

Legal and normative frameworks

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How the legal and normative frameworks are addressed will be critical to the security of people threatened by climate change.

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

The key questions explored in this article are, first, the case for developing the capacity of domestic and international legal apparatus to support the needs of people vulnerable to displacement induced by climate change. The second is to what extent these legal and normative frameworks could support the capacity of local and regional governance and civil society structures to implement adaptation and resilience strategies in order to avert population displacement.

The aspiration is not to promote a case for developing binding conventions but to initiate a bottom-up process – much as the debate on the Guiding Principles on Internal Displacement did in the early 1990s – which might afford firmer support for the rights of those forcibly displaced by environmental change and of those at risk of displacement but who remain behind.

Conceptual and policy questions

Recognising the role of human agency and the need for states to articulate and address the protection of rights in relation to environmentally induced displacement is a pressing issue. What forms of protection for environmentally displaced people currently exist and, more significantly, should be developed as these migratory processes increase?

This same question has recently been posed by, for example, the IASC, IOM, EC and NRC¹, and at the Hague Debate.² A number of issues flow from this question.

It is essential to recognise the multi-causality of environmental displacement in which climate change may be only one of the factors triggering forced migration; this raises the question as to the extent to which it is possible to consider specific forms of protection for a migratory process which does not have a clearly established 'cause'.

A second, and related, challenge is to explore the extent to which people forcibly displaced by environmental factors are subject to violations of basic human rights in the way that refugees and IDPs are. It is necessary to establish the particular nature of threats to human rights caused by ecosystem degradation induced by climate change.

Thirdly, in contrast to one of the fundamental factors on which the 1951 Convention and the Guiding Principles are predicated, those who are forcibly displaced by environmental factors will often not return home. Moreover, whilst it is almost certainly the case that the majority will remain internally displaced and will thus fall within the sphere of national norms and legal instruments to protect their human rights, what has enforced displacement is a global process, not a local crisis. This reflects one of the most fundamental issues related to climate change: accountability – the obligation on the polluting countries of the global north to address the needs of countries that will suffer most in the global south. The interplay between national and international frameworks and issues of state sovereignty in applying protection instruments takes on unique meanings in this context.

Fourthly, much of the current discourse treats environmentally induced migration as a reactive response of last resort where migration is seen as failure. However, migration is sometimes a positive and proactive diversification and development strategy that households, individuals and sometimes whole communities adopt to improve their lives and to reduce risk and vulnerability.

Fifthly, and conversely, the focus of much current academic and political debate is on the interests of those forced to migrate because of environmental factors over the equally important rights of those who remain. For some, remaining may be a positive choice – a strategy of adaptation and resilience. This challenges the notion of vulnerable groups as passive victims, highlighting instead people's skills, strategies and agency. Equally, there may be those who are forced to remain because they lack the opportunities, skills and resources to migrate. In either case we need to consider how a rights-based protection regime and the application of principles of human security might support those who remain.

Lastly, it is in the global south where the incidence of climate-induced environmental displacement is, and will be, most severe. Many of these countries and regions have weak governance and civil society structures and are least able, or willing, to protect human rights and security. How can their protection capacity be enhanced? In this context it is important to recognise that environmental factors do not undermine rights and security in isolation from a broader range of socio-economic rights.

A new framework of guiding principles?

Acknowledging the strong resistance of the international community to developing new international instruments but recognising the need to protect the increasing numbers of environmental migrants, what

existing norms and instruments might be embraced in a new framework of guiding principles?

I believe the case is very weak for extending the 1951 Convention and 1967 Protocol to include so-called 'environmental refugees' as has recently been advanced by some researchers and humanitarian agencies. Conversely, the 1998 Guiding Principles, however, are not just a fundamental starting point in their own right but also a model for the process of aggregating and adapting the norms and principles from a wide range of international instruments to protect the rights of the 'environmentally displaced'. The 1948 Universal Declaration of Human Rights protects freedom of movement and other social, cultural and economic rights which can be enjoyed under international human rights law and international humanitarian law but which might be threatened when people are forced to migrate by climate-induced environmental degradation.

There are 'subsidiary' norms and instruments which afford different forms of human rights protection for migrant groups either directly or indirectly, for example: the 1966 Covenant on Economic, Social and Cultural Rights and the 1996 International Convention on Civil and Political Rights, as well as a range of international conventions dealing with specific social groups, such as the 1990 International Convention on the Protection of the Rights of All Migrant Workers, the 1989 Convention on the Rights of the Child 1989, the 1981 Convention on the Elimination of All Forms of Discrimination against Women and the 1991 ILO Convention on the Rights of Indigenous People. Given that statelessness is the likely condition for citizens of small island states which will be submerged by rising sea levels, their protection is a critical challenge under the 1954 Convention Relating to Stateless Persons, the 1991 Convention on the Reduction of Statelessness and the protection mandate of UNHCR for stateless people.

Alongside this framework of international human rights and humanitarian law is a substantial body of sovereign state domestic law

and regional instruments providing subsidiary and/or temporary protection. Although implementation is limited in precisely those fragile states where protection is most needed, these laws and instruments offer scope for debate and possible expansion to protect the rights of those displaced by, or affected by, environmental degradation.

A number of international bodies, guidelines and standards buttress the protection and security rights of international law and give practical support to them. Although fraught with the same political challenges which accompany development of the framework of principles, in time we might conceive that the protection mandates of a number of international bodies could be extended, for example that of UNHCR or of the Office of the High Commissioner for Human Rights.

Standards and guidelines that could be extended include the UN Inter-Agency Standing Committee's Guidelines on Human Rights and Natural Disasters, the Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, and the Responsibility to Protect of the International Commission on Intervention and State Sovereignty. Equally, the Sphere Project's Humanitarian Charter and Minimum Standards in Disaster Response and the humanitarian clusters under the Humanitarian Response Review process also provide essential features of protection regimes of relevance to those who are environmentally displaced. Interagency coordination, problematic enough now, will be vital.

Policy relevance

Protection and human security instruments and norms will not have the immediate impact of the physical, spatial and developmental strategies and policies needed to respond to climate-induced displacement – but providing and enhancing protection capacity remain essential components of a comprehensive approach to the challenge of displacement at both national and international levels.

Linking the protection discourse to climate-induced environmental displacement and strengthening protection norms and instruments

are essential for supporting the potentially very large numbers of people forced to move as well as those who stay behind. Promoting a rights-based perspective of protection and an analysis based on entitlements can also be used as a tool to indicate the parameters for other 'hard' and 'soft' policy responses to the environmentally displaced – for example, rights of access to land and housing, freedom of movement, and participation and empowerment in decision-making on resettlement. Addressing the impacts of displacement as a rights-based challenge inevitably demands that affected populations are fully involved in developing response strategies, and that advocacy tools and processes are enhanced to promote their rights.

Finally, the policy relevance of developing protection norms, instruments and guidelines is emphasised by the extreme cases where ecosystem degradation and the depletion of environmental resources might lead to conflict and violence – and therefore to refugees in the strictest sense of the 1951 Convention. It is necessary to be cautious about these links, for there is little solid empirical research and it is clear that environmental factors do not work in isolation. Nevertheless, given the inevitability of ecosystem degradation and the resulting increase in the numbers of those who will be forcibly displaced, there is a strong case to be made to ensure that the protection machinery does embrace environmental displacement in these specific contexts.

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1. Inter-Agency Standing Committee, see p41; Norwegian Refugee Council, see p46; International Organization for Migration see pp59-60.

2. See podcast on Human Displacement and Climate Change in International Law at www.forcedmigration.org/podcasts/hague-climate-debate/