return to the countryside – they know the drought has become permanent – and they want to take advantage of the opportunities of the city, such as getting education for their children. But the urban settlements or slums are often also particularly vulnerable to disasters, such as floods, because they are congested and lack proper sanitation. People who have been displaced for whatever reason are often also particularly vulnerable to the weather and environment. For example, the intense fighting in Mogadishu during the summer of 2009 even displaced many of the poorest inhabitants – who up until then had not moved due to lack of resources and networks – and they ended up with nothing to shelter them from the heavy rains.¹¹²

LOCAL CUSTOMARY LAW IN THE CONTEXT OF CLIMATE CHANGE

In Somalia, new formal laws are often nothing more than theoretical; this is partly because they are not gazetted or otherwise made available, so few people know about them, and they are not applied and enforced. In many respects, the traditional Somali clan law, *xeer*, is more important. This set of rules and obligations has been developed between clan elders over a long time in a region where droughts are frequent and people depend directly on the weather and natural environment. In *sharia*, which has had substantial influence on *xeer*, and to some extent is applied directly, there are also norms relevant to climate change and the environment. For example, natural resources are considered to belong to God and all mankind should benefit from them.



Many wells in Eastern Africa have dried up or the water has become too salty for human consumption.



Photo: Dieter Telmans, Panos Pictures.

CLIMATE CHANGED > PEOPLE DISPLACED

Somali refugee women fetching firewood in Dadaab refugee camp in Kenya.

While *xeer* is a polycentric legal system, some generally accepted norms relevant in a climate change context can be identified. For example, there are resource-utilization rules regarding use of water and pasture, and the temporary or permanent donation of livestock and other assets to the poor.¹¹³ An elder in Hargeisa explained how the norm was translated to an urban displacement setting: “In the rural areas, we give animals to those who have lost their own animals; here in the city, we help with shelter and food rations.”¹¹⁴ On the other hand, the conflict and constant drought mean that fewer people have enough animals to be able to donate to others in need.¹¹⁵ Rules identified as part of *xeer* in one area, further state that pasture is free for all pastoralists in times of need, irrespective of clan affiliation; that individual pastoralists should not destroy shared pasture and fruit-bearing trees; that pastoralists should not establish private enclosures or farms on grazing land, and that visiting grazers must respect grazing *xeer* and maintain peaceful coexistence with host communities.¹¹⁶

There is a willingness of competing pastoral groups to recognize drought-induced problems, even during times of hostility, and there are historical examples of how lengthy movements across Somalia have occurred without incident.¹¹⁷ Since everyone is affected by drought at some point, this reciprocity can be seen as “survival insurance.”¹¹⁸ In cases involving clans of relatively equal standing, factors such as avoiding a future cycle of revenge work to ensure that *xeer* decisions are respected. Weak and powerless clans can only seek client status with a more powerful clan and hope that they fulfill their obligations. Today, however, the authority and responsibility of clan elders has been weakened due to *inter alia* warlords targeting them and rejecting their authority.

PROTECTION IN KENYA

Some of the displaced people cross the border to Kenya. The Kenyan 2006 Refugees Act recognizes as refugees those with well-founded fears of persecution on 1951 Convention grounds and, *prima facie*, those compelled to leave their countries due to one of the reasons set out in the wider refugee definition of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.¹¹⁹ Kenya is party to these conventions, but maintains certain reservations and *inter alia* restricts the right to work and freedom of movement. UNHCR has lobbied hard to get neighbouring countries to accept Somalis as *prima facie* refugees. The Kenyan government refers asylum seekers who apply under the Refugees Act to UNHCR for refugee status determination. A senior UNHCR staff said, “If drought and conflict coincides, we will not split hairs.”¹²⁰ Around 5,000 pastoralists used to live in and around Dadaab village in the historically neglected and under-developed Northeastern Province in Kenya. In 1991, three camps were established which could accommodate 90,000 displaced persons. By mid-2009, about 300,000 people were living there. Due to the conflict and fear that armed opposition forces are entering the country, Kenya officially closed its border with Somalia in 2007. Somali pastoralists who live on both sides of the border are allowed to cross. Others, who cannot



Photo: Vikram Kulkarni/ICG

bribe the police and others, are subject to serious police abuses, detention and forcibly returned to an area where their lives or security may be at risk, a violation of the principle of non-refoulement.¹²¹ Still, there has been a dramatic increase in new arrivals to the Dadaab camps, with 45,000 persons in the first six months of 2009 and the influx continuing at about 7,000 per month.¹²²

Dadaab is already one of the world’s oldest, largest and most congested refugee sites. Furthermore, the environmental situation is not much better than in Somalia. In 2009, Kenya has experienced one of the worst droughts in decades, with millions in urgent need of food aid.¹²³ In the camps, the availability of water and trees for firewood and construction is limited, and competition between the local population and the displaced people is increasing. Women collecting firewood outside the camps are at great risk of rape. Reported sexual and gender-based violence cases have increased by 30 percent in 2009.¹²⁴ When the rain came in 2009, it fell as heavy

and unpredictable showers, often resulting in floods that devastated people’s houses, destroyed food, polluted water, and triggered outbreaks of diseases such as cholera.¹²⁵

THE WAY FORWARD

Much needs to be done both in Somalia and Kenya to address this humanitarian crisis. The Kenyan government, with help from international supporters, should explore options for an open, but managed, border, and allocate new land for the establishment of another camp. At the same time, there is a need to address concerns about the environmental impact, and there is a need to focus more on local development.

Much of the solution to the refugee challenge in Kenya lies in Somalia. The case of Somalia clearly shows how complex the dynamics of conflict, disasters and human mobility are. Holistic considerations and several types of action are needed to address

the factors that make the country and people so affected by climate change. All those who control territory in Somalia must recognize and respect humanitarian agencies and support their unhindered access to populations in need. The country and agencies present also need to address longer-term development issues such as reducing poverty, reforestation, seeking alternative sustainable energy sources, supporting pastoralism as a livelihood, but also creating alternative livelihoods. Donors must respond generously to funding appeals for Dadaab and Somalia. The challenge of further climate change impels us to act now.

The case of Somalia shows how a country already affected by conflict, droughts and floods on the one hand is particularly vulnerable to further climate change, but also, on the other hand, how such a country may have certain protection frameworks and mechanisms, such as local customary law, that may be relevant in the context of climate change.

CONCLUSIONS AND RECOMMENDATIONS

THERE IS A NEED FOR MORE RESEARCH AND SYSTEMATIC DISPLACEMENT MONITORING.

- Consistent application of a natural disaster displacement monitoring methodology, as suggested in the OCHA-IDMC study, would provide a baseline for informed estimates as to how current displacement trends may be affected by climate change in the future, and would be a necessary element for any improvement in the response for the displaced.
- In addition, data should be collected on related factors, including the duration of displacement and needs of displaced populations.
- There is also a need for further research on displacement related to slow-onset disasters and sea level rise, the links between climate change, conflict and displacement, and climate change impacts on those who already are displaced.

THERE IS A NEED TO IDENTIFY AND FILL OPERATIONAL AND LEGAL GAPS IN PROTECTION.

- States and humanitarian agencies should review policies, laws and institutional arrangements and take a rights approach when addressing climate change, disasters and displacement.
- There is a need to recognise protection issues in the context of natural disasters, and fill operational gaps and clarify institutional arrangements, in particular the Cluster Approach.
- Considering that climate change is a global process, the international community also has a responsibility to support and strengthen different states' ability to provide protection from displacement, during displacement and to end displacement.
- Some displaced persons may qualify as either stateless persons or refugees, and states should recognise them as such, but states should also ensure that migration management systems provide for the entry and protection of others in need. While bilateral deals, such as those under the American TPS, is one option, the receiving states must also use their sovereign right to grant safe haven in accordance with basic human rights commitments.
- As many of the domestic approaches to cross-border displacement are discretionary and vary greatly, there is a need to address these questions at a regional and international level, but states should also already start adapting their national laws.

THE CLIMATE CHANGE AGREEMENT MUST RECOGNIZE AND ADDRESS DISPLACEMENT ISSUES.

- Hopefully, Copenhagen results in a political agreement with clear commitments on key elements that can provide protection against and during displacement, including climate change mitigation and adaptation, and we will see a binding legal agreement within 2010.
- Both the political agreement and the binding legal agreement should explicitly recognise and address migration and displacement issues, as well as the wider risk management and reduction issues. The draft text from Barcelona contains relevant and good language.

ACTION IS NEEDED NOW IN THE MOST VULNERABLE AND AFFECTED COUNTRIES.

- What we need is politics of the next disaster. Longer-term development and mainstreaming climate change adaptation and environmental considerations in humanitarian response are needed to mitigate the cycle of disasters and emergency relief.
- There is a need for sensitization, education, technology, capacity and finance.
- There is a need for information and assistance in accessing information and funds generated through the UNFCCC.
- Facilitating migration both internally in countries and across borders, and creating and encouraging alternative livelihoods, are two important ways of increasing resilience.
- Countries that are already affected by conflict, droughts and floods are on the one hand particularly vulnerable to further climate change, but may also, on the other hand, have certain strengths; for example local customary law frameworks and mechanisms that can be relevant in the context of climate change and should be improved and supported.
- Donors must respond generously to funding appeals to address the humanitarian crises now, so they do not turn worse with accelerating climate change.



A Kenyan boy sits near a stagnant water pool.

Photo: EPA/STR. Scampix

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